

Colorado Revised Statutes 2017

TITLE 7

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NOTE TO DRAFT: The statutes themselves inconsistently use the term “Repealed” and “Deleted by amendment, L. 2006 ...” or similar language. This draft uses “Deleted by amendment, L. 2019 ____” for deletions proposed herein.

SECTION 1. In Colorado Revised Statutes, amend Articles 90, and 101-117 of Title 7, as follows:

CORPORATIONS AND ASSOCIATIONS

ARTICLE 90

Colorado Corporations and Associations Act

PART 1

DEFINITIONS AND APPLICATION -

SPECIAL RULES

7-90-101. Short title. This article shall be known and may be cited as the "Colorado Corporations and Associations Act".

7-90-102. Definitions. As used in this title, except as otherwise defined for the purpose of any section, subpart, part, or article of this title, or unless the context otherwise requires:

(1) "Address" means a mailing address or a street address.

(1.3) (Deleted by amendment, L. 2010, (HB 10-1403), ch. 404, p. 1995, § 12, effective August 11, 2010.)

(1.5) "Articles of association" means, with respect to a domestic limited partnership association, the articles of association as defined in the "Colorado Limited Partnership Association Act", article 63 of this title. With respect to a foreign limited partnership association or partnership association, "articles of association" means the corresponding document filed with the jurisdiction under the law of which the limited partnership association is formed.

(2) "Articles of incorporation" means, with respect to:

(a) A domestic cooperative that is not a domestic limited cooperative association, a domestic corporation, or other domestic entity that is formed under or subject to the "Colorado Business Corporation Act", articles 101 to 117 of this title, articles of incorporation as that term is used in the "Colorado Business Corporation Act";

(b) A corporation formed under or subject to article 40 of this title, a certificate of incorporation as that term is used in article 40 of this title;

(c) A domestic cooperative, a domestic nonprofit corporation, or other domestic entity that is formed under or subject to the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title, articles of incorporation as that term is used in the "Colorado Revised Nonprofit Corporation Act"; and

(d) A foreign corporation or foreign nonprofit corporation, the corresponding document filed with the jurisdiction, under the law of which the corporation or nonprofit corporation is formed.

(3) "Articles of organization" means, with respect to:

(a) A domestic limited liability company, the articles of organization as defined in the "Colorado Limited Liability Company Act", article 80 of this title;

(b) A foreign limited liability company, the corresponding document filed with the filing officer of the jurisdiction under the law of which the foreign limited liability company is formed; and

(c) A domestic limited cooperative association, the articles of organization as defined in the "Colorado Uniform Limited Cooperative Association Act", article 58 of this title.

(3.3) "Assumed entity name" means an entity name assumed by a foreign entity pursuant to the provisions of section 7-90-603.

(3.5) Deleted by amendment, L. 2019 ____.

(3.7) (Deleted by amendment, L. 2002, p. 1837, § 87, effective July 1, 2002; p. 1702, § 85, effective October 1, 2002.)

(3.8) [*Editor's note: Subsection (3.8) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*] "Commercial registered agent" means a registered agent who has filed the appropriate documentation with the secretary of state to become listed as a commercial registered agent pursuant to section 7-90-707.

(3.9) (Deleted by amendment, L. 2004, p. 1465, § 201, effective July 1, 2004.)

(4) "Constituent document" means a constituent filed document or a constituent operating document.

(5) "Constituent entity" means, with respect to a merger, each merging entity and the surviving entity; with respect to a conversion, the converting entity and the resulting entity; and, with respect to a share or equity capital exchange, each entity whose owner's interests will be acquired and each entity acquiring those interests.

(6) "Constituent filed document" means the articles of incorporation, articles of organization, certificate of limited partnership, articles of association, statement of registration, or other document of similar import filed or recorded by or for an entity in the jurisdiction under the law of which the entity is formed, by which it is formed, or by which the entity obtains its status as an entity or the entity or any or all of its owners obtain the attribute of limited liability. Where a constituent filed document has been amended or restated, "constituent filed document" means the constituent filed document as last amended or restated.

(7) "Constituent operating document" means articles of incorporation, operating agreement, or partnership agreement, and bylaws of a corporation, nonprofit corporation, cooperative, or limited partnership association.

(8) "Converting entity" means the entity that converts into a resulting entity pursuant to section 7-90-201.

(9) "Cooperative" means a domestic cooperative or a foreign cooperative.

(9.5) Deleted by amendment, L. 2019____.

(10) "Corporation" means a domestic corporation or a foreign corporation.

(10.3) "Delinquent entity" means an entity that has been declared delinquent pursuant to section 7-90-902 and that has not cured its delinquency.

(10.5) "Deliver" includes mail; except that delivery to the secretary of state means actual receipt by the secretary of state. "Deliver" to any person by the secretary of state includes delivery or mail to the registered agent address of the person's registered agent, or to the principal office address of the person, unless otherwise specified in section 7-90-902 or by an

organic statute other than this article. "Deliver" by the secretary of state to a person that has neither a principal office address nor a registered agent address includes delivery to the address that such person may have provided to the secretary of state for such purpose, unless otherwise specified by an organic statute other than this article.

(11) "Domestic cooperative" means an entity formed under article 55 of this title; an entity formed under the "Colorado Cooperative Act", article 56 of this title; an entity formed under the "Colorado Uniform Limited Cooperative Association Act", article 58 of this title; or an entity formed under any other act of the state of Colorado that has elected to be subject to the "Colorado Cooperative Act".

(11.5) (Deleted by amendment, L. 2003, p. 2276, § 194, effective July 1, 2004.)

(12) "Domestic corporation" means a corporation formed under or subject to the "Colorado Business Corporation Act", articles 101 to 117 of this title.

(13) "Domestic entity" means a domestic corporation, a domestic general partnership, a domestic cooperative, a domestic limited liability company, a domestic limited partnership, a domestic limited partnership association, a domestic nonprofit association, a domestic nonprofit corporation, or any other organization or association that is formed under a statute or common law of this state or as to which the law of this state governs relations among the owners and between the owners and the organization or association and that is recognized under the law of this state as a separate legal entity.

(13.5) "Domestic entity name" means the name of a domestic entity as stated in the entity's constituent filed document or as changed pursuant to section 7-90-601.5 or 7-90-601.6.

(14) "Domestic general partnership" means a partnership as defined in the "Uniform Partnership Law", article 60 of this title, or as defined in the "Colorado Uniform Partnership Act (1997)", article 64 of this title if, in either case, the law of this state governs relations among the partners and between the partners and the partnership. The term includes a limited liability partnership as defined in the "Uniform Partnership Law", article 60 of this title, or as defined in the "Colorado Uniform Partnership Act (1997)", article 64 of this title.

(14.5) "Domestic limited cooperative association" means a limited cooperative association formed under or subject to the "Colorado Uniform Limited Cooperative Association Act", article 58 of this title.

(15) "Domestic limited liability company" means a limited liability company formed under the "Colorado Limited Liability Company Act", article 80 of this title.

(15.3) "Domestic limited liability limited partnership" means a domestic limited partnership that is registered as a limited liability limited partnership under section 7-60-144 or 7-64-1002.

(15.5) "Domestic limited liability partnership" means a domestic general partnership that is a limited liability partnership as defined in the "Uniform Partnership Law", article 60 of this title, or as defined in the "Colorado Uniform Partnership Act (1997)", article 64 of this title.

(16) "Domestic limited partnership" means a limited partnership as defined in the "Uniform Limited Partnership Law of 1931", article 61 of this title, or as defined in the "Colorado Uniform Limited Partnership Act of 1981", article 62 of this title. The term includes a limited partnership that is a limited liability limited partnership.

(17) "Domestic limited partnership association" means a limited partnership association formed under the "Colorado Limited Partnership Association Act", article 63 of this title.

(18) "Domestic nonprofit association" means a nonprofit association as defined in the "Uniform Unincorporated Nonprofit Association Act", article 30 of this title.

(19) "Domestic nonprofit corporation" means a corporation formed under or subject to article 40 of this title or the "Colorado Revised Nonprofit Corporation Act", articles 121 to 137 of this title.

(19.3) (Deleted by amendment, L. 2004, p. 1465, § 201, effective July 1, 2004.)

(19.5) "Effective date", when referring to a document filed by the secretary of state, means the time and date determined in accordance with section 7-90-304.

(19.7) "Effective date of dissolution of an entity" means, with respect to any domestic entity other than a general partnership that was a reporting entity before dissolution, the earlier of the effective date of the entity's articles of dissolution or statement of dissolution or the date as shown by the records of the secretary of state on which the entity was administratively or judicially dissolved.

(20) "Entity" means a domestic entity or a foreign entity.

(20.5) "Entity name" means a domestic entity name or a foreign entity name.

(20.6) "Fee" means a fee determined and collected by the secretary of state as provided in section 24-21-104, C.R.S., and includes a fee imposed as a penalty for a late filing or otherwise.

(20.7) "Filed document" means any document filed by the secretary of state pursuant to this title, whether or not effective.

(21) "Foreign cooperative" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic cooperative.

(21.5) (Deleted by amendment, L. 2003, p. 2276, § 194, effective July 1, 2004.)

(22) "Foreign corporation" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic corporation.

(23) "Foreign entity" means a foreign corporation, a foreign cooperative, a foreign general partnership, a foreign limited liability partnership, a foreign limited liability company, a foreign limited partnership, a foreign limited liability limited partnership, a foreign limited partnership association, a foreign nonprofit association, a foreign nonprofit corporation, or any other organization or association that is formed under a statute or common law of a jurisdiction other than this state or as to which the law of a jurisdiction other than this state governs relations among the owners and between the owners and the organization or association and is recognized under the law of such jurisdiction as a separate legal entity.

(23.3) "Foreign entity name" means:

(a) The name of a foreign entity under which it is authorized to transact business or conduct activities in this state, whether such name is its true name or an assumed entity name, as such name may be changed pursuant to section 7-90-601.6; or

(b) As to a foreign entity that is not authorized to transact business or conduct activities in this state but that has registered its true name pursuant to section 7-90-604, that true name.

(23.5) "Foreign general partnership" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic general partnership.

(23.7) "Foreign limited cooperative association" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic limited cooperative association.

(24) "Foreign limited liability company" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic limited liability company.

(24.3) "Foreign limited liability limited partnership" means an entity that is functionally equivalent to a domestic limited liability limited partnership and is formed under the law of a jurisdiction other than this state or as to which the law of a jurisdiction other than this state governs relations among the owners and between the owners and the entity and is recognized under the law of this state as a separate legal entity.

(24.5) "Foreign limited liability partnership" means an entity that is functionally equivalent to a domestic limited liability partnership and is formed under the law of a jurisdiction other than this state or as to which the law of a jurisdiction other than this state governs relations among the owners and between the owners and the entity and is recognized under the law of this state as a separate legal entity.

(25) "Foreign limited partnership" means a partnership formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic limited partnership.

(26) "Foreign limited partnership association" means a limited partnership association formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic limited partnership association.

(27) (Deleted by amendment, L. 2000, p. 959, § 44, effective July 1, 2000.)

(28) "Foreign nonprofit association" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic nonprofit association.

(29) "Foreign nonprofit corporation" means an entity formed under the law of a jurisdiction other than this state that is functionally equivalent to a domestic nonprofit corporation.

(29.3) (Deleted by amendment, L. 2004, p. 1465, § 201, effective July 1, 2004.)

(29.5) "Formed" includes incorporated, created, and organized, and each of the terms includes the others as the context may require. With respect to an entity that was initially formed under the law of one jurisdiction and, by merger, conversion, consolidation, redomestication, or other action, is treated, after such action, according to the law of the jurisdiction under which it was initially formed, as having been formed under the law of a second jurisdiction, the entity shall be considered to have been formed under the law of the second jurisdiction for purposes of this title.

(30) "General partner" means a partner in a general partnership and a general partner in a limited partnership.

(31) "General partnership" means a domestic general partnership or a foreign general partnership.

(31.1) "Health care coverage cooperative" shall have the same meaning as set forth in section 10-16-1002 (2), C.R.S., or a successor statute.

(31.3) "Include" or its variants, when used in reference to any definition or list, indicates that the definition or list is partial and not exclusive.

(31.5) "Individual" means a natural person.

(31.7) "Jurisdiction" includes the United States, a state of the United States, a foreign country or other foreign governmental authority, and any agency, instrumentality, or subdivision thereof.

(32) "Limited liability company" means a domestic limited liability company or a foreign limited liability company.

(32.5) "Limited liability limited partnership" means a domestic limited liability limited partnership or a foreign limited liability limited partnership.

(32.7) "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.

(33) "Limited partner" means a limited partner in a limited partnership.

(34) "Limited partnership" means a domestic limited partnership or a foreign limited partnership.

(35) "Limited partnership association" means a domestic limited partnership association or a foreign limited partnership association.

(35.5) "Mail" means deposit in the United States mail, properly addressed, first class postage prepaid, and includes registered, certified, express, or priority mail for which the proper fee has been paid.

(35.6) "Mailing address" means, with respect to any person, a physical location to which mail for such person may be delivered, which physical location shall be described by its street name and number or post office box number, city, state, and (if not the United States) country, and the postal code, if any, for delivery of mail to the location. If the person has no post office box and, by reason of rural location or otherwise, a street name and number, city, or town does not exist, "mailing address" shall mean an appropriate description fixing as nearly as possible the actual physical location to which mail for that person is delivered, but, for all locations in the United States, the county or parish and, if any, the rural free delivery route and the United States postal code shall be included.

(35.7) "Manager" means:

(a) A member of a limited liability company in which management is not vested in managers rather than members;

(b) A manager of a limited liability company in which management is vested in managers rather than members;

(c) A member of a limited partnership association in which management is not vested in managers rather than members;

(d) A manager of a limited partnership association in which management is vested in managers rather than members;

(e) A general partner;

(f) An officer or director of a corporation, a nonprofit corporation, a cooperative, or a limited partnership association; or

(g) Any person whose position with respect to an entity, as determined under the constituent documents and organic statutes of the entity, without regard to the person's title, is the functional equivalent of any of the positions described in paragraphs (a) to (f) of this subsection (35.7).

(35.9) "Means" denotes an exhaustive definition or list.

(36) "Member" means:

(a) A member of a cooperative;

(a.5) A member of a limited cooperative association as defined in section 7-58-102;

(b) A member of a nonprofit association;

(c) A member of a limited liability company;

(d) In the case of a nonprofit corporation with one or more classes of voting members, a voting member of a nonprofit corporation; or

(e) In the case of a nonprofit corporation with no voting members, a director of a nonprofit corporation.

(37) "Merging entity" means any entity that merges into a surviving entity pursuant to section 7-90-203 or pursuant to the organic statutes other than this article.

(38) "Nonprofit association" means a domestic nonprofit association or a foreign nonprofit association.

(39) "Nonprofit corporation" means a domestic nonprofit corporation or a foreign nonprofit corporation.

(40) "Nonprofit entity" means a nonprofit corporation or a nonprofit association.

(40.5) "Obligation" means any debt, obligation, duty, or liability whether sounding in tort, contract, or otherwise.

(40.7) "On file in the records of the secretary of state", "on file in the office of the secretary of state", and "on file with the secretary of state", with reference to a document, means that the document has been filed by the secretary of state and has become effective pursuant to section 7-90-304 or otherwise pursuant to law and that, subsequent to the commencement of the document's effectiveness, no action has been taken, or omission has occurred, that has caused the document to become ineffective or to be superseded in effect.

(41) "Operating agreement" means the operating agreement of a domestic limited liability company or the functionally equivalent document of a foreign limited liability company.

(42) "Organic statutes" means, with respect to any entity:

(a) This article;

(b) The statute, whether of this state or of another jurisdiction, under which the entity is formed; and

(c) All other statutes of this state or such other jurisdiction that govern the organization and internal affairs of the entity.

(43) "Owner" means a shareholder of a corporation, a member, a partner, or a person having an interest in any other entity that is functionally equivalent to an owner's interest.

(44) "Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.

(45) "Partner" means a general partner and a limited partner.

(46) "Partnership" means a domestic general partnership, a foreign general partnership, a domestic limited partnership, or a foreign limited partnership.

(47) "Partnership agreement" means the partnership agreement of a domestic general partnership or a domestic limited partnership, or the functional equivalent for a foreign general partnership or a foreign limited partnership.

(47.1) (Deleted by amendment, L. 2000, p. 959, § 44, effective July 1, 2000.)

(48) (Deleted by amendment, L. 2003, p. 2276, § 194, effective July 1, 2004.)

(48.5) "Periodic report" means the report required by section 7-90-501.

(49) "Person" means an individual, an estate, a trust, an entity, or a state or other jurisdiction.

(50) "Primary constituent documents" means articles of incorporation with respect to a corporation and constituent documents with respect to other entities.

(50.5) (a) "Principal address" means principal office address or, for a person that has no principal office address, the street address of the person's usual place of business in this state if it has one, the street address of the person's residence in this state if it has one but has no principal

place of business in this state, the street address of the person's usual place of business outside this state if it has one but has no usual place of business or residence in this state, or the street address of the person's residence outside this state if it has one but has no principal place of business anywhere and no residence in this state.

(b) In each case enumerated in paragraph (a) of this subsection (50.5), for a person that has no principal office address, "principal address" means the mailing address of the person if it is different from the address determined pursuant to paragraph (a) of this subsection (50.5).

(51) "Principal office" means the office of an entity located at the principal office address of the entity.

(51.5) "Principal office address" means the street address and, if different, the mailing address inside or outside this state, that has been stated by or for an entity to be the principal office address of the entity in the first filed document, in which document the entity or another person has been required, by a provision of this title or by a form or cover sheet the use of which is required by the secretary of state, to state the entity's principal office address; or, if the entity's principal office address has been changed pursuant to section 7-90-705, the principal office address of the entity as last so changed.

(52) "Proceeding" includes a civil suit, arbitration, or mediation and a criminal, administrative, or investigatory action.

(53) "Provider network" means an entity created pursuant to part 3 of article 18 of title 6, C.R.S., or any functionally equivalent entity formed under any subsequently enacted statute of this state.

(54) "Receive", when used in reference to receipt of a writing or other document by an entity, means that the entity actually obtains the writing or other document.

(55) ***[Editor's note: This version of subsection (55) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)]*** "Registered agent" means the registered agent required to be maintained by an entity pursuant to part 7 of this article or appointed pursuant to article 70 of this title.

(55) ***[Editor's note: This version of subsection (55) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)]*** "Registered agent" means the registered agent required to be maintained by an entity pursuant to part 7 of this article or appointed pursuant to article 70 of this title. "Registered agent" includes a commercial registered agent.

(56) "Registered agent address" means the street address and, if different, the mailing address of the registered agent's primary residence in this state or usual place of business in this state if the registered agent is an individual, or of the registered agent's usual place of business in this state if the registered agent is an entity.

(56.5) "Registered agent name" means, with respect to a registered agent who is an individual or a domestic entity, the true name of the registered agent and, with respect to a registered agent that is a foreign entity, the foreign entity name of the foreign entity.

(57) (Deleted by amendment, L. 2004, p. 1465, § 201, effective July 1, 2004.)

(58) "Reporting entity" means any domestic entity as to which a constituent filed document is on file in the records of the secretary of state other than a domestic limited partnership that is not a reporting limited partnership and any foreign entity authorized to transact business or conduct activities in this state. An entity ceases to be a reporting entity upon the dissolution of the entity, the entity becoming delinquent, the relinquishment of the entity's authority to transact business or conduct activities in this state, or, if the entity is a limited liability partnership or a limited liability limited partnership that is not a reporting limited partnership, its withdrawal of its statement of registration. A dissolved entity that was a reporting entity before its dissolution again becomes a reporting entity upon its reinstatement under part 10 of this article, and a delinquent entity again becomes a reporting entity upon the curing of its delinquency pursuant to section 7-90-904.

(58.5) "Reporting limited partnership" means:

(a) A domestic limited partnership formed after July 26, 2009;

(b) A domestic limited partnership formed under article 61 of this title that elects after July 26, 2009, to be governed by article 62 of this title;

(c) A domestic limited partnership formed under or governed by article 62 of this title for which, after July 26, 2009, a statement of registration is delivered to the secretary of state, for filing pursuant to part 3 of this article, and which is subsequently on file in the records of the secretary of state; or

(d) Any other domestic limited partnership formed under or governed by article 62 of this title as to which a statement of election to be a reporting entity is on file in the records of the secretary of state after July 26, 2009.

(59) "Resulting entity" means the entity that results from the conversion of an entity pursuant to section 7-90-201.

(60) (Deleted by amendment, L. 2003, p. 2276, § 194, effective July 1, 2004.)

(60.5) "Signature" or "signed", unless otherwise provided in the constituent document, includes an "electronic signature" as that term is defined in the "Uniform Electronic Transactions Act", section 24-71.3-102 (8), C.R.S.

(61) "State", when referring to a part of the United States, includes the following:

(a) A state;

(b) A commonwealth;

(c) The District of Columbia;

(d) All agencies, instrumentalities, and subdivisions of a state, a commonwealth, or the District of Columbia; or

(e) Any territory or insular possessions of the United States together with all agencies and governmental subdivisions thereof.

(61.1) "Statement of change" means a statement of change as described in section 7-90-305.5.

(61.3) "Statement of conversion" means a statement of conversion as described in section 7-90-201.7.

(61.4) "Statement of correction" means a statement of correction as described in section 7-90-305.

(61.5) "Statement of election to be a reporting entity" means a statement of election to be a reporting entity as described in section 7-90-501 (7.5).

(61.6) "Statement of merger" means a statement of merger as described in section 7-90-203.7.

(61.7) "Statement of registration" means, with respect to a domestic limited liability partnership or a domestic limited liability limited partnership, the statement of registration as described in section 7-60-144 or section 7-64-1002. With respect to a foreign limited liability partnership or a foreign limited liability limited partnership, "statement of registration" means the corresponding document filed with the filing officer of the jurisdiction under the law of which the foreign limited liability partnership or the foreign limited liability limited partnership is formed.

(62) "Street address" means, with respect to a physical location, the street name and number, city, state, and (if not the United States) country, and the postal code, if any, that is required for delivery of mail to the location. If, by reason of rural location or otherwise, a street name and number, city, or town does not exist, "street address" shall mean an appropriate description fixing as nearly as possible the actual physical location, but, for all locations in the United States, the county or parish and, if any, the rural free delivery route and the United States postal code shall be included.

(63) "Surviving entity" means the entity into which a merging entity or entities have merged pursuant to section 7-90-203 or pursuant to the organic statutes other than this article.

(63.3) "Trade name" means a name of a person other than the true name of the person, or, in the case of a general partnership that is not a limited liability partnership, other than the true name of each general partner of the general partnership, under which the person may transact business or conduct activities pursuant to the provisions of article 71 of this title.

(63.7) "True name" means, with respect to an individual, the first name and surname of the individual; with respect to a domestic entity, the domestic entity name, if any, of the domestic entity, or, if the domestic entity does not have a domestic entity name, the name under which the domestic entity most commonly transacts business or conducts activities in this state; and, with respect to a foreign entity, the functional equivalent of such a name.

(64) "United States" includes any district, authority, office, bureau, commission, department, and any other agency of the United States of America.

(65) "Unit owner's association" means an entity created pursuant to part 3 of article 33.3 of title 38, C.R.S., or any functionally equivalent entity formed under any subsequently enacted statute of this state.

(66) "Writing" or "written", unless otherwise provided in the constituent document, includes an "electronic record" as that term is defined in the "Uniform Electronic Transactions Act", section 24-71.3-102 (7), C.R.S.

7-90-102.5. Relationship between constituent documents and organic statutes. For purposes of this article, the constituent documents of an entity shall govern to the extent not inconsistent with any provision of the organic statutes that may not be waived by the constituent documents of the entity.

7-90-103. Reservation of power to amend or repeal. The general assembly has the power to amend or repeal all or part of this article at any time, and all entities subject to said article shall be governed by the amendment or repeal.

7-90-104. Nonapplication of uniform commercial code to owner's interest. Subsections (d) to (f) of section 4-9-406 and section 4-9-408, C.R.S., do not apply to the assignment or the transfer of, or the creation of a security interest in, an owner's interest.

Editor's note: (1) Amendments to subsection (58) by sections 194 and 344 of House Bill 03-1377 were harmonized.

(2) Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding subsection (3.8) and amending subsection (55) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement said subsections. As of publication date, the revisor of statutes had not received certification from the secretary of state.

PART 2

MERGER AND CONVERSION OF ENTITIES

7-90-201. Conversion of an entity. (1) Pursuant to a plan of conversion complying with section 7-90-201.3 and approved in accordance with section 7-90-201.4:

(a) A domestic entity of one form may convert into any other form of domestic entity.

(b) A domestic entity may convert into any form of foreign entity recognized in the jurisdiction under the law of which the entity will be considered to have been formed after the conversion.

(2) A foreign entity may convert into a domestic entity if the conversion is not prohibited by the constituent documents or organic statutes of the foreign entity and if the foreign entity complies with all of the requirements, if any, of its constituent documents and organic statutes in effecting the conversion.

7-90-201.3. Plan of conversion. (1) A plan of conversion shall state:

(a) The entity name or, for an entity that has no entity name, the true name, the jurisdiction under the law of which the entity is formed, and the form of entity of the converting entity;

(b) The entity name or, for an entity that has no entity name, the true name, the jurisdiction under the law of which the entity is formed, and the form of the resulting entity;

(c) The terms and conditions of the conversion, including the manner and basis of changing the owners' interests of the converting entity into owners' interests or obligations of the resulting entity or into money or other property in whole or in part.

7-90-201.4. Approval of plan of conversion. (1) In the case of domestic entities described in this subsection (1), the plan of conversion shall be approved:

(a) In the case of a corporation, as provided in section 7-111-103;

(b) In the case of a nonprofit corporation, as provided in section 7-131-102;

(c) In the case of a cooperative formed under, or subject to, article 56 of this title, as provided in section 7-56-602; and

(d) In the case of a cooperative formed under article 55 of this title, as provided in section 7-55-112.

(2) In the case of a domestic entity other than an entity described in subsection (1) of this section, the plan of conversion shall be approved as follows:

(a) If the primary constituent documents expressly provide for the approval of the plan of conversion, it shall be approved in accordance with those provisions.

(b) If the provisions of clause (a) of this subsection (2) do not apply, the plan of conversion shall be approved in accordance with the provisions of the primary constituent documents that contain the most stringent terms for the approval of a plan of merger.

(c) If the provisions of clauses (a) and (b) of this subsection (2) do not apply, the plan of conversion shall be approved in accordance with the provisions of the primary constituent documents that contain the most stringent terms for the approval of an amendment to the primary constituent documents or, if no such provisions exist, the provisions of the organic statutes that contain the most stringent terms for the approval of an amendment to the primary constituent documents.

(d) If the provisions of clauses (a), (b), and (c) of this subsection (2) do not apply, the plan of conversion shall be approved by all of the owners of the converting entity.

(3) For purposes of this section, the provisions of the organic statutes and constituent documents applicable to approval include provisions relating to any preliminary approval by managers for submission to the owners, notices, quorum, voting, and consent by owners or third parties. References in this section to the most stringent provisions of the primary constituent documents or organic statutes are references to those provisions of such documents or statutes that establish the highest voting requirements.

(4) Nothing in this section shall be deemed to permit a primary constituent document to contain any provision proscribed by the organic statutes.

7-90-201.7. Statement of conversion - when conversion effective. (1) After the conversion of an entity is approved in accordance with section 7-90-201.4, the converting entity shall cause a statement of conversion to be delivered to the secretary of state, for filing pursuant to part 3 of this article, if the converting entity has a constituent filed document or a statement of foreign entity authority filed in the records of the secretary of state and the resulting entity will not be an entity for which a constituent filed document will be filed in the records of the secretary of state. The statement of conversion shall state:

(a) The entity name of the converting entity, its principal office address, the jurisdiction under the law of which it is formed, and its form of entity;

(b) The true name of the resulting entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(c) A statement that the converting entity has been converted into the resulting entity pursuant to this section; and

(d) Any other matters relating to the conversion that the converting entity determines to include therein.

(2) After the conversion of an entity is approved in accordance with section 7-90-201.4, if neither the resulting entity nor the converting entity is or will be an entity that will have a constituent filed document filed in the records of the secretary of state, either the resulting entity or the converting entity may deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of conversion stating:

(a) The true name of the converting entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(b) The true name of the resulting entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(c) That the converting entity has been converted into the resulting entity pursuant to this section; and

(d) Any other matters relating to the conversion that the entity filing the statement of conversion determines to include therein.

(3) (a) After the conversion of an entity is approved in accordance with section 7-90-201.4, if the resulting entity will be an entity for which a constituent filed document is to be filed in the records of the secretary of state, the converting entity shall deliver to the secretary of state, for filing pursuant to part 3 of this article, a combined statement of conversion and the constituent filed document that complies with the requirements of the organic statutes. In addition to complying with the requirements of the organic statutes for the constituent filed document, a combined statement of conversion and constituent filed document shall state:

(I) The entity name or, for an entity that has no entity name, the true name of the converting entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(II) The entity name of the resulting entity;

(III) That the converting entity has been converted into the resulting entity pursuant to this section; and

(IV) Any other matters relating to the conversion that the entity filing the statement of conversion determines to include therein.

(b) Notwithstanding the requirement in paragraph (a) of this subsection (3), a combined statement of conversion and constituent filed document, once accepted for filing by the secretary

of state, shall for all purposes be deemed to be two separate documents: The statement of conversion and the constituent filed document.

(4) The conversion shall become effective as specified by the organic statutes. If the organic statutes do not specify an effective date, the conversion shall become effective when the statement of conversion, if any, becomes effective as determined pursuant to section 7-90-304, or, if no statement of conversion is filed, the conversion shall become effective at the time and on the date determined by the owners of the converting entity.

7-90-202. Effect of conversion - entity unchanged. (1) When a conversion takes effect, the converting entity shall be converted into the resulting entity, and the resulting entity shall thereafter be subject to all of the provisions of the organic statutes.

(2) Unless otherwise agreed, the conversion of any converting entity into a resulting entity shall not be deemed to affect any obligations of the converting entity incurred prior to the conversion to the resulting entity or the personal liability of any person incurred prior to such conversion.

(3) Unless otherwise agreed or otherwise provided by the organic statutes, other than this article, the converting entity shall not be required to wind up the entity's affairs or pay obligations and distribute the entity's assets, and the conversion shall not be deemed to constitute a dissolution of the converting entity and shall constitute a continuation of the existence of the converting entity in the form of the resulting entity.

(4) The resulting entity is the same entity as the converting entity.

7-90-203. Merger of entities. (1) One or more domestic entities may merge into a domestic entity of a form the same as or different from any of the merging entities pursuant to a plan of merger complying with section 7-90-203.3 and approved pursuant to section 7-90-203.4.

(2) One or more domestic entities may merge into a foreign entity of a form the same as or different from that of any of the merging entities, or one or more foreign entities may merge into a domestic entity of a form the same as or different from that of any of the merging entities, pursuant to a plan of merger complying with section 7-90-203.3 and approved, in the case of a domestic entity, pursuant to section 7-90-203.4, if:

(a) The merger is not prohibited by the constituent documents or organic statutes of each foreign entity; and if each foreign entity complies with all of the requirements, if any, of its constituent documents and organic statutes in effecting the merger; and

(b) Any foreign entity that is the surviving entity of the merger complies with section 7-90-204.5.

(3) to (7) (Deleted by amendment, L. 2007, p. 235, § 23, effective May 29, 2007.)

7-90-203.1. Exchange of Owner's Interest. (1) One or more domestic entities may acquire all owners' interests of any other entity or all of one or more classes, series or types thereof, in exchange for owners' interests or other securities, obligations, rights to acquire owners' interests or other securities, cash, other property or any combination of the foregoing pursuant to a plan of exchange complying with section 7-90-203.3 and approved pursuant to section 7-90-203.4.

(2) A foreign entity may be party to an exchange pursuant to a plan of exchange complying with section 7-90-203.3, and approved, in the case of a domestic entity, pursuant to section 7-90-203.4, if:

(a) The exchange is not prohibited by the constituent documents or organic statutes of the foreign entity and if the foreign entity complies with all of the requirements, if any, of its constituent documents and organic statutes in effecting the exchange; and

(b) Any foreign entity that is the acquiring entity in the exchange complies with section 7-90-204.5.

(3) This section does not limit the power of a domestic entity to acquire the owners' interests of any other entity in a transaction other than an exchange.

7-90-203.3. Plan of merger or plan of exchange. (1) A plan of merger shall state:

(a) The entity name or, for an entity that has no entity name, the true name, the jurisdiction under the law of which the entity is formed, and the form of entity of each of the merging entities;

(b) The entity name or, for an entity that has no entity name, the true name, the jurisdiction under the law of which the entity is formed, and the form of the surviving entity into which the merging entities are to merge;

(c) The terms and conditions of the merger, including the manner and basis of changing the owners' interests of each merging entity into owners' interests or obligations of the surviving entity or into money or other property in whole or in part; and

(d) Any amendments to the constituent documents of the surviving entity to be effected by the merger.

(2) A plan of exchange shall state:

(a) The entity name of each party to the exchange;

(b) The terms and conditions of the exchange;

- (c) The manner and basis of exchanging the owners' interests to be acquired.
- (d) The plan of exchange may state other provisions relating to the exchange.

7-90-203.4. Approval of plan of merger or plan of exchange. (1) In the case of domestic entities described in this subsection (1), the plan of merger or plan of exchange shall, if required, be approved:

- (a) In the case of a corporation, as provided in section 7-111-103;
- (b) In the case of a nonprofit corporation as provided in section 7-131-102 for merger except, if the transaction is an owner's interest exchange and the primary constituent documents expressly provide for the approval of a plan of exchange, the transaction shall be approved in accordance with those provisions;
- (c) In the case of a cooperative formed under, or subject to, article 56 of this title, as provided in section 7-56-602 for approval of a plan of merger, conversion, consolidation, or share or equity capital exchange; and
- (d) In the case of a cooperative formed under article 55 of this title, as provided in section 7-55-112 for merger except, if the transaction is an owner's interest exchange and the primary constituent documents expressly provide for the approval of a plan of exchange, the transaction shall be approved in accordance with those provisions.
- (e) In the case of a cooperative formed under article 58 of this title, as provided in section 7-58-1606 for merger except, if the transaction is an owner's interest exchange and the primary constituent documents expressly provide for the approval of a plan of exchange, the transaction shall be approved in accordance with those provisions.

(2) In the case of a domestic entity other than an entity described in subsection (1) of this section, the plan of merger or plan of exchange shall be approved as follows:

- (a) If the primary constituent documents expressly provide for the approval of the plan of merger or plan of exchange, the transaction shall be approved in accordance with the respective provisions of the primary constituent documents;
- (b) If the provisions of clause (a) of this subsection (2) do not apply, in accordance with the provisions of the primary constituent documents that contain the most stringent terms for approval of the other type of transaction in this section;
- (c) If the provisions of clauses (a) and (b) of this subsection (2) do not apply, in accordance with the provisions of the entity's organic statutes that contain the most stringent terms for approval of the other type of transaction in this section;

(d) If the provisions of clauses (a), (b), and (c) of this subsection (2) do not apply, in accordance with the provisions of the primary constituent documents that contain the most stringent terms for the approval of an amendment to the primary constituent documents or, if no such provisions exist, the provisions of the organic statutes that contain the most stringent terms for the approval of an amendment to the primary constituent documents; or

(e) If the provisions of clauses (a), (b), (c), and (d) of this subsection (2) do not apply, the plan of merger or plan of exchange shall be approved by all of the owners of the entity.

(3) For purposes of this section, the provisions of the organic statutes and constituent documents applicable to approval include provisions relating to any preliminary approval by managers for submission to the owners, notices, quorum, voting, and consent by owners or third parties. References in this section to the most stringent provisions of the primary constituent documents or organic statutes are references to those provisions of such documents or statutes that establish the highest voting requirements.

(4) Nothing in this section shall be deemed to permit a primary constituent document to contain any provision proscribed by the organic statutes.

7-90-203.7. Statement of merger - when merger effective. (1) After a merger is approved in accordance with section 7-90-203, if any merging entity is an entity for which a constituent filed document has been filed by the secretary of state, the surviving entity shall deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of merger that shall state:

(a) The entity name or, for an entity that has no entity name, the true name of each merging entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(b) The entity name or, for an entity that has no entity name, the true name of the surviving entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(c) That each merging entity is merged into the surviving entity;

(d) That, if the plan of merger provides for amendments to any constituent filed document of the surviving entity, an appropriate statement of change or other document effecting the amendments shall be delivered to the secretary of state for filing pursuant to part 3 of this article; and

(e) Any other matters relating to the merger the surviving entity determines to include therein.

(2) After a merger is approved in accordance with section 7-90-203, if no merging entity is an entity for which a constituent filed document has been filed by the secretary of state, the

surviving entity may deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of merger that shall state:

(a) The entity name or, for an entity that has no entity name, the true name of each merging entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(b) The entity name or, for an entity that has no entity name, the true name of the surviving entity, its principal address, the jurisdiction under the law of which it is formed, and its form of entity;

(c) That each merging entity is merged into the surviving entity; and

(d) Any other matters relating to the merger that the surviving entity determines to include therein.

(3) The merger shall become effective as specified by the organic statutes. If the organic statutes do not specify an effective date, the merger takes effect at the time and on the date the statement of merger becomes effective as determined pursuant to section 7-90-304 or, if no statement of merger is required to be filed, at the time and on the date determined by the owners of the merging entity.

7-90-203.8. Statement of owner's interest exchange. (1) After a plan of exchange is approved pursuant to section 7-90-203.4, the acquiring entity shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, a statement of owner's interest exchange stating:

(a) The entity name of each entity whose owners' interests will be acquired, and the principal office address of its principal office;

(b) The entity name of the acquiring entity, and the principal office address of its principal office; and

(c) A statement that the acquiring entity acquires owners' interests of the other entity or entities.

7-90-204. Effect of merger. (1) When a merger takes effect:

(a) Every merging entity merges into the surviving entity and the separate existence of every merging entity ceases. All of the rights, privileges, including specifically the attorney-client privilege, and powers of each of the merging entities, all real, personal, and mixed property, and all obligations due to each of the merging entities, as well as all other things and causes of action of each of the merging entities, shall vest as a matter of law in the surviving entity and shall thereafter be the rights, privileges, powers, and property of, and obligations due

to, the surviving entity. Title to any property vested in any of the merging entities shall not revert or be in any way impaired by reason of the merger; except that all rights of creditors in and all liens upon any property of any of the merging entities shall be preserved unimpaired in the same property, however held. All obligations of the merging entities shall attach as a matter of law to the surviving entity and may be fully enforced against the surviving entity. A merger does not constitute a conveyance, transfer, or assignment. Nothing in this section affects the validity of contract provisions or of reversions or other forms of title limitations that attach conditions or consequences specifically to mergers.

(b) Any owner who was liable for the obligation of any merging entity solely by reason of being an owner of the merging entity, but who will otherwise not be liable for the obligation of the surviving entity, remains liable for the obligations of the merging entity incurred before the merger unless a contract giving rise to the obligation provides otherwise.

(c) Unless otherwise provided in the constituent documents or required under the organic statutes, no merging entity shall be required to wind up its affairs or pay obligations and distribute assets, and the merger shall not be deemed to constitute a dissolution or liquidation of the merging entity. Unless otherwise provided in the constituent documents of a constituent entity or as required under the organic statutes, any payments in cash or in kind to owners of the constituent entity pursuant to the plan of merger shall not be deemed to constitute a dividend, liquidating distribution, or other distribution that gives rise to contractual distributional preference rights.

7-90-204.1. Effect of an exchange. (1) When an exchange takes effect, the owner's interest of each acquired entity is exchanged as provided in the plan, and the former holders of the owner's interest are entitled only to the exchange rights provided in the statement of owner's interest exchange or to their rights under the organic statutes.

7-90-204.5. Foreign entity resulting from conversion or surviving merger, or foreign entity acquiring owners' interests in an exchange. (1) Upon a conversion of a domestic entity into a foreign entity, a merger of a domestic entity and a foreign entity in which the foreign entity is the surviving entity, or an exchange between a domestic entity and a foreign entity in which the foreign entity is the acquiring entity, the foreign entity:

(a) Shall either:

(I) Appoint a registered agent if the foreign entity has no registered agent and maintain a registered agent pursuant to part 7 of this article, whether or not the foreign entity is otherwise required to do so, to accept service in any proceeding to enforce any obligation or rights of shareholders seeking appraisal rights in any domestic entity party to the conversion, merger, or exchange or in any proceeding based on a cause of action arising with respect to any domestic entity party to the conversion, merger, or exchange; or

(II) Be deemed to have authorized service of process on it in connection with such causes of action by mailing in accordance with section 7-90-704 (2);

(b) Shall promptly pay to shareholders seeking appraisal rights in each domestic entity party to the conversion, merger, or exchange the amount, if any, to which they are entitled under the organic statutes; and

(c) Shall comply with part 8 of this article if it is to transact business or conduct activities in this state.

7-90-205. Scope of article - article not exclusive. (Repealed)

7-90-205.2. Abandonment or amendment of plan of merger, plan of conversion, or plan of exchange. (1) After a plan of merger, a plan of conversion, or a plan of exchange is authorized, and at any time before the merger, conversion, or exchange becomes effective:

(a) The transaction may be abandoned, subject to any contractual rights, in accordance with the procedure stated in the plan of merger, plan of conversion, or plan of exchange. If a merger, conversion, or exchange is abandoned after a plan of merger has been filed by the secretary of state pursuant to section 7-90-203.7, a plan of conversion has been filed by the secretary of state pursuant to section 7-90-201.7, or a plan of exchange has been filed by the secretary of state pursuant to section 7-90-203.8 stating a delayed effective date, the transaction may be prevented from becoming effective by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, before the date the transaction becomes effective pursuant to section 7-90-304, a statement of change that states that, by appropriate action, the transaction has been abandoned; or

(b) A plan of merger, plan of conversion, or plan of exchange may be amended in accordance with the procedure stated in the plan, but the plan may not be amended to change:

(I) The amount or kind of owners' interests or other securities, eligible interests, obligations, rights to acquire owners' interests, other securities or eligible interests, cash, or other property to be received under the plan by the owners of eligible interests in any party to the merger, conversion, or exchange;

(II) The primary constituent documents of any entity party to the merger, conversion, or exchange except for changes permitted by the organic statutes of any such entity; or

(III) Any of the other terms or conditions of the plan if the change would adversely affect the owners in any material respect.

7-90-206. Appraisal rights, prohibitions, restrictions, and requirements. (1) To the extent that any organic statute or the common law expressly prohibits or restricts the right of any entity to convert into any other form of entity, or merge with or be party to an exchange with any other entity, grants appraisal rights with respect to such conversion, merger, or exchange, or imposes any requirement on such conversion, merger, or exchange, any conversion, merger, or

exchange of such entity under this part shall be subject to such restriction, entitle its owners to such appraisal rights, and be subject to such requirement.

(2) If the primary constituent documents or organic statutes do not provide an owner of a converting entity, merging entity, or an entity party to an exchange with appraisal rights, or do not expressly deny an owner of a converting entity, merging entity, or entity party to an exchange appraisal rights, but an owner would be entitled under the organic statutes or primary constituent documents to appraisal rights if the entity were merged into an entity of the same form as the converting or acquiring entity, were party to an exchange with an entity of the same form as the converting or surviving entity, or were converted into an entity of the same form as the acquiring or surviving entity then such owner shall be entitled to appraisal rights with respect to the conversion, merger, or exchange on the same basis as:

(a) the owner would be so entitled under the organic statutes or primary constituent documents if the entity were being merged into an entity of the same form as the converting or acquiring entity, or

(b) if no such provisions exist in clause (a), on the same basis as the owner would be so entitled under the organic statutes or primary constituent documents if the entity were party to an exchange with an entity of the same form as the converting or acquiring entity, or

(c) if no such provisions exist in clauses (a) and (b), on the same basis as the owner would be so entitled under the organic statutes or primary constitute documents if the entity were being converted into an entity of the same form as the surviving or acquiring entity.

(3) Unless otherwise provided in the plan of conversion, plan of merger, or plan of exchange, an owner of an entity that is converted into another form of entity or merged into any other entity, or whose owner's interest is exchanged with another entity pursuant to a owner's interest exchange who consents to the conversion, merger, or exchange, or, in a transaction in which appraisal rights are applicable, who does not consent to the conversion, merger, or exchange, and who does not exercise appraisal rights, shall become an owner of the resulting or surviving entity and shall be deemed to be a party to, and to be bound by, the constituent operating document of the resulting or surviving entity.

PART 3

FILING DOCUMENTS

7-90-301. Filing requirements. (1) (a) Each document that is required or permitted to be filed in the records of the secretary of state pursuant to any provision of this title or any organic statute of this state shall be subject to this part 3.

(b) To be entitled to be filed pursuant to this part 3, a document shall be subject to this part 3 and shall comply with the requirements of this section and the requirements of any other law of this state that adds to or varies the requirements of this part 3.

(b.5) (Deleted by amendment, L. 2004, p. 1475, § 208, effective July 1, 2004.)

(c) Any provision in this title or any other organic statute of this state that provides for filing of a document with the secretary of state or with the office of the secretary of state or in the records of the secretary of state shall be deemed to mean delivery of the document to the secretary of state, for filing pursuant to this part 3.

(2) Notwithstanding the general recognition in paragraph (b) of subsection (1) of this section of requirements of other law of this state that may add to or vary the requirements of this part 3, and notwithstanding any other provision of this title or any other organic statute of this state requiring the signature of any person on, or execution by any person of, a document, no such signature or execution shall be required as a condition to its being filed pursuant to this part 3.

(3) The document shall contain all information required by the law of this state to be contained in the document but, unless otherwise provided by law, shall not contain other information.

(4) The document shall be on or in such medium as may be acceptable to the secretary of state and from which the secretary of state may create a document that contains all of the information stated in the document and that is typewritten or printed on paper. The secretary of state may require that the document be delivered by any one or more means or on or in any one or more media as may be acceptable to the secretary of state. The secretary of state is not required to file a document that is not delivered by a means and in a medium that complies with the requirements then established by the secretary of state for the delivery and filing of documents. If the secretary of state permits a document to be delivered on paper, the document shall be typewritten or machine printed, and the secretary of state may impose reasonable requirements upon the dimensions, legibility, quality, and color of such paper and typewriting or printing and upon the format and other attributes of any document that is delivered electronically. The secretary of state shall ensure, at the earliest practicable time, that delivery of a document subject to this part 3 for filing may be accomplished electronically, without the necessity for the delivery of a physical original document or the image thereof, if all required information is delivered and is readily retrievable from the data delivered. If the delivery of a document subject to this part 3 for filing is required to be accomplished electronically, such document shall not be accompanied by any physical document unless the secretary of state permits such accompaniment.

(5) The document shall be in the English language. The entity name of any entity contained in the document need not be in English if expressed in English letters or arabic or roman numerals.

(6) The document shall state the section or sections of the organic statutes, other than this part 3, pursuant to which it is delivered to the secretary of state for filing pursuant to this part 3.

(6.5) to (7.7) (Deleted by amendment, L. 2002, p. 1838, § 90, effective July 1, 2002; p. 1702, § 88, effective October 1, 2002.)

(8) The document shall state the true name or true names, and mailing address or mailing addresses, of any one or more of the individuals who cause the document to be delivered for filing, but the document need not state the true name and mailing address of more than one such individual.

(9) The document shall include any form or cover sheet, or both, required pursuant to section 7-90-302.

(10) The document shall be delivered to the secretary of state for filing and shall be accompanied by all required fees.

(11) (Deleted by amendment, L. 2004, p. 1475, § 208, effective July 1, 2004.)

(12) Notwithstanding section 2-4-108, C.R.S., section 24-11-110, C.R.S., or any other provision of law, if the last day of a period for filing a document that is authorized or required to be filed by electronic means falls on a Saturday, Sunday, legal holiday, or any day the secretary of state's physical office is closed, the period shall expire on such day.

7-90-301.5. Act of causing document to be delivered for filing. Causing a document to be delivered to the secretary of state for filing pursuant to this part 3 shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of this part 3, the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of this part 3, the constituent documents, and the organic statutes.

7-90-302. Forms and cover sheets - secretary of state to furnish upon request. (1) The secretary of state may prepare and furnish a form or cover sheet, or both, for any document that is subject to this part 3 and may require the use of any such form or cover sheet or both. The form or cover sheet may require the statement of any information the secretary of state deems appropriate to perform the duties of the secretary of state under the law of this state, including information as to the identity of any person to which the document relates, the mailing address of any such person, the registered agent name and registered agent address of the registered agent for any such person who is required or permitted by this title to have a registered agent, and the principal office address of the principal office of any such person who has a principal office. A form or cover sheet shall not preclude in any way the inclusion in any document of any item the inclusion of which is not prohibited by the law of this state and shall not require the inclusion of any item the inclusion of which is not required or permitted by this article or any other law of this state.

(2) The form or cover sheet shall be deemed to be a part of the filed document that uses such form or cover sheet. Information that is contained in such form or cover sheet shall control over any contrary information contained elsewhere in the filed document.

(3) The secretary of state shall furnish, on request, any form or cover sheet that the secretary of state requires to be used pursuant to this section.

7-90-303. Filing, service, and copying fees - subpoenas. (1) The secretary of state shall charge and collect fees and other charges, which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S., for:

(a) Issuing any certificate;

(b) Furnishing any information;

(c) Furnishing a copy of any filed document; or

(d) (Deleted by amendment, L. 2004, p. 1477, § 211, effective July 1, 2004.)

(e) (Deleted by amendment, L. 2003, p. 2290, § 199, effective July 1, 2004.)

(f) Processing any document delivered to the secretary of state for filing as required or permitted under part 3 of article 18 of title 6 or part 10 of article 16 of title 10 or part 3 of article 33.3 of title 38, C.R.S., or this title.

(2) (a) The secretary of state shall charge and collect, at the time of service of any subpoena upon the secretary of state or any deputy or employee of the secretary of state's office, a fee of fifty dollars and an allowance of ten dollars for meals and a charge for mileage at the rate prescribed by section 24-9-104, C.R.S., for each mile from the state capitol building to the place named in the subpoena. The fee shall be paid to the secretary of state; the meal allowance and mileage charge shall be paid to the person named in the subpoena. If the person named in the subpoena is required to appear at the place named in the subpoena for more than one day, the person shall be paid in advance a per diem allowance of forty-four dollars for each day of attendance in addition to any other fees, allowances, and charges.

(b) Notwithstanding the amount specified for any fee or allowance in paragraph (a) of this subsection (2), the secretary of state may reduce the amount of one or more of the fees or allowances if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees or allowances is credited. After the uncommitted reserves of the fund are sufficiently reduced, the secretary of state by rule or as otherwise provided by law may increase the amount of one or more of the fees or allowances as provided in section 24-75-402 (4), C.R.S.

(3) The secretary of state shall charge and collect all other fees and penalties imposed by or assessed in accordance with the law of this state.

(4) In all cases where fees or charges are imposed under this article, the fee shall include indexing and filing of the document and providing all copies required to be provided by the secretary of state in connection with the filing and shall include affixing the seal of the secretary of state upon any certified copy.

7-90-304. Effective time and date of filed document. (1) Except as provided in subsection (2) or (4) of this section, a document that is filed by the secretary of state is effective:

(a) If no time is stated in the filed document as its effective time, then at the time of filing on the date it is filed, as evidenced by the records of the secretary of state; or

(b) If a time is stated in the filed document as its effective time, then at the later of the stated time on the date it is filed, as such date is stated in the records of the secretary of state, or the time the filed document is filed by the secretary of state, as such time is stated in the records of the secretary of state.

(2) A filed document may state a delayed effective time and date, and if it does so the filed document becomes effective at the later of the time and date so stated or the time and date the filed document is filed by the secretary of state, as such time and date are stated in the records of the secretary of state. If a filed document states a delayed effective date but not a time, the filed document is effective at the later of 11:59 p.m. on that date or the time and date the filed document is filed by the secretary of state, as such time and date are stated in the records of the secretary of state. If a filed document states a delayed effective date that is later than the ninetieth day after the date the filed document is filed, the filed document is effective at 11:59 p.m. on the ninetieth day after it is filed. A filed document may state the order in which the matters provided for in the filed document are deemed to have occurred. This subsection (2) may be limited by other provisions of this title. In the event of conflict between this subsection (2) and any other provision of this title, such other provision of this title controls.

(3) If a filed document states a delayed effective date pursuant to subsection (2) of this section, the filed document may be prevented from becoming effective if a person to which the filed document relates delivers to the secretary of state, for filing pursuant to this part 3, on or before the earlier of the stated effective date of the document or the ninetieth day after the filed document was filed, a statement of correction revoking the filed document.

(4) If two or more documents are simultaneously delivered to the secretary of state, each of the documents shall be deemed to have been filed simultaneously if each identifies, to the satisfaction of the secretary of state, all of the documents that are to be deemed to have been filed simultaneously and states that all of such documents are to be deemed to have been filed simultaneously. All of such documents shall be deemed to have been filed at the time and on the date of filing of the first of such documents to be filed, as such time and date are evidenced by

the records of the secretary of state. If any of such documents is rejected by the secretary of state, all of such documents shall be deemed to have been rejected by the secretary of state.

7-90-304.5. Restated constituent filed document. (1) Unless the organic statutes expressly provide otherwise:

(a) A domestic entity may restate its constituent filed document at any time by action of its owners or of any other person authorized by the organic statutes to deliver, on behalf of the entity, articles of restatement to the secretary of state, for filing pursuant to this part 3, effecting such restatement.

(b) Articles of restatement of a constituent filed document may include one or more amendments to the constituent filed document if each amendment to the constituent filed document has been approved in the manner provided in the organic statutes. Such an amendment may:

(I) Delete the statement of the names and addresses of the incorporators or other persons forming the entity;

(II) Delete the statement of the names and addresses of the initial managers of the entity;

(III) Delete the statement of the names and addresses of any or all of the individuals named in the constituent filed document, pursuant to section 7-90-301 (6), as being individuals who caused the constituent filed document to be delivered for filing;

(IV) Delete the statement of the principal office address of the entity; and

(V) If a statement of change changing the registered agent name and registered agent address of the registered agent of the entity is on file in the records of the secretary of state, delete the statement of the registered agent name and registered agent address of the initial registered agent of the entity.

(c) An entity restating its constituent filed document shall deliver to the secretary of state, for filing pursuant to this part 3, articles of restatement stating:

(I) The entity name of the entity; and

(II) The text of the restated constituent filed document.

(III) (Deleted by amendment, L. 2004, p. 1479, § 213, effective July 1, 2004.)

(d) Upon filing of articles of restatement of a constituent filed document by the secretary of state or at any delayed effective date provided in the articles of restatement, determined pursuant to section 7-90-304, the constituent filed document as restated by the articles of

restatement supersedes the original constituent filed document and all prior amendments to the original constituent filed document.

7-90-305. Correcting filed document. (1) A person may deliver to the secretary of state, for filing pursuant to this part 3, a statement of correction to:

(a) Correct a filed document if the filed document contains information that was incorrect at the time the document was delivered to the secretary of state for filing pursuant to this part 3; or

(b) Revoke a filed document pursuant to section 7-90-304 (3) or revoke a filed document that was delivered to the secretary of state for filing in error.

(2) A statement of correction:

(a) *[Editor's note: This version of paragraph (a) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)]* Shall state the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, shall state the true name of the entity, or, in the case of a trade name, shall state the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any other document relating to a statement of trademark registration, shall identify the statement of trademark registration in a manner satisfactory to the secretary of state;

(a) *[Editor's note: This version of paragraph (a) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)]* Shall state the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, shall state the true name of the entity, or, in the case of a trade name, shall state the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any other document relating to a statement of trademark registration, shall identify the statement of trademark registration in a manner satisfactory to the secretary of state, or, in the case of a commercial registered agent, shall state the name of the commercial registered agent as reflected in the records of the secretary of state;

(b) Shall identify the filed document to the satisfaction of the secretary of state;

(c) Shall state the information, if any, contained in the filed document to be corrected;

(d) Shall state each such correction;

(d.5) Shall state each addition or deletion of information, if any; and

(e) Must, if it revokes a filed document, state that the filed document is revoked either pursuant to section 7-90-304 (3) or because the filed document was delivered to the secretary of state for filing in error, whichever is applicable.

(3) (Deleted by amendment, L. 2003, p. 2292, § 202, effective July 1, 2004.)

(4) Except as otherwise provided in this subsection (4), a statement of correction is effective on the effective date of the filed document it corrects or revokes as such date is stated in the records of the secretary of state. As to persons relying on the filed document before it is corrected or revoked and adversely affected by the correction or revocation, a statement of correction is effective when filed. A statement of correction that corrects the effective date of a filed document to an earlier date is effective on such earlier date or on the date the filed document was filed in the records of the secretary of state as such date is stated in the records of the secretary of state, whichever is later. A statement of correction may not state a delayed effective date for the effectiveness of the statement of correction itself.

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act amending subsection (2)(a) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement said subsection. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-305.5. Statement of change. (1) A person may amend, cancel, revoke, or otherwise change a filed document if circumstances occur after the filing of the filed document by the secretary of state that make it appropriate that the filed document be changed.

(2) A filed document is changed by causing to be delivered to the secretary of state, for filing pursuant to this part 3, a statement of change that:

(a) [*Editor's note: This version of paragraph (a) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)*] States the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, states the true name of the entity, or, in the case of a trade name, states the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any document relating to a statement of trademark registration, identifies the statement of trademark registration in a manner satisfactory to the secretary of state;

(a) [*Editor's note: This version of paragraph (a) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*] States the entity name of the entity to which the document relates or, if the entity to which the document relates does not have an entity name, states the true name of the entity, or, in the case of a trade name, states the trade name and the name of the person transacting business or conducting activities under such name, or, in the case of a statement of trademark registration or any

document relating to a statement of trademark registration, identifies the statement of trademark registration in a manner satisfactory to the secretary of state, or, in the case of a commercial registered agent, states the name of the commercial registered agent as reflected in the records of the secretary of state;

(b) Identifies the filed document to the satisfaction of the secretary of state;

(c) States the information, if any, contained in the filed document that is to be changed;

(d) States each such change;

(d.5) States each addition or deletion of information, if any; and

(e) Complies with all other requirements of this title applicable to the statement of change.

(3) If a person is specifically permitted or required by an organic statute other than this article to amend, cancel, revoke, or otherwise change a filed document, it may amend, cancel, revoke, or otherwise change such filed document only in accordance with such organic statute unless that organic statute or another organic statute other than this article also permits the amendment, cancellation, revocation, or other change to be effected by a statement of change pursuant to this section.

(4) A statement of change and the change it effects in a filed document become effective as provided in section 7-90-304.

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act amending subsection (2)(a) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement said subsection. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-306. Filing duty of secretary of state - manner of filing. (1) If a document delivered to the secretary of state for filing pursuant to this part 3 complies with the requirements of section 7-90-301, the secretary of state shall file it. The secretary of state has no duty to determine whether the document complies with any or all requirements of any law.

(2) The secretary of state files a document by marking or otherwise associating the words "secretary of state" and the time and date of filing on or with the document and by placing the document in records that the secretary of state shall maintain to contain all filed documents. The records of filed documents that the secretary of state maintains shall be such that any filed document may be retrieved by the secretary of state in perceivable form and with the time and date of its filing.

(3) If the secretary of state permits a document to be delivered in a physical medium and the secretary of state refuses to file the document, the secretary of state shall return it to any individual who has been identified, pursuant to section 7-90-301 (8), as having caused the

document to be delivered for filing at the address provided for that individual, together with a written notice providing a brief explanation of the reason for the refusal, within ten days after the document was delivered to the secretary of state; except that no return or notice shall be required with respect to a periodic report that the secretary of state has refused to file.

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

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

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

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

(5) (a) Notwithstanding the foregoing or any other provision of law, the secretary of state may, upon receipt of a written request from and a showing of good cause by an authorized person supported by such validating, verifying, and authenticating documents as the secretary of state may require, remove personal identifying information from the publicly accessible documents and other records of the secretary of state maintained pursuant to this section where such information is not required by law to be included in such documents and records.

(b) A document or record from which the secretary of state removes personal identifying information pursuant to paragraph (a) of this subsection (5) shall not be rendered insufficient or ineffective by such removal notwithstanding any other provision of law.

(c) The secretary of state may retain the original or a copy of a document or record that contains personal identifying information, but such a document or record shall be open for inspection, and copies or printouts of the document or record or information from the document or record shall be furnished only upon application to the secretary of state and only for good cause shown notwithstanding any provision of part 2 of article 72 of title 24, C.R.S., or any other provision of law.

(6) For the purposes of this section, "personal identifying information" means information about an individual that could reasonably be used to identify such individual, including, but not limited to:

(a) A social security number;

(b) A personal identification number;

(c) A password; or

(d) A pass code.

7-90-307. Appeal from secretary of state's refusal to file document. (1) If the secretary of state refuses to file a document delivered to the secretary of state for filing, the person causing the document to be delivered to the secretary of state for filing may, within forty-five days after the effective date of the notice of the refusal given by the secretary of state pursuant to section 7-90-306 (3), appeal to the district court for the county in this state in which the street address of the entity's principal office is located, or, if the entity has no principal office in this state, to the district court for the county in which the street address of its registered agent is located or, if the entity has no registered agent, to the district court for the city and county of Denver. The appeal is commenced by petitioning the court to compel the filing of the document by the secretary of state and by attaching to the petition a copy of the document and a copy of the secretary of state's notice of refusal.

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

(3) The court's order or decision may be appealed as in other civil proceedings.

7-90-308. Evidentiary effect of copy of filed document. A certificate attached to a copy of a document, bearing the secretary of state's manual or facsimile signature and the seal of this state and stating to the effect that the document is filed in the records of the secretary of state, is prima facie evidence that the document is on file in the records of the secretary of state.

7-90-309. Certificates issued by secretary of state. (1) The secretary of state shall issue to any person, upon request, a copy of any document filed by the secretary of state pursuant to this title, a certificate endorsed on or accompanying a copy of any filed document identifying the filed document and certifying that the copy is a true copy of the filed document, and, if appropriate, a certificate of good standing concerning any entity. The secretary of state may issue to any person, upon request, any other certificate as to the records of the secretary of state that the secretary of state deems appropriate.

(2) A certificate issued by the secretary of state may be relied upon, subject to any qualification stated in the certificate, as prima facie evidence of the facts stated therein.

7-90-310. Proof of delivery for filing. (1) The secretary of state may consider a document to have been received for filing upon proof of such receipt as evidenced by a signed return receipt, an entry in records maintained by the secretary of state of electronic or facsimile transmissions received by the secretary of state, or such other or additional proof of receipt of the documents received as the secretary of state may require. Such proof must be satisfactory to the secretary of state before the document will be considered received.

(2) The secretary of state may require that the receipt of a document by facsimile transmission on or after February 11, 1994, be shown in the records of the secretary of state of

facsimile transmissions received by the secretary of state. The secretary of state may condition relief under this section upon fulfillment of such other requirements or conditions that the secretary of state determines appropriate, including, without limitation, the making of a change of entity name of the entity involved and payment of fees for the filing.

(3) Application for relief under this section shall be made in writing and delivered to the secretary of state within sixty days after the purported date of receipt of such document by the secretary of state. The application shall contain information satisfactory to the secretary of state to enable the secretary of state to identify the transaction.

7-90-311. Powers. (Repealed)

7-90-312. Restated constituent filed documents. (Repealed)

7-90-313. Remedy for failure or refusal to file - presumptions. Any person who is adversely affected by a failure or refusal of any other person to deliver any document to the secretary of state, for filing pursuant to this part 3, with respect to any entity may petition the district court for the county in this state in which the street address of the entity's principal office is located or, if the entity has no principal office in this state, in the district court for the county in which the street address of its registered agent is located or, if the entity has no registered agent, in the city and county of Denver, to approve the document and direct the appropriate person to deliver the document to the secretary of state, for filing pursuant to this part 3. If the court finds that it is proper for the document to be filed and that there has been a failure or refusal to approve the document and deliver the document to the secretary of state for filing pursuant to this part 3, it shall order the secretary of state to file the document in the form it has approved.

PART 4

SECRETARY OF STATE

7-90-401. Powers. The secretary of state has all powers reasonably necessary to perform the duties required by law.

7-90-402. Interrogatories by secretary of state. (1) The secretary of state may propound to any domestic entity that has a constituent filed document filed in the records of the secretary of state, to any foreign entity that is authorized to transact business or conduct activities in this state, and to any manager thereof, such interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether the entity has complied with all the provisions of the organic statutes. The interrogatories shall be answered within thirty days after the mailing thereof or within such additional time as fixed by the secretary of state, and the

answers thereto shall be full and complete and shall be made in writing. If the interrogatories are directed to an individual, they shall be answered by the individual, and if directed to an entity, they shall be answered by a manager of the entity or by any other person authorized to answer the interrogatories as its agent. The secretary of state need not file any document to which such interrogatories relate until the interrogatories are answered as provided in this section, and not then if the answers thereto disclose that the document is not in conformity with the provisions of the organic statutes. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto that disclose a violation of any of the provisions of the organic statutes.

(2) Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection, nor shall the secretary of state disclose any facts or information obtained therefrom, except insofar as the official duty of the secretary of state may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state.

(3) Each entity that fails or refuses to answer truthfully and fully, within the time prescribed by subsection (1) of this section, interrogatories propounded to the entity by the secretary of state in accordance with the provisions of said subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars.

(4) Each manager of an entity who fails or refuses to answer truthfully and fully, within the time prescribed by subsection (1) of this section, interrogatories propounded to the manager by the secretary of state in accordance with the provisions of said subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars.

(5) The attorney general may enforce this section in an action brought in the district court for the county in this state in which the street address of the entity's principal office or the street address of its registered agent is located or, if the entity has no principal office in this state and no registered agent, in the district court in and for the city and county of Denver.

7-90-403. Notices by the secretary of state. (1) (a) The secretary of state may give notice, in such manner as the secretary of state may determine, to any person about any matter arising under or with respect to this title, including notice regarding:

- (I) The due date of a periodic report;
- (II) The existence of grounds for delinquency;
- (III) The pendency of dissolution upon expiration of period of duration;
- (IV) The dissolution upon expiration of period of duration;

(V) The due date of a trade name renewal; and

(VI) The due date of a trademark renewal.

(b) The secretary of state may use a phase-in period or any other method to mitigate hardship on the reporting entity caused by electronic notification and may provide exceptions from such electronic notification where hardship or other good cause is shown.

(c) This subsection (1) does not affect a requirement that the secretary of state give notice under another provision of law.

(2) Neither the determination of the secretary of state to give, or not to give, any notice under the authority of subsection (1) of this section nor the failure of any person to receive any notice so given affects any obligation under or requirement of any provision of this title or excuses any noncompliance by any person of any obligation under or requirement of any provision of this title.

PART 5

ANNUAL REPORTS - STATEMENT

OF PERSON NAMED IN FILED DOCUMENT

7-90-501. Periodic reports. (1) Each reporting entity shall deliver to the secretary of state, for filing pursuant to part 3 of this article, a periodic report that states the entity name of the reporting entity, the jurisdiction under the law of which the reporting entity is formed, and:

(a) and (b) (Deleted by amendment, L. 2003, p. 2296, § 210, effective July 1, 2004.)

(c) The registered agent name and registered agent address of the reporting entity's registered agent;

(d) The principal office address of the reporting entity's principal office.

(e) (Deleted by amendment, L. 2003, p. 2296, § 210, effective July 1, 2004.)

(2) and (3) (Deleted by amendment, L. 2003, p. 2296, § 210, effective July 1, 2004.)

(4) (a) The annual report shall be made in a manner prescribed by the secretary of state.

(b) Repealed.

(c) (I) Unless otherwise elected as provided in subparagraph (II) of this paragraph (c), a reporting entity shall deliver its first periodic report to the secretary of state, for filing pursuant to

part 3 of this article, no later than the last day of the second calendar month following the first anniversary of the calendar month in which the reporting entity's constituent filed document or statement of foreign entity authority, as the case may be, became effective or, in the case of a reporting entity that has been reinstated or that has cured its delinquency, no later than the last day of the second calendar month following the first anniversary of the calendar month in which the reinstatement or curing of delinquency occurred. Unless otherwise elected as provided in subparagraph (II) or (III) of this paragraph (c), thereafter, the periodic report shall be delivered to the secretary of state by each reporting entity annually.

(II) ***[Editor's note: This version of subparagraph (II) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)]*** The secretary of state may permit, on such conditions as the secretary of state may determine, a reporting entity to select an anniversary month different than the anniversary month as established in subparagraph (I) of this paragraph (c) by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of election of alternative anniversary month.

(II) ***[Editor's note: This version of subparagraph (II) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)]*** A reporting entity may, at the time of filing the constituent filed document or the periodic report, select an anniversary month different than the anniversary month as established in subparagraph (I) of this paragraph (c). If an entity elects to change its anniversary month pursuant to this subparagraph (II), that entity may not subsequently change its anniversary month for a period of at least one year.

(III) The secretary of state may permit, on such conditions as the secretary of state may determine, a reporting entity to elect to file the periodic report required by this section biennially by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of election of biennial reporting.

(d) Information in the periodic report shall be current as of the date the periodic report is delivered to the secretary of state, for filing pursuant to part 3 of this article, on behalf of the reporting entity. No periodic report shall state a delayed effective date.

(e) (Deleted by amendment, L. 2002, p. 1843, § 98, effective July 1, 2002; p. 1707, § 96, effective October 1, 2002.)

(f) (Deleted by amendment, L. 2005, p. 1208, § 11, effective October 1, 2005.)

(5) (Deleted by amendment, L. 2005, p. 1208, § 11, effective October 1, 2005.)

(5.5) (Deleted by amendment, L. 2010, (HB 10-1403), ch. 404, p. 1997, § 15, effective August 11, 2010.)

(6) (Deleted by amendment, L. 2004, p. 1484, § 223, effective July 1, 2004.)

(7) Each reporting entity that fails or refuses to deliver to the secretary of state a periodic report for filing on or before the due date prescribed by subsection (4) of this section and pay the prescribed processing fee is subject to a penalty, which shall be determined and collected pursuant to section 24-21-104 (3), C.R.S.

(7.5) Beginning July 27, 2009, a domestic limited partnership formed under or governed by article 62 of this title that is not a reporting limited partnership may deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of election to be a reporting entity stating:

- (a) The domestic entity name of the domestic limited partnership;
- (b) The principal office address of its principal office;
- (c) The registered agent name and registered agent address of its registered agent; and
- (d) That the domestic limited partnership elects to become a reporting limited partnership.

(8) (Deleted by amendment, L. 2003, p. 2296, § 210, effective July 1, 2004.)

Editor's note: (1) Subsection (4)(b)(II) provided for the repeal of subsection (4)(b), effective January 1, 2002. (See L. 2000, p. 971.)

(2) Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act amending subsection (4)(c)(II) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement said subsection. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-502. Statement of person named in filed document. (Repealed)

PART 6

ENTITY NAMES

7-90-601. Entity name. (1) An entity name shall not contain any term the inclusion of which would violate any statute of this state.

(2) Except as provided in section 7-90-604 (4.5), each entity name shall be distinguishable on the records of the secretary of state from every:

- (a) Other entity name; and

(b) Name that is reserved with the secretary of state for another person as an entity name pursuant to section 7-90-602.

(c) (Deleted by amendment, L. 2004, p. 1544, § 5, effective May 30, 2006.)

(d) (Deleted by amendment, L. 2003, p. 2298, § 212, effective July 1, 2004.)

(3) In addition to the requirements of subsection (2) of this section:

(a) The entity name of a corporation shall contain the term or abbreviation "corporation", "incorporated", "company", "limited", "corp.", "inc.", "co.", or "ltd."; except that this paragraph (a) shall not apply to any of the following:

(I) A domestic corporation incorporated before January 1, 1959, whose domestic entity name has not been changed by amendment to its articles of incorporation effective after December 31, 1958;

(II) A domestic corporation incorporated under a statute of this state that permits the use of other names; or

(III) Savings and loan associations covered by section 11-41-102, C.R.S.

(b) The entity name of a nonprofit corporation may, but need not, contain the term or abbreviation "corporation", "incorporated", "company", "limited", "corp.", "inc.", "co.", or "ltd."

(c) The entity name of a limited liability company shall contain the term or abbreviation "limited liability company", "ltd. liability company", "limited liability co.", "ltd. liability co.", "limited", "l.l.c.", "llc", or "ltd."

(d) The entity name of a limited liability partnership shall contain the term or abbreviation "limited liability partnership", "registered limited liability partnership", "limited", "llp", "l.l.p.", "rllp", "r.l.l.p.", or "ltd."

(e) (I) The entity name of a limited partnership, that is not a limited liability limited partnership, shall contain the term or abbreviation "limited partnership", "limited", "company", "l.p.", "lp", "ltd.", or "co."

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (e), any limited partnership in existence on October 31, 1981, shall be entitled to elect to be governed by the provisions of article 62 of this title with the true name it had on October 31, 1981.

(f) (I) The entity name of a limited liability limited partnership shall contain the term or abbreviation "limited partnership", "limited", "company", "limited liability limited partnership" or "registered limited liability limited partnership", "l.p.", "lp", "co.", "l.l.l.p.", "lllp", "LTD.", "r.l.l.l.p.", or "rlllp"; or

(II) When the name of a limited partnership that is registered as a limited liability limited partnership in the records of the office of the secretary of state is the same as that stated in a certificate of limited partnership, amended certificate of limited partnership, or statement of registration delivered on or after May 24, 1995, for filing by the secretary of state with respect to the limited partnership and if, upon filing of such certificate or statement, the name was modified by the addition of any word or initial to indicate that the limited partnership is a limited liability limited partnership, then the limited partnership may acquire, convey, and encumber title to real and personal property and otherwise deal in such name with or without the addition of such word or initial. The fact of the filing of such certificate or statement and the modification of the name of the limited partnership by such additional word or initial may be stated in an affidavit executed by a general partner of the limited partnership or a statement of authority executed pursuant to section 38-30-172, C.R.S., and shall be prima facie evidence of such facts and of the authority of the person executing the same to do so on behalf of the limited partnership. The affidavit may be recorded with the county clerk and recorder of any county.

(g) An entity name must meet the requirements of section 7-90-301(5), C.R.S.

(h) The words or abbreviations "public benefit corporation", "P.B.C.", "PBC", and "Pub. Ben. Corp." may be used in an entity name only by corporations and cooperatives that are organized as public benefit corporations under part 5 of article 101 of this title 7.

(4) The entity name of a cooperative may, but need not, contain the term or abbreviation "cooperative", "association", "incorporated", "company", "limited", "coop", "ass'n", "assn", "assoc.", "inc.", "co.", or "ltd."

(4.5) The entity name of a limited cooperative association shall contain the words "limited cooperative association" or "limited cooperative" or the abbreviation "L.C.A." or "LCA". "Limited" may be abbreviated as "Ltd.". "Cooperative" may be abbreviated as "Co-op" or "Coop". "Association" may be abbreviated as "Assoc." or "Assn."

(5) For an entity that is specifically permitted by C.R.C.P. 265 or title 12, C.R.S., to use the words "professional company", "professional corporation", or abbreviations thereof in its name:

(a) "P.c." or "pc" shall be a permitted abbreviation for such an entity that is a corporation;

(b) "P.l.l.c." or "pllc" shall be a permitted abbreviation for such an entity that is a limited liability company;

(c) "P.l.l.p." or "pllp" shall be a permitted abbreviation for such an entity that is a limited liability partnership.

(6) The abbreviations stated in subsection (5) of this section are in addition to all others that may be permitted by law.

(7) (a) No person shall use the word "cooperative" or an abbreviation or derivation of it as a part of its business or domestic entity name or as a trade name, trademark, service mark, brand, or designation except:

(I) An entity incorporated under or subject to article 55 or 56 or 58 of this title, part 10 of article 16 of title 10, C.R.S., article 33.5 of title 38, C.R.S., or a similar law of another jurisdiction;

(II) An entity operated on a cooperative basis;

(III) An entity described in section 501 (c)(6) of the "Internal Revenue Code of 1986", as amended;

(IV) An association of two or more of the entities described in subparagraphs (I) to (III) of this paragraph (a); or

(V) As authorized by section 7-56-205 or as otherwise required or authorized by any other statute.

(b) An entity described in this subsection (7), or one or more members of such an entity, may, without the necessity of posting a bond, bring an action for an injunction or for actual damages incurred as a result of a violation of this subsection (7) or to enforce this subsection (7). Upon proof that the word "cooperative" or an abbreviation or derivation of that word is used in violation of this section, the court shall enter an order permanently enjoining such use of the word. The prevailing party in the action shall be awarded judgment against the other party for the attorney fees and costs of litigation incurred by the prevailing party in the action. This section shall not apply to any person that has been continuously using the word "cooperative" or an abbreviation or derivation of that word in the person's business on or before July 5, 1973, as part of its trade name, business name, trademark, service mark, brand, true name, or designation.

7-90-601.5. Domestic entity name and trade name of dissolved domestic entity. (1) If a domestic entity that has a constituent filed document dissolves, the domestic entity name of the dissolved entity shall include the word "dissolved" followed by the month, day, and year of the effective date of dissolution of the entity.

(2) (Deleted by amendment, L. 2007, p. 242, § 32, effective May 29, 2007.)

7-90-601.6. Entity name of delinquent entity. (1) The entity name of a delinquent entity shall include the word "delinquent", followed by the month, day, and year of the effective date of the entity's delinquency, after the four-hundredth day after the effective date of its delinquency under section 7-90-902 (1).

(2) (Deleted by amendment, L. 2007, p. 242, § 33, effective May 29, 2007.)

7-90-601.7. Foreign entity name and trade name of withdrawn foreign entity. (1) If a foreign entity has a statement of foreign entity authority on file in the records of the secretary of state, but such authority has been relinquished, the foreign entity name of the foreign entity shall include the words "Colorado authority relinquished" followed by the effective date of the statement of foreign entity withdrawal by which the foreign entity relinquished its authority.

(2) (Deleted by amendment, L. 2007, p. 243, § 34, effective May 29, 2007.)

7-90-602. Reserved entity name. (1) Any person may apply for the reservation of the exclusive use of a name as an entity name by delivering a statement of reservation of a name to the secretary of state, for filing pursuant to part 3 of this article, stating the name and mailing address of the person, that the person is applying under this section to reserve a name for use as an entity name, and the name proposed to be reserved. If the secretary of state determines that the name applied for would be available for use as an entity name under section 7-90-601, the secretary of state shall reserve the name for the person's exclusive use for a one-hundred-twenty-day period, which reservation may be renewed successively for one-hundred-twenty-day periods. No statement of reservation of name shall state a delayed effective date.

(2) The holder of a reserved name may transfer the reservation to any other person by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of transfer of reserved name that states the reserved name, the name of the holder, and the name and mailing address of the transferee.

(3) If a constituent filed document stating a delayed effective date and stating a new domestic entity name is filed in the records of the secretary of state, such domestic entity name shall be deemed to be a reserved name until the constituent filed document becomes effective.

7-90-603. Assumed entity name of foreign entity. If the name that a foreign entity would use as its foreign entity name is not permitted to be used by the foreign entity under section 7-90-601, the foreign entity, in order to obtain authority to transact business or conduct activities in this state, shall assume for use in this state as its foreign entity name a foreign entity name that would comply with section 7-90-601.

7-90-604. Registered true name of a foreign entity. (1) A foreign entity that is not authorized to transact business or conduct activities in this state may register its true name, if that true name is a name that could be the entity name of the foreign entity if the foreign entity were authorized to transact business or conduct activities in this state. Such registration shall be effective through December 31 of the year in which the filing becomes effective.

(2) A foreign entity may register a true name pursuant to this section by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of registration of true name that complies with the requirements of this subsection (2). When filed, the statement of

registration of true name registers the true name. The statement of registration of true name shall state:

- (a) The foreign entity's true name;
- (b) The jurisdiction under the law of which the foreign entity is formed;
- (c) The form of the entity as that form is recognized by the jurisdiction under the law of which the entity is formed; and
- (d) The principal office address of the foreign entity's principal office.
- (e) (Deleted by amendment, L. 2006, p. 875, § 60, effective July 1, 2006.)

(3) A foreign entity that has in effect a registration of its true name pursuant to this section may renew such registration by delivering to the secretary of state, for filing pursuant to part 3 of this article, on or before December 31 of the year of registration, a statement of renewal of registration of true name that complies with this subsection (3). When filed, the statement of renewal of registration renews the registration for the following year. The statement of renewal of registration of true name shall state:

- (a) The foreign entity's true name, the registration of which is to be renewed;
- (b) The form of entity and the jurisdiction under the law of which the foreign entity is formed; and
- (c) (Deleted by amendment, L. 2009, (HB 09-1248), ch. 252, p. 1133, § 15, effective December 1, 2009.)
- (d) The principal office address of the foreign entity's principal office.

(3.5) No statement of renewal of registration of true name shall state a delayed effective date.

(4) (a) A foreign entity that has in effect a registration of its true name may transfer such registration to another foreign entity, if the transferee is not then authorized to transact business or conduct activities in Colorado, if that name is also the true name of the transferee and if, concurrently with the delivery of the foreign entity's statement of transfer of registration of true name to the secretary of state, for filing pursuant to part 3 of this article, the transferee delivers to the secretary of state a statement of registration of true name pursuant to this section.

(b) A foreign entity that has in effect a registration of its true name may transfer the registration to another foreign entity, whether or not that name is the true name of the transferee, if the transferee is then authorized to transact business or conduct activities in Colorado and if, concurrently with the delivery of the foreign entity's statement of transfer of registration of true

name to the secretary of state pursuant to paragraph (a) of this subsection (4), the transferee delivers to the secretary of state, for filing pursuant to part 3 of this article, either:

(I) A statement of trade name stating the transferred name as a trade name of the transferee pursuant to section 7-71-101;

(II) A statement of reservation of name reserving the transferred name as an entity name of the transferee pursuant to section 7-90-602; or

(III) A statement of change to the transferee's statement of foreign entity authority changing the assumed entity name of the transferee to the transferred name or stating that the transferee has acquired rights to use the transferred name as its true name in Colorado, as the case may be.

(c) A foreign entity that has in effect a registration of its true name may transfer such registration to another foreign entity, although that name is not the true name of the transferee, if, concurrently with the delivery of the foreign entity's statement of transfer of registration of true name to the secretary of state pursuant to paragraph (a) of this subsection (4), the transferee delivers to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity authority stating the transferred name as its assumed entity name under section 7-90-803 (1)(a).

(d) A foreign entity that has in effect a registration of its true name may transfer such registration to a person other than a foreign entity, although that name is not the true name of the transferee, if, concurrently with the delivery of the foreign entity's statement of transfer of registration of true name to the secretary of state pursuant to paragraph (a) of this subsection (4), the transferee delivers to the secretary of state, for filing pursuant to part 3 of this article, either:

(I) A statement of trade name stating the transferred name as a trade name pursuant to section 7-71-101;

(II) A statement of reservation of name reserving the transferred name as an entity name pursuant to section 7-90-602; or

(III) An amendment or statement of change to the transferee's constituent filed document changing the entity's domestic entity name to the transferred name.

(e) (Deleted by amendment, L. 2007, p. 243, § 36, effective May 29, 2007.)

(f) The transfer of the registration of the true name shall be effected by the current registrant's delivery to the secretary of state, for filing pursuant to part 3 of this article, of a statement of transfer of registered name that states:

(I) The true name of the foreign entity;

(II) The name of the jurisdiction under the law of which it is formed;

(III) The entity name of the transferee or, if the transferee does not have an entity name, the true name of the transferee;

(IV) The name of the jurisdiction under the law of which the transferee is formed; and

(V) That the registration of the true name is transferred by the entity to the transferee pursuant to this section.

(g) When the statement of transfer of registered name and each other document, if any, required by this subsection (4) to be delivered concurrently to the secretary of state with the statement of transfer of registered name is filed, the transfer of the registration of true name is transferred.

(4.5) A foreign entity that has in effect a registration of its true name may deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity authority stating that name as its true name.

(5) A foreign entity that has in effect a registration of its true name may relinquish the registration at any time by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of change stating the foreign entity's true name and stating that the registration is relinquished. When filed, the statement of change withdraws the registration of true name.

PART 7

REGISTERED AGENT - SERVICE OF PROCESS -

CHANGE OF PRINCIPAL OFFICE

7-90-701. Registered agent. (1) Every domestic entity for which a constituent filed document is on file in the records of the secretary of state and every foreign entity authorized to transact business or conduct activities in this state shall continuously maintain in this state a registered agent that shall be:

(a) An individual who is eighteen years of age or older whose primary residence or usual place of business is in this state;

(b) A domestic entity having a usual place of business in this state; or

(c) A foreign entity authorized to transact business or conduct activities in this state that has a usual place of business in this state.

(2) An entity having a usual place of business in this state may serve as its own registered agent.

(3) Any document delivered to the secretary of state for filing on behalf of an entity that appoints a person as the registered agent for the entity shall contain a statement that the person has consented to being so appointed.

7-90-702. Change or resignation of registered agent. (1) An entity that maintains a registered agent pursuant to this part 7 may change its registered agent, the registered agent address, or the registered agent name of its registered agent only by stating a different registered agent, different registered agent address, or different registered agent name for its registered agent, as the case may be, in one of the following:

(a) A statement of change filed pursuant to section 7-90-305.5;

(b) A periodic report filed pursuant to section 7-90-501; or

(c) Any form or cover sheet filed by the secretary of state pursuant to part 3 of this article, which form or cover sheet has been prescribed by the secretary of state for effecting such change.

(2) If the registered agent address or the registered agent name of the registered agent of an entity that is required to maintain a registered agent pursuant to this part 7 changes, the registered agent shall deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of change that, in addition to the information required to be stated in the statement of change pursuant to section 7-90-305.5, states that the person appointed as registered agent has delivered notice of the change to the entity.

(3) (Deleted by amendment, L. 2004, p. 1490, § 232, effective July 1, 2004.)

(4) If a person appointed as the registered agent for an entity in a filed document has resigned or otherwise is no longer the registered agent, the person, or if such person is deceased or a court of competent jurisdiction has appointed a guardian or general conservator for the person, the person's executor, administrator, guardian, conservator, or other legal representative, may deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of change that, in addition to the information required to be stated in the statement of change pursuant to section 7-90-305.5, states:

(a) The registered agent name and registered agent address as contained in the records of the secretary of state;

(b) The date on which the person resigned or otherwise ceased to be the registered agent for the entity; and

(c) That notice of the change has been delivered to the entity.

(5) Notwithstanding the provisions of section 7-90-304, a statement of change delivered by a person pursuant to subsection (4) of this section is effective on the thirty-first day after the date that the statement of change is filed in the records of the secretary of state or on a delayed effective date stated in the statement of change effecting the resignation that is not earlier than the thirty-first day, and not later than the ninetieth day, after the date the statement of change effecting the resignation is filed in the records of the secretary of state or on the effective date of a statement of change appointing a different person as registered agent, whichever occurs first.

(6) A statement of change pursuant to this section shall not be required to comply with section 7-90-305.5 (2)(b).

7-90-703. Correction of registered agent. (1) *[Editor's note: This version of subsection (1) is effective until ninety days following certification by the secretary of state. (See the editor's note following this section.)]* A registered agent may correct either or both its registered agent address and registered agent name as contained in a document on file in the office of the secretary of state, if such information was incorrect when that document was delivered for filing, by causing to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of correction that, in addition to the information required to be stated in the statement of correction pursuant to section 7-90-305, states that notice of the correction has been delivered to the entity.

(1) *[Editor's note: This version of subsection (1) is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)]* A registered agent may correct either or both its registered agent address and registered agent name as contained in a document on file in the office of the secretary of state, if such information was incorrect when that document was delivered for filing, by causing to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of correction that, in addition to the information required to be stated in the statement of correction pursuant to section 7-90-305, states that notice of the correction has been delivered to:

(a) The entity; or

(b) If the statement of correction is delivered for filing on behalf of a commercial registered agent, each entity and trademark registrant that the commercial registered agent represents. The filing of a statement of correction delivered on behalf of a commercial registered agent pursuant to this subsection (1) is effective to correct the information regarding the commercial registered agent with respect to each entity and trademark registrant represented by the commercial registered agent.

(2) Any person appointed as the registered agent for an entity in a document on file in the office of the secretary of state may, if the person has not consented to be appointed as the registered agent or is otherwise not the registered agent for the entity, cause to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of correction that, in

addition to the information required to be stated in the statement of correction pursuant to section 7-90-305 (2)(a) and (2)(b), states:

- (a) That the person is not the registered agent for the entity; and
- (b) That the person has delivered notice of the correction to the entity.

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act amending subsection (1) is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement said subsection. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-704. Service on entities. (1) The registered agent of an entity is an agent of the entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The registered agent of an entity is an agent of the entity to whom the secretary of state may deliver any form, notice, or other document with respect to the entity under this title, unless otherwise specified by an organic statute.

(2) If an entity that is required to maintain a registered agent pursuant to this part 7 has no registered agent, or if the registered agent is not located under its registered agent name at its registered agent address, or if the registered agent cannot with reasonable diligence be served, the entity may be served by registered mail or by certified mail, return receipt requested, addressed to the entity at its principal address. Service is perfected under this subsection (2) at the earliest of:

- (a) The date the entity receives the process, notice, or demand;
- (b) The date shown on the return receipt, if signed on behalf of the entity; or
- (c) Five days after mailing.

(3) This section does not prescribe the only means, or necessarily the required means, of serving an entity in this state.

7-90-705. Change of principal office address. (1) An entity that has stated a principal office address in a document filed by the secretary of state may change its principal office address only by stating a different principal office address in one of the following:

- (a) A statement of change filed pursuant to section 7-90-305.5, which statement of change shall not be required to comply with section 7-90-305.5 (2)(b);
- (b) A periodic report filed pursuant to section 7-90-501;

(c) Any form or cover sheet filed by the secretary of state pursuant to part 3 of this article, which form or cover sheet has been prescribed by the secretary of state for effecting such change; or

(d) A statement of dissolution or articles of dissolution.

7-90-706. Application to dissolved or delinquent entities. (Repealed)

7-90-707. Commercial registered agent. [*Editor's note: This section is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*] (1) A registered agent may become listed as a commercial registered agent by delivering a commercial registered agent listing statement to the secretary of state for filing pursuant to part 3 of this article. The statement must include the registered agent name and registered agent address of the registered agent and the e-mail address of the registered agent that will be used to receive notifications from the secretary of state.

(2) The statement must be accompanied by a list of the entities represented by the registered agent at the time the statement is filed. If the registered agent is appointed as an agent for a trademark registrant who is an individual who is not a resident of this state, the registered agent shall identify the statement of trademark registration to the satisfaction of the secretary of state.

(3) A commercial registered agent listing statement must not state a delayed effective date.

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding this section is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement this section. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-708. Termination of commercial registered agent listing. [*Editor's note: This section is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*] (1) A commercial registered agent may terminate its listing as a commercial registered agent by delivering a commercial registered agent termination statement to the secretary of state for filing pursuant to part 3 of this article. The statement must include:

(a) The name of the registered agent as reflected in the records of the secretary of state at the time the statement is filed;

(b) A statement indicating that the commercial registered agent no longer serves as a commercial registered agent in this state; and

(c) A statement indicating that notice of the termination has been delivered to each entity and trademark registrant that the commercial registered agent represents.

(2) Notwithstanding section 7-90-304, a commercial registered agent termination statement is effective on the thirty-first day following the day that the commercial registered agent termination statement is filed in the records of the secretary of state or on a delayed effective date stated in the commercial registered agent termination statement that is not earlier than the thirty-first day and not later than the ninetieth day following the day the commercial registered agent termination statement is filed in the records of the secretary of state.

(3) A commercial registered agent ceases to be the agent for service of process for an entity and trademark registrant formerly represented by the commercial registered agent when the termination statement becomes effective. If an entity or trademark registrant represented by the person that is resigning as a commercial registered agent appoints a registered agent before the effective date of the termination statement, the commercial registered agent ceases to be the agent for that entity or trademark registrant on the effective date of the appointment of the new registered agent.

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding this section is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement this section. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-709. Change of commercial registered agent name or address. [*Editor's note: This section is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*] (1) If a commercial registered agent changes its registered agent name or its registered agent address, the commercial registered agent shall deliver to the secretary of state, for filing pursuant to part 3 of this article, a statement of change that states, in addition to the information required by section 7-90-305.5, that the commercial registered agent has delivered notice of the change to each entity and trademark registrant represented by the commercial registered agent.

(2) The filing of a statement of change pursuant to this section is effective to change the information regarding the commercial registered agent with respect to each entity and trademark registrant represented by the commercial registered agent.

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding this section is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement this section. As of publication date, the revisor of statutes had not received certification from the secretary of state.

7-90-710. Listing of entities represented by commercial registered agents. [*Editor's note: This section is effective ninety days following certification by the secretary of state. (See the editor's note following this section.)*] The secretary of state shall make available upon

request a list of filings made during the previous month that contain the name of a commercial registered agent. The secretary of state may assess a fee for the requested lists.

Editor's note: Section 10 of chapter 171, Session Laws of Colorado 2012, provides that the act adding this section is effective ninety days following certification in writing by the secretary of state to the revisor of statutes that the secretary of state has implemented the necessary computer system changes to implement this section. As of publication date, the revisor of statutes had not received certification from the secretary of state.

PART 8

FOREIGN ENTITIES

7-90-801. Authority to transact business or conduct activities required. (1) A foreign entity shall not transact business or conduct activities in this state except in compliance with this part 8 and not until its statement of foreign entity authority is filed in the records of the secretary of state. Notwithstanding the foregoing, this part 8 shall not apply to foreign general partnerships that are not foreign limited liability partnerships and shall not apply to foreign unincorporated nonprofit associations. To the extent that a provision of this part 8 is inconsistent with another statute of this state in its application to a foreign entity, such other statute, and not such provision of this part 8, shall apply.

(2) A foreign entity shall not be considered to be transacting business or conducting activities in this state within the meaning of subsection (1) of this section by reason of carrying on in this state any one or more of the following activities:

- (a) Maintaining, defending, or settling in its own behalf any proceeding or dispute;
- (b) Holding meetings of its owners or managers or carrying on other activities concerning its internal affairs;
- (c) Maintaining bank accounts;
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of its own securities or owner's interests, or maintaining trustees or depositories with respect to those securities or owner's interests;
- (e) Selling through independent contractors;
- (f) 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;
- (g) Creating, as borrower or lender, or acquiring, indebtedness;

(h) Creating, as borrower or lender, or acquiring, mortgages or other security interests in real or personal property;

(i) Securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing such debts;

(j) Owning, without more, real or personal property;

(k) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(l) Transacting business or conducting activities in interstate commerce; and

(m) In the case of a foreign nonprofit corporation:

(I) Granting funds; or

(II) Distributing information to its members.

(3) The list of activities in subsection (2) of this section is not exhaustive.

(4) Nothing in this section shall limit or affect the right to subject a foreign entity that does not, or is not required to, have authority to transact business or conduct activities in this state to the jurisdiction of the courts of this state or to serve upon any foreign entity any process, notice, or demand required or permitted by law to be served upon an entity pursuant to part 7 of this article or sections 13-1-124 and 13-1-125, C.R.S., or any other provision of law or pursuant to the applicable rules of civil procedure.

(5) A foreign nonprofit entity shall be considered to be transacting business or conducting activities in this state if it is required to file a registration statement with the secretary of state pursuant to section 6-16-104, C.R.S.

7-90-802. Consequences of transacting business or conducting activities without authority. (1) (a) No foreign entity transacting business or conducting activities in this state without authority, nor anyone on its behalf, shall be permitted to maintain a proceeding in any court in this state for the collection of its debts until a statement of foreign entity authority for the foreign entity is filed in the records of the secretary of state.

(b) A court may stay a proceeding commenced by a foreign entity until it determines whether the foreign entity should have a statement of foreign entity authority on file with the secretary of state. If the court determines that the foreign entity should have a statement of foreign entity authority on file with the secretary of state, the court may further stay the proceeding until there is a statement of foreign entity authority on file with the secretary of state with respect to the foreign entity. If a foreign entity has a statement of foreign entity authority on file with the secretary of state, no proceeding in any court in this state to which the foreign entity

is a party shall, after the effective date of such statement of foreign entity authority, be dismissed by reason of a statement of foreign entity authority not being on file with the secretary of state with respect to the foreign entity.

(2) A foreign entity that transacts business or conducts activities in this state without being authorized to do so shall be liable to this state in an amount equal to the fee as prescribed by the secretary of state from time to time, not to exceed one hundred dollars for each calendar year or part of a calendar year during which it transacted business or conducted activities in this state without being authorized to do so, plus all penalties imposed by this state pursuant to subsection (3) of this section for failure to pay such fees. No statement of foreign entity authority shall be filed until payment of the amounts due under this subsection (2) and subsection (3) of this section is made.

(3) A foreign entity that transacts business or conducts activities in this state without having a statement of foreign entity authority on file in the records of the secretary of state shall be subject to a civil penalty, payable to this state, not to exceed five thousand dollars.

(4) The amounts due to this state under the provisions of subsection (2) of this section and the civil penalties set forth in subsection (3) of this section may be recovered in an action brought by the attorney general in the district court in and for the city and county of Denver. Upon a finding by the court that a foreign entity or any of its managers or agents on its behalf has transacted business or conducted activities in this state in violation of this part 8, the court may issue, in addition to or in lieu of the imposition of a civil penalty, an injunction restraining the further transaction of business or conducting of activities by the foreign entity and the managers and agents, and the further exercise of any rights and privileges of an entity in this state until all amounts plus any interest and court costs that the court may assess have been paid, and until the foreign entity has otherwise complied with this part 8.

(5) Notwithstanding subsection (1) of this section, the transaction of business or conducting of activities in this state by a foreign entity without having a statement of foreign entity authority on file in the records of the secretary of state does not impair the validity of the acts of the foreign entity or prevent it from defending any proceeding in this state.

7-90-803. Statement of foreign entity authority to transact business or conduct activities. (1) A foreign entity may cause to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity authority stating:

- (a) Its true name and its assumed entity name, if any;
- (b) The jurisdiction under the law of which it is formed;
- (c) The form of the entity as that form is recognized by the jurisdiction under the law of which the entity is formed;
- (d) (Deleted by amendment, L. 2004, p. 1493, § 238, effective July 1, 2004.)

- (e) The principal office address of its principal office;
- (f) The registered agent name and registered agent address of its registered agent; and
- (g) The date it commenced or expects to commence transacting business or conducting activities in this state.
- (h) (Deleted by amendment, L. 2004, p. 1493, § 238, effective July 1, 2004.)

7-90-804. Change of statement of foreign entity authority to transact business or conduct activities. Upon any change in circumstances that makes any statement contained in its filed statement of foreign entity authority no longer true, a foreign entity authorized to transact business or conduct activities in this state shall deliver to the secretary of state, for filing pursuant to part 3 of this article, an appropriate statement of change so that its statement of foreign entity authority is in all respects true.

7-90-805. Effect of statement of foreign entity authority. (1) A foreign entity is authorized to transact business or conduct activities in this state from the effective date of its statement of foreign entity authority until the effective date of its statement of foreign entity withdrawal.

(2) A foreign entity that has authority to transact business or conduct activities in this state has the same rights and privileges as, but no greater rights or privileges than, and, except as otherwise provided by this title, is subject to the same duties, restrictions, penalties, and liabilities imposed upon, a functionally equivalent domestic entity.

(3) Nothing in this part 8 authorizes this state to regulate the organization, formation, existence, or internal activities of a foreign entity authorized to transact business or conduct activities in this state.

(4) As to any foreign entity transacting business or conducting activities in this state, the law of the jurisdiction under the law of which the foreign entity is formed shall govern the organization and internal affairs of the foreign entity and the liability of its owners and managers.

7-90-806. Withdrawal of foreign entity. (1) A foreign entity authorized to transact business or conduct activities in this state may relinquish that authority by causing to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity withdrawal stating:

- (a) Its true name and its assumed entity name, if any;

(b) The registered agent name and registered agent address of its registered agent or, if a registered agent is no longer to be maintained, a statement that the entity will not maintain a registered agent, and the mailing address to which service of process may be mailed pursuant to section 7-90-807;

(c) The principal office address of its principal office;

(d) The jurisdiction under the law of which it was formed;

(e) That it will no longer transact business or conduct activities in this state and that it relinquishes its authority to transact business or conduct activities in this state; and

(f) That any statement of trade name it has on file in the records of the secretary of state pursuant to article 71 of this title, and any assumed entity name pursuant to section 7-90-603, are withdrawn upon the effective date of the statement of foreign entity withdrawal.

(g) (Deleted by amendment, L. 2004, p. 1494, § 240, effective July 1, 2004.)

(2) If a foreign entity causes a statement of foreign entity withdrawal to be delivered to the secretary of state for filing pursuant to part 3 of this article before the date on which a periodic report for the foreign entity is due pursuant to part 5 of this article, the foreign entity is relieved of its obligation to file such annual report or pay the fee therefor.

7-90-807. Service on withdrawn foreign entity. (1) A foreign entity with respect to which a statement of foreign entity withdrawal has been filed pursuant to section 7-90-806 shall either:

(a) Maintain a registered agent to accept service on its behalf in any proceeding based on a cause of action arising during the time it was authorized to transact business or conduct activities in this state; or

(b) Be deemed to have authorized service of process on it in connection with such causes of action by mailing in accordance with section 7-90-704 (2).

(2) Subsection (1) of this section does not prescribe the only means, or necessarily the required means, of serving a foreign entity with respect to which a statement of foreign entity withdrawal has been filed.

7-90-808. Grounds for revocation. (Repealed)

7-90-809. Procedure for and effect of revocation. (Repealed)

7-90-810. Appeal from revocation. (Repealed)

7-90-811. Application to existing foreign entities. A foreign entity authorized to transact business or conduct activities in this state in accordance with law as in effect on June 30, 2004, is subject to this part 8 and the filed document pursuant to which it has such authority shall be deemed to be a filed statement of foreign entity authority for purposes of this part 8.

7-90-812. Foreign general partnerships. This part 8 shall not apply to a foreign general partnership that is not a foreign limited liability partnership.

7-90-813. Title 12 limitations. Nothing in this part 8 shall be construed to permit a foreign entity to engage in a profession or occupation as described in title 12, C.R.S., for which there is a specific statutory provision applicable to the practice of such profession or occupation by a corporation or professional corporation in this state unless authorized under applicable provisions of title 12, C.R.S., or section 25-3-103.7, C.R.S.

PART 9

DELINQUENCY - DISSOLUTION OF DELINQUENT ENTITY - NOTICE TO CREDITORS BY ENFORCEMENT OF CLAIMS AGAINST DISSOLVED ENTITIES

SUBPART 1

DELINQUENCY

7-90-901. Grounds for delinquency. (1) A domestic entity that is a reporting entity may be declared delinquent under section 7-90-902 if:

(a) The domestic entity does not pay any fee or penalty imposed by this title when it is due;

(b) The domestic entity does not comply with part 5 of this article, providing for reports from reporting entities; or

(c) The domestic entity does not comply with part 7 of this article, providing for registered agents and service of process.

(2) A foreign entity that is a reporting entity may be declared delinquent under section 7-90-902 if:

(a) The foreign entity does not pay any fee or penalty imposed by this title when it is due;

(b) The foreign entity does not comply with part 5 of this article, providing for reports from reporting entities;

(c) The foreign entity does not comply with part 7 of this article, providing for registered agents and service of process;

(d) The foreign entity does not deliver for filing an appropriate statement of change when necessary to make its statement of foreign entity authority true in all respects; or

(e) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of entity records in the jurisdiction under the law of which the foreign entity was formed to the effect that it no longer exists as the result of a dissolution or merger or otherwise.

7-90-902. Declaration of delinquency. (1) If the secretary of state determines that one or more grounds exist under section 7-90-901 for declaring an entity delinquent and the entity does not correct each ground for declaring it delinquent or demonstrate to the reasonable satisfaction of the secretary of state that such ground does not exist within sixty days after the secretary of state makes such determination, the entity becomes delinquent following the expiration of such sixty days.

(2) (Deleted by amendment, L. 2010, (HB 10-1403), ch. 404, p. 1998, § 20, effective August 11, 2010.)

7-90-903. Effect of delinquency. (1) A delinquent entity may not maintain a proceeding in any court in this state for the collection of its debts until it has cured its delinquency pursuant to section 7-90-904 (1), (2), or (3).

(2) A court may stay a proceeding commenced by an entity until it determines whether the entity is delinquent. If the court determines that the entity is delinquent, it may further stay the proceeding until the entity cures its delinquency pursuant to section 7-90-904. If a delinquent entity cures its delinquency in accordance with section 7-90-904, no proceeding in any court in this state to which such entity is a party shall thereafter be dismissed by reason of that instance of delinquency.

(3) The delinquency of an entity does not terminate the authority of the registered agent of the entity.

(4) The existence of a domestic entity continues notwithstanding its delinquency.

(5) A delinquent domestic entity may be dissolved at any time and by any manner as may be provided or permitted by its constituent documents and organic statutes and, if it has failed to cure its delinquency for three years or more, the delinquent domestic entity may be dissolved pursuant to section 7-90-908.

7-90-904. Cure of delinquency. (1) A delinquent entity may cure its delinquency by:

(a) Delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement curing delinquency stating:

(I) The entity's principal office address; and

(II) The entity's registered agent's name and address.

(b) (Deleted by amendment, L. 2008, p. 23, § 17, effective August 5, 2008.)

(2) In lieu of curing its delinquency pursuant to subsection (1) of this section, a delinquent foreign entity may cure its delinquency by causing to be delivered to the secretary of state, for filing pursuant to part 3 of this article, a statement of foreign entity withdrawal.

(3) A delinquent domestic entity may cure its delinquency by dissolving.

(4) (a) Except as provided in paragraphs (b) and (c) of this subsection (4), the entity name of an entity following the curing of its delinquency shall be the same as the entity name, determined without regard to section 7-90-601.6, of the entity at the time the entity cures its delinquency if such entity name complies with section 7-90-601 at the time the entity cures its delinquency. If such entity name would not be distinguishable on the records of the secretary of state as contemplated in section 7-90-601, the entity name of the entity following curing of its delinquency shall be such entity name followed by the words "delinquency cured" and the month, day, and year of the effective date of the statement curing delinquency.

(b) In the case of a foreign entity that cures its delinquency pursuant to subsection (2) of this section, the foreign entity name of the foreign entity shall be its foreign entity name at the time it cures its delinquency, determined without regard to section 7-90-601.6, as changed by section 7-90-601.7.

(c) In the case of a domestic entity that cures its delinquency pursuant to subsection (3) of this section, the domestic entity name of the domestic entity shall be its domestic entity name at the time it cures its delinquency, determined without regard to section 7-90-601.6, as changed by section 7-90-601.5.

7-90-905. Appeal from declaration of delinquency. (1) An entity may appeal a declaration under section 7-90-902 (1) that it is delinquent to the district court for the county in this state in which the street address of the entity's principal office is located, or, if the entity has

no principal office in this state, to the district court for the county in which the street address of its registered agent is located or, if the entity has no registered agent, to the district court for the city and county of Denver within thirty days after the effective date of its delinquency. The entity shall commence such appeal by petitioning the court to set aside the declaration of its delinquency or to determine that the entity has cured its delinquency and attaching to the petition copies of such documents in the secretary of state's records as may be relevant.

(2) The court may summarily order the secretary of state to take whatever action the court considers appropriate or may take any other action the court considers appropriate.

(3) The court's order or decision may be appealed as in other civil proceedings.

7-90-906. Limited liability partnerships and limited liability limited partnerships. Each limited liability partnership and limited liability limited partnership to which section 7-60-152 or section 7-64-1008 was applicable on September 30, 2005, shall be deemed delinquent pursuant to section 7-90-902 (1), effective October 1, 2005.

SUBPART 2

DISSOLUTION OF DELINQUENT ENTITY

7-90-907. Dissolution upon expiration of term.

(1) Repealed.

(2) Deleted by amendment, L. 2019_____.

7-90-908. Dissolution of delinquent domestic entity. (1) If a delinquent domestic entity has failed to cure its delinquency for three years or more, any manager of the domestic entity may cause it to dissolve by delivering to the secretary of state, for filing pursuant to part 3 of this article, a statement of dissolution of delinquent entity stating:

(a) The domestic entity name of the delinquent entity;

(b) The principal office address of the delinquent entity's principal office;

(c) That the entity is delinquent and has failed to cure its delinquency for three years or more; and

(d) That, at least thirty days prior to the delivery of the statement of dissolution of delinquent entity to the secretary of state, the delinquent entity has delivered written notice of the delinquent entity's plan to file a statement of dissolution of delinquent entity to all owners and other persons having authority under the organic statutes and under its constituent operating

document to bring about or prevent dissolution of the entity and the delinquent entity has not received, as of the date the statement of dissolution of delinquent entity is delivered for filing to the secretary of state, written objections to dissolution from such number of such owners and other persons as would be sufficient to prevent voluntary dissolution of the delinquent entity under the organic statutes and its constituent operating document.

(2) A delinquent domestic entity is dissolved upon the effective date of its statement of dissolution of delinquent entity.

7-90-909. Notice of dissolution upon expiration of term. (Repealed)

7-90-910. Effect of dissolution under section 7-90-908. A domestic entity that is dissolved pursuant to section 7-90-908 continues its existence but may not carry on any business except as is appropriate to wind up and liquidate its business and affairs, and to give notice to claimants, in accordance with the organic statutes.

SUBPART 3

NOTICE TO CREDITORS BY DISSOLVED ENTITIES -

ENFORCEMENT OF CLAIMS AGAINST DISSOLVED ENTITIES

7-90-911. Disposition of known claims by notification. (1) A dissolved domestic entity may dispose of claims against it by following the procedures described in this section.

(2) A dissolved domestic entity may deliver written notice under this subsection (2) to any person at any time on or after the effective date of the dissolution. The notice contemplated in this subsection (2) shall state that, unless sooner barred by any other statute limiting actions, any claim of that person against the dissolved domestic entity will be barred if an action to enforce the claim is not commenced by a deadline that is stated in the notice, which deadline shall not be less than two years after the delivery of notice. The notice may contain such other information as the dissolved entity determines to include, including information regarding procedures facilitating the processing of claims against the dissolved entity; except that no obligations on persons having claims against the dissolved entity shall be imposed or implied that do not exist at law.

(3) Unless sooner barred by any other statute limiting actions, a person's claim against the dissolved domestic entity is barred if the dissolved entity delivers a notice of dissolution as contemplated by subsection (2) of this section and an action to enforce the claim is not commenced by the deadline stated in the notice.

(4) (a) 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. For purposes of this

section, an action to enforce a claim includes an arbitration under any agreement for binding arbitration between the dissolved domestic entity and the person making the claim and includes a civil action.

(b) For purposes of this section and sections 7-90-912 and 7-90-913, "dissolved domestic entity" means a dissolved domestic cooperative other than a domestic cooperative formed under article 55 of this title, a dissolved domestic corporation, a dissolved domestic limited liability company, or a dissolved domestic nonprofit corporation.

7-90-912. Disposition of claims by publication. (1) A dissolved domestic entity may publish notice of its dissolution and request that persons with claims against the dissolved domestic entity present them in accordance with the notice.

(2) The notice contemplated in subsection (1) of this section shall:

(a) Be published one time in a newspaper of general circulation in the county in this state in which the street address of the dissolved domestic entity's principal office is or was last located or, if the dissolved domestic entity has not had a principal office in this state, in the county in which the street address of its registered agent is or was last located; and

(b) State that, unless sooner barred by any other statute limiting actions, any claim against the dissolved entity will be barred if an action to enforce the claim is not commenced within five years after the publication of the notice or within four months after the claim arises, whichever is later. The notice may contain such other information as the dissolved entity determines to include, including information regarding procedures facilitating the processing of claims against the dissolved entity; except that no obligations on persons having claims against the dissolved entity shall be imposed or implied that do not exist at law.

(3) If the dissolved domestic entity publishes a notice in accordance with subsection (2) of this section, then, unless sooner barred under section 7-90-911 or under any other statute limiting actions, the claim of any person against the dissolved domestic entity is barred unless the person commences an action to enforce the claim within five years after the publication date of the notice or within four months after the claim arises, whichever is later.

(4) For purposes of this section and except where permitted to be disposed of under section 7-90-911, "claim" means any claim, excluding claims of this state, whether known, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise. For purposes of this section, an action to enforce a claim includes an arbitration under any agreement for binding arbitration between the dissolved domestic entity and the person making the claim and includes a civil action.

(5) This section shall not apply to a claim with respect to which notice has been delivered by a dissolved domestic entity under section 7-90-911.

7-90-913. Enforcement of claims against a dissolved domestic entity. (1) A claim may be enforced under section 7-90-911 or 7-90-912:

(a) Against the dissolved domestic entity to the extent of its undistributed assets; and

(b) If assets have been distributed in liquidation, against an owner of the dissolved domestic entity; except that an owner's total liability for all claims under this section shall not exceed the total value of assets distributed to the owner, as such value is determined at the time of distribution. Any owner required to return any portion of the value of assets received by the owner in liquidation shall be entitled to contribution from all other owners. Each such contribution shall be in accordance with the contributing owner's rights and interests and shall not exceed the value of the assets received by the contributing owner in liquidation.

7-90-914. Court Proceedings. (1) A dissolved domestic entity that has published a notice under section 7-90-912 may file an application with the court for the county in this state in which the street address of the domestic entity's principal office or the street address of its registered agent 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 domestic entity or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved domestic entity, 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 7-90-912(3).

(2) Within ten days after the filing of the application, notice of the proceeding shall be given by the dissolved domestic entity to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved domestic entity.

(3) 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 entity.

(4) Provision by the dissolved entity for security in the amount and the form ordered by the court under section 7-90-914(1) shall satisfy the dissolved entity'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.

7-90-915. Manager Duties. (1) Managers shall cause the dissolved domestic entity to discharge or make reasonable provision for the payment of claims and make distributions of assets to owners after payment or provision for claims.

(2) Managers of a dissolved domestic entity which has disposed of claims under section 7-90-911, section 7-90-912, or section 7-90-914 shall not be liable for breach of section 7-90-915(1) with respect to claims against the dissolved domestic entity that are barred or satisfied under section 7-90-911, section 7-90-912, or section 7-90-914.

PART 10

REINSTATEMENT OF DISSOLVED ENTITIES

7-90-1001. Reinstatement after dissolution. Any domestic entity as to which a constituent filed document has been filed by, or placed in the records of, the secretary of state and that has been dissolved may be reinstated under this part 10; except that this part 10 shall not apply to domestic general partnerships or to limited partnerships formed under article 61 of this title that have not elected to be governed by article 62 of this title.

7-90-1002. Vote or consent required - effect of opposition. (1) An entity eligible for reinstatement under section 7-90-1001 may be reinstated upon compliance with the following conditions:

(a) The affirmative vote or consent shall have been obtained from owners and other persons entitled to vote or consent at that time that is:

(I) Required for reinstatement under its constituent operating document; or

(II) If its constituent operating document does not state the vote or consent required for reinstatement, sufficient for dissolution under the organic statutes, or such greater or lesser vote or consent as is required for dissolution under its constituent operating document;

(b) Except as otherwise provided in the constituent operating document, the owners and other persons having authority under the entity's organic statutes and under its constituent operating document to bring about or prevent dissolution of the entity shall not have, before or at the time of the vote or consent required by paragraph (a) of this subsection (1), voted against reinstatement or delivered to the entity their written objection to reinstatement;

(c) In the case of an entity dissolved in an involuntary or judicial proceeding initiated by one or more of the owners, the affirmative vote or consent of each such owner shall have been obtained and shall be included in the vote or consent required by paragraph (a) of this subsection (1);

(d) In the case of an entity dissolved in a proceeding initiated by one or more creditors of the entity, the obligations of the entity to each such creditor shall have been satisfied or discharged in full; and

(e) In the case of an entity dissolved in a proceeding initiated by the attorney general, all grounds for the dissolution asserted by the attorney general shall have been remedied, and the attorney general shall have consented to the reinstatement.

(2) To the extent that an entity's constituent operating document or the organic statutes provide for the voting rights of owners or other persons, for the calling of meetings, for notices of meetings, for consents and actions of owners and other persons without a meeting, for establishing a record date for meetings, or for other matters concerning the voting or consent of owners and other persons, such provisions shall govern the vote or consent required by paragraph (a) of subsection (1) of this section with respect to the entity and the vote or objection of owners and other persons provided for in paragraph (b) of subsection (1) of this section with respect to the entity.

(3) This section shall not apply to a domestic entity that is described in this subsection (3) and that was administratively dissolved for any reason other than the expiration of the period of duration stated in its constituent filed document until the later of January 1, 2006, or the following date, as applicable:

(a) In the case of a corporation that was administratively dissolved after July 1, 2002, the date that is three years after the date it was administratively dissolved;

(b) In the case of a nonprofit corporation that was administratively dissolved after July 1, 1999, the date that is six years after the date it was administratively dissolved;

(c) In the case of a limited liability company that was administratively dissolved after July 1, 2001, the date that is four years after the date it was administratively dissolved.

7-90-1003. Articles of reinstatement. (1) In order to reinstate an entity under this part 10, articles of reinstatement shall be delivered to the secretary of state, for filing pursuant to part 3 of this article stating:

(a) The domestic entity name of the entity;

(a.5) The domestic entity name of the entity following reinstatement, which entity name shall comply with section 7-90-1004;

(b) The date of formation of the entity;

(c) The Colorado statute under which the entity existed immediately prior to its dissolution;

(d) The date of dissolution of the entity, if known;

(e) (Deleted by amendment, L. 2006, p. 878, § 65, effective July 1, 2006.)

(f) A statement that all applicable conditions of section 7-90-1002 have been satisfied;

(g) The principal office address of the entity's principal office; and

(h) The registered agent name and registered agent address of the entity's registered agent.

(2) If the constituent-filed document referred to in section 7-90-1001 is no longer in the publicly-accessible electronic records of the secretary of state at the time articles of reinstatement are delivered to the secretary of state for filing, the entity shall cause a true and complete copy of its constituent filed document to be attached to its articles of reinstatement.

7-90-1004. Entity name upon reinstatement. The domestic entity name of a domestic entity following reinstatement shall be the domestic entity name, determined without regard to section 7-90-601.5, of the domestic entity at the time of reinstatement if such domestic entity name complies with section 7-90-601 at the time of reinstatement. If that domestic entity name does not comply with section 7-90-601, the domestic entity name of the domestic entity following reinstatement shall be that domestic entity name followed by the word "reinstated" and the month, day, and year of the effective date of the articles of reinstatement.

7-90-1005. Effect of reinstatement. (1) Subject to subsection (2) of this section, upon reinstatement, the existence of the entity shall be deemed for all purposes to have continued without interruption; the entity resumes carrying on its business or conducting its activities as if dissolution had never occurred; any debt, obligation, or liability incurred by the entity or an owner or manager of the entity before or after the dissolution shall be determined as if dissolution had never occurred; and, if the entity was, at the time of its dissolution, a limited liability limited partnership, it continues, upon reinstatement, to be a limited liability limited partnership.

(2) The rights of owners and other persons arising by reason of reliance on the dissolution before those persons had notice of the reinstatement shall not be adversely affected by the reinstatement.

CORPORATIONS

Colorado Business Corporations

ARTICLE 101

General Provisions

PART 1

SHORT TITLE AND

RESERVATION OF POWER

7-101-101. Short title. Articles 101 to 117 of this title shall be known and may be cited as the "Colorado Business Corporation Act".

7-101-102. Reservation of power to amend or repeal. The general assembly has the power to amend or repeal all or part of articles 101 to 117 of this title at any time, and all domestic and foreign corporations subject to said articles shall be governed by the amendment or repeal.

PART 2

FILING DOCUMENTS

7-101-201. Filing requirements. (1) Part 3 of article 90 of this title, providing for the filing of documents, applies to any document filed or to be filed by the secretary of state pursuant to articles 101 to 117 of this title.

(2) to (11) (Deleted by amendment, L. 2002, p. 1845, § 103, effective July 1, 2002; p. 1709, § 101, effective October 1, 2002.)

7-101-202. Forms - secretary of state to furnish upon request - repeal. (Repealed)

7-101-203. Filing, service, and copying fees - subpoenas. (Repealed)

7-101-204. Effective time and date of document. (Repealed)

7-101-205. Correcting filed document. (Repealed)

7-101-206. Filing duty of secretary of state - manner of filing. (Repealed)

7-101-207. Appeal from secretary of state's refusal to file document. (Repealed)

7-101-208. Evidentiary effect of copy of filed document. (Repealed)

7-101-209. Certificates issued by secretary of state. (Repealed)

7-101-210. Proof of delivery for filing. (Repealed)

PART 3

SECRETARY OF STATE

7-101-301 and 7-101-302. (Repealed)

PART 4

DEFINITIONS

7-101-401. General definitions. As used in articles 101 to 117 of this title, unless the context otherwise requires:

(1) Repealed.

(2) "Affiliate" means any person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "Articles of incorporation" includes amended articles of incorporation, restated articles of incorporation, and other instruments, however designated, on file in the records of the secretary of state, which have the effect of amending or supplementing in some respect the original or amended articles of incorporation.

(4) Repealed.

(5) "Authorized shares" means the shares of all classes which a domestic or foreign corporation is authorized to issue.

(5.5) "Beneficial owner" means a person who owns the beneficial interest in shares, which may be a shareholder included in the records of the corporation, or a person on whose behalf shares are registered in the name of an intermediary, a nominee or a voting trust of which the person is a beneficiary.

(6) "Bylaws" includes amended bylaws and restated bylaws.

(7) "Cash" and "money" are used interchangeably in articles 101 to 117 of this title. Each of these terms includes:

(a) Legal tender;

(b) Negotiable instruments readily convertible into legal tender; and

(c) Other cash equivalents readily convertible into legal tender.

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

(9) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.

(10) (Deleted by amendment, L. 2000, p. 977, § 50, effective July 1, 2000.)

(11) "Corporation" or "domestic corporation" means a corporation for profit which is not a foreign corporation, incorporated under or subject to the provisions of articles 101 to 117 of this title.

(12) Repealed.

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

(14) Repealed.

(15) "Effective date of notice" has the meaning set forth in section 7-101-402.

(16) "Employee" includes an officer but not a director; except that a director may accept duties that make said director also an employee.

(17) and (18) Repealed.

(19) "Governmental subdivision" includes an authority, county, district, subdistrict, municipality, and any other political subdivision.

(20) to (26) Repealed.

(27) "Receive", when used in reference to receipt of a writing or other document by a domestic or foreign corporation, means that the writing or other document is actually received:

(a) By the corporation at its registered office or at its principal office;

(b) By the secretary of the corporation, wherever the secretary is found; or

(c) By any other person authorized by the bylaws or the board of directors to receive such writings, wherever such person is found.

(28) "Record date" means the date, established under article 106 or 107 of this title, on which a corporation determines the identity of its shareholders and their shareholdings. The determination shall be made as of the close of business on the record date unless another time for doing so is stated when the record date is fixed.

(28.4) "Related person" means:

(i) the individual's spouse;

(ii) 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 individual or of the individual's spouse;

(iii) a natural person living in the same home as the individual;

(iv) an entity (other than the corporation or an entity controlled by the corporation) controlled by the director individual or any person specified above in this subdivision (5);

(v) a domestic or foreign (A) business or nonprofit corporation (other than the corporation or an entity controlled by the corporation) of which the individual is a director, (B) unincorporated entity of which the individual is a general partner or a member of the governing body, or (C) individual, trust or estate for whom or of which the individual is a trustee, guardian, personal representative or like fiduciary; or

(vi) a person that is, or an entity that is controlled by, an employer of the individual.

(28.3) and (28.5) Repealed.

(29) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under section 7-108-301 (3) for the preparation and maintenance of minutes of the meetings of the board of directors and of the shareholders and of the other records and information required to be kept by the corporation under section 7-116-101 and for authenticating records of the corporation.

(30) "Shareholder" means either 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 beneficial ownership certificate meeting the requirements of section 7-107-204 which certificate is on file with the corporation.

(31) "Shares" means the units into which the proprietary interests in a corporation are divided.

(32) to (33) Repealed.

(34) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(35) Repealed.

(36) "Voting group" means all the shares of one or more classes or series that, under articles 101 to 117 of this title or under the articles of incorporation, are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by articles 101 to 117 of this title or the articles of incorporation to vote generally on the matter are for that purpose a single voting group.

7-101-402. Notice. (1) Notice given pursuant to articles 101 to 117 of this title shall be in writing unless oral notice is reasonable under the circumstances.

(2) Notice may be given in person; by telephone, telegraph, teletype, electronically transmitted facsimile, or other form of wire or wireless delivery; or by mail or private carrier.

(3) Written notice by a corporation to its shareholders, if in a comprehensible form, is effective as to each shareholder when mailed, if mailed addressed to the shareholder's address shown in the corporation's current record of shareholders. If three successive notices given to a shareholder pursuant to this subsection (3) have been returned as undeliverable, no further notices to such shareholder shall be necessary until another address for the shareholder is made known to the corporation.

(4) Written notice to a domestic corporation or to a foreign corporation authorized to transact business or conduct activities in this state may be mailed to the registered agent address of its registered agent or to the corporation or its secretary at its principal office.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, is effective at the earliest of:

(a) The date received;

(b) Five days after mailing; or

(c) The date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

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

(7) Repealed.

(8) If articles 101 to 117 of this title prescribe notice requirements for particular circumstances, those requirements govern. If the articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of articles 101 to 117 of this title, those requirements govern.

(9) A domestic corporation has given written notice or any other report or statement under articles 101 to 117 of this title, the articles of incorporation or the bylaws to all shareholders who share a common address if:

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

(b) the domestic 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

(c) each of those shareholders consents to delivery of a single copy of such notice, report or statement to the shareholders' common address.

(d) Any such consent described in subsections (9)(a) or (9)(b) of this section shall be revocable by any of such shareholders who delivers 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 30 days after delivery of the written notice of revocation.

(e) Any shareholder who fails to object by written notice to the domestic corporation, within 60 days of written notice by the corporation of its intention to deliver single copies of notices, reports or statements to shareholders who share a common address as permitted by subsection (a), shall be deemed to have consented to receiving such single copy at the common address; provided that the notice of intention explains that consent may be revoked and the method for revoking.

PART 5

PUBLIC BENEFIT CORPORATIONS

7-101-501. Short title. This part 5 shall be known and may be cited as the "Public Benefit Corporation Act of Colorado".

7-101-502. Law applicable to public benefit corporations - how formed. This part 5 applies to all public benefit corporations. If a corporation elects to become a public benefit corporation under this part 5 in the manner prescribed in this part 5, it is subject in all respects to the "Colorado Business Corporation Act", articles 101 to 117 of this title, and the "Colorado Corporations and Associations Act", article 90 of this title, except to the extent this part 5 imposes additional or different requirements, in which case such additional or different requirements apply.

7-101-503. Public benefit corporation - definitions - contents of articles of incorporation. (1) A public benefit corporation is a for-profit corporation organized under and subject to the requirements of the "Colorado Business Corporation Act", articles 101 to 117 of this title 7, or a domestic cooperative organized under article 55, 56, or 58 of this title 7 that is subject to the "Colorado Business Corporation Act", that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner. To that end, a public benefit corporation shall be managed in a manner that balances the shareholders' pecuniary interests, the best interest of those materially affected by the corporation's conduct, and the public benefit identified in its articles of incorporation. In its articles of incorporation, a public benefit corporation shall:

(a) Identify within its statement of business or purpose pursuant to section 7-103-101 (1) one or more specific public benefits to be promoted by the public benefit corporation; and

(b) State at the beginning of the articles of incorporation that it is a public benefit corporation.

(2) "Public benefit" means one or more positive effects or reduction of negative effects on one or more categories of persons, entities, communities, or interests other than shareholders in their capacities as shareholders, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature.

(3) "Public benefit provisions" means the provisions of articles of incorporation contemplated by this part 5.

(4) The domestic entity name of a public benefit corporation may contain the words "public benefit corporation", the abbreviation "P.B.C." or "Pub. Ben. Corp.", or the designation "PBC", which shall be deemed to satisfy the requirements of section 7-90-601 (3)(a), and must otherwise satisfy the requirements of section 7-102-102 (1)(a). If the name does not contain the language specified in this subsection (4), the public benefit corporation shall, before issuing unissued shares of stock or disposing of treasury shares, provide notice to any person to whom the stock is issued or who acquires the treasury shares that it is a public benefit corporation; except that the notice need not be provided if the issuance or disposal is pursuant to an offering registered under the federal "Securities Act of 1933", 15 U.S.C. sec. 77a et seq., as amended, or if, at the time of issuance or disposal, the public benefit corporation has a class of securities that is registered under the federal "Securities Exchange Act of 1934", 15 U.S.C. sec. 78b et seq., as amended.

7-101-504. Certain amendments and mergers - votes required - appraisal rights. (1) Notwithstanding any other provisions of this part 5 other than subsection (2) of this section, a corporation that is not a public benefit corporation shall not, without the approval of two-thirds of the outstanding shares of each class of shares of the corporation of which there are outstanding shares, whether voting or nonvoting:

(a) Amend its articles of incorporation to include a provision authorized by section 7-101-503 (1)(a);

(b) Convert into a domestic or foreign public benefit corporation or similar entity; or

(c) Merge with or into another entity if, as a result of the merger, the shares in such corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity.

(2) The restrictions of this section do not apply before the corporation has received payment for any of its capital stock. In the case of a domestic cooperative formed under article 55, 56, or 58 of this title 7 that is subject to the "Colorado Business Corporation Act", articles 101 to 117 of this title 7, an action described in subsection (1) or (4) of this section must be approved by vote or consent of the holders of every class or series of equity interest in the entity that are entitled to vote on the action by at least two-thirds of the votes or consents that all of those holders are entitled to cast on the action.

(3) A shareholder of a corporation that is not a public benefit corporation is entitled to exercise the right to seek appraisal rights pursuant to article 113 of this title if the shareholder has neither voted in favor of an amendment, merger, or conversion specified in this subsection (3) nor consented thereto in writing pursuant to section 7-107-104 and holds shares of such corporation immediately before the effective time of:

(a) An amendment to the corporation's articles of incorporation to include a provision authorized by section 7-101-503 (1)(a);

(b) A conversion into a domestic or foreign public benefit corporation or similar entity;
or

(c) A merger that would result in the conversion of the corporation's shares into, or exchange of the corporation's shares for, the right to receive shares or other equity interests in a domestic or foreign public benefit corporation or similar entity.

(4) Notwithstanding any other provision of this part 5, a corporation that is a public benefit corporation shall not, without the approval of two-thirds of the outstanding shares of each class of shares of the corporation of which there are outstanding shares, whether voting or nonvoting:

(a) Amend its articles of incorporation to delete or amend a provision authorized by section 7-101-503 (1)(a);

(b) Convert into another domestic or foreign entity that is not a public benefit corporation or similar entity;

(c) Merge with or into another entity if, as a result of the merger, the shares in the public benefit corporation would become, be converted into, or be exchanged for the right to receive:

(I) Cash;

(II) Shares or other equity interests in a domestic or foreign corporation that is not a public benefit corporation or similar entity; or

(III) Shares or other equity interests in a domestic or foreign public benefit corporation or similar entity, the articles of incorporation or similar governing instrument of which do not contain the identical provisions identifying the public benefit pursuant to section 7-101-503 (1);
or

(d) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the public benefit corporation in a transaction for which a shareholder vote is required under section 7-112-102 (1).

(5) A nonprofit corporation cannot be a constituent entity in connection with a merger or conversion governed by this section.

7-101-505. Share certificates - notices regarding uncertificated shares. A share certificate issued by a public benefit corporation must note conspicuously that the corporation is a public benefit corporation formed pursuant to this part 5. A statement sent by a public benefit corporation pursuant to section 7-106-207 must state conspicuously that the corporation is a public benefit corporation formed pursuant to this part 5.

7-101-506. Duties of directors. (1) The board of directors shall manage or direct the business and affairs of a public benefit corporation in a manner that balances the pecuniary interests of the shareholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit identified in its articles of incorporation.

(2) A director of a public benefit corporation:

(a) Does not, by virtue of the public benefit provisions of section 7-101-503 (1), have a duty to any person on account of an interest of the person in the public benefit identified in the articles of incorporation or on account of an interest materially affected by the corporation's conduct; and

(b) With respect to a decision implicating the balance requirement in subsection (1) of this section, will be deemed to satisfy the director's fiduciary duties to shareholders and the corporation if the director's decision is both informed and disinterested and not such that no person of ordinary, sound judgment would approve.

(3) The articles of incorporation of a public benefit corporation may include a provision that a disinterested director's failure to satisfy this section does not, for the purposes of section 7-108-401 or 7-108-402 or article 109 of this title 7, constitute an act or omission not in good faith or a breach of the duty of loyalty.

7-101-507. Benefit report - definition. (1) A public benefit corporation shall prepare an annual report that includes:

(a) A narrative description of:

(I) The ways in which the public benefit corporation promoted the public benefit identified in the articles of incorporation and the best interests of those materially affected by the public benefit corporation's conduct;

(II) Any circumstances that have hindered the public benefit corporation's promotion of the identified public benefit and the best interests of those materially affected by the public benefit corporation's conduct; and

(III) The process and rationale for selecting or changing the third-party standard used to complete the assessment pursuant to subsection (1)(b) of this section; and

(b) An assessment of the overall social and environmental performance of the public benefit corporation against a third-party standard:

(I) Applied consistently with any application of that standard in prior benefit reports; or

(II) Accompanied by an explanation of the reasons for any inconsistent application. The assessment does not need to be performed, audited, or certified by a third party.

(2) For purposes of subsection (1) of this section, "third-party standard" means a standard for defining, reporting, and assessing the overall corporate social and environmental performance, which standard is developed by an organization that is not controlled by the public benefit corporation or any of its affiliates and that makes publicly available the following information:

(a) The criteria considered when measuring the social and environmental performance of a business, the relative weightings of those criteria, if any, and the process for development and revision of the standard; and

(b) Any material owners of the organization that developed the third-party standard, the members of its governing body and how they are selected, and the sources of financial support for the organization, in sufficient detail to disclose any relationships that could reasonably be considered to compromise its independence.

(3) A public benefit corporation that prepares a report pursuant to this section shall send it to each shareholder.

(4) A public benefit corporation shall post all of its reports prepared pursuant to this section on the public portion of its website, if any, but the public benefit corporation may omit from the posted reports any financial or proprietary information included in the reports.

(5) If a public benefit corporation does not have a website, the public benefit corporation shall provide a copy of its most recent report, without charge, to a person that requests a copy, but the public benefit corporation may omit any financial or proprietary information from the copy of the benefit report so provided.

7-101-508. Derivative suits. (1) Shareholders of a public benefit corporation may maintain a derivative lawsuit to enforce the requirements of section 7-101-506 (1) if the shareholders own, individually or collectively, as of the date of instituting a derivative suit, either:

(a) At least two percent of the corporation's outstanding shares; or

(b) In the case of a corporation with shares listed on a national securities exchange, the lesser of two percent of the corporation's outstanding shares or shares of at least two million dollars in market value.

7-101-509. No effect on other corporations. (1) Except as provided in section 7-101-504:

(a) The existence of a provision of this part 5 does not of itself create an implication that a contrary or different rule of law is or would be applicable to a corporation or other entity that is not a public benefit corporation.

(b) This part 5 does not affect a statute or rule of law that applies to a corporation that is not a public benefit corporation.

ARTICLE 102

Incorporation

7-102-101. Incorporators. One 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 pursuant to part 3 of article 90 of this title. An incorporator who is an individual shall be of the age of eighteen years or older.

7-102-102. Articles of incorporation. (1) The articles of incorporation shall state:

(a) The domestic entity name for the corporation, which domestic entity name shall comply with part 6 of article 90 of this title;

(b) The information regarding shares required by section 7-106-101;

(c) The registered agent name and registered agent address of the corporation's initial registered agent;

(d) The principal office address of the corporation's initial principal office;

(e) The true name and mailing address of each incorporator.

(f) Repealed.

(2) The articles of incorporation may but need not state:

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

(b) Provisions not inconsistent with law regarding:

(I) The purpose or purposes for which the corporation is incorporated;

(II) Managing the business of the corporation and regulating its affairs;

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

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

(V) The imposition of personal liability on shareholders for the debts of the corporation to a stated extent and upon stated conditions;

(c) Any provision that under articles 101 to 117 of this title is required or permitted to be stated in the bylaws;

(d) 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 (i) the amount of a financial benefit received by a director to which the director is not entitled; (ii) an intentional infliction of harm on the corporation or the shareholders; (iii) a violation of section 7-108-405, C.R.S.; or (iv) an intentional violation of criminal law; and

(e) a provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person; provided that any application of such a provision to an officer or a related person of that officer (i) also requires a determination by the board of directors by action of the disinterested directors taken in compliance with the same procedures as are set forth in section 7-108-402 subsequent to the effective date of the provision applying the provision to a particular officer or any related person of that officer, and (ii) may be limited by the authorizing action of the board.

(3) For corporations incorporated after December 31, 1958, if cumulative voting is not desired in the election of directors, a statement to that effect shall be made in the articles of incorporation. If no such statement is made, cumulative voting shall be mandatory in the election of directors, subject to the provisions of section 7-107-209. For corporations incorporated before January 1, 1959, the articles of incorporation shall state whether cumulative voting shall be allowed in the election of directors; and, if the articles of incorporation allow cumulative voting, shareholders shall be permitted to cumulate their shares in the election of directors as provided in section 7-107-209.

(4) The articles of incorporation need not state any of the corporate powers enumerated in articles 101 to 117 of this title.

(5) If articles 101 to 117 of this title condition any matter upon the presence of a provision in the bylaws, the condition is satisfied if such provision is present either in the articles of incorporation or the bylaws. If articles 101 to 117 of this title condition any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both the articles of incorporation and the bylaws.

7-102-103. Incorporation. (1) A corporation is incorporated when the articles of incorporation are filed by the secretary of state or, if a delayed effective date is stated pursuant to

section 7-90-304 in the articles of incorporation as filed by the secretary of state and if a statement of change revoking the articles of incorporation is not filed before such effective date, on such delayed effective date. The corporate existence begins upon incorporation.

(2) The secretary of state's filing of the articles of incorporation is conclusive that all conditions precedent to incorporation have been met.

7-102-104. Unauthorized assumption of corporate powers. All persons purporting to act as or on behalf of a corporation without authority to do so and without good faith belief that they have such authority shall be jointly and severally liable for all liabilities incurred or arising as a result thereof.

7-102-105. Organization of corporation. (1) After incorporation:

(a) If initial directors are not elected in the articles of incorporation, the incorporators may hold a meeting, at the call of a majority of the incorporators, to adopt initial bylaws, if desired, and to elect a board of directors; and

(b) The initial directors may hold a meeting, at the call of a majority of the directors, to adopt bylaws, if desired, to appoint officers, and to carry on any other business.

(2) Action required or permitted by articles 101 to 117 of this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action is taken in the manner provided in section 7-108-202 for action by directors without a meeting.

(3) An organizational meeting may be held in or out of this state.

7-102-106. Bylaws. (1) The board of directors or, if no directors have been elected, the incorporators may adopt initial bylaws. If neither the incorporators nor the board of directors have adopted initial bylaws, the shareholders may do so.

(2) 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 with the articles of incorporation.

7-102-107. Emergency bylaws. (1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt bylaws to be effective only in an emergency as defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may include all provisions necessary for managing the corporation during the emergency, including:

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

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws shall remain in effect during the emergency. The emergency bylaws shall not be effective after the emergency ends.

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

(a) Binds the corporation; and

(b) May not be the basis for imposition of liability on any director, officer, employee, or agent of the corporation on the ground that the action was not authorized corporate action.

(4) An emergency exists for the purposes of this section if a quorum of the directors cannot readily be obtained because of some catastrophic event.

7-102-108 Forum Selection Provisions.

(1) The articles of incorporation or the bylaws may require that any or all internal corporate claims shall be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision of the articles of incorporation or bylaws adopted under subsection (1) of this section shall not have the effect of conferring jurisdiction on any court or over any person or claim, and shall not apply if none of the courts specified by such provision has the requisite personal and subject matter jurisdiction. If the court or courts of this state specified in a provision adopted under subsection (1) do not have the requisite personal and subject matter jurisdiction and another court of this state does have such jurisdiction, then the internal corporate claim may be brought in such other court of this state, notwithstanding that such other court of this state is not specified in such provision, and in any other court specified in such provision that has the requisite jurisdiction.

(3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in the courts of this state or require such claims to be determined by arbitration.

(4) “Internal corporate claim” means, for the purposes of this section, (i) any claim that is based upon a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity, (ii) any derivative action or proceeding brought on behalf of the corporation, (iii) any action asserting a claim arising pursuant to any provision of this Act or the articles of incorporation or bylaws, or (iv) any action asserting a claim governed by the internal affairs doctrine that is not included in (i) through (iii) above.

ARTICLE 103

Purposes and Powers

7-103-101. Purposes and applicability. (1) Every corporation incorporated under articles 101 to 117 of this title has the purpose of engaging in any lawful business unless a more limited purpose is stated in the articles of incorporation.

(2) Where another statute of this state requires that corporations of a particular class shall be formed or incorporated exclusively thereunder, corporations of that class shall be formed or incorporated under such other statute.

(3) Where another statute of this state requires corporations of a particular class to be formed or incorporated under that other statute and also under general corporation law, such corporations shall be formed or incorporated under such other law and, in addition thereto, under articles 101 to 117 of this title to the extent general corporation law is applicable.

(4) Where another statute of this state permits corporations of a particular class to be formed or incorporated either under such statute or under the general corporation law, a corporation of that class may at the election of its incorporators be formed or incorporated under articles 101 to 117 of this title. Unless the articles of incorporation of such corporation indicate that it is formed or incorporated under such other alternate statute, the corporation shall for all purposes be considered as formed and incorporated under articles 101 to 117 of this title.

(5) Articles 101 to 117 of this title shall apply to corporations of every class, whether or not included in the term "corporation" as defined in section 7-101-401 (11), that are formed or incorporated under and governed by other statutes of this state, to the extent that said articles are not inconsistent with such other statutes. Notwithstanding the foregoing, except as permitted by section 7-123-101 (8), articles 101 to 117 of this title shall not apply to nonprofit corporations:

(a) Formed under articles 121 to 137 of this title;

(b) Governed by articles 121 to 137 of this title pursuant to section 7-137-101 (2); or

(c) Governed by articles 121 to 137 of this title by reason of an election pursuant to section 7-137-201.

7-103-102. General powers. (1) Unless otherwise provided in the articles of incorporation, every corporation has perpetual duration and succession in its domestic entity name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including the power:

- (a) To sue and be sued, complain, and defend in its entity name;
- (b) To have a corporate seal, which may be altered at will, and to use such seal, or a facsimile thereof, including a rubber stamp, by impressing or affixing it or by reproducing it in any other manner;
- (c) To make and amend bylaws;
- (d) To purchase, receive, lease, and otherwise acquire, and to own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located;
- (e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (f) To purchase, receive, subscribe for, and otherwise acquire shares and other interests in, and obligations of, any other entity; and to own, hold, vote, use, sell, mortgage, lend, pledge, and otherwise dispose of, and deal in and with, the same;
- (g) To make contracts and guarantees, incur liabilities, borrow money, issue 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;
- (h) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (i) To be an agent, an associate, a fiduciary, a manager, a member, a partner, a promoter, or a trustee of, or to hold any similar position with, any entity;
- (j) To conduct its business, locate offices, and exercise the powers granted by articles 101 to 117 of this title within or without this state;
- (k) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
- (l) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share options and rights plans, and benefit or incentive plans for any of its current or former directors, officers, employees, and agents;
- (m) To make donations for the public welfare or for charitable, scientific, or educational purposes;
- (n) To make payments or donations and to do any other act, not inconsistent with law, that furthers the business and affairs of the corporation;

(o) To indemnify current or former directors, officers, employees, fiduciaries, or agents as provided in article 109 of this title;

(p) To limit the liability of its directors as provided in section 7-102-102 (2)(d);

(q) To cease its corporate activities and dissolve;

(r) To impose restrictions on the transfer of its shares; and

(s) To renounce in its articles of incorporation or by action of its board of directors any specified corporate opportunities or specified classes or categories of corporate opportunities that may be presented to the corporation or one or more of its officers, directors, or shareholders as provided in section 7-102-102 (2)(e).

7-103-103. Emergency powers. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors may:

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

(b) Relocate the principal office or additional offices or regional offices, or authorize the officers to do so.

(2) During an emergency as contemplated in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) 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 or radio; and

(b) One 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.

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

(a) Binds the corporation; and

(b) May not be the basis for the imposition of liability on any director, officer, employee, or agent of the corporation on the ground that the action was not authorized corporate action.

(4) An emergency exists for purposes of this section if a quorum of the directors cannot readily be obtained because of some catastrophic event.

7-103-104. Ultra vires. (1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by or in the right of the corporation, whether 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

(c) In a proceeding by the attorney general under section 7-114-301.

(3) In a shareholder's proceeding under paragraph (a) of subsection (2) of this section 7-103-104 to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if it would be equitable to do so 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 the injunction.

7-103-105. Agent may convey real estate - repeal. (Repealed)

7-103-106 Ratification of Defective Corporate Actions.

(1) Definitions. In this section:

(a) “Corporate action” means any action taken by or on behalf of the corporation, including any action taken by the incorporator, the board of directors, a committee of the board of directors, an officer or agent of the corporation or the shareholders.

(b) “Date of the defective corporate action” means the date (or the approximate date, if the exact date is unknown) the defective corporate action was purported to have been taken.

(c) “Defective corporate action” means (i) any corporate action purportedly taken that is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization, and (ii) an overissue.

(d) “Failure of authorization” means the failure to authorize, approve or otherwise effect a corporate action in compliance with the provisions of articles 101 through 117 of this title 7, the articles of incorporation or bylaws, a corporate resolution or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.

(e) “Overissue” means the purported issuance of:

(i) shares of a class or series in excess of the number of shares of a class or series the corporation has the power to issue under section 7-106-101 at the time of such issuance; or

(ii) shares of any class or series that is not then authorized for issuance by the articles of incorporation.

(f) “Putative shares” means the shares of any class or series (including shares issued upon exercise of rights, options, warrants or other securities convertible into shares of the corporation, or interests with respect to such shares) that were created or issued as a result of a defective corporate action, that (i) but for any failure of authorization would constitute valid shares, or (ii) cannot be determined by the board of directors to be valid shares.

(g) “Valid shares” means the shares of any class or series that have been duly authorized and validly issued in accordance with articles 101 through 117 of this title 7, including as a result of ratification or validation under this section 7-103-106.

(h) “Validation effective time” with respect to any defective corporate action ratified under this section 7-103-106 means the later of:

(i) the time at which the ratification of the defective corporate action is approved by the shareholders, or if approval of shareholders is not required, the time at which the notice required by subsection (5) of this section 7-103-106 becomes effective in accordance with section 7-101-402; and

(ii) the time at which any articles of validation filed in accordance with subsection (7) of this section become effective.

The validation effective time shall not be affected by the filing or pendency of a judicial proceeding under subsection (8) of this section or otherwise, unless otherwise ordered by the court.

(2) Defective Corporate Actions.

(a) A defective corporate action shall not be void or voidable if ratified in accordance with subsection (3) of this section or validated in accordance with subsection (8) of this section.

(b) Ratification under subsection (3) of this section or validation under subsection (8) of this section shall not be deemed to be the exclusive means of ratifying or validating any defective corporate action, and the absence or failure of ratification in accordance with this section shall not, of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise, nor shall it create a presumption that any such corporate action is or was a defective corporate action or void or voidable.

(c) In the case of an overissue, putative shares shall be valid shares effective as of the date originally issued or purportedly issued upon:

(i) the effectiveness under this section and under chapter Article 110 of this title 7 of an amendment to the articles of incorporation authorizing, designating or creating such shares; or

(ii) the effectiveness of any other corporate action under this section ratifying the authorization, designation or creation of such shares.

(3) Ratification of Defective Corporate Actions.

(a) To ratify a defective corporate action under this section (other than the ratification of an election of the initial board of directors under subsection (3) (b) of this section), the board of directors shall take action ratifying the action in accordance with subsection (4) of this section, stating:

(i) the defective corporate action to be ratified and, if the defective corporate action involved the issuance of putative shares, the number and type of putative shares purportedly issued;

(ii) the date of the defective corporate action;

(iii) the nature of the failure of authorization with respect to the defective corporate action to be ratified; and

(iv) that the board of directors approves the ratification of the defective corporate action.

(b) In the event that a defective corporate action to be ratified relates to the election of the initial board of directors of the corporation under section 7-102-105 (1) (a), a majority of the persons who, at the time of the ratification, are exercising the powers of directors may take an action stating:

(i) the name of the person or persons who first took action in the name of the corporation as the initial board of directors of the corporation;

(ii) the earlier of the date on which such persons first took such action or were purported to have been elected as the initial board of directors; and

(iii) that the ratification of the election of such person or persons as the initial board of directors is approved.

(c) If any provision of articles 101 through 117 of this title 7, the articles of incorporation or bylaws, any corporate resolution or any plan or agreement to which the corporation is a party in effect at the time action under subsection (3) (a) of this section 7-103-106 is taken requires shareholder approval or would have required shareholder approval at the date of the occurrence of the defective corporate action, the ratification of the defective corporate action approved in the action taken by the directors under subsection (3) (a) of this section 7-

103-106 shall be submitted to the shareholders for approval in accordance with subsection (4) of this section 7-103-106.

(d) Unless otherwise provided in the action taken by the board of directors under subsection (3) (a) of this section 7-103-106, after the action by the board of directors has been taken and, if required, approved by the shareholders, the board of directors may abandon the ratification at any time before the validation effective time without further action of the shareholders.

(4) Action on Ratification.

(a) The quorum and voting requirements applicable to a ratifying action by the board of directors under subsection (3) of this section shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken.

(b) If the ratification of the defective corporate action requires approval by the shareholders under subsection (3) (c) of this section, and if the approval is to be given at a meeting, the corporation shall notify each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of defective corporate action, provided that notice shall not be required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the records of the corporation. The notice must state that the purpose, or one of the purposes, of the meeting, is to consider ratification of a defective corporate action and must be accompanied by (i) either a copy of the action taken by the board of directors in accordance with section (3) (a) of this section or the information required by subsections (3) (a) (i) through (3) (a) (iv) of this section, and (ii) a statement that any claim that the ratification of such defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

(c) Except as provided in subsection (d) with respect to the voting requirements to ratify the election of a director, the quorum and voting requirements applicable to the approval by the shareholders required by subsection (3) (c) of this section shall be the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time of such shareholder approval.

(d) The approval by shareholders to ratify the election of a director requires that the votes cast within the voting group favoring such ratification exceed the votes cast opposing such ratification of the election at a meeting at which a quorum is present.

(e) Putative shares on the record date for determining the shareholders entitled to vote on any matter submitted to shareholders under subsection (3) (c) of this section (and without giving effect to any ratification of putative shares that becomes effective as a result of such vote) shall neither be entitled to vote nor counted for quorum purposes in any vote to approve the ratification of any defective corporate action.

(f) If the approval under this section of putative shares would result in an overissue, in addition to the approval required by subsection (3) of this section, approval of an amendment to the articles of incorporation under article 110 of this title 7 to increase the number of shares of an authorized class or series or to authorize the creation of a class or series of shares so there would be no overissue shall also be required.

(5) Notice Requirements.

(a) Unless shareholder approval is required under subsection (3)(c) of this section 7-103-106, prompt notice of an action taken under subsection (3) of this section shall be given to each holder of valid and putative shares, regardless of whether entitled to vote, as of (i) the date of such action by the board of directors and (ii) the date of the defective corporate action ratified, provided that notice shall not be required to be given to holders of valid and putative shares whose identities or addresses for notice cannot be determined from the records of the corporation.

(b) The notice must contain (i) either a copy of the action taken by the board of directors in accordance with subsections (3)(a) or (b) of this section or the information required by subsections (3) (a) (i) through (a) (iv) or subsections (3)(b)(i) through (3)(b)(iv) of this section 7-103-106, as applicable, and (ii) a statement that any claim that the ratification of the defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days from the applicable validation effective time.

(c) No notice under this section 7-103-106 is required with respect to any action required to be submitted to shareholders for approval under subsection (3)(c) of this section if notice is given in accordance with subsection (5)(b) of this section 7-103-106.

(d) A notice required by this section may be given in any manner permitted by section 7-101-402 and, for any corporation subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, may be given by means of a filing or furnishing of such notice with the United States Securities and Exchange Commission.

(6) Effect of Ratification. From and after the validation effective time, and without regard to the 120-day period during which a claim may be brought under subsection (8) of this section 7-103-106:

(a) Each defective corporate action ratified in accordance with subsection (3) of this section shall not be void or voidable as a result of the failure of authorization identified in the action taken under subsection (3)(a) or (3)(b) and shall be deemed a valid corporate action effective as of the date of the defective corporate action;

(b) The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken under subsection (3) of this section shall not be void or voidable, and each such putative share or fraction of a putative

share shall be deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued; and

(c) Any corporate action taken subsequent to the defective corporate action ratified in accordance with this section in reliance on such defective corporate action having been validly effected and any subsequent defective corporate action resulting directly or indirectly from such original defective corporate action shall be valid as of the time taken.

(7) Filings.

(a) If the defective corporate action ratified under this section 7-103-106 would have required under any other section of articles 101 through 117 of this title 7 a filing in accordance with articles 101 through 117 of this title 7, then, regardless of whether a filing was previously made in respect of such defective corporate action and in lieu of a filing otherwise required by articles 101 through 117 of this title 7, the corporation shall file articles of validation in accordance with this section 7-103-106, and such articles of validation shall serve to amend or substitute for any other filing with respect to such defective corporate action required by articles 101 through 117 of this title 7.

(b) The articles of validation must set forth:

(i) the defective corporate action that is the subject of the articles of validation (including, in the case of any defective corporate action involving the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which such putative shares were purported to have been issued);

(ii) the date of the defective corporate action;

(iii) the nature of the failure of authorization in respect of the defective corporate action;

(iv) a statement that the defective corporate action was ratified in accordance with subsection (3) of this section 7-103-106, including the date on which the board of directors ratified such defective corporate action and the date, if any, on which the shareholders approved the ratification of such defective corporate action; and

(v) the information required by subsection (7)(c) of this section 7-103-106.

(c) The articles of validation must also contain the following information:

(i) if a filing was previously made in respect of the defective corporate action and no changes to such filing are required to give effect to the ratification of such defective corporate action in accordance with subsection (3) of this section, the articles of validation must set forth (x) the name, title and filing date of the filing previously made and any articles of correction to that filing, and (y) a statement that a copy of the filing previously made, together with any articles of correction to that filing, is attached as an exhibit to the articles of validation;

(ii) if a filing was previously made in respect of the defective corporate action and such filing requires any change to give effect to the ratification of such defective corporate action in accordance with subsection (7)(c) of this section, the articles of validation must set forth (x) the name, title and filing date of the filing previously made and any articles of correction to that filing, and (y) a statement that a filing containing all of the information required to be included under the applicable section or sections of articles 101 through 117 of this title 7 to give effect to such defective corporate action is attached as an exhibit to the articles of validation, and (iii) the date and time that such filing is deemed to have become effective; or

(iii) if a filing was not previously made in respect of the defective corporate action and the defective corporate action ratified under subsection (3) of this section would have required a filing under any other section of articles 101 through 117 of this title 7, the articles of validation must set forth (i) a statement that a filing containing all of the information required to be included under the applicable section or sections of articles 101 through 117 of this title 7 to give effect to such defective corporate action is attached as an exhibit to the articles of validation, and (ii) the date and time that such filing is deemed to have become effective.

(8) Judicial Proceedings Regarding Validity of Corporate Actions.

(a) Upon application by the corporation, any successor entity to the corporation, a director of the corporation, any beneficial owner of the corporation, including any such beneficial owner as of the date of the defective corporate action ratified under subsection (3) of this section, or any other person claiming to be substantially and adversely affected by a ratification under subsection (3) of this section, the court authorized to act under section 7-107-103 may:

(i) determine the validity and effectiveness of any corporate action or defective corporate action;

(ii) determine the validity and effectiveness of any ratification under subsection (3) of this section;

(iii) determine the validity of any putative shares; and

(iv) modify or waive any of the procedures specified in subsection (3) or subsection (4) of this section to ratify a defective corporate action.

(b) In connection with an action under this section, the court may make such findings or orders, and take into account any factors or considerations, regarding such matters as it deems proper under the circumstances.

(c) Service of process of the application under subsection (8) (a) of this section on the corporation may be made in any manner provided by statute of this state or by rule of the applicable court for service on the corporation, and no other party need be joined in order for the court to adjudicate the matter. In an action filed by the corporation, the court may require notice

of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

(d) Notwithstanding any other provision of this section or otherwise under applicable law, any action asserting that the ratification of any defective corporate action and any putative shares issued as a result of such defective corporate action should not be effective, or should be effective only on certain conditions, shall be brought within 120 days of the validation effective time.

ARTICLE 104

Name

7-104-101. Corporate name. (Repealed)

7-104-102. Reserved name. (Repealed)

ARTICLE 105

Office and Agent

7-105-101. Registered office and registered agent. (1) Part 7 of article 90 of this title, providing for registered agents and service of process, applies to corporations incorporated under or subject to articles 101 to 117 of this title.

(2) (Deleted by amendment, L. 2003, p. 2315, § 225, effective July 1, 2004.)

7-105-102. Change of registered office or registered agent - repeal. (Repealed)

7-105-103. Resignation of registered agent - repeal. (Repealed)

7-105-104. Service on corporation - repeal. (Repealed)

ARTICLE 106

Shares and Distributions

PART 1

SHARES

7-106-101. Authorized shares. (1) The articles of incorporation shall state the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall state a distinguishing designation for each class, and, before the issuance of shares of any class, the preferences, limitations, and relative rights of that class shall be stated in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 7-106-102.

(2) The articles of incorporation shall authorize:

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

(b) One or more classes 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.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote; except that no condition, limitation, or prohibition on voting shall eliminate any right to vote provided by section 7-110-104;

(b) Are redeemable or convertible as stated in the articles of incorporation:

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

(II) For money, indebtedness, securities, or other property; or

(III) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic facts or events;

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

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

(4) The description of the preferences, limitations, and relative rights of classes of shares in subsection (3) of this section is not exhaustive.

7-106-102. Terms of class or series determined by board of directors. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in section 7-106-101, of:

- (a) Any class of shares before the issuance of any shares of that class; or
 - (b) One or more series within a class before the issuance of any shares of that series.
- (2) Each series of a class shall be given a distinguishing designation.

(3) 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.

(4) Before issuing any shares of a class or series, the preferences, limitations, and relative rights of which are determined by the board of directors under this section, the corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment to the articles of incorporation, which are effective without shareholder action, that state:

- (a) The domestic entity name of the corporation;
- (b) The text of the amendment determining the designations, preferences, limitations, and relative rights of the class or series of shares;
- (c) The date the amendment was adopted; and
- (d) A statement that the amendment was duly adopted by the board of directors.

7-106-103. Issued and outstanding shares. (1) 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.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations contained in subsection (3) of this section and is subject to section 7-106-401.

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

7-106-104. Fractional shares. (1) A corporation may:

- (a) Issue fractions of a share or pay in cash the value of fractions of a share;
- (b) Arrange for disposition of fractional shares by the shareholders; or
- (c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip shall be conspicuously labeled "scrip" and shall contain the information required to be included in a share certificate by sections 7-106-206 (2)(a), (2)(c), and (4) and 7-106-208 (2).

(3) 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.

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

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

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

7-106-105. Reverse split. (1) Unless otherwise provided in the articles of incorporation, the outstanding shares of a class or series may be reduced to a lesser number of shares by a reverse split made on the terms set forth in this section.

(2) To effect the reverse split, each outstanding share of the class or series shall be divided by the same divisor as is every other such share.

(3) Each share of the class or series shall have, after the reverse split, such par value, if any, as may be stated in the articles of incorporation.

(4) If the articles of incorporation are to be amended in connection with the reverse split, whether to change the number of authorized shares of such class or series or the par value, if any, of the shares of such class or series or for any other reason, such amendment shall be effected pursuant to article 110 of this title.

(5) In lieu of issuing fractional shares upon such reverse split, the corporation may take any of the actions provided for in section 7-106-104.

(6) For the reverse split to be effected:

(a) The board of directors shall recommend the reverse split to the holders of shares of the class or series that is to be reverse split and to each other voting group that is entitled, by reason of any provision in the articles of incorporation, to vote on the reverse split, 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 reverse split; and

(b) The holders of shares of the class or series that is to be reverse split, and each other voting group that is entitled, by reason of any provision in the articles of incorporation, to vote on the reverse split, shall approve the reverse split.

(7) The board of directors may condition the effectiveness of the reverse split on any basis.

(8) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the reverse split, of the shareholders' meeting at which the reverse split will be voted upon. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is to consider the reverse split, and the notice shall contain or be accompanied by a copy or a summary of the reverse split.

(9) Unless articles 101 to 117 of this title, the articles of incorporation, bylaws adopted by the shareholders, or the proposing board of directors require a greater vote, the reverse split shall be approved by the votes required by sections 7-107-206 and 7-107-207 by every voting group entitled to vote on the reverse split.

PART 2

ISSUANCE OF SHARES

7-106-201. Subscription for shares. (1) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation before the time the corporation is incorporated and accepts the subscription.

(2) The acceptance by the corporation of a subscription entered into before incorporation and the authorization of the issuance of shares pursuant thereto are subject to section 7-106-202.

(3) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement states 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 states otherwise.

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

(5) If a subscriber defaults in payment of money or other property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as it might collect 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 days after the corporation sends written demand for payment to the subscriber.

(6) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 7-106-202.

7-106-202. Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) Subject to the limitations set forth in subsection (5) of this section, the board of directors may authorize the issuance of shares for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, and other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for the shares to be issued is adequate. In the absence of fraud in the transaction, that determination by the board of directors is conclusive insofar as the adequacy of such consideration relates to whether the shares are validly issued, fully paid, and nonassessable.

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

(5) The promissory note of a subscriber or an affiliate of the subscriber for shares shall not constitute consideration for the shares unless the note is negotiable and is secured by collateral, other than the shares, having a fair market value at least equal to the principal amount of the note. For the purposes of this subsection (5), "promissory note" means a negotiable instrument on which there is an obligation to pay independent of collateral and does not include a nonrecourse note.

(6) Unless otherwise expressly provided in the articles of incorporation or bylaws, shares having a par value may be issued for less than the par value.

7-106-203. Liability of shareholders. (1) A purchaser from a corporation of shares issued by the corporation 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 under section 7-106-202 or stated in a subscription agreement under section 7-106-201.

(2) Unless otherwise provided in the articles of incorporation, a shareholder or a subscriber for shares of a corporation is not personally liable for the acts or debts of the corporation; except that such person may become personally liable by reason of the person's own acts or conduct.

(3) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

7-106-204. Share dividends. (1) Unless otherwise provided in the articles of incorporation, shares may be issued pro rata and without consideration to the shareholders or to the shareholders of one or more classes or series of its shares. An issuance of shares pursuant to this subsection (1) is a share dividend.

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

(a) The articles of incorporation so authorize;

(b) Such issuance is approved by a majority of the votes entitled to be cast by the class or series to be issued; or

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

(3) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a share dividend. If no future record date is so fixed, the record date is the date the board of directors authorizes the share dividend.

7-106-205. Share options and other rights - definitions. (1) For purposes of this section:

(a) "Rights" means rights, options, warrants, or convertible securities entitling the holders thereof to purchase, receive, or acquire shares or fractions of shares of the corporation or assets or debts or other obligations of the corporation.

(b) "Significant shareholder" means any person owning, or offering to acquire, directly or indirectly, a number or percentage, as stated by the board of directors, of the outstanding voting shares of a corporation, or any transferee of such person.

(2) A corporation may create and issue rights, except as precluded or limited by provisions contained in the articles of incorporation at the time of such creation or issuance. The board of directors shall determine the terms upon which the rights are issued, their form and content, and the consideration, if any, for which shares or fractions of shares, assets, or debts or other obligations of the corporation are to be issued pursuant to the rights. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of consideration received for such rights shall be conclusive.

(3) Notwithstanding any other provision of articles 101 to 117 of this title, the terms determined by the board of directors pursuant to subsection (2) of this section for rights issued before, on, or after January 1, 1994, to any shareholders, by way of distribution or otherwise, may, without limitation:

(a) Preclude or limit any significant shareholder from exercising, converting, transferring, or receiving rights;

(b) Impose conditions upon the exercise, conversion, transfer, or receipt of rights by any significant shareholder that differ from those imposed on other holders of the same class of rights; or

(c) Provide that, upon exercise or conversion, any significant shareholder shall be entitled to receive securities, obligations, or assets, the terms or nature of which may differ from the securities, obligations, or assets to be received by the other holders of the same class of rights.

(4) Nothing contained in this section shall be construed to effect a change in the fiduciary duties of directors.

7-106-206. Form and content of certificates. (1) Shares may, but need not, be represented by certificates. Unless articles 101 to 117 of this title or another statute expressly provide otherwise, the rights and obligations of shareholders are not affected by the fact that their shares are not represented by certificates.

(2) Each share certificate shall state on its face:

(a) The domestic entity name of the issuing corporation and that the corporation is incorporated under the law of this state;

(b) The name of the person to whom the certificate is issued; and

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

(3) Each share certificate:

(a) Shall be signed, either manually or in facsimile, by one or more officers designated in the bylaws or by the board of directors;

(b) May bear the corporate seal or its facsimile; and

(c) May contain such other information as the corporation deems necessary or appropriate.

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

(5) 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.

7-106-207. Shares without certificates. (1) Unless otherwise provided by the bylaws, the board of directors may authorize the issuance by the corporation of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send to the shareholder a written statement of the information required on certificates by subsections (2) and (4) of section 7-106-206 and section 7-106-208.

7-106-208. Restriction on transfer of shares and other securities. (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an agreement among 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 became effective unless the holder of such shares acquired such shares with knowledge of the restriction, is a party to the agreement containing the restriction, or voted in favor of the restriction or otherwise consented to the restriction.

(2) 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 section 7-106-207 (2). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

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

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

(b) To preserve entitlements, benefits, or exemptions under federal, state, or local laws; and

(c) For any other reasonable purpose.

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

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

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

(c) Require, as a condition to such a transfer or registration, that any one or more persons, including the corporation or the holders of any of its shares, approve the transfer or registration, if the requirement is not manifestly unreasonable; or

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

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

7-106-209. Expense of issue. A corporation may pay the expenses of selling or underwriting its shares, and of incorporating, organizing, or reorganizing the corporation, from the consideration received for shares.

PART 3

SUBSEQUENT ACQUISITION OF SHARES

BY SHAREHOLDERS AND CORPORATION

7-106-301. Shareholders' preemptive rights. (1) The shareholders of a corporation do not have a preemptive right to acquire unissued shares except to the extent provided by subsections (3) to (6) of section 7-117-101 or the articles of incorporation.

(2) 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 otherwise provided by subsections (3) to (6) of section 7-117-101 or the articles of incorporation:

(a) The shareholders have a preemptive right, subject to any 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 unissued shares upon the decision of the board of directors to issue them.

(b) A shareholder may waive the shareholder's preemptive right, and such waiver, if evidenced by a writing, is irrevocable even though it is not supported by consideration.

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

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

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

(III) Shares that are issued within six months after the effective date of incorporation; or

(IV) Shares sold otherwise than for cash.

(d) 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.

(e) 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.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person, for a period of one year after being offered to shareholders pursuant to such preemptive rights, 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 such one-year period is subject to the shareholders' preemptive rights.

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

7-106-302. Corporation's acquisition of its own shares. (1) A corporation may acquire its own shares, and, except as provided by section 7-117-101 (6), shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissuance of acquired shares:

(a) The number of authorized shares is reduced by the number of shares acquired by the corporation, effective upon amendment to the articles of incorporation; and

(b) The corporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment to the articles of incorporation, which are effective without shareholder action, that state:

(I) The domestic entity 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.

PART 4

DISTRIBUTIONS

7-106-401. Distributions to shareholders. (1) A board of directors may authorize, and the corporation may make, distributions to its shareholders subject to any restriction in the articles of incorporation and subject to the limitations set forth in subsection (3) of this section.

(2) The bylaws or, in the absence of an applicable bylaw, the board of directors may fix a future date as the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares. If a record date is necessary but no future record date is so fixed, the record date is the date the board of directors authorizes the distribution.

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

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

(b) 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.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(5) Except as provided in subsection (6) of this section, the time for measuring the effect of a distribution under subsection (3) of this section is:

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

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

(II) The date the shareholder ceases to be a shareholder with respect to the acquired shares;

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

(c) In all other cases, as of either:

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

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

(6) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) of this section if its terms provide that payment of principal and interest thereon 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 thereon is treated as a distribution the effect of which is measured on the date the payment is actually made.

(7) Unless otherwise expressly provided in the articles of incorporation or bylaws, a statement of par value for shares shall not impose any limitation on distributions and shall not require any separate designation, restriction, reservation, or other segregation of any capital account of a corporation.

7-106-402. Unclaimed distributions. If a corporation has mailed three successive distributions to a shareholder addressed to the shareholder's address shown on the corporation's current record of shareholders and the distributions have been returned as undeliverable, no further attempt to deliver distributions to the shareholder need be made until another address for the shareholder is made known to the corporation, at which time all distributions accumulated by reason of this section shall, except as otherwise provided by law, be mailed to the shareholder at such other address.

ARTICLE 107

Shareholders

PART 1

MEETINGS

7-107-101. Annual meeting. (1) A corporation shall hold a meeting of shareholders annually at a time and date stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a time and date stated in or fixed in accordance with a resolution of the board of directors.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a place stated in or fixed in accordance with a resolution of the board of directors. If no place is so stated or fixed, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time determined pursuant to subsection (1) of this section does not affect the validity of any corporate action and does not work a forfeiture or dissolution of the corporation.

7-107-102. Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized by the bylaws or resolution of the board of directors to call such a meeting; or

(b) If the corporation receives one or more written demands for the meeting, stating the purpose or purposes for which it is to be held, signed and dated by the holders of shares representing at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the meeting.

(2) If not otherwise fixed under section 7-107-103 or 7-107-107, the record date for determining shareholders entitled to demand a special meeting pursuant to paragraph (b) of subsection (1) of this section is the date of the earliest of any of the demands pursuant to which the meeting is called, or the date that is sixty days before the date the first of such demands is received by the corporation, whichever is later.

(3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws, or, if not so stated or fixed, at a place stated in or fixed in accordance with a resolution of the board of directors. If no place is so stated or fixed, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the notice of the meeting required by section 7-107-105 (3) may be conducted at a special shareholders' meeting.

7-107-103. Court-ordered meeting. (1) The holding of a meeting of the shareholders may be summarily ordered by the district court for the county in this state in which the street address of the corporation's principal office is located or, if the corporation has no principal office in this state, by the district court for the county in which the street address of its registered agent is located or, if the corporation has no registered agent, by the district court for the city and county of Denver:

(a) On application of any shareholder entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the close of the corporation's most recently ended fiscal year or fifteen months after its last annual meeting; or

(b) On application of any person who participated in a call of or demand for a special meeting effective under section 7-107-102 (1), if:

(I) Notice of the special meeting was not given within thirty days after the date of the call or the date the last of the demands necessary to require the calling of the meeting was received by the corporation pursuant to section 7-107-102 (1)(b), as the case may be; or

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

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, fix a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the notice of the meeting, 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 or appropriate to accomplish the holding of the meeting.

7-107-104. Action without meeting. (1) Unless the articles of incorporation require that such action be taken at a shareholders' meeting, any action required or permitted by articles 101 to 117 of this title to be taken at a shareholders' meeting may be taken without a meeting if:

(a) All of the shareholders entitled to vote thereon consent to such action in writing; or

(b) Except as otherwise provided in subsection (1.5) of this section and if expressly provided for in the articles of incorporation, the shareholders holding shares having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the shares entitled to vote thereon were present and voted consent to such action in writing.

(1.5) If shares are entitled to be voted cumulatively in the election of directors, shareholders may take action under this section to elect or remove directors only if:

(a) The articles of incorporation do not require that such action be taken at a shareholders' meeting; and

(b) All of the shareholders entitled to vote in the election or removal sign writings describing and consenting to the election or removal of the same directors and the writings are received by the corporation in accordance with subsection (2) of this section.

(2) (a) No action taken pursuant to this section shall be effective unless, within sixty days after the date the corporation first receives a writing describing and consenting to the action and signed by a shareholder, the corporation has received writings that describe and consent to the action, signed by shareholders holding at least the number of shares entitled to vote on the action as required by subsection (1) or (1.5) of this section, as the case may be, disregarding any such writing that has been revoked pursuant to subsection (3) of this section. The bylaws may provide for the receipt of any such writing by the corporation by electronically transmitted facsimile or other form of wire or wireless communication providing the corporation with a complete copy thereof, including a copy of the signature thereto.

(b) Action taken pursuant to this section shall be effective as of the date the corporation receives the last writing necessary to effect the action unless all of the writings necessary to effect the action state another date as the effective date of the action, in which case such stated date shall be the effective date of the action.

(3) Any shareholder who has signed a writing describing and consenting to action taken pursuant to this section may revoke such consent by a writing signed and dated by the shareholder describing the action and stating that the shareholder's prior consent thereto is revoked, if such writing is received by the corporation prior to the effectiveness of the action.

(4) If not otherwise fixed under subsection (7) of this section or section 7-107-107, the record date for determining shareholders entitled to take action pursuant to this section or entitled to be given notice under subsection (5.5) of this section of action taken pursuant to this section is the date the corporation first receives a writing upon which the action is taken pursuant to this section.

(5) Action taken under this section has the same effect as action taken at a meeting of shareholders and may be described as such in any document.

(5.5) If action is taken under subsection (1) of this section with less than unanimous consent of all shareholders entitled to vote upon the action, the corporation or shareholders taking the action shall, upon receipt by the corporation of all writings necessary to effect the action, give notice of the action to all shareholders who were entitled to vote upon the action but who have not consented to the action in the manner provided in subsection (1) of this section. The notice shall contain or be accompanied by the same material, if any, that would have been required under articles 101 to 117 of this title to be given to shareholders in or with a notice of the meeting at which the action would have been submitted to the shareholders.

(6) (Deleted by amendment, L. 96, p. 1316, § 18, effective June 1, 1996.)

(7) The district court for the county in this state in which the street address of the corporation's principal office is located or, if the corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located, or, if the corporation has no registered agent, the district court for the city and county of Denver may, upon application of the corporation or any shareholder who would be entitled to vote on the action at a shareholders' meeting, summarily state a record date for determining shareholders entitled to sign writings consenting to an action under this section and may enter other orders necessary or appropriate to effect the purposes of this section.

7-107-105. Notice of meeting. (1) A corporation shall give notice to shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the date of the meeting; except that, if the number of authorized shares is to be increased, at least thirty days' notice shall be given. Unless articles 101 to 117 of this title or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless articles 101 to 117 of this title 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.

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

(4) If not otherwise fixed under section 7-107-103 or 7-107-107, the record date for determining shareholders entitled to be given notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is given to shareholders.

(5) Subject to the next sentence of this subsection (5) and unless otherwise required by the bylaws, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 7-107-107, notice of the adjourned meeting shall be given under this section to persons who are shareholders as of the new record date.

7-107-106. Waiver of notice. (1) A shareholder may waive any notice required by articles 101 to 117 of this title or by the articles of incorporation or the bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. The waiver shall be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.

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

(a) 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 because of lack of notice or defective notice; and

(b) 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.

7-107-107. Record date. (1) The bylaws may fix or provide the manner of fixing a future date as the record date for one or more voting groups in order to determine the shareholders entitled to be given notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action, and if the bylaws do not fix or provide for fixing a record date, the board of directors may fix a future date as the record date; except that the record date for determining the shareholders entitled to take action without a meeting or entitled to be given notice of action so taken shall be determined as provided in section 7-107-104 (4).

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

(3) A determination of shareholders entitled to be given 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 days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than one hundred twenty 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.

7-107-108. Meetings by telecommunication. Unless otherwise provided in the bylaws, any or all of the shareholders may participate in an annual or special shareholders' meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting.

PART 2

VOTING

7-107-201. Shareholders' list for meeting. (1) After fixing a record date for a shareholders' meeting, the corporation shall prepare a list of the names of all its shareholders who are entitled to be given notice of the meeting. The list shall be arranged by voting groups

and within each voting group by class or series of shares, shall be alphabetical within each class or series, and shall show the address of, and the number of shares of each such class and series that are held by, each shareholder.

(2) The shareholders' list shall be available for inspection by any shareholder, beginning the earlier of ten days before the meeting for which the list was prepared or two business days after notice of the meeting is given and continuing through the meeting, and any adjournment thereof, at the corporation's principal office or at a place identified in the notice of the meeting in the city in which the meeting will be held. A shareholder or an agent or attorney of the shareholder is entitled on written demand to inspect and, subject to the requirements of section 7-116-102 (3) and the provisions of subsections (2) and (3) of section 7-116-103, to copy the list during regular business hours and during the period it is available for inspection.

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

(4) If the corporation refuses to allow a shareholder or an agent or attorney of the shareholder to inspect the shareholders' list before or at the meeting or to copy the list, as permitted by subsection (2) or (3) of this section, the district court for the county in this state in which the street address of the corporation's principal office is located or, if the corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located or, if the corporation has no registered agent, the district court for the city and county of Denver may, on application of the shareholder, summarily order the inspection or copying of the list at the corporation's expense and may postpone or adjourn the meeting for which the list was prepared until the inspection or copying is complete.

(5) If a court orders inspection or copying of the shareholders' list pursuant to subsection (4) of this section, unless the corporation proves that it refused inspection or copying of the list in good faith because it had a reasonable basis for doubt about the right of the shareholder or the agent or attorney of the shareholder to inspect or copy the shareholders' list:

(a) The court shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred in obtaining the order;

(b) The court may order the corporation to pay the shareholder for any damages the shareholder incurred; and

(c) The court may grant the shareholder any other remedy afforded the shareholder by law.

(6) If a court orders inspection or copying of the shareholders' list pursuant to subsection (4) of this section, the court may impose reasonable restrictions on the use or distribution of the list by the shareholder.

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

7-107-202. Voting entitlement of shares. (1) Except as otherwise provided in subsections (2) and (4) of this section or in the articles of incorporation, each outstanding share, regardless of class, is entitled to one vote, and each fractional share is entitled to a corresponding fractional vote, on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) Except as otherwise ordered by a court of competent jurisdiction upon a finding that the purpose of this subsection (2) would not be violated in the circumstances presented to the court, the shares of a corporation are not entitled to be voted 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.

(3) Subsection (2) 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.

(4) Redeemable shares are not entitled to be voted 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.

7-107-203. Proxies. (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) Without limiting the manner in which a shareholder may appoint a proxy to vote or otherwise act for the shareholder, the following shall constitute valid means of such appointment:

(a) A shareholder may appoint a proxy by signing an appointment form, either personally or by the shareholder's attorney-in-fact.

(b) A shareholder may appoint a proxy by transmitting or authorizing the transmission of a telegram, teletype, or other electronic transmission providing a written statement of the appointment to the proxy, to a proxy solicitor, proxy support service organization, or other person duly authorized by the proxy to receive appointments as agent for the proxy, or to the corporation; except that the transmitted appointment shall set forth or be transmitted with written evidence from which it can be determined that the shareholder transmitted or authorized the transmission of the appointment.

(3) An appointment of a proxy is effective against the corporation when received by the corporation, including receipt by the corporation of an appointment transmitted pursuant to paragraph (b) of subsection (2) of this section. An appointment is valid for the term and, if no

term is provided, is valid for eleven months unless the appointment is irrevocable under subsection (5).

(4) Any complete copy, including an electronically transmitted facsimile, of an appointment of a proxy may be substituted for or used in lieu of the original appointment for any purpose for which the original appointment could be used.

(5) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following persons or their designees:

(a) A pledgee;

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

(c) A creditor of the corporation who extended credit to the corporation under terms requiring the appointment;

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

(e) A party to a voting agreement created under section 7-107-302.

(6) 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 the proxy's authority under the appointment.

(7) An appointment made irrevocable under subsection (5) of this section is revoked when the interest with which it is coupled is extinguished, but such revocation does not affect the right of the corporation to accept the proxy's authority unless:

(a) The corporation had notice that the appointment was coupled with that interest and notice that the interest is extinguished is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment; or

(b) Other notice of the revocation of the appointment is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(8) The corporation shall not be required to recognize an appointment made irrevocable under subsection (5) of this section if it has received a writing revoking the appointment signed by the shareholder either personally or by the shareholder's attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the shareholder to another person not to

revoke the appointment. This provision shall not affect any claim such other person may have against the shareholder with respect to the revocation.

(9) Unless it otherwise provides, an appointment made irrevocable under subsection (5) continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted on the certificate representing the shares or on the information statement for shares without certificates.

(10) Subject to section 7-107-205 and to any express limitation on the proxy's authority appearing on the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

7-107-204. Shares held by intermediaries and nominees. (1) A corporation's board of directors may establish a procedure under which a beneficial owner is recognized by the corporation in its records as the shareholder. The extent, terms, conditions, and limitations of this treatment shall be specified in the procedure so established. To the extent such person is treated under such procedure as having rights or privileges that the shareholder otherwise would have, the shareholder shall not have those rights or privileges.

(2) The procedure described in subsection (1) of this section shall specify:

- (a) The types of intermediaries or nominees to which it applies;
- (b) The rights or privileges that the corporation recognizes in a beneficial owner, which may include rights or privileges other than voting;
- (c) The manner in which the procedure may be used by the nominee;
- (d) The information that shall be provided by the nominee when the procedure is used;
- (e) The period for which the nominee's use of the procedure is effective;
- (f) Requirements for notice to the corporation with respect to the arrangement, including any requirements for the deposit with the corporation of the beneficial ownership certificate;
- (g) The form and contents of the beneficial ownership certificate.

and

- (h) Other aspects of the rights and duties thereby created.

7-107-205. Corporation's acceptance of votes. (1) If the name signed on a vote, ballot, consent, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, ballot, consent, waiver, proxy appointment, or proxy appointment revocation and to give it effect as the act of the shareholder.

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

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

(b) 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, ballot, consent, waiver, proxy appointment, or proxy appointment revocation;

(c) 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, ballot, consent, waiver, proxy appointment, or proxy appointment revocation;

(d) 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, ballot, consent, waiver, proxy appointment, or proxy appointment revocation;

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

(f) The acceptance of the vote, ballot, consent, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the corporation that are not inconsistent with the provisions of this subsection (2).

(3) The corporation is entitled to reject a vote, ballot, consent, waiver, proxy appointment, or proxy appointment revocation 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.

(4) Neither the corporation nor the person authorized to count votes that accepts or rejects a vote, ballot, consent, waiver, proxy appointment, or proxy appointment revocation in good

faith and in accordance with the standards of this section is liable in damages for the consequences of the acceptance or rejection.

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

7-107-206. Quorum and voting requirements for voting groups. (1) 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 otherwise provided in articles 101 to 117 of this title or in the articles of incorporation, 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, but a quorum shall not consist of fewer than one-third of the votes entitled to be cast on the matter by the voting group.

(2) Once a share is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless otherwise provided in the articles of incorporation or unless a new record date is or shall be set for that adjourned meeting.

(3) 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 within the voting group opposing the action, unless a greater number of affirmative votes is required by articles 101 to 117 of this title or the articles of incorporation.

(4) An amendment to the articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than that specified in subsection (1) or (3) of this section is governed by section 7-107-208 (2).

(5) The election of directors is governed by section 7-107-209.

7-107-207. Action by single and multiple voting groups. (1) If articles 101 to 117 of this title or the articles of incorporation 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 section 7-107-206.

(2) If articles 101 to 117 of this title or the articles of incorporation provide for voting by two 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 section 7-107-206. One voting group may vote on a matter even though no action is taken by another voting group entitled to vote on the matter.

7-107-208. Greater quorum or voting requirements. (1) The articles of incorporation or, if authorized by the articles of incorporation, bylaws adopted by the shareholders may provide for a greater quorum or voting requirement for shareholders or voting groups than is provided for by articles 101 to 117 of this title.

(2) 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.

7-107-209. Voting for directors - cumulative voting. (1) At each election for directors, every shareholder entitled to vote at such election has the right:

(a) To vote, in person or by proxy, all of the shareholder's votes for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote unless the articles of incorporation provide otherwise; or

(b) To the extent that the privilege of cumulative voting in the election of directors is in effect pursuant to the provisions of section 7-102-102 (3), to cumulate votes by multiplying the number of votes the shareholder is entitled to cast by the number of directors for whom the shareholder is entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.

(2) The articles of incorporation may provide that shares otherwise entitled to vote cumulatively may not be voted cumulatively at a meeting unless:

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

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

(3) If, before a meeting of shareholders at which directors are to be elected, the corporation receives notice pursuant to paragraph (b) of subsection (2) of this section with respect to that meeting, then:

(a) If such notice is received sufficiently early that the information required by paragraph (a) of subsection (2) of this section can be included, without significant additional expense, in the notice of the meeting or in a proxy statement accompanying the notice, the corporation shall include such information in that notice or proxy statement; or

(b) If such notice is received later than contemplated in paragraph (a) of this subsection (3), the corporation may take such other action as it may deem appropriate to provide notice, to the voting group or groups that are affected by the shareholder's notice, that cumulative voting is authorized at the meeting for such voting group or groups; and, in any event, the corporation shall cause an announcement to be made at the meeting, before the taking of any vote with respect to which cumulative voting is in effect, that cumulative voting is authorized at the meeting.

(4) In an election of directors, that number of candidates equaling the number of directors to be elected, having the highest number of votes cast in favor of their election, are elected to the board of directors.

PART 3

VOTING TRUSTS AND AGREEMENTS

7-107-301. Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and by 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 promptly cause the corporation to receive copies of the list and agreement. Thereafter, the trustee shall cause the corporation to receive changes to the list promptly as they occur and amendments to the agreement promptly as they are made.

(2) 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 years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the trustee's written consent to the extension. An extension is valid for not more than ten years after the date the first shareholder signs the extension agreement, unless such signing occurs within two years before the expiration date of the voting trust as originally fixed or as last extended, in which case the extension is valid for not more than ten years after the expiration date of the voting trust as originally fixed or last extended. The trustee shall cause the corporation to receive copies of the extension agreement. An extension agreement binds only those parties signing it.

7-107-302. Voting agreements. (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section 7-107-301.

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

PART 4

ACTIONS BY SHAREHOLDERS

7-107-401. Deleted by amendment, L. 2019 ____.

7-107-402. Actions by shareholders. (1) No action shall be commenced by a shareholder in the right of a domestic corporation, and no action shall be commenced in this state by a shareholder in the right of a foreign corporation, unless the plaintiff was a shareholder of the corporation at the time of the transaction of which the plaintiff complains or the plaintiff is a person upon whom shares or voting trust certificates thereafter devolved by operation of law from a person who was a shareholder at such time.

(2) In any action instituted on or after January 1, 1959, in the right of any domestic or foreign corporation by a shareholder, the court having jurisdiction, upon final judgment and a finding that the action was commenced without reasonable cause, shall require the plaintiff to pay to the parties named as defendants the costs and reasonable expenses directly attributable to the defense of such action, but not including fees of attorneys.

(3) In any action pending, instituted, or maintained on or after January 1, 1959, in the right of any domestic or foreign corporation by a shareholder holding less than five percent of the outstanding shares of any class of such corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is commenced shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by it in the defense of such action or may be incurred by other parties named as defendant for which it may become legally liable, but not including fees of attorneys. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that the plaintiff becomes a party to the action. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. If the court finds that the action was commenced without reasonable cause, the corporation shall have recourse to such security in such amount as the court shall determine upon the termination of such action.

ARTICLE 108

Directors and Officers

PART 1

BOARD OF DIRECTORS

7-108-101. Requirement for board of directors. (1) Except as otherwise provided in its articles of incorporation, each corporation shall have a board of directors.

(2) Subject to any provision stated in the articles of incorporation, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the board of directors or such other persons as the articles of incorporation provide shall have the authority and perform the duties of a board of directors.

7-108-102. Qualifications of directors. A director shall be an individual who is eighteen years of age or older. The bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a shareholder unless the bylaws so prescribe.

7-108-103. Number and election of directors. (1) A board of directors shall consist of one or more members, with the number stated in or fixed in accordance with the bylaws.

(2) The bylaws may establish a range for the size of the board of directors by fixing a minimum and maximum number of directors. If a range is established, the number of directors may be fixed or changed from time to time within the range by the shareholders or the board of directors.

(3) Directors are elected at each annual meeting of the shareholders except as provided in section 7-108-106.

7-108-104. Election of directors by certain classes of shareholders. If the articles of incorporation authorize dividing the shares of the corporation into classes or series, the articles of incorporation may authorize the election of all or a stated number or portion of directors by the holders of one or more authorized classes or series of shares. A class or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

7-108-105. Terms of directors generally. (1) Except as provided in section 7-108-106, the terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) Except as provided in section 7-108-106, the terms of all other directors expire at the next annual shareholders' meeting following their election.

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

(4) The term of a director elected to fill a vacancy pursuant to section 7-108-110 (1)(b) or 7-108-110 (1)(c) expires at the next annual shareholders' meeting at which directors are elected. The term of a director elected to fill a vacancy pursuant to section 7-108-110 (1)(a) shall be the unexpired term of the director's predecessor in office; except that, if the director's predecessor had been elected to fill a vacancy pursuant to section 7-108-110 (1)(b) or 7-108-110 (1)(c), the term of a director elected pursuant to section 7-108-110 (1)(a) shall be the unexpired term of the last predecessor elected by the shareholders.

(5) Despite the expiration of the director's term, a director continues to serve until the director's successor is elected and qualifies.

(6) (Deleted by amendment, L. 2004, p. 1497, § 252, effective July 1, 2004.)

7-108-106. Staggered terms for directors. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of directors in the second group expire at the second annual shareholders' meeting after their election, and the terms of directors in the third group, if any, expire at the third annual shareholders' meeting after their election. Upon the expiration of the initial staggered terms, directors shall be elected for terms of two years or three years, as the case may be, to succeed those whose terms expire.

7-108-107. Resignation of directors. (1) A director may resign at any time by giving written notice of resignation to the corporation.

(2) A resignation of a director is effective when the notice is received by the corporation unless the notice states a later effective date.

(3) Repealed.

7-108-108. Removal of directors by shareholders. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) 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 that director.

(3) A director may be removed only if the number of votes cast in favor of removal exceeds the number of votes cast against removal; except that, if cumulative voting is in effect, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against such removal.

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

(5) (Deleted by amendment, L. 2004, p. 1498, § 254, effective July 1, 2004.)

7-108-109. Removal of directors by judicial proceeding. (1) A director may be removed by the district court for the county in this state in which the street address of the corporation's principal office is located or, if the corporation has no principal office in this state, by the district court for the county in which the street address of its registered agent is located or, if the corporation has no registered agent, by the district court for the city and county of Denver, in a proceeding commenced either by the corporation or by shareholders holding at least ten percent of the outstanding shares of any class, if the court finds that the director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation and that removal is in the best interests of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant.

(4) Repealed.

7-108-110. Vacancy on board. (1) Unless otherwise provided in the articles of incorporation, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

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

(c) 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.

(2) Notwithstanding subsection (1) of this section, unless otherwise provided in the articles of incorporation, if the vacant office was held by a director elected by a voting group of shareholders:

(a) If one or more of the remaining directors were elected by the same voting group, only such directors are entitled to vote to fill the vacancy if it is filled by directors, and they may do so by the affirmative vote of a majority of such directors remaining in office; and

(b) Only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 7-108-107 (2) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

7-108-111. Compensation of directors. Unless otherwise provided in the bylaws, the board of directors may fix the compensation of directors.

PART 2

MEETINGS AND ACTION OF THE DIRECTORS

7-108-201. Meetings. (1) The board of directors may hold regular or special meetings in or out of this state.

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

7-108-202. Action without meeting. (1) Unless the bylaws require that the action be taken at a meeting, any action required or permitted by articles 101 to 117 of this title to be taken at a board of directors' meeting may be taken without a meeting if all members of the board consent to such action in writing.

(2) Action is taken under this section at the time the last director signs a writing describing the action taken, unless, before such time, any director has revoked the director's consent by a writing signed by the director and received by the secretary or any other person authorized by the bylaws or the board of directors to receive such a revocation.

(3) Action under this section is effective at the time it is taken as provided by subsection (2) of this section, unless the directors establish a different effective date.

(4) Action taken pursuant to this section has the same effect as action taken at a meeting of directors and may be described as such in any document.

7-108-203. Notice of meeting. (1) Unless otherwise provided in the bylaws, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two 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 bylaws.

7-108-204. Waiver of notice. (1) A director may waive any notice of a meeting before or after the time and date of the meeting stated in the notice. Except as provided by subsection (2) of this section, the waiver shall be in writing and signed by the director entitled to the notice. Such waiver shall be delivered to the corporation for filing with the corporate records, but such delivery and filing shall not be conditions of the effectiveness of the waiver.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless:

(a) At the beginning of the meeting or promptly upon the director's later arrival, the director objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and does not thereafter vote for or assent to action taken at the meeting; or

(b) If special notice was required of a particular purpose pursuant to section 7-108-203 (2), the director objects to transacting business with respect to the purpose for which such special notice was required and does not thereafter vote for or assent to action taken at the meeting with respect to such purpose.

7-108-205. Quorum and voting. (1) Unless a greater number is required by the bylaws, a quorum of a board of directors consists of:

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

(b) A majority of the number of directors fixed or, if no number is fixed, of the number in office immediately before the meeting begins, if a range for the size of the board is established pursuant to section 7-108-103 (2).

(2) The bylaws may authorize a quorum of a board of directors to consist of:

(a) No fewer than a majority of the number of directors fixed if the corporation has a fixed board size; or

(b) No fewer than a majority of the number of directors fixed or, if no number is fixed, of the number in office immediately before the meeting begins, if a range for the size of the board is established pursuant to section 7-108-103 (2).

(3) 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 vote of a greater number of directors is required by articles 101 to 117 of this title or the bylaws.

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

(a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting;

(b) The director contemporaneously requests that the director's dissent or abstention as to any specific action taken be entered in the minutes of the meeting; or

(c) The director causes written notice of the director's dissent or abstention as to any specific action to be received by the presiding officer of the meeting before adjournment of the meeting or by the corporation promptly after adjournment of the meeting.

(5) The right of dissent or abstention pursuant to subsection (4) of this section as to a specific action is not available to a director who votes in favor of the action taken.

7-108-206. Committees. (1) Except as otherwise provided in the bylaws and subject to the provisions of section 7-109-106, the board of directors may create one or more committees and appoint one or more members of the board of directors to serve on them.

(2) The creation of a committee and appointment of members to it shall be approved by the greater of a majority of all the directors in office when the action is taken or the number of directors required by the bylaws to take action under section 7-108-205.

(3) Sections 7-108-201 to 7-108-205, which govern meetings, action without meeting, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent stated in the bylaws or by the board of directors, each committee shall have the authority of the board of directors under section 7-108-101; except that a committee shall not:

(a) Authorize distributions;

(b) Approve or propose to shareholders action that articles 101 to 117 of this title require to be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to section 7-110-102;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of conversion or plan of merger not requiring shareholder approval;

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

(h) Authorize or approve the issuance or sale of shares, or a contract for the 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 an officer to do so within limits specifically prescribed by the board of directors.

(5) 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 section 7-108-401.

PART 3

OFFICERS

7-108-301. Officers. (1) A corporation shall have the officers designated in its bylaws or by the board of directors. An officer shall be an individual who is eighteen years of age or older.

(2) Officers may be appointed by the board of directors or in such other manner as the board of directors or bylaws may provide. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one or more of the officers responsibility for the preparation and maintenance of minutes of the directors' and shareholders' meetings and other records and information required to be kept by the corporation under section 7-116-101 and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in the corporation.

7-108-302. Duties of officers. Each officer shall have the authority and shall perform the duties stated with respect to the officer's office in the bylaws or, to the extent not inconsistent with the bylaws, prescribed with respect to that office by the board of directors or by an officer authorized by the board of directors.

7-108-303. Resignation and removal of officers. (1) An officer may resign at any time by giving written notice of resignation to the corporation.

(2) A resignation of an officer is effective when the notice is received by the corporation unless the notice states a later effective date.

(3) If a resignation is made effective at a later date, the board of directors may permit the officer to remain in office until the effective date and may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date, or the board of directors may remove the officer at any time before the effective date and may fill the resulting vacancy.

(4) Unless otherwise provided in the bylaws, the board of directors may remove any officer at any time with or without cause. The bylaws or the board of directors may make provision for the removal of officers by other officers or by the shareholders.

(5) Repealed.

7-108-304. Contract rights with respect to officers. (1) The appointment of an officer does not itself create contract rights.

(2) 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.

PART 4

STANDARDS OF CONDUCT

7-108-401. General standards of conduct for directors and officers. (1) Each director shall discharge the director's duties as a director, including the director's duties as a member of a committee, and each officer with discretionary authority shall discharge the officer's duties under that authority:

(a) In good faith;

(b) With care; and

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

(2) In discharging duties under this section 7-108-401, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director or officer reasonably believes to be reliable and competent with respect to the information, opinions, reports, or statements;

(b) One or more legal counsel, accountants, or other persons retained by the corporation as to matters involving skills or expertise the director or officer reasonably believes are within such person's or person's professional or expert competence;

(c) In the case of a director, a committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence; or

(d) In the case of an officer, the board of directors or any committee of the board of directors.

(3) A director or officer may not rely as permitted by subsection (2) of this section if that director or officer has knowledge concerning the matter in question that makes such reliance unwarranted.

(4) A director or officer of a corporation, in the performance of duties in that capacity, shall not have any fiduciary duty to any creditor of the corporation arising only from the status as a creditor, whether the corporation is solvent or insolvent.

7-108-402. Standards of liability for directors. (1) A director shall be liable to the corporation or its shareholders for money damages or other money payment for any act, omission to act, or decision, as a director, only if the party asserting liability establishes in a proceeding that the challenged act, omission, or decision:

(a) Was not in good faith;

(b) Was one that the director did not rationally believe to be in the best interests of the corporation;

(c) Was one as to which the director was at least grossly negligent, unless the articles of incorporation change the standard of liability to knowing misconduct or knowing violation of law or change the standard of liability to negligence;

(d) Was one as to which the director failed to make (or cause to be made) appropriate inquiry, when particular facts or circumstances of significant concern came to the attention of the director that would have alerted a reasonably attentive director to the need for inquiry;

(e) Consisted of or resulted from a sustained or systematic failure by the director to exercise oversight of the business and affairs of the corporation; or

(f) Subject to section 7-108-501, was a breach of the director's duty of loyalty to the corporation, including by directly or indirectly receiving an improper personal benefit; or

(g) Consisted of or resulted from a vote or assent specified in section 7-108-405.

(2) In addition to the requirements of section 7-108-402(1), the party seeking to hold the director liable also shall have:

(a) With respect to money damages, the burden of establishing that:

(I) Such money damages were suffered by the corporation or its shareholders; and

(II) Such money damages were caused by the director's challenged conduct.

(b) With respect to other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, whatever persuasion burden may be called for to establish that the money payment sought is appropriate in the circumstances; or

(c) With respect to other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(3) A director liable under this section for money damages or for other money payment may offset against such liability any gain to the corporation that the director establishes arose out of the same transaction, unless such offset is against public policy.

7-108-403. Limitation of certain liabilities of directors and officers. No director or officer shall be personally liable for any injury to person or property arising out of a tort committed by an employee unless such director or officer was personally involved in the situation giving rise to the litigation or unless such director or officer committed a criminal offense in connection with such situation. The protection afforded in this section shall not restrict other common law protections and rights that a director or officer may have.

7-108-404. Limitation of certain remedies. (1) In this section, the term "precluded director" means a director who violated one or more of the standards of liability set forth in subsection (1) of section 7-108-402 with respect to an action described in subsection (2) of this section.

(2) No action by the corporation or by the board of directors shall be void or voidable, be enjoined, or be set aside in a proceeding by a shareholder or by or in the right of the corporation because one or more precluded directors was present at or participated in the meeting of the board of directors at which the action was authorized, approved, or ratified, or executed a consent for the action in the manner provided in section 7-108-202, if the action was authorized, approved or ratified:

(a) If the action was taken at a meeting, by the affirmative vote of the number of directors present at the meeting which would be sufficient to take action at the meeting under articles 101 to 117 of this title or the bylaws; provided that, in determining how many votes would be sufficient, the vote of a precluded director may not be counted for purposes of authorizing the action but such director shall be considered present for purposes of determining a quorum; or

(b) If the action was taken without a meeting by written consent pursuant to section 7-108-202 and executed by all of the directors, if the number of directors, not including any precluded director, constitutes not less than a majority of all of the directors or such greater number of directors as is required by articles 101 to 117 of this title or the bylaws.

7-108-405. Liability of directors for unlawful distributions. (1) A director who votes for or assents to a distribution made in violation of section 7-106-401 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating said section or the articles of incorporation if it is established that the director did not perform the director's duties in compliance with section 7-108-401. In any proceeding commenced under this section, a director shall have all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder who accepted the distribution knowing the distribution was made in violation of section 7-106-401 or the articles of incorporation, the amount of the contribution from such shareholder being the amount of the distribution to that shareholder that exceeds what could have been distributed to that shareholder without violating said section or the articles of incorporation.

PART 5

DIRECTOR - CONFLICTS OF INTEREST

7-108-501. Conflicting interest transaction - repeal. (1) (a) As used in this section, "conflicting interest transaction" means, with respect to a director of the corporation, any of the following:

(I) A loan or other assistance by a corporation to a director of the corporation or to an entity in which the director is a director or officer or has a financial interest that is known to, and material to, the director;

(II) A guaranty by a corporation of an obligation of the director or of an obligation of an entity in which the director is a director or officer or has a financial interest that is known to, and material to, the director;

(III) A contract or transaction between the corporation and the director or between the corporation and an entity in which a director is a director or officer or has a financial interest that is known to, and material to, the director; or

(IV) A director's taking a corporate opportunity except to the extent permitted pursuant to a provision of the articles of incorporation adopted under section 7-102-102 (2)(d).

(b) "Conflicting interest transaction" shall not include any transaction between

(I) The corporation and another entity if the other entity owns, directly or indirectly, all of the outstanding shares of the corporation; or

(II) The corporation and another entity if the corporation owns, directly or indirectly, all of the outstanding shares or other equity interests of the other entity.

(2) No conflicting interest transaction shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation, solely because it is a conflicting interest transaction or because the director is present at or participates in the meeting of the corporation's board of directors or of the committee of the board of directors which authorizes, approves, or ratifies the conflicting interest transaction or because the director's vote is counted for such purpose, if:

(a) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or

(b) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the shareholders entitled to vote thereon, and either;

(I) The conflicting interest transaction is specifically authorized, approved, or ratified by a vote of the disinterested shareholders in which the votes cast in favor of the authorizing, approving, or ratifying the conflicting interest transaction exceed the votes cast in opposition thereto; or

(II) If the articles of incorporation provide for voting on the matter by the disinterested shareholders in two or more voting groups, the conflicting interest transaction is specifically authorized, approved, or ratified by a vote of each such voting group in which the votes cast within the voting group in favor of authorizing, approving, or ratifying the conflicting interest transaction exceed the votes cast within the voting group in opposition thereto; or

(c) The conflicting interest transaction is fair as to the corporation.

(3) No director's taking advantage, directly or indirectly, of a corporate opportunity shall be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation, because the director took such advantage, if:

(a) The material facts as to the director's relationship or interest and as to the corporate opportunity are disclosed to or are known to the board of directors or the committee, and the board of directors or committee authorizes, approves, or ratifies the taking of the corporate opportunity by the affirmative vote of a majority of the disinterested directors, even though the disinterested directors are less than a quorum; or

(b) The material facts as to the director's relationship or interest and as to the corporate opportunity are disclosed to or are known to the shareholders entitled to vote thereon, and either:

(I) The taking of the corporate opportunity is specifically authorized, approved, or ratified by a vote of the disinterested shareholders in which the votes cast in favor of authorizing, approving, or ratifying the taking of the corporate opportunity exceed the votes cast in opposition thereto; or

(II) If the articles of incorporation provide for voting on the matter by the disinterested shareholders in two or more voting groups, the taking of the corporate opportunity is specifically authorized, approved, or ratified by a vote of each such voting group in which the votes cast within the voting group in favor of authorizing, approving, or ratifying the taking of the corporate opportunity exceed the votes cast within the voting group in opposition thereto.

(4) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or of a committee which authorizes, approves, or ratifies a conflicting interest transaction or the taking of a corporate opportunity.

(5) Unless otherwise provided in the articles of incorporation, a majority of the votes of disinterested shareholders entitled to be cast on the matter of authorizing, approving, or ratifying a conflicting interest transaction pursuant to subsection (2)(b) of this section or a taking of a corporate opportunity pursuant to subsection (3)(b) of this section constitutes a quorum of that voting group for action on that matter, but a quorum shall not consist of fewer than one-third of the votes of disinterested shareholders entitled to be cast on the matter by the voting group.

ARTICLE 109

Indemnification

7-109-101. Definitions. As used in this article:

(1) "Corporation" includes any entity that is a predecessor of a corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, an officer, an agent, an associate, an employee, a fiduciary, a manager, a member, a partner, a promoter, or a trustee of, or in any other capacity with, another person or an employee benefit plan. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a deceased director.

(3) "Expenses" includes counsel fees.

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

(5) "Official capacity" means, when used with respect to a director, the office of director in a corporation and, when used with respect to a person other than a director as contemplated in section 7-109-107, the office in a corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by the employee, fiduciary, or agent on behalf of the corporation.

"Official capacity" does not include service for any other domestic or foreign corporation or other person or employee benefit plan.

(6) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

7-109-102. Authority to indemnify directors. (1) Except as provided in subsection (4) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

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

(b) The individual reasonably believed:

(I) In the case of conduct in an official capacity with the corporation, that such conduct was in the corporation's best interests; and

(II) In all other cases, that such conduct was at least not opposed to the corporation's best interests; and

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

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in or beneficiaries of the plan is conduct that satisfies the requirement of subparagraph (II) of paragraph (b) of subsection (1) of this section. A director's conduct with respect to an employee benefit plan for a purpose that the director did not reasonably believe to be in the interests of the participants in or beneficiaries of the plan shall be deemed not to satisfy the requirements of paragraph (a) of subsection (1) of this section.

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

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

(a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (1); or

(b) In connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in an official capacity, in which proceeding the director was adjudged liable on the basis that the director derived an improper personal benefit.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

7-109-103. Mandatory indemnification of directors. A corporation shall indemnify an individual who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the individual was a party because the individual is or was a director against reasonable expenses incurred by the person in connection with the proceeding.

7-109-104. Advance of expenses to directors. (1) A corporation may, before final disposition of a proceeding, pay for or reimburse the reasonable expenses incurred by an individual who is a party to a proceeding because that person is a director if:

(a) The director delivers to the corporation a written affirmation of the director's good-faith belief that the director has met the relevant standard of conduct described in section 7-109-102 or that the proceeding involves conduct for which liability has been eliminated under a provision in the articles of incorporation as authorized by section 7-102-102(2)(d).

(b) The director delivers to the corporation a written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section 7-109-103 and it is ultimately determined under section 7-109-105 or section 7-109-106 that the director has not met the relevant standard of conduct described in section 7-109-102.

(c) Deleted by amendment, L. 2019 _____

(2) The undertaking required by paragraph (b) of subsection (1) of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Authorizations of payments under this section shall be made in the manner specified in section 7-109-106.

7-109-105. Court-ordered indemnification and advance of expenses. (1) A director who is or was a party to a proceeding may apply for indemnification or an advance of expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application, and after giving any notice the court considers necessary, the court may order indemnification or advance of expenses, in the following manner:

(a) If it determines that the director is entitled to mandatory indemnification under section 7-109-103, the court shall order indemnification, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

(b) If it determines that the director is entitled to indemnification or an advance of expenses under section 7-109-109(1), the court shall order indemnification or an advance of expenses, as applicable, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification or an advance of expenses.

(c) If it determines that the director is fairly and reasonably entitled to indemnification or an advance of expenses in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 7-109-102 (1), failed to comply with section 7-109-104, or was adjudged liable in the circumstances described in section 7-109-102 (4), the court may order such indemnification or an advance of expenses as the court deems proper; except that the indemnification with respect to any proceeding in which liability shall have been adjudged in the circumstances described in section 7-109-102 (4) is limited to reasonable expenses incurred in connection with the proceeding and reasonable expenses incurred to obtain court-ordered indemnification.

7-109-106. Determination and authorization of indemnification of directors. (1) A corporation may not indemnify a director under section 7-109-102 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 7-109-102. A corporation shall not advance expenses to a director under section 7-109-104 unless authorized in the specific case after the written affirmation and undertaking required by section 7-109-104 (1)(a) and (1)(b) are received.

(2) The determinations required by subsection (1) of this section shall be made:

(a) If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors (a majority of whom shall for such purpose constitute a quorum), or by a majority vote of a committee of the board of directors appointed by such a vote, which committee shall consist of two or more disinterested directors.

(b) By independent legal counsel selected in the manner specified in paragraph (a) of subsection (2) of this section or, if there are fewer than two disinterested directors, by independent legal counsel selected by a majority vote of the full board of directors; or

(c) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a disinterested director may not be voted on the determination.

(3) Authorization of indemnification and an advance of expenses shall be made in the same manner as the determination that indemnification or an advance of expenses is permissible; except that, if the determination that indemnification or an advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected such counsel.

7-109-107. Indemnification of officers, employees, fiduciaries, and agents. (1) An officer is entitled to mandatory indemnification under section 7-109-103, and is entitled to apply for court-ordered indemnification or an advance of expenses under section 7-109-105, in each case to the same extent as a director;

(2) A corporation may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the corporation to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to such further extent as may be provided for by its articles of incorporation, bylaws, general or specific action of its board of directors or shareholders, or contract. The provisions of this subsection (3) shall apply to an officer who is also a director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer.

7-109-108. Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, agent, associate, employee, fiduciary, manager, member, partner, promoter or trustee of, or in any other capacity with, another person or an employee benefit plan, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, fiduciary, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under section 7-109-102, 7-109-103, or 7-109-107. Any such insurance may be procured from any insurance company designated by the board of directors, whether such insurance company is formed under the law of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the corporation has an equity or any other interest through stock ownership or otherwise.

7-109-109. Variation by Corporate Action.

(1) Deleted by amendment, L. 2019 _____

(2) 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 section 7-109-102 or advance funds to pay for or reimburse expenses in

accordance with section 7-109-104. Any such obligatory provision shall be deemed to satisfy the requirements for authorization, but not determination, referred to in section 7-109-106. Any such 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 section 7-109-104 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(3) A right of indemnification or to advances of expenses created by this Article or under subsection (2) and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under subsection (2), the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

(4) Any provision pursuant to subsection (2) 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 an advance of 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 section 7-90-204(1).

(5) Subject to subsection (3), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or an advance of expenses created by or pursuant to this Article.

(6) Sections 7-109-101 to 7-109-108 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with an appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent in the proceeding.

7-109-110. Notice to shareholders of indemnification of director. If a corporation indemnifies or advances expenses to a director under this article in connection with a proceeding by or in the right of the corporation, the corporation shall give written notice of the indemnification or advance to the shareholders with or before the notice of the next shareholders' meeting. If the next shareholder action is taken without a meeting at the instigation of the board of directors, such notice shall be given to the shareholders at or before the time the first shareholder signs a writing consenting to such action.

7-109-111. Exclusivity. A corporation may provide indemnification or an advance of expenses to a director or an officer only as permitted by this Article.

ARTICLE 110

Amendment of Articles of Incorporation and Bylaws

PART 1

AMENDMENT OF ARTICLES OF INCORPORATION

7-110-101. Authority to amend articles of incorporation. (1) 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 or to delete a provision not required 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.

(2) A shareholder does not have a vested property right resulting from any provision in the articles of incorporation, including any provision relating to management, control, capital structure, dividend entitlement, purpose, or duration of the corporation.

7-110-102. Amendment of articles of incorporation by board of directors. (1) Unless otherwise provided in the articles of incorporation, the board of directors may adopt, without shareholder action, one or more amendments to the articles of incorporation to:

(a) Delete the statement of the names and addresses of the incorporators or of the initial directors;

(b) Delete the statement of the registered agent name and registered agent address of the initial registered agent, if a statement of change changing the registered agent name and registered agent address of the registered agent is on file in the records of the secretary of state;

(b.3) Delete the statement of the principal office address of the initial principal office, if a statement of change changing the principal office address is on file in the records of the secretary of state;

(b.5) Delete the statement of the names and addresses of any or all of the individuals named in the articles of incorporation, pursuant to section 7-90-301 (6), as being individuals who caused the articles of incorporation to be delivered for filing;

(c) Repealed.

(d) Change the domestic entity name of the corporation by substituting the word "corporation", "incorporated", "company", or "limited", or an abbreviation of any thereof for a similar word or abbreviation in the domestic entity name, or by adding, deleting, or changing a geographical attribution; or

(e) Make any other change expressly permitted by articles 101 to 117 of this title to be made without shareholder action.

(2) The board of directors may adopt, without shareholder action, one or more amendments to the articles of incorporation to change the domestic entity name of the corporation, if necessary, in connection with the reinstatement of a corporation pursuant to part 10 of article 90 of this title.

7-110-103. Amendment of articles of incorporation by board of directors and shareholders. (1) The board of directors or the holders of shares representing at least ten percent of all of the votes entitled to be cast on the amendment may propose an amendment to the articles of incorporation for submission to the shareholders.

(2) For an amendment to the articles of incorporation to be adopted pursuant to subsection (1) of this section:

(a) The board of directors shall recommend the amendment to the shareholders unless the amendment is proposed by shareholders or 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 amendment; and

(b) The shareholders entitled to vote on the amendment shall approve the amendment as provided in subsection (5) of this section.

(3) The proposing board of directors or the proposing shareholders may condition the effectiveness of the amendment on any basis.

(4) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the amendment of the shareholders' meeting at which the amendment will be voted upon. The notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is to consider the amendment, and the notice shall contain or be accompanied by a copy or a summary of the amendment.

(5) Unless articles 101 to 117 of this title (including the provisions of section 7-117-101 (7)), the articles of incorporation, bylaws adopted by the shareholders, or the proposing board of directors or the proposing shareholders acting pursuant to subsection (3) of this section require a greater vote, the amendment shall be approved by the votes required by sections 7-107-206 and 7-107-207 by the voting groups entitled to vote on the amendment.

7-110-104. Voting on amendments of articles of incorporation by voting groups. (1) If shareholder voting is otherwise required by articles 101 to 117 of this title, the holders of the shares of a class are entitled to vote as a separate voting group on an amendment if the amendment would:

- (a) Increase or decrease the aggregate number of authorized shares of the class;
 - (b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;
 - (c) 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;
 - (d) Change the designation, preferences, limitations, or relative rights of all or part of the shares of the class;
 - (e) Change the shares of all or part of the class into a different number of shares of the same class;
 - (f) Create a new class of shares having rights or preferences with respect to distributions or dissolution that are prior, superior, or substantially equal to the shares of the class;
 - (g) 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, superior, or substantially equal to the shares of the class;
 - (h) Limit or deny an existing preemptive right of all or part of the shares of the class; or
 - (i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but have not yet been declared on all or part of the shares of the class.
- (2) If an amendment would affect a series of a class of shares in one or more of the ways described in subsection (1) of this section, the shares of that series are entitled to vote as a separate voting group on the amendment.
- (3) If an amendment that entitles two or more series of a class of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected shall, instead, vote together as a single voting group on the amendment.
- (4) A class or series of shares is entitled to the voting rights granted by this section notwithstanding any provision in the articles of incorporation that the shares are nonvoting shares.

7-110-105. Amendment of articles of incorporation before issuance of shares. If a corporation has not yet issued shares, its board of directors or, if no directors have been elected, its incorporators may adopt one or more amendments to the articles of incorporation.

7-110-106. Articles of amendment to articles of incorporation. (1) A corporation amending its articles of incorporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment stating:

- (a) The domestic entity name of the corporation;
- (b) The text of each amendment adopted; and
- (c) If the amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.
- (d) to (f) Repealed.

7-110-107. Restated articles of incorporation. (1) The board of directors may restate the articles of incorporation at any time with or without shareholder action. If the corporation has not yet issued shares and no directors have been elected, its incorporators may restate the articles of incorporation at any time.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in section 7-110-103.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the restatement of the shareholders' meeting at which the restatement will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the restatement, and the notice shall contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of restatement stating:

- (a) The domestic entity name of the corporation;
- (b) The text of the restated articles of incorporation;
- (c) Repealed.
- (d) If the restatement was adopted by the board of directors or incorporators without shareholder action, a statement to that effect and that shareholder action was not required.

(5) Upon filing by the secretary of state or at any later effective date determined pursuant to section 7-90-304, restated articles of incorporation supersede the original articles of incorporation and all prior amendments to them.

7-110-108. Amendment of articles of incorporation pursuant to reorganization. (1) 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 a statute of the United States if the articles of incorporation after amendment contain only provisions required or permitted by section 7-102-102.

(2) For an amendment to the articles of incorporation to be made pursuant to subsection (1) of this section, an individual or individuals designated by the court shall deliver to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of amendment stating:

- (a) The domestic entity name of the corporation;
- (b) The text of each amendment approved by the court;
- (c) The date of the court's order or decree approving the articles of amendment;
- (d) The title of the reorganization proceeding in which the order or decree was entered;

and

(e) A statement that the court had jurisdiction of the proceeding under a specified statute of the United States.

(3) Shareholders of a corporation undergoing reorganization do not have appraisal rights except as provided in the reorganization plan.

(4) 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.

7-110-109. Effect of amendment of articles of incorporation. An amendment to the articles of incorporation does not affect any existing right of persons other than shareholders, any cause of action existing against or in favor of the corporation, or any proceeding to which the corporation is a party. An amendment changing a corporation's domestic entity name does not abate a proceeding brought by or against a corporation in its former entity name.

PART 2

AMENDMENT OF BYLAWS

7-110-201. Amendment of bylaws by board of directors or shareholders. (1) The board of directors may amend the bylaws at any time to add, change, or delete a provision, unless:

(a) Articles 101 to 117 of this title or the articles of incorporation reserve such power exclusively to the shareholders in whole or part; or

(b) A particular bylaw expressly prohibits the board of directors from doing so.

(2) The shareholders may amend the bylaws even though the bylaws may also be amended by the board of directors.

7-110-202. Bylaw changing quorum or voting requirement for shareholders. (1) If authorized by the articles of incorporation, the shareholders may amend the bylaws to fix a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is required by articles 101 to 117 of this title. An amendment to the bylaws to add, change, or delete 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 requirements then in effect or proposed to be adopted, whichever are greater.

(2) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (1) of this section shall not be amended by the board of directors.

7-110-203. Bylaw changing quorum or voting requirement for directors. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended:

(a) If adopted by the shareholders, only by the shareholders; or

(b) If adopted by the board of directors, either by the shareholders or by the board of directors.

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

(3) Action by the board of directors under paragraph (b) of subsection (1) of this section to adopt or amend 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.

ARTICLE 111

Merger, Share Exchange, and Redomestication

7-111-101. Merger of domestic corporation. (1) One or more domestic corporations may merge with any other entity pursuant to section 7-90-203.

(2) and (3) (Deleted by amendment, L. 2007, p. 245, ' 43, effective May 29, 2007.)

7-111-101.5. Conversion of domestic corporation. A domestic corporation may convert into any form of entity pursuant to section 7-90-201.

7-111-102. Owner's interest exchange involving domestic corporation. (1) A domestic corporation may be party to an exchange of owners' interests with any other entity pursuant to section 7-90-203.1.

7-111-103. Action on plan of merger, plan of conversion or plan of exchange. (1) After adopting a plan of conversion complying with section 7-90-201.3, a plan of merger complying with section 7-90-203.3, or a plan of exchange complying with section 7-90-203.3, the board of directors of the converting corporation, the board of directors of each corporation party to the merger, or the board of directors of each corporation party to the exchange, shall submit the plan of conversion, plan of merger, or plan of exchange to its shareholders for approval, except as provided in subsection (7) of this section or in section 7-111-104.

(2) For a plan of conversion, a plan of merger, or a plan of exchange to be approved by the shareholders:

(a) The board of directors shall recommend the plan of conversion, plan of merger, or plan of 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

(b) The shareholders entitled to vote on the plan of conversion, plan of merger, or plan of exchange shall approve the plan as provided in subsection (5) of this section.

(3) The board of directors may condition the effectiveness of the plan of conversion, plan of merger, or plan of exchange on any basis.

(4) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the plan of conversion, plan of merger, or plan of exchange of the shareholders' meeting at which the plan will be voted upon. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion, plan of merger, or plan of exchange, and the notice shall contain or be accompanied by a copy of the plan or a summary thereof.

(5) Unless articles 101 to 117 of this title, including the provisions of section 7-117-101 (8), the articles of incorporation, bylaws adopted by the shareholders, or the board of directors acting pursuant to subsection (3) of this section require a greater vote, the plan of conversion, plan of merger, or plan of exchange 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.

(6) Separate voting by voting groups is required:

(a) On a plan of merger or a plan of conversion if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment under section 7-110-104;

(b) On a plan of exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger or acquiring corporation in a plan of exchange is not required if:

(a) The articles of incorporation of the surviving or acquiring corporation will not differ, except for amendments enumerated in section 7-110-102, from its articles of incorporation before the transaction;

(b) Each shareholder of the surviving or acquiring corporation whose shares were outstanding immediately before the transaction will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the transaction;

(c) The number of voting shares outstanding immediately after the transaction, plus the number of voting shares issuable as a result of the transaction either by the conversion of securities issued pursuant to the transaction or by the exercise of rights and warrants issued pursuant to the transaction, will not exceed by more than twenty percent the total number of voting shares of the surviving corporation outstanding immediately before the transaction; and

(d) The number of participating shares outstanding immediately after the transaction, plus the number of participating shares issuable as a result of the transaction either by the conversion of securities issued pursuant to the transaction or by the exercise of rights and

warrants issued pursuant to the transaction, will not exceed by more than twenty percent the total number of participating shares outstanding immediately before the transaction.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

7-111-104. Merger of parent and subsidiary. (1) By complying with the provisions of this section, a parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may either merge such subsidiary into itself or merge itself into such subsidiary.

(2) The board of directors of such parent corporation shall adopt, and its shareholders, if required by subsection (3) of this section, shall approve, a plan of merger that states:

(a) The entity names of such parent corporation and subsidiary and the entity name of the surviving corporation;

(b) The terms and conditions of the merger;

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into money or other property in whole or part;

(d) Any amendments to the articles of incorporation of the surviving corporation to be effected by the merger; and

(e) Any other provisions relating to the merger as are deemed necessary or desirable.

(3) No vote of the shareholders of such subsidiary shall be required with respect to the merger. If the subsidiary will be the surviving corporation, the approval of the shareholders of the parent corporation shall be sought in the manner provided in section 7-111-103 (1) to (6). If the parent will be the surviving corporation, no vote of its shareholders shall be required if all of the provisions of section 7-111-103 (7) are met with respect to the merger. If all of such provisions are not met, the approval of the shareholders of the parent shall be sought in the manner provided in subsections (1) to (6) of section 7-111-103.

(4) The parent corporation shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary, other than the parent corporation, who does not waive this mailing requirement in writing.

(5) The effective date of the merger shall be no earlier than:

(a) The date on which all shareholders of the subsidiary waived the mailing requirement of subsection (4) of this section; or

(b) Ten days after the date the parent mailed a copy or summary of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

7-111-104.5. Statement of merger or conversion. (Repealed)

7-111-105. Statement of share exchange. (Moved to 7-90-203.8)

(d) and (e) (Deleted by amendment, L. 2004, p. 1503, ' 275, effective July 1, 2004.)

(2) and (3) (Deleted by amendment, L. 2003, p. 2324, ' 258, effective July 1, 2004.)

7-111-106. Effect of merger, conversion, or share exchange. (Moved to 7-90-204.3)

7-111-106.5. Merger with foreign entity. (1) One or more domestic corporations may merge with one or more foreign entities if:

(a) The merger is permitted by section 7-90-203 (2);

(b) The foreign entity complies with section 7-90-203.7 if it is the surviving entity of the merger; and

(c) Each domestic corporation complies with the applicable provisions of sections 7-111-101 to 7-111-104 and, if it is the surviving corporation of the merger, with section 7-111-104.5.

(2) Upon the merger taking effect, the surviving foreign entity of a merger shall comply with section 7-90-204.5.

7-111-107. Share exchange with foreign corporation. (Repealed)

(1.5) (Deleted by amendment, L. 2007, p. 248, § 49, effective May 29, 2007.)

(Moved to 7-90-204.5)

7-111-108. Redomestication as a domestic insurer. (1) A foreign or alien insurer which seeks to change its domicile under section 10-3-125 or 10-3-126, C.R.S., shall submit

articles of redomestication in triplicate to the commissioner of insurance and the attorney general for examination. After being approved by them, the articles of redomestication shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title. A copy of such articles, certified by the secretary of state, shall be filed with the commissioner of insurance.

(2) The articles of redomestication shall state:

(a) The domestic entity name for the corporation, which domestic entity name shall comply with the requirements of sections 7-90-601 and 10-3-103, C.R.S.;

(b) The state in which the corporation was originally incorporated, the name under which it was so incorporated, the date of such incorporation, and the date the corporation was authorized to transact business or conduct activities as an insurance company in the state of its original incorporation;

(c) If the state in which the corporation was last incorporated is different from the state in which it was originally incorporated, the state in which the corporation was last incorporated, the entity name under which it was so incorporated, the date of such incorporation, and the date the corporation was authorized to transact business or conduct activities as an insurance company in the state of its last incorporation;

(d) The information regarding shares required by section 7-106-101;

(e) The registered agent name and registered agent address of the corporation's registered agent;

(f) The principal office address of the corporation's principal office;

(g) The names and mailing addresses of the persons serving as the directors and officers of such corporation; and

(h) A statement that, upon redomestication, the corporation accepts and will be subject to the law of this state.

(3) The articles of incorporation may but need not state:

(a) Provisions not inconsistent with law regarding:

(I) The current purpose or purposes of the corporation and the purpose or purposes which it intends to pursue after redomestication;

(II) Managing the business of the corporation and regulating its affairs;

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

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

(V) The imposition of personal liability on shareholders for the debts of the corporation to a stated extent and upon stated conditions; and

(b) Any provision that, under articles 101 to 117 of this title, is required or permitted to be stated in the bylaws.

(4) It shall not be necessary to state in the articles of redomestication any of the corporate powers enumerated in articles 101 to 117 of this title.

(5) In its articles of redomestication, the corporation may amend, restate, or revise its articles of incorporation or charter to the same extent, subject to the same limitations, and by the same procedures as those provisions governing the amendment, restatement, and revision of articles of incorporation as provided in articles 101 to 117 of this title.

(6) The corporation shall attach to the articles of redomestication:

(a) Its articles of incorporation or charter, as amended or restated, as in effect immediately before the filing of its articles of redomestication, duly authenticated by the proper officer in the jurisdiction of its last incorporation;

(b) A certificate to the effect that the corporation is in good standing in the jurisdiction of its last incorporation, duly authenticated by the proper officer in the jurisdiction of its last incorporation. The certificate shall be dated within ninety days before the filing of the articles of redomestication.

(c) A resolution, duly certified by the secretary of the corporation, adopted by the affirmative vote of the shareholders entitled to cast at least a majority of the votes which all shareholders are entitled to cast thereon, and, if any class of shares is entitled to vote thereon as a class, the affirmative vote of the holders of at least a majority of the outstanding shares in each class of shares entitled to vote as a class thereon, consenting to the filing of the articles of redomestication and the renunciation, conditioned upon its redomestication as a domestic insurer, of its last articles of incorporation or charter.

(7) Upon the issuance by the secretary of state of a certificate of redomestication, a corporation shall be deemed to be domiciled in and incorporated under the law of this state; except that an insurer that has redomesticated in this state pursuant to section 10-3-125 or 10-3-126, C.R.S., shall be considered to be the same corporation as that corporation that existed under the law of the jurisdiction in which it was formerly domiciled and shall be considered as having been an operating insurer from the date that the corporation was authorized to transact business or conduct activities as an insurer in such jurisdiction.

(8) The certificate of redomestication shall serve the same purpose as articles of incorporation under articles 101 to 117 of this title.

(9) The certificate of redomestication, subject to the provisions of the law of this state relating to insurance, shall entitle the redomesticated corporation to all the powers, rights, and privileges granted to corporations incorporated in this state and shall subject the redomesticated corporation to all of the duties, liabilities, and limitations imposed upon domestic corporations but shall continue the corporation as if it had been originally incorporated under the law of this state. Upon the issuance of the certificate of redomestication by the secretary of state, the articles of redomestication shall constitute the articles of incorporation of the corporation.

(10) Any domestic insurer, subject to and in compliance with section 10-3-125 (2), C.R.S., may change its domicile from this state to any other state in which it is authorized to transact business or conduct activities and, in connection therewith, shall submit to the commissioner of insurance a copy of the articles of redomestication or their equivalent, duly authenticated by the proper officer of its new state of domicile, and a certificate of good standing or its equivalent from that state. Upon approval by the commissioner of insurance, the copy of the articles of redomestication and certificate of good standing, or their equivalents, from the new state of domicile shall be delivered to the secretary of state for filing pursuant to part 3 of article 90 of this title. Upon the filing of such documents by the secretary of state, the domestic insurer shall cease to be a domestic corporation and a domestic insurer and, if otherwise qualified, shall become a foreign corporation and foreign insurer authorized to transact business or conduct activities in this state effective as of the date of its redomestication by the new state of domicile as stated in its articles of redomestication.

(11) All certificates of redomestication issued by the secretary of state shall state the date on which the articles of redomestication were filed and, based upon the information submitted to the secretary of state pursuant to this section, the date from which the corporation existed and operated as an insurer, which shall be the date the insurer was incorporated in the jurisdiction of its original incorporation.

ARTICLE 112

Sale of Property

7-112-101. Sale or mortgage of property without shareholder approval. (1) A corporation may, as authorized by its bylaws or by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of any or all of its property in the usual and regular course of business;

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(c) Transfer any or all of its property to a domestic corporation all the shares of which are owned, directly or indirectly, by the corporation.

(2) Unless otherwise provided in the articles of incorporation, approval by the shareholders of a transaction described in subsection (1) of this section is not required.

7-112-102. Sale of property requiring shareholder approval. (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without its good will, other than in the usual and regular course of business on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the shareholders approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without its good will, in connection with its dissolution, other than in the usual and regular course of business, and other than pursuant to a court order, shall be subject to the requirements of this section; but a sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without its good will, pursuant to a court order shall not be subject to the requirements of this section.

(2) If a corporation is entitled to vote or otherwise consent, other than in the usual and regular course of its business, with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property with or without the good will of another entity which it controls, and if the shares or other interests held by the corporation in such other entity constitute all, or substantially all, of the property of the corporation, then the corporation shall consent to such transaction only if the board of directors proposes and the shareholders approve the giving of consent.

(3) For a transaction described in subsection (1) of this section or a consent described in subsection (2) of this section to be approved by the shareholders:

(a) The board of directors shall recommend the transaction or the consent 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 transaction; and

(b) The shareholders entitled to vote on the transaction or the consent shall approve the transaction or the consent as provided in subsection (6) of this section.

(4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.

(5) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the transaction described in subsection (1) of this section or the consent described in subsection (2) of this section, of the shareholders' meeting at which the transaction or the consent will be voted upon. The notice shall:

(a) State that the purpose, or one of the purposes, of the meeting is to consider:

(I) In the case of action pursuant to subsection (1) of this section, the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the corporation; or

(II) In the case of action pursuant to subsection (2) of this section, the corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity (which entity shall be identified in the notice), shares or other interests of which are held by the corporation and constitute all, or substantially all, of the property of the corporation; and

(b) Contain or be accompanied by a description of the transaction, in the case of action pursuant to subsection (1) of this section, or by a description of the transaction underlying the consent, in the case of action pursuant to subsection (2) of this section.

(6) Unless articles 101 to 117 of this title (including the provisions of section 7-117-101 (9)), the articles of incorporation, bylaws adopted by the shareholders, or the board of directors acting pursuant to subsection (4) of this section require a greater vote, the transaction described in subsection (1) of this section or the consent described in subsection (2) of this section shall be approved by each voting group entitled to vote separately on the transaction or consent by a majority of all the votes entitled to be cast on the transaction or the consent by that voting group.

(7) After a transaction described in subsection (1) of this section or a consent described in subsection (2) of this section is authorized, the transaction may be abandoned or the consent withheld or revoked, subject to any contractual rights or other limitations on such abandonment, withholding, or revocation, without further shareholder action.

(8) A transaction that constitutes a distribution is governed by section 7-106-401 and not by this section.

ARTICLE 113

Appraisal Rights

PART 1

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

7-113-101. Definitions. For purposes of this article:

(1) "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. For purposes of section 7-113-102 (2)(d), a person is deemed to be an affiliate of its senior executives.

(2) Deleted by amendment, L. 2019 ____.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 7-113-203 through 7-113-302 and 7-113-401, includes the surviving entity in a merger.

(4) "Fair value" means the value of the corporation's shares determined:

(a) Immediately before the effectuation of the corporate action to which the shareholder objects;

(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 section 7-113-102(1)(e).

(5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the legal rate as specified in section 5-12-101, C.R.S.

(6) "Interested transaction" means a corporate action described in section 7-113-102(1), other than a merger pursuant to section 7-111-104, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

(a) "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(I) Was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(II) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(III) Was a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(A) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action; or

(B) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those

existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 7-108-501; or

(C) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(b) For the purposes of this subsection 7-113-101(6) only, “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 record holder 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. For the purposes of this subsection 7-113-101(6) only, 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.

(c) “Excluded shares” means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(7) “Preferred shares” means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

(8) Deleted by amendment, L. 2019 ____

(9) “Senior executive” means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

(10) Deleted by amendment, L. 2019 ____

7-113-102. Right to appraisal.

(1) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder’s shares in the event of any of the following corporate actions:

(a) Consummation of a merger to which the corporation is a party if:

(I) Shareholder approval is required for the merger by section 7-111-103 and the shareholder is entitled to vote on the merger, 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

(II) The corporation is a subsidiary that is merged with its parent corporation under section 7-111-104;

(b) Consummation of a 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 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;

(c) Consummation of a disposition of assets pursuant to section 7-112-102 (1) if the shareholder is entitled to vote on the disposition;

(d) Consummation of a disposition of assets of an entity controlled by the corporation pursuant to section 7-112-102 (2) if the shareholders of the corporation were entitled to vote on the consent of the corporation to the disposition;

(e) An amendment of the articles of incorporation with respect to a class or series of shares that 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;

(f) 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;

(g) Consummation of a conversion of the corporation to nonprofit status pursuant to 7-90-201; or

(h) Consummation of a conversion of the corporation to an unincorporated entity pursuant to section 7-90-206(2) if the shareholder is entitled to vote on the conversion.

(2) Notwithstanding subsection (1), the availability of appraisal rights under subsections (1)(a), (b), (c), (d), (e), and (h) of this section 7-113-102 shall be limited in accordance with the following provisions:

(a) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(I) A covered security under section 18(b)(1)(A) or (B) of the federal “Securities Act of 1933”; or

(II) Not a covered security but is traded in an organized market and has 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 persons known to the corporation owning more than 10% of such shares); or

(III) 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.

(b) The applicability of subsection (2)(a) of this section 7-113-102 shall be determined as of:

(I) 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

(II) The day before the effective date of such corporate action if there is no meeting of shareholders.

(c) Subsection (2)(a) of this section 7-113-102 shall not be applicable and appraisal rights shall be available pursuant to subsection (1) of this section 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:

(I) Cash, or

(II) 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 subsection (2)(a) at the time the corporate action becomes effective.

(d) Subsection (2)(a) of this section 7-113-102 shall not be applicable and appraisal rights shall be available pursuant to subsection (1) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

(3) Notwithstanding any other provision of this section 7-113-102, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

(4) Deleted by amendment, L. 2019 _____

7-113-103. Assertion of rights by nominees and beneficial owners.

(1) A shareholder may assert appraisal rights as to fewer than all the shares registered in the shareholder's name but owned by a beneficial owner other than the shareholder only if the shareholder objects with respect to all shares of the class or series owned by the beneficial owner and notifies the corporation in writing of the name and address, and federal taxpayer identification number, if any, of each beneficial owner on whose behalf appraisal rights are being asserted. The rights of a shareholder who asserts appraisal rights for only part of the shares held of record in the shareholder's name under this subsection shall be determined as if the shares as to which the shareholder objects and the shareholder's other shares were registered in the names of different shareholders.

(2) A beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the beneficial owner only if such beneficial owner:

(a) Submits to the corporation the shareholder's written consent to the assertion of such rights no later than the date referred to in section 7-113-203(2)(b)(II); and

(b) Does so with respect to all shares of the class or series that are owned by the beneficial owner.

(3) The corporation may require that, when a shareholder objects with respect to the shares of any class or series held by any one or more beneficial owners, each such beneficial owner must certify to the corporation that the beneficial owner and the shareholder or shareholders of all shares of that class or series owned by the beneficial owner have asserted, or will timely assert, such beneficial owner's appraisal rights as to all such shares as to which there is no limitation on the ability to exercise appraisal rights. Any such requirement shall be stated in the notice given pursuant to section 7-113-202.

PART 2

PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

7-113-201. Notice of appraisal rights.

(1) Where any corporate action specified in section 7-113-102 (1) is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that the shareholders are, are not, or may be entitled to assert appraisal rights under this article. If the corporation concludes that appraisal rights are or may be available, a copy of this article must accompany the meeting notice sent to those shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to section 7-111-104, the parent corporation must notify in writing all shareholders of the subsidiary who are entitled to assert appraisal rights that the

corporate action became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in section 7-113-203.

(3) Where any corporate action specified in section 7-113-102 (1) is to be approved by written consent of the shareholders pursuant to section 7-107-104:

(a) Written notice that appraisal rights are, are not or may be available must be given to each 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, must be accompanied by a copy of this article; and

(b) Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by sections 7-107-104 (5.5) may include the materials described in section 7-113-203 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this article.

(4) Where corporate action described in section 7-113-102 (1) is proposed, or a merger pursuant to section 7-111-104 is effected, the notice referred to in subsection (1) or (3), if the corporation concludes that appraisal rights are or may be available, and in subsection (2) of this section 7-113-201 shall be accompanied by:

(a) The annual financial statements specified in section 7-116-105 of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than 16 months before the date of the notice and shall comply with section 7-116-105; provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(b) The latest available quarterly financial statements of such corporation, if any.

(5) The right to receive the information described in subsection (4) of this section 7-113-201 may be waived in writing by a shareholder before or after the corporate action.

7-113-202. Notice of intent to demand payment.

(1) If a proposed corporate action specified in section 7-113-102 (1) is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must deliver to the corporation, before the vote is taken, written notice of the shareholder's intent to demand payment if the proposed corporate action is effectuated; and

(b) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed corporate action.

(2) If a proposed corporate action specified in section 7-113-102 (1) 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 must not execute a consent in favor of the proposed corporate action with respect to that class or series of shares.

(3) A shareholder who fails to satisfy the requirements of subsection (1) or (2) of this section 7-113-202 is not entitled to demand payment under this article.

7-113-203. Appraisal notice and form.

(1) If a proposed corporate action requiring appraisal rights under section 7-113-102 (1) becomes effective, the corporation must deliver a written appraisal notice and form to all shareholders who may be entitled to asset appraisal rights.

(2) The appraisal notice required by subsection (1) of this section must be sent no earlier than the date the corporate action specified in section 7-113-102 (1) became effective, and no later than ten days after such date and must:

(a) Supply a form that

(I) Specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action, and

(II) If such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date, and

(III) Requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction;

(b) State:

(I) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (2)(b)(II) of this section 7-113-203;

(II) A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the section 7-113-203 (1) 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;

(III) The corporation's estimate of the fair value of the shares;

(IV) That, if requested in writing, the corporation will provide, to the shareholder so requesting, within 10 days after the date specified in section 7-113-203 (2)(b)(II) the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

(V) The date by which the notice to withdraw under section 7-113-204 must be received, which date must be within 20 days after the date specified in section 7-113-203 (2)(b)(II); and

(g) Be accompanied by a copy of this article.

7-113-204. Perfection of rights; right to withdraw.

(1) A shareholder receives notice pursuant to section 7-113-203 and who wishes to exercise appraisal rights must sign and return the form sent by the corporation and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 7-113-203 (2)(b)(II). In addition, if applicable, the shareholder must 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 section 7-113-203 (2)(a). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 7-113-206. 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 7-113-204(2).

(2) A shareholder who has complied with subsection (1) of this section 7-113-204 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 section 7-113-203 (2)(b)(V). A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not sign and return the form and, in the case of certified shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in section 7-113-203(2), shall not be entitled to payment under this article.

7-113-205 Payment.

(1) Except as provided in section 7-113-206, within thirty days after the form required by section 7-113-203 (2)(b)(II) is due, the corporation shall pay in cash to those shareholders who complied with section 7-113-204 (1) the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) of this section 7-113-205 must be accompanied by:

(a) (i) the annual financial statements specified in section 7-116-105 of the corporation that issued the shares to be appraised, which shall be of a date ending not more than 16 months before the date of payment; 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;

(b) a statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to section 7-113-203 (2)(b)(III);

(c) a statement that shareholders described in subsection (a) have the right to demand further payment under section 7-113-207 and that if any such shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this article.

7-113-206. After-acquired shares.

(1) The corporation may elect to withhold payment required by section 7-113-205 from 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 notices sent pursuant to section 7-113-203 (2)(a).

(2) If the corporation elected to withhold payment under subsection (1) of this section 7-113-206, it must, within thirty days after the form required by section 7-113-203 (2)(b)(II) is due, notify all shareholders who are described in subsection (1):

(a) Of the information required by section 7-113-205 (2)(a);

(b) Of the corporation's estimate of fair value pursuant to section 7-113-205 (2)(b);

(c) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 7-113-207;

(d) That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within thirty days after receiving the offer; and

(e) That those shareholders who do not satisfy the requirements for demanding appraisal under section 7-113-207 shall be deemed to have accepted the corporation's offer.

(3) Within ten days after receiving the shareholder's acceptance pursuant to subsection (2) of this section 7-113-206, the corporation must pay in cash the amount it offered under section 7-113-206(2)(b) to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within forty days after sending the notice described in subsection (2) of this section 7-113-206, the corporation must pay in cash the amount it offered to pay under section 7-113-206 (2)(b) to each shareholder described in this section 7-113-206.

7-113-207. Procedure if shareholder dissatisfied with payment or offer.

(1) A shareholder paid pursuant to section 7-113-205 who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest (less any payment made under section 7-113-205). A shareholder offered payment under section 7-113-206 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(2) 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 (1) of this section 7-113-207 within thirty days after receiving the corporation's payment or offer of payment under section 7-113-205 or section 7-113-206, 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.

PART 3

JUDICIAL APPRAISAL OF SHARES

7-113-301. Court action.

(1) If a demand for payment under section 7-113-207 remains unresolved, the corporation shall commence a proceeding within sixty 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-day period, it shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 7-113-207 plus interest.

(2) The corporation shall commence the proceeding described in subsection (1) of this section 7-113-301 in the district court for the county in this state in which the street address of the corporation's principal office is located, or, if the corporation has no principal office in this state, in the district court for the county in which the street address of its registered agent is located, or, if the corporation has no registered agent, in the district court for the city and county of Denver. If the corporation is a foreign corporation without a registered agent, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

(3) The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unresolved parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Service on each shareholder demanding appraisal rights shall be by registered or certified mail, to the address stated in such shareholder's payment demand, or if no such address is stated in the payment demand, at the address shown on the corporation's current record of shareholders for the shareholder holding the shares as to which appraisal rights are demanded, or as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section 7-113-301 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them, or in any amendment to such order. The shareholders demanding appraisal right are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(5) Each shareholder made a party to the proceeding commenced under subsection (2) of this section 7-113-301 is entitled to judgment:

(a) For the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation for such shares, or

(b) For the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 7-113-206.

7-113-302. Court costs and expenses.

(1) The court in an appraisal proceeding commenced under section 7-113-301 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 shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(2) The court in an appraisal proceeding may also assess the fees and expenses of the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with sections 7-113-201, 7-113-203, 7-113-205, or 7-113-206; or

(b) Against either the corporation or one or more shareholders 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.

(3) If the court in an appraisal proceeding finds that the expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated, and that such expenses should not be assessed against the corporation, the court may direct that such expenses be paid out of the amounts awarded to the shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to sections 7-113-205, 7-113-206, or 7-113-207, 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 including reasonable attorneys' fees.

Part 4

OTHER REMEDIES

§ 7-113-401. Other remedies limited.

(1) The legality of a proposed or completed corporate action described in section 7-113-102 (1) 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.

(2) Subsection (1) of this section 7-113-401 does not apply to a corporate action that:

(a) Was not authorized and approved in accordance with the applicable provisions of:

(I) Articles 109, 110, 111, or 112 of this title 7,

(II) The articles of incorporation or bylaws, or

(III) The resolution of the board of directors authorizing the corporate action;

(b) 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;

(c) Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section 7-108-501 and has been approved by the shareholders in the same manner as is provided in section 7-108-501, as if the interested transaction were a director's conflicting interest transaction; or

(d) Is approved by less than unanimous consent of the voting shareholders pursuant to section 7-107-104 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 days before the corporate action was effected; and

(II) The proceeding challenging the corporate action is commenced within ten days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

ARTICLE 114

Dissolution

PART 1

VOLUNTARY DISSOLUTION

7-114-101. Authorization of dissolution before issuance of shares. If a corporation has not yet issued shares, a majority of its directors or, if no directors have been elected, a majority of its incorporators may authorize the dissolution of the corporation.

7-114-102. Authorization of dissolution after issuance of shares. (1) After shares have been issued, dissolution of a corporation may be authorized in the manner provided in subsection (2) of this section.

(2) For a proposal to dissolve the corporation to be authorized:

(a) The board of directors shall adopt the proposal to dissolve;

(b) The board of directors shall recommend the proposal to dissolve 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

(c) The shareholders entitled to vote on the proposal to dissolve shall approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition the effectiveness of the dissolution on any basis.

(4) The corporation shall give notice, in accordance with section 7-107-105, to each shareholder entitled to vote on the proposal of the shareholders' meeting at which the proposal to dissolve will be voted upon. The notice shall state that the purpose, or one of the purposes, of the

meeting is to consider the proposal to dissolve the corporation, and the notice shall contain or be accompanied by a copy of the proposal or a summary thereof.

(5) Unless articles 101 to 117 of this title (including the provisions of section 7-117-101 (10)), the articles of incorporation, bylaws adopted by the shareholders, or the board of directors acting pursuant to subsection (3) of this section require a greater vote, the proposal to dissolve shall be approved by each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast on the proposal by that voting group.

7-114-102.5. Dissolution upon expiration of period of duration. (1) A corporation shall be dissolved upon and by reason of the expiration of its period of duration, if any, stated in its articles of incorporation.

(2) A provision in the articles of incorporation to the effect that the corporation or its existence shall be terminated at a stated date or after a stated period of time or upon a contingency, or any similar provision, shall be deemed to be a provision for a period of duration within the meaning of this section, and the occurrence of such date, the expiration of the stated period of time, the occurrence of such contingency, or the satisfaction of such provision shall be deemed to be the expiration of the corporation's period of duration for purposes of this section.

7-114-103. Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state, for filing pursuant to part 3 of article 90 of this title, articles of dissolution stating:

- (a) The domestic entity name of the corporation;
- (b) The principal office address of the corporation's principal office; and
- (c) That the corporation is dissolved.
- (d) to (f) (Deleted by amendment, L. 2004, p. 1506, § 280, effective July 1, 2004.)
- (2) A corporation is dissolved upon the effective date of its articles of dissolution.
- (3) Repealed.

(4) Articles of dissolution need not be filed by a corporation that is dissolved pursuant to section 7-114-102.5.

7-114-103.5. Name of dissolved corporation - repeal. (Repealed)

7-114-104. Revocation of dissolution. (Repealed)

7-114-105. Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any business except as is appropriate to wind up and liquidate its business and affairs, including:

- (a) Collecting its assets;
- (b) Disposing of its properties that will not be distributed in kind to its shareholders;
- (c) Discharging or making provision for discharging its liabilities;
- (d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

- (a) Transfer title to the corporation's property;
- (b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in article 108 of this title;

(d) 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 or its articles of incorporation;

(e) Prevent commencement of a proceeding by or against the corporation in its name; or

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

(3) A dissolved corporation may dispose of claims against it pursuant to sections 7-90-911 and 7-90-912.

7-114-106. Disposition of known claims by notification. (Repealed)

7-114-107. Disposition of claims by publication. (Repealed)

7-114-108. Enforcement of claims against dissolved corporation. (Repealed)

7-114-109. Service on dissolved corporation - repeal. (Repealed)

PART 2

ADMINISTRATIVE DISSOLUTION

7-114-201. Grounds for administrative dissolution. (Repealed)

7-114-202. Procedure for and effect of administrative dissolution. (Repealed)

7-114-203. Reinstatement following administrative dissolution - repeal. (Repealed)

7-114-204. Appeal from denial of reinstatement - repeal. (Repealed)

PART 3

JUDICIAL DISSOLUTION

7-114-301. Grounds for judicial dissolution. (1) A corporation may be dissolved 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.

(2) A corporation may be dissolved 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 consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

(d) The corporate assets are being misapplied or wasted; or

(e) The corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(3) A corporation may be dissolved 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 has been returned unsatisfied, and the corporation is insolvent; or

(b) The corporation is insolvent and the corporation has admitted in writing that the creditor's claim is due and owing.

(4) (a) If a corporation has been dissolved by voluntary action taken under part 1 of this article:

(I) The corporation may bring a proceeding to wind up and liquidate its business and affairs under judicial supervision in accordance with section 7-114-302; and

(II) The attorney general, a shareholder, or a creditor, as the case may be, may bring a proceeding to wind up and liquidate the business and affairs of the corporation under judicial supervision in accordance with section 7-114-302, upon establishing the grounds set forth for such person, respectively, in subsections (1) to (3) of this section.

(b) As used in sections 7-114-302 to 7-114-304, a "proceeding to dissolve a corporation" includes a proceeding brought under this subsection (4), and a "decree of dissolution" includes an order of court entered in a proceeding under this subsection (4) which directs that the business and affairs of a corporation shall be wound up and liquidated under judicial supervision.

(5) Subsections (2)(a) through (2)(e) of this section 7-114-301 shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has a class or series of shares which is:

(a) A covered security under section 18(b)(1)(A) or (B) of the federal "Securities Act of 1933"; or

(b) Not a covered security, but is traded in an organized market has 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 persons known to the corporation 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.

7-114-302. Procedure for judicial dissolution. (1) A proceeding by the attorney general to dissolve a corporation shall be brought in the district court for the county in this state in which the street address of the corporation's principal office or the street address of its registered agent is located or, if the corporation has no principal office in this state and no registered agent, in the district court for the city and county of Denver. A proceeding brought by any other party named in section 7-114-301 shall be brought in the district court for the county in this state in which the street address of the corporation's principal office is located or, if it has no principal office in this state, in the district court for the county in which the street address of its registered agent is located, or, if the corporation has no registered agent, in the district court for the city and county of Denver.

(2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) 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.

(4) Within ten days of the commencement of a proceeding to dissolve a corporation under section 7-114-301(2), 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 section 7-114-305 and accompanied by a copy of section 7-114-305.

7-114-303. Receivership or custodianship. (1) Unless an election to purchase has been filed under section 7-114-305, a court in a judicial proceeding to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after giving notice to 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 jurisdiction over the corporation and all of its property, wherever located.

(2) The court may appoint an individual, a domestic entity, or a foreign entity authorized to transact business or conduct activities 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.

(3) 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:

(a) The receiver:

(I) May dispose of all or any part of the property 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 of the corporation in all courts; or

(b) 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.

(4) 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 and its shareholders and creditors.

(5) 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 such person's counsel from the assets of the corporation or proceeds from the sale of the assets.

7-114-304. Decree of dissolution. (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in section 7-114-301 exist, it may enter a decree dissolving the corporation and stating 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 for filing pursuant to part 3 of article 90 of this title.

(2) 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 section 7-114-105 and the giving of notice to claimants in accordance with sections 7-90-911 and 7-90-912.

(3) The court's order or decision may be appealed as in other civil proceedings.

7-114-305. Election To Purchase In Lieu Of Dissolution. (1) In a proceeding under section 7-114-301(2) to dissolve a corporation, unless otherwise provided in the articles of incorporation or bylaws of the corporation, the corporation may elect or, if it fails to elect, one 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.

(2) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under section 7-114-301(2) or at such later

time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten 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 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 participate in the 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 or more shareholders, the proceeding under section 7-114-302(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her 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.

(3) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and 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.

(4) If the parties are unable to reach an agreement as provided for in subsection (3) of this section, the court, upon application of any party, shall stay the section 7-114-302 proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under section 7-114-302 was filed or as of such other date as the court deems appropriate under the circumstances.

(5) 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 interests of equity, provision for security to assure payment of the purchase price and any additional expenses as may have been awarded, and, if the shares are to be purchased by 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 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 subsection (b) or (d) of section 7-114-301(2), it may award expenses to the petitioning shareholder.

(6) Upon entry of an order under subsections (3) or (5) of this section, the court shall dismiss the petition to dissolve the corporation under section 7-114-302, 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 by the order of the court which shall be enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) of this section shall be made within ten 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 sections 7-114-102 and 7-114-103, which articles must then be adopted and filed within fifty days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of sections 7-90-910 through 7-90-914, and the order entered pursuant to subsection (5) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder expenses in accordance with the provisions of the last sentence of subsection (5) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under subsections (3) or (5) of this section, other than an award of expenses pursuant to subsection (5) of this section, is subject to the provisions of section 7-106-409.

PART 4

MISCELLANEOUS

7-114-401. 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 legally competent to receive them shall be reduced to cash and deposited with the state treasurer as property presumed to be abandoned under the provisions of article 13 of title 38, C.R.S.

ARTICLE 115

Foreign Corporations

7-115-101. Authority to transact business or conduct activities required. Part 8 of article 90 of this title, providing for the transaction of business or the conduct of activities by foreign entities, applies to foreign corporations.

ARTICLE 116

Records, Information, and Reports

7-116-101. Corporate records. (1) 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, 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, and a record of all waivers of notices of meetings of shareholders and of the board of directors or any committee of the board of directors.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of the names and addresses of its shareholders, in a form that permits preparation of a list of shareholders that is arranged by voting group and within each voting group by class or series of shares, that is alphabetical within each class or series, and that shows the address of, and the number of shares of each class and series held by, each shareholder.

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

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

(a) Its articles of incorporation;

(b) Its bylaws;

(c) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(d) All written communications within the past three years to shareholders as a group or to the holders of any class or series of shares as a group;

(e) A list of the names and business addresses of its current directors and officers;

(f) A copy of its most recent periodic report pursuant to part 5 of article 90 of this title; and

(g) All financial statements prepared for periods ending during the last three years that a shareholder could have requested under section 7-116-105.

7-116-102. Inspection of corporate records by shareholder. (1) A shareholder 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 section 7-116-101 (5) if the shareholder gives the corporation written demand at least five business days before the date on which the shareholder wishes to inspect and copy such records.

(2) In addition to the rights set forth in subsection (1) of this section, a shareholder is entitled to inspect and copy, during regular business hours at a reasonable location stated by the

corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written demand at least five business days before the date on which the shareholder wishes to inspect and copy such records:

(a) Excerpts from minutes of any meeting of the board of directors or from records of any action taken by the board of directors without a meeting, minutes of any meeting of the shareholders or records of any action taken by the shareholders without a meeting, excerpts of 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, and waivers of notices of any meeting of the shareholders or the board of directors or any committee of the board of directors;

(b) Accounting records of the corporation; and

(c) The record of shareholders described in section 7-116-101 (3).

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) The shareholder has been a shareholder for at least three months immediately preceding the demand to inspect or copy or is a shareholder of at least five percent of all of the outstanding shares of any class of shares of the corporation as of the date the demand is made;

(b) The demand is made in good faith and for a proper purpose;

(c) The shareholder describes with reasonable particularity the purpose and the records the shareholder desires to inspect; and

(d) The records are directly connected with the described purpose.

(4) For purposes of this section:

(a) "Proper purpose" means a purpose reasonably related to the demanding shareholder's interest as a shareholder; and

(b) "Shareholder" includes a beneficial owner.

(5) The right of inspection granted by this section may not be abolished or limited by the articles of incorporation or bylaws.

(6) This section does not affect:

(a) The right of a shareholder to inspect records under section 7-107-201;

(b) The right of a shareholder to inspect records to the same extent as any other litigant if the shareholder is in litigation with the corporation; or

(c) The power of a court, independent of articles 101 to 117 of this title, to compel the production of corporate records for examination.

7-116-103. Scope of shareholder's inspection right. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder.

(2) The right to copy records under section 7-116-102 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) Except as provided in section 7-116-106, 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 and reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 7-116-102 (2)(c) by furnishing to the shareholder a list of shareholders that complies with section 7-116-101 (3) and was compiled no earlier than the date of the shareholder's demand.

7-116-104. Court-ordered inspection of corporate records. (1) If a corporation refuses to allow a shareholder, or the shareholder's agent or attorney, who complies with section 7-116-102 (1) to inspect or copy any records that the shareholder is entitled to inspect or copy by said section, the district court for the county in this state in which the street address of the corporation's principal office is located or, if the corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located or, if the corporation has no registered agent, the district court for the city and county of Denver may, on application of the shareholder, summarily order the inspection or copying of the records demanded at the corporation's expense.

(2) If a corporation refuses to allow a shareholder, or the shareholder's agent or attorney, who complies with section 7-116-102 (2) and (3) to inspect or copy any records that the shareholder is entitled to inspect or copy by section 7-116-102 (2) and (3) within a reasonable time following the shareholder's demand, the district court for the county in this state in which the street address of the corporation's principal office is located or, if the corporation has no principal office in this state, the district court for the county in which the street address of its registered agent is located or, if the corporation has no registered agent, the district court for the city and county of Denver may, on application of the shareholder, summarily order the inspection or copying of the records demanded.

(3) If a court orders inspection or copying of the records demanded, unless the corporation proves that it refused inspection or copying in good faith because it had a reasonable basis for doubt about the right of the shareholder or the shareholder's agent or attorney to inspect or copy the records demanded:

(a) The court shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order;

(b) The court may order the corporation to pay the shareholder for any damages the shareholder incurred;

(c) If inspection or copying is ordered pursuant to subsection (2) of this section, the court may order the corporation to pay the shareholder's inspection and copying expenses; and

(d) The court may grant the shareholder any other remedy provided by law.

(4) If a court orders inspection or copying of records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

7-116-105. Financial statements. Upon the written request of any shareholder, a corporation shall mail to such shareholder its most recent annual financial statements, if any, and its most recently published financial statements, if any, showing in reasonable detail its assets and liabilities and results of its operations.

7-116-106. Information respecting shares. Upon the written request of any shareholder, a corporation shall mail to such shareholder, at the corporation's expense, the information specified by section 7-106-206 (4), whether or not such information is also contained or summarized on any share certificate of the shareholder.

7-116-107. Periodic report to secretary of state. Part 5 of article 90 of this title, providing for periodic reports from reporting entities, applies to domestic corporations and applies to foreign corporations that are authorized to transact business or conduct activities in this state.

7-116-108. Statement of person named as director or officer. (Repealed)

7-116-109. Interrogatories by secretary of state. (Repealed)

ARTICLE 117

Transition Provisions

7-117-101. Application to existing corporations. (1) For purposes of this article, "existing corporation" means any domestic corporation that was in existence on June 30, 1994, and that was incorporated under any general statute of this state providing for incorporation of corporations for profit if the power to amend or repeal the statute under which the corporation was incorporated was reserved.

(2) Articles 101 to 117 of this title apply to all existing corporations.

(3) Except to the extent the articles of incorporation of an existing corporation limit or deny preemptive rights, shareholders of such corporation shall have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares; except that, unless otherwise provided in the articles of incorporation, such preemptive rights shall not exist:

(a) To acquire any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and not inconsistent with a plan theretofore approved by such a vote of shareholders; or

(b) To acquire any shares sold otherwise than for cash.

(4) Notwithstanding the provisions of subsection (3) of this section, unless the articles of incorporation of an existing corporation provide otherwise:

(a) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right;

(b) Holders of shares of common stock shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations unless such shares are convertible into shares of common stock or carry a right to subscribe to or acquire shares of common stock; and

(c) Holders of common stock without voting powers shall have no preemptive right to shares of common stock with voting power.

(5) To the extent that preemptive rights exist pursuant to subsections (3) and (4) of this section, the preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

(6) Nothing in subsections (3) and (4) of this section shall confer any preemptive right with respect to shares of a corporation incorporated before January 1, 1959, that have been or may be issued and subsequently acquired by such corporation and that have not been cancelled or restored to the status of authorized but unissued shares. Any such shares in existence on June 30, 1994, or acquired thereafter by any such corporation shall not be deemed to be restored to the status of authorized but unissued shares, for purposes of this subsection (6) only, notwithstanding the provisions of section 7-106-302.

(7) Unless the articles of incorporation of an existing corporation contain a provision establishing the vote of shareholders required to amend the articles of incorporation, as contemplated in section 7-110-103, such amendment shall be approved by each voting group entitled to vote separately on the amendment by two-thirds of all the votes entitled to be cast on the amendment by that voting group.

(8) Unless the articles of incorporation of an existing corporation contain a provision establishing the vote of shareholders required to approve a plan of merger or a plan of share exchange, as contemplated in section 7-111-103, such plan shall be approved by each voting group entitled to vote separately on the plan by two-thirds of all the votes entitled to be cast on the plan by that voting group. In the case of a corporation incorporated before July 1, 1978, each outstanding share of the corporation, other than a redeemable share that is not entitled to vote by reason of section 7-107-202 (4), shall be entitled to vote on the plan of merger or share exchange whether or not such share has voting rights under the provisions of the articles of incorporation, unless the articles of incorporation have been amended after June 30, 1978, by the same vote of shareholders which would have been necessary at the time of the amendment to approve the plan, so as to restrict or eliminate the right of such share to vote on such plan.

(9) Unless the articles of incorporation of an existing corporation contain a provision establishing the vote of shareholders required to approve a transaction involving a sale, lease, exchange, or other disposition of all, or substantially all, of its property, with or without its good will, otherwise than in the usual and regular course of business, as contemplated in section 7-112-102 (1), such transaction shall be approved by each voting group entitled to vote separately on the transaction by two-thirds of all the votes entitled to be cast on the transaction by that voting group.

(10) Unless the articles of incorporation of an existing corporation contain a provision establishing the vote of shareholders required to approve a proposal to dissolve the corporation as contemplated in section 7-114-102, such proposal shall be approved by each voting group entitled to vote separately on the proposal by two-thirds of all the votes entitled to be cast on the proposal by that voting group. In the case of a corporation incorporated before July 1, 1978, each outstanding share of the corporation, other than a redeemable share that is not entitled to vote by reason of section 7-107-202 (4), shall be entitled to vote on a proposal to dissolve the corporation whether or not such share has voting rights under the provisions of the articles of incorporation, unless the articles of incorporation have been amended after June 30, 1978, by the same vote of shareholders which would have been necessary at the time of the amendment to approve the proposal, so as to restrict or eliminate the right of such share to vote on such proposal.

(11) An amendment to the articles of incorporation of an existing corporation to reduce the vote required to take any action specified in subsections (7) to (10) of this section, which amendment may not reduce the required vote to less than that which would be required to take the action if the action were to be taken by a corporation formed on or after July 1, 1994, shall be adopted by the same vote and voting groups required to take the action specified in said subsections (7) to (10).

7-117-102. Application to foreign corporations. A foreign corporation authorized to transact business or conduct activities in this state on **June 30, 1994**, is subject to articles 101 to 117 of this title but is not required to obtain new authorization to transact business or conduct activities under said articles.

7-117-103. Saving provisions. (1) Except as provided in subsection (2) of this section, the repeal of any provision of the "Colorado Corporation Code", articles 1 to 10 of this title, does not affect:

- (a) The operation of the statute, or any action taken under it, before its repeal;
- (b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the provision before its repeal;
- (c) Any violation of the provision, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or
- (d) Any proceeding, reorganization, or dissolution commenced under the provision before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the provision as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of any provision of the "Colorado Corporation Code", articles 1 to 10 of this title, is reduced by articles 101 to 117 of this title, the penalty or punishment, if not already imposed, shall be imposed in accordance with said articles 101 to 117.

7-117-104. Severability. If any provision of articles 101 to 117 of this title or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of said articles that can be given effect without the invalid provision or application, and to this end the provisions of said articles are severable.

7-117-105. Effective date. The amendments to Articles 101 to 117 of this title are effective **July 1, 2020**.

SECTION 2. Act subject to petition - effective date applicability. (1) This act takes effect July 1, 2020; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2019 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.