

JOURNAL OF THE HOUSE

NINETY-FIRST SESSION

TWENTY-FIFTH DAY

STATE OF SOUTH DAKOTA
House of Representatives, Pierre
Monday, February 22, 2016

The House convened at 2:00 p.m., pursuant to adjournment, the Speaker presiding.

The prayer was offered by the Chaplain, Pastor J.P. Mosley, Jr., followed by the Pledge of Allegiance led by House pages Kayla Bailly and Wyatt Beyer.

Roll Call: All members present except Reps. Kaiser and Verchio who were excused.

APPROVAL OF THE JOURNAL

MR. SPEAKER:

The Committee on Legislative Procedure respectfully reports that the Chief Clerk of the House has had under consideration the House Journal of the twenty-fourth day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,
Dean Wink, Chair

Which motion prevailed.

1 The oath of office was administered by Speaker Wink to the following named pages:

2 Kayla Bailly, Wyatt Beyer, Levi Czmowski, Layna Darling, Cameron Decker, Andrew
3 Flannery, Jacob Huber, Madison Jones, Hannah Kilker, Shaun Maher, Luke Mairose, Joseph
4 Miller, Staci Seaman, Ashley Van Meeteren.

5 Which was subscribed to and placed on file in the office of the Secretary of State.

6 **REPORTS OF STANDING COMMITTEES**

7 MR. SPEAKER:

8 The Joint Committee on Appropriations respectfully reports that it has had under
9 consideration HB 1130 which was tabled.

10 Respectfully submitted,
11 Justin R. Cronin, Co-Chair

12 Also MR. SPEAKER:

13 The Committee on Commerce and Energy respectfully reports that it has had under
14 consideration SB 38 and returns the same with the recommendation that said bill do pass and
15 be placed on the consent calendar.

16 Also MR. SPEAKER:

17 The Committee on Commerce and Energy respectfully reports that it has had under
18 consideration HB 1242 and returns the same with the recommendation that said bill be amended
19 as follows:

20 1242ya

21 On page 1 of the printed bill, delete lines 13 and 14.

22 On page 2, delete lines 1 to 11, inclusive.

23 And that as so amended said bill do pass.

1 Also MR. SPEAKER:

2 The Committee on Commerce and Energy respectfully reports that it has had under
3 consideration HB 1246 which was tabled.

4 Respectfully submitted,
5 Tim Rounds, Chair

6 Also MR. SPEAKER:

7 The Committee on State Affairs respectfully reports that it has had under consideration
8 HB 1143, 1144, and 1145 and HJR 1002 and returns the same with the recommendation that
9 said bills and resolution do pass.

10 Also MR. SPEAKER:

11 The Committee on State Affairs respectfully reports that it has had under consideration
12 HB 1234 and returns the same with the recommendation that said bill be amended as follows:

13 1234ra

14 On page 1, line 7, of the printed bill, after "regarding" insert "expanded programs or
15 expanded".

16 On page 1, line 8, after "entitlements" insert "requiring an expenditure of funds equal to
17 or greater than five percent of the Department of Social Services and Department of Human
18 Services combined total Medicaid expenditures for the most recently completed fiscal year".

19 1234ota

20 On page 1, line 2, of the printed bill, delete "any" and insert "certain".

21 And that as so amended said bill do pass.

22 Also MR. SPEAKER:

23 The Committee on State Affairs respectfully reports that it has had under consideration
24 HCR 1014 and returns the same with the recommendation that said resolution be adopted.

25 Also MR. SPEAKER:

26 The Committee on State Affairs respectfully reports that it has had under consideration
27 HB 1241 and 1247 which were tabled.

1 Also MR. SPEAKER:

2 The Committee on State Affairs respectfully reports that it has had under consideration
3 HJR 1001 which was deferred to the 41st Legislative Day.

4 Respectfully submitted,
5 Brian G. Gosch, Chair

6 Also MR. SPEAKER:

7 The Committee on Judiciary respectfully reports that it has had under consideration
8 HB 1139 and returns the same with the recommendation that said bill do pass and be placed on
9 the consent calendar.

10 Also MR. SPEAKER:

11 The Committee on Judiciary respectfully reports that it has had under consideration
12 HB 1068 and returns the same with the recommendation that said bill be amended as follows:

13 1068ra

14 On the printed bill, delete everything after the enacting clause and insert:

15 " Section 1. That the code be amended by adding a NEW SECTION to read:

16 This chapter shall be known and may be cited as the South Dakota Revised Model Nonprofit
17 Corporations Act.

18 Section 2. That the code be amended by adding a NEW SECTION to read:

19 The Office of the Secretary of State shall accept for filing any document satisfying the
20 following requirements, and the requirements of any other section of this Act that adds to or
21 varies these requirements:

22 (1) The document is required or permitted to be filed in the Office of the Secretary of
23 State;

24 (2) The document contains the information required by this Act;

25 (3) The document is typewritten or printed or, if electronically transmitted, is in a format
26 that can be retrieved or reproduced in typewritten or printed form;

27 (4) The document is in the English language. A nonprofit corporate name need not be in
28 English if written in English letters or in English letters in combination with Arabic
29 or Roman numerals. The certificate of existence required of foreign corporations

1 need not be in English if accompanied by a reasonably authenticated English
2 translation;

3 (5) The document is executed by one of the following persons:

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

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

8 (iii) If the nonprofit corporation is in the hands of a receiver, trustee, or other
9 court-appointed fiduciary, by that receiver, trustee, or court-appointed
10 fiduciary;

11 (6) The person executing the document has signed it and has stated beneath or opposite
12 the signature the person's name and the capacity in which the person signs. The
13 document may, but need not, contain a corporate seal, attestation, acknowledgment,
14 or verification;

15 (7) If the Office of the Secretary of State prescribes a mandatory form for the document
16 under section 3 of this Act, the document is in or on the prescribed form;

17 (8) The document is delivered to the Office of the Secretary of State for filing. Delivery
18 may be made by electronic transmission if and to the extent permitted by the Office
19 of the Secretary of State. If the document is filed in typewritten or printed form and
20 not transmitted electronically, the Office of the Secretary of State may require one
21 exact or conformed copy to be delivered with the document; and

22 (9) When the document is delivered to the Office of the Secretary of State for filing, the
23 correct filing fee, and any license fee, or penalty required to be paid at that time by
24 sections 2 to 20, inclusive, of this Act, or other law is paid or provision for payment
25 made in a manner permitted by the Office of the Secretary of State.

26 Section 3. That the code be amended by adding a NEW SECTION to read:

27 The Office of the Secretary of State may prescribe and furnish, on request, forms for:

28 (1) An application for a certificate of existence;

29 (2) A foreign nonprofit corporation's application for a certificate of authority to conduct
30 activities in this state;

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

32 (4) The annual report.

1 The Office of the Secretary of State may require the use of the forms described in this
2 section. The Office of the Secretary of State may prescribe and furnish, on request, forms for
3 other documents required or permitted to be filed by this Act but the use of such forms is not
4 mandatory.

5 Section 4. That the code be amended by adding a NEW SECTION to read:

6 (a) The Office of the Secretary of State shall collect the following fees when the documents
7 described in this section are delivered for filing:

8 (1) Articles of incorporation for nonprofit, \$75;

9 (2) Application for use of indistinguishable name, \$10;

10 (3) Application for reserved name, \$25;

11 (4) Notice of transfer of reserved name, \$15;

12 (5) Application for registered name, \$25;

13 (6) Application for renewal of registered name, \$15. A renewal application may be filed
14 between the first day of October and the thirty-first day of December in each year and
15 shall extend the registration for the following year;

16 (7) Articles of domestication, \$30;

17 (8) Articles of charter surrender, \$30;

18 (9) Articles of domestication and conversion, \$30;

19 (10) Articles of entity conversion, \$30;

20 (11) Amendment of articles of incorporation, \$30;

21 (12) Restatement of articles of incorporation, \$15;

22 (13) Articles of merger or membership exchange, \$30;

23 (14) Articles of dissolution, \$5;

24 (15) Articles of revocation of dissolution, \$5;

25 (16) Certificate of administrative dissolution, no charge;

26 (17) Application for reinstatement following administrative dissolution, plus any
27 delinquent annual report filing fees for the period prior to the reinstatement
28 application, \$50 plus fees;

- 1 (18) Certificate of reinstatement, no charge;
- 2 (19) Certificate of judicial dissolution, no charge;
- 3 (20) Application for certificate of authority, \$125;
- 4 (21) Application for amended certificate of authority, \$30;
- 5 (22) Application for certificate of withdrawal, \$5;
- 6 (23) Application for transfer of authority, \$10;
- 7 (24) Certificate of revocation of authority to conduct activities, no charge;
- 8 (25) Annual report, \$25;
- 9 (26) Articles of correction, \$15;
- 10 (27) Application for certificate of existence or authorization, \$20;
- 11 (28) Any other document required or permitted to be filed by this chapter, \$10.

12 (b) The Office of the Secretary of State shall collect a fee of thirty dollars each time process
13 is served on the Office of the Secretary of State under sections 2 to 20, inclusive, of this Act.
14 The party to a proceeding causing service of process is entitled to recover this fee as costs if the
15 party prevails in the proceeding.

16 (c) The Office of the Secretary of State shall collect the following fees for copying and
17 certifying the copy of any filed document relating to a domestic or foreign corporation:

- 18 (1) Two dollars a page for copying;
- 19 (2) Twenty dollars for copying microfiche archived documents for a single nonprofit
20 corporation; and
- 21 (3) Fifteen dollars for the certificate of certification.

22 Section 5. That the code be amended by adding a NEW SECTION to read:

23 (a) Except as provided in paragraph (b) and section 6 of this Act, a document accepted for
24 filing is effective:

- 25 (1) At the date and time of filing, as evidenced by such means as the Office of the
26 Secretary of State may use for the purpose of recording the date and time of filing;
27 or
- 28 (2) At the time specified in the document as its effective time on the date it is filed.

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

6 Section 6. That the code be amended by adding a NEW SECTION to read:

7 (a) A domestic or foreign corporation may correct a document filed by the Office of the
8 Secretary of State if any of the following occur:

9 (1) The document contains an inaccuracy;

10 (2) The document was defectively executed, attested, sealed, verified, or acknowledged;
11 or

12 (3) The electronic transmission was defective.

13 (b) A document is corrected:

14 (1) By preparing articles of correction that:

15 (i) Describe the document, including its filing date, or attach a copy of it to the
16 articles;

17 (ii) Specify the inaccuracy or defect to be corrected; and

18 (iii) Correct the inaccuracy or defect; and

19 (2) By delivering the articles to the Office of the Secretary of State for filing.

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

23 Section 7. That the code be amended by adding a NEW SECTION to read:

24 If a document delivered to the Office of the Secretary of State for filing satisfies the
25 requirements of section 2 of this Act, the Office of the Secretary of State shall file it. The Office
26 of the Secretary of State files a document by recording it as filed on the date and time of receipt.
27 After filing a document, the Office of the Secretary of State shall deliver to the domestic or
28 foreign nonprofit corporation or its representative a receipt with an acknowledgment of the date
29 and time of filing.

30 If the Office of the Secretary of State refuses to file a document, the Office of the Secretary
31 of State shall return it to the domestic or foreign nonprofit corporation or its representative
32 within five days after the document is delivered, together with a brief, written explanation of
33 the reason for the refusal.

1 The Office of the Secretary of State's duty to file documents under this section is ministerial.
2 The Office of the Secretary of State's filing or refusing to file a document does not:

- 3 (1) Affect the validity or invalidity of the document in whole or part;
- 4 (2) Relate to the correctness or incorrectness of information contained in the document;
5 or
- 6 (3) Create a presumption that the document is valid or invalid or that information
7 contained in the document is correct or incorrect.

8 Section 8. That the code be amended by adding a NEW SECTION to read:

9 If the Office of the Secretary of State refuses to file a document delivered to the Office of
10 the Secretary of State for filing, the domestic or foreign nonprofit corporation may appeal the
11 refusal within thirty days after the return of the document to the circuit court of the county where
12 the corporation's principal office is located in this state or, if none in this state, to the circuit
13 court of Hughes County. The appeal is commenced by petitioning the court to compel filing the
14 document and by attaching to the petition the document and the Office of the Secretary of State's
15 explanation of the refusal to file.

16 The court may summarily order the Office of the Secretary of State to file the document or
17 take other action the court considers appropriate. The court's final decision may be appealed as
18 in other civil proceedings.

19 Section 9. That the code be amended by adding a NEW SECTION to read:

20 Any certificate from the Office of the Secretary of State delivered with a copy of a document
21 filed by the Office of the Secretary of State, is conclusive evidence that the original document
22 is on file with the Office of the Secretary of State.

23 Section 10. That the code be amended by adding a NEW SECTION to read:

24 Any person may apply to the Office of the Secretary of State to furnish a certificate of
25 existence for a domestic nonprofit corporation or a certificate of authorization for a foreign
26 nonprofit corporation. A certificate of existence or authorization shall set forth:

- 27 (1) The domestic nonprofit corporation's corporate name or the foreign nonprofit
28 corporation's corporate name used in this state;
- 29 (2) That the domestic nonprofit corporation is duly incorporated under the law of this
30 state, the date of its incorporation, and the period of its duration if less than perpetual;
31 or that the foreign nonprofit corporation is authorized to conduct activities in this
32 state;
- 33 (3) That all fees, taxes, and penalties owed to this state have been paid, if:
34 (i) Payment is reflected in the records of the Office of the Secretary of State; and

- 1 (ii) Nonpayment affects the existence or authorization of the domestic or foreign
2 nonprofit corporation;
- 3 (4) That its most recent annual report has been delivered to the Office of the Secretary
4 of State;
- 5 (5) That articles of dissolution have not been filed; and
- 6 (6) Other facts of record in the Office of the Secretary of State that may be requested by
7 the applicant.

8 Subject to any qualification stated in the certificate, a certificate of existence or authorization
9 issued by the Office of the Secretary of State may be relied upon as conclusive evidence that the
10 domestic or foreign nonprofit corporation is in existence or is authorized to conduct activities
11 in this state.

12 Section 11. That the code be amended by adding a NEW SECTION to read:

13 No person may sign a document, paper form or electronically, knowing it is false in any
14 material respect with intent that the document be delivered to the Office of the Secretary of State
15 for filing. An offense under this section is subject to an administrative penalty assessed by the
16 Office of the Secretary of State in any amount not exceeding five hundred dollars.

17 Section 12. That the code be amended by adding a NEW SECTION to read:

18 The Office of the Secretary of State has the power and authority reasonably necessary to
19 perform the duties required of Office of the Secretary of State by this Act.

20 Section 13. That the code be amended by adding a NEW SECTION to read:

21 Terms used in this Act mean:

22 (1) "Articles" or "articles of incorporation," the original articles of incorporation or
23 articles of organization, all amendments thereof, and any other record filed with the
24 Office of the Secretary of State with respect to a domestic nonprofit corporation
25 under any provision of this Act. If any record filed under this Act restates the articles
26 in their entirety, thenceforth the articles may not include any prior filings;

27 (2) "Board" or "board of directors," the group of individuals responsible for the
28 management of the activities and affairs of the nonprofit corporation, regardless of
29 the name used to refer to the group. The term includes a designated body to the
30 extent:

31 (i) The powers, functions, or authority of the board are vested in, or are exercised
32 by, the designated body; and

33 (ii) The provision of this Act in which the term appears is relevant to the discharge
34 by the designated body of its powers, functions, or authority;

- 1 (3) "Business corporation" or "domestic business corporation," a corporation
2 incorporated or limited liability company organized under the laws of this state and
3 subject to the provisions of the business corporation act or limited liability company
4 act;
- 5 (4) "Bylaws," the code or codes of rules, other than the articles of incorporation, adopted
6 for the regulation and governance of the internal affairs of the nonprofit corporation,
7 regardless of the name used to refer to those rules;
- 8 (5) "Charitable corporation," a domestic nonprofit corporation that is operated primarily
9 or exclusively for one or more charitable purposes;
- 10 (6) "Charitable purpose," a purpose that:
- 11 (i) Would make a corporation operated exclusively for that purpose eligible to be
12 exempt from taxation under section 501(c)(3) or (4) of the Internal Revenue
13 Code; or
- 14 (ii) Is considered charitable under law other than this Act or the Internal Revenue
15 Code;
- 16 (7) "Corporation," "domestic corporation," "domestic nonprofit corporation," or
17 "nonprofit corporation," a corporation incorporated or limited liability company
18 organized pursuant to or subject to the provisions of this Act that is not a foreign
19 corporation;
- 20 (8) "Delegate," a person elected or appointed to vote in a representative assembly for the
21 election of directors or on other matters;
- 22 (9) "Deliver" or "delivery," any method of delivery used in conventional commercial
23 practice, including delivery by hand, mail, commercial delivery, and electronic
24 transmission, except that delivery to the Office of the Secretary of State means actual
25 receipt by the Office of the Secretary of State;
- 26 (10) "Designated body," a person or group, other than a committee of the board of
27 directors, that is vested by the articles of incorporation or bylaws with powers that,
28 if not vested by the articles or bylaws in that person or group, would be required by
29 this Act to be exercised by the board or the members;
- 30 (11) "Director," an individual designated, elected, or appointed, by that or any other name
31 or title, to act as a member of the board of directors, while the individual is holding
32 that position. The term does not include a member of a designated body, as such;
- 33 (12) "Domestic unincorporated entity," an unincorporated entity whose internal affairs are
34 governed by the laws of this state;
- 35 (13) "Effective date of notice," as provided pursuant to section 14 of this Act;

- 1 (14) "Electronic," relating to technology having electrical, digital, magnetic, wireless,
2 optical, electromagnetic, or similar capabilities;
- 3 (15) "Eligible entity," a domestic or foreign unincorporated entity or a domestic or foreign
4 business corporation or limited liability company;
- 5 (16) "Eligible interests," interests, units, or shares;
- 6 (17) "Employee," does not include an individual serving as an officer or director who is
7 not otherwise employed by the corporation;
- 8 (18) "Entitled to vote," entitled to vote on the matter under consideration pursuant to the
9 articles of incorporation or bylaws of the nonprofit corporation or any applicable
10 controlling provision of law;
- 11 (19) "Entity," includes a domestic or foreign business corporation or limited liability
12 company, domestic or foreign nonprofit corporation, domestic or foreign
13 unincorporated entity, estate, trust, state, the United States, foreign government, or
14 governmental subdivision;
- 15 (20) "Filing entity," an unincorporated entity that is created by filing a public organic
16 record;
- 17 (21) "Foreign business corporation," a corporation for profit incorporated under a law
18 other than the laws of this state that would be a business corporation if incorporated
19 under the laws of this state;
- 20 (22) "Foreign corporation" or "foreign nonprofit corporation," a corporation incorporated
21 pursuant to a law other than the laws of this state that would be a nonprofit
22 corporation if incorporated under the laws of this state;
- 23 (23) "Foreign unincorporated entity," an unincorporated entity whose internal affairs are
24 governed by an organic law of a jurisdiction other than this state;
- 25 (24) "Fundamental transaction," an amendment of the articles of incorporation or bylaws,
26 merger, membership exchange, sale of all or substantially all of the assets,
27 domestication, conversion, or dissolution of a nonprofit corporation;
- 28 (25) "Governmental subdivision," includes any county, municipality, township, school
29 district, chartered governmental unit, or other special districts;
- 30 (26) "Governor," a person by or under whose authority the powers of an unincorporated
31 entity are exercised and under whose direction the business, activities, or affairs of
32 the entity are managed pursuant to the organic law and organic records of the entity;
- 33 (27) "Includes," denotes a partial definition;
- 34 (28) "Individual," a natural person;

- 1 (29) "Interest," either or both of the following rights under the organic law of an
2 unincorporated entity:
- 3 (i) The right to receive distributions from the entity either in the ordinary course
4 or upon liquidation; or
- 5 (ii) The right to receive notice or vote on issues involving its internal affairs, other
6 than as an agent, assignee, proxy, or person responsible for managing its
7 business, activities, or affairs;
- 8 (30) "Interest holder," a person who holds of record an interest;
- 9 (31) "Interest holder liability," personal liability for a debt, obligation, or liability of a
10 domestic or foreign business or nonprofit corporation or unincorporated entity that
11 is imposed on a person:
- 12 (i) Solely by reason of the person's status as a shareholder, interest holder, or
13 member; or
- 14 (ii) By the articles of incorporation, bylaws, or an organic record pursuant to a
15 provision of the organic law authorizing the articles, bylaws, or an organic
16 record to make one or more specified shareholders, interest holders, or
17 members liable in their capacity as shareholders, interest holders, or members
18 for all or specified debts, obligations, or liabilities of the entity;
- 19 (32) "Internal Revenue Code," the Internal Revenue Code of 1986 (Public Law 99-514,
20 26 U.S.C. § 1 et seq.), as amended;
- 21 (33) "Material interest," an actual or potential benefit or detriment, other than one that
22 would devolve on the nonprofit corporation or the members generally, that would
23 reasonably be expected to impair the objectivity of an individual's judgment when
24 participating in the action to be taken;
- 25 (34) "Material relationship," a familial, financial, professional, employment, or other
26 relationship that would reasonably be expected to impair the objectivity of an
27 individual's judgment when participating in the action to be taken;
- 28 (35) "Means," denotes an exhaustive definition;
- 29 (36) "Member,":
- 30 (i) A person who has the right, in accordance with the articles of incorporation or
31 bylaws and not as a delegate, to select or vote for the election of directors or
32 delegates, to vote on any type of fundamental transaction, or to exercise the
33 other rights or powers as are reserved to the member in accordance with the
34 provisions of the articles of incorporation or bylaws. See section 36 of this
35 Act;

- 1 (ii) A designated body to the extent:
- 2 (A) The powers, functions, or authority of the members are vested in, or are
3 exercised by, the designated body; and
- 4 (B) The provision of this Act in which the term appears is relevant to the
5 discharge by the designated body of its powers, functions, or authority;
- 6 (37) "Membership," the rights and any obligations of a member in a nonprofit corporation;
- 7 (38) "Membership corporation," a nonprofit corporation whose articles of incorporation
8 or bylaws provide that it shall have one or more members;
- 9 (39) "Nonfiling entity," an unincorporated entity that is not created by filing a public
10 organic record;
- 11 (40) "Nonmembership corporation," a nonprofit corporation whose articles of
12 incorporation or bylaws do not provide that it shall have members;
- 13 (41) "Nonqualified foreign corporation," a foreign corporation that is not authorized to
14 conduct activities in this state;
- 15 (42) "Notice," as provided for in section 14 of this Act;
- 16 (43) "Officer," includes:
- 17 (i) A person who is an officer pursuant to section 93 of this Act; and
- 18 (ii) If a nonprofit corporation is in the hands of a custodian, receiver, trustee, or
19 other court-appointed fiduciary, that fiduciary or any person appointed by that
20 fiduciary to act as an officer for any purpose under this Act;
- 21 (44) "Organic law," the statute principally governing the internal affairs of a domestic or
22 foreign business or nonprofit corporation or unincorporated entity;
- 23 (45) "Organic record," a public organic record or the private organic rules;
- 24 (46) "Person," includes an individual or an entity;
- 25 (47) "Principal office," the office, in or out of this state, designated in the annual report
26 as the location of the principal executive office of a domestic or foreign nonprofit
27 corporation;
- 28 (48) "Private organic rules," any record, other than the public organic record, if any, that
29 determines the internal governance of an unincorporated entity. Where the private
30 organic rules have been amended or restated, the term means the private organic rules
31 as last amended or restated;

- 1 (49) "Proceeding," includes civil suit and criminal, administrative, and investigatory
2 action;
- 3 (50) "Public organic record," the record, if any, that is filed of public record to create an
4 unincorporated entity. Where a public organic record has been amended or restated,
5 the term means the public organic record as last amended or restated;
- 6 (51) "Qualified foreign corporation," a foreign corporation authorized to conduct activities
7 in this state;
- 8 (52) "Record," information that is inscribed on a tangible medium or that is stored in an
9 electronic or other medium and is retrievable in perceivable form;
- 10 (53) "Record date," the date established pursuant to section 58 of this Act on which a
11 nonprofit corporation determines the identity of its members and the membership
12 interests they hold for purposes of this Act. The determinations shall be made as of
13 the close of business on the record date unless another time for doing so is specified
14 when the record date is fixed;
- 15 (54) "Secretary," the corporate officer to whom the articles of incorporation, bylaws, or
16 board of directors delegates responsibility pursuant to section 93(b) of this Act for
17 custody of the minutes of the meetings of the board of directors, any designated body,
18 committees, and the members, and for authenticating records of the nonprofit
19 corporation;
- 20 (55) "Shareholder," the person in whose name shares or units are registered in the records
21 of a domestic or foreign business corporation, limited liability company, or the
22 beneficial owner of shares to the extent of the rights granted by a nominee certificate
23 on file with such a corporation;
- 24 (56) "Shares," the units into which the proprietary interests in a domestic or foreign
25 business corporation or limited liability company are divided;
- 26 (57) "Sign," with present intent to authenticate or adopt a record:
- 27 (i) To execute or adopt a tangible symbol; or
- 28 (ii) To attach to or logically associate with the record an electronic sound, symbol,
29 or process;
- 30 (58) "State," when referring to a part of the United States, includes a state or
31 commonwealth, the District of Columbia, the Commonwealth of Puerto Rico, a
32 territory or insular possession of the United States, and any agency or governmental
33 subdivision of any of the foregoing;
- 34 (59) "Unincorporated entity," an organization or artificial legal person that either has a
35 separate legal existence or has the power to acquire an estate in real property in its
36 own name and that is not any of the following: a domestic or foreign business,

1 limited liability company, or nonprofit corporation, an estate, a trust, a governmental
2 subdivision, a state, the United States, or a foreign government. The term includes
3 a general partnership, limited partnership, business or statutory trust, joint stock
4 association, and unincorporated nonprofit association;

5 (60) "United States," includes a district, authority, bureau, commission, department, and
6 any other agency of the United States;

7 (61) "Vote," "voting," or "casting a vote," includes the giving of consent in the form of a
8 record without a meeting. The term does not include either recording the fact of
9 abstention or failing to vote for a candidate or for approval or disapproval of a matter,
10 whether or not the person entitled to vote characterizes such conduct as voting or
11 casting a vote;

12 (62) "Voting group," one or more classes of members that pursuant to the articles of
13 incorporation, bylaws, or this Act are entitled to vote and be counted together
14 collectively on a matter at a meeting of members. All members entitled by the articles
15 of incorporation, bylaws, or this Act to vote generally on the matter are for that
16 purpose a single voting group;

17 (63) "Voting power," the current power to vote in the election of directors or delegates,
18 or to vote on approval of any type of fundamental transaction or other matter in
19 accordance with the provisions of the articles of incorporation or bylaws.

20 Section 14. That the code be amended by adding a NEW SECTION to read:

21 (a) Notice under this Act must be in the form of a record unless oral notice is authorized by
22 this Act or is reasonable under the circumstances.

23 (b) Notice may be communicated in person or by delivery. If these forms of communication
24 are impracticable, notice may be communicated by a newspaper of general circulation in the
25 area where published, or by radio, television, or other form of public broadcast communication.

26 (c) Notice by a corporation to a director, member of a designated body, or member shall be
27 given to the mailing or electronic address of the person shown in the records of the corporation
28 or as provided in subdivision (e)(1) or (e)(2).

29 (d) Notice to a domestic or qualified foreign nonprofit corporation may be delivered to its
30 registered agent at its registered office or to the corporation or its secretary at its principal office
31 shown in its most recent annual report or, in the case of a foreign corporation that has not yet
32 delivered an annual report, in its application for a certificate of authority.

33 (e) Notice is effective at the earliest of the following:

34 (1) When received;

35 (2) When left at the recipient's residence or usual place of business;

1 (3) Five days after its deposit in the United States mail or with a commercial delivery
2 service, if the postage or delivery charge is paid and the notice is correctly addressed;

3 (4) On the date shown on the return receipt, if sent by registered or certified mail, return
4 receipt requested, or by commercial delivery service.

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

7 (g) If this Act prescribes notice requirements for particular circumstances, those
8 requirements govern. If bylaws prescribe notice requirements, not inconsistent with this section
9 or other provisions of this Act, those requirements govern.

10 (h) With respect to electronic communications:

11 (1) Unless otherwise provided in the articles of incorporation or bylaws, or otherwise
12 agreed between the sender and the recipient, an electronic communication is received
13 when:

14 (i) It enters an information processing system that the recipient has designated or
15 uses for the purpose of receiving electronic records or information of the type
16 sent and from which the recipient is able to retrieve the electronic record; and

17 (ii) It is in a form capable of being processed by that system;

18 (2) An electronic communication is received under subdivision (h)(1) even if no
19 individual is aware of its receipt;

20 (3) Receipt of an electronic acknowledgement from an information processing system
21 described in subdivision (h)(1) establishes that a record was received but, by itself,
22 does not establish that the content sent corresponds to the content received.

23 Section 15. That the code be amended by adding a NEW SECTION to read:

24 (a) For purposes of sections 15 to 18, inclusive, of this Act, a corporate action applies to and
25 is:

26 (1) The election, appointment, designation or other selection and the suspension,
27 removal or expulsion of members, delegates, directors, members of a designated
28 body, or officers of a nonprofit corporation;

29 (2) The taking of any action on any matter that is required pursuant to this Act or under
30 any other provision of law to be, or which under the articles of incorporation or
31 bylaws may be, submitted for action to the members, delegates, directors, members
32 of a designated body, or officers of a nonprofit corporation.

1 (b) For purposes of sections 15 to 18, inclusive, of this Act, court is the circuit court of the
2 county where the corporation's principal office or, if none in this state, its registered office is
3 located.

4 Section 16. That the code be amended by adding a NEW SECTION to read:

5 (a) Where under applicable law or the articles of incorporation or bylaws of a nonprofit
6 corporation there has been a failure to hold an annual meeting if an annual meeting was not held
7 within the earlier of six months after the end of the corporation's fiscal year or fifteen months
8 after its last annual meeting; or there has been a failure to take corporate action and the failure
9 has continued for thirty days after the date designated or appropriate therefor, the court may
10 summarily order a meeting to be held upon the application of the attorney general in the case
11 of a charitable corporation or any person entitled, either alone or in conjunction with other
12 persons similarly seeking relief under this section, to call a meeting to consider the corporate
13 action in issue.

14 (b) The court may determine the right to vote at the meeting of persons claiming that right,
15 may appoint an individual to hold the meeting under such orders and powers as the court may
16 deem proper, and may take such action as may be required to give due notice of the meeting and
17 convene and conduct the meeting in the interests of justice.

18 Section 17. That the code be amended by adding a NEW SECTION to read:

19 (a) Upon petition of a person whose status as, or whose rights or duties as, a member,
20 delegate, director, member of a designated body, or officer of a corporation are or may be
21 affected by any corporate action, the court may hear and determine the validity of the corporate
22 action.

23 (b) The court may make such orders in any such case as may be just and proper, with power
24 to enforce the production of any books, papers and records of the corporation and other evidence
25 that may relate to the issue. The court shall provide for notice of the pendency of the
26 proceedings under this section to all persons affected thereby. If the court determines that no
27 valid corporate action has been taken, the court may order a meeting to be held in accordance
28 with section 16 of this Act.

29 (c) Paragraph (a) does not apply if a nonprofit corporation has provided in its articles of
30 incorporation or bylaws for a means of resolving a challenge to a corporate action, but the court
31 may enforce the articles or bylaws if appropriate.

32 Section 18. That the code be amended by adding a NEW SECTION to read:

33 The plaintiff in a proceeding pursuant to sections 15 to 18, inclusive, of this Act must notify
34 the attorney general within ten days after commencing the proceeding if it involves a charitable
35 corporation.

36 Section 19. That the code be amended by adding a NEW SECTION to read:

1 If religious doctrine or canon law governing the affairs of a nonprofit corporation is
2 inconsistent with the provisions of this Act on the same subject, the religious doctrine or canon
3 law shall control to the extent required by the Constitution of the United States or the
4 Constitution of South Dakota or both.

5 Section 20. That the code be amended by adding a NEW SECTION to read:

6 (a) The attorney general must be given notice of the commencement of any proceeding that
7 this Act authorizes the attorney general to bring but that has been commenced by another
8 person.

9 (b) Whenever any provision of this Act requires that notice be given to the attorney general
10 before or after commencing a proceeding or permits the attorney general to commence a
11 proceeding:

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

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

16 Section 21. That the code be amended by adding a NEW SECTION to read:

17 One or more persons may act as the incorporators of a nonprofit corporation by delivering
18 articles of incorporation to the Office of the Secretary of State for filing.

19 Section 22. That the code be amended by adding a NEW SECTION to read:

20 (a) The articles of incorporation must set forth:

21 (1) A name for the nonprofit corporation that satisfies the requirements of section 32 of
22 this Act;

23 (2) The purpose or purposes for which the nonprofit corporation is organized;

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

26 (4) That the corporation is incorporated under this Act;

27 (5) The name and address of each incorporator;

28 (6) If the corporation is to have no members, a statement to that effect;

29 (7) If the corporation is to have one or more classes of members, any provision which the
30 incorporators elect to set forth in the articles of incorporation designating the class
31 or classes of members and stating the qualifications and rights of the members of
32 each class; and

1 (8) If the directors or any of them are not to be elected or appointed by one or more
2 classes of members, a statement of the manner in which such directors shall be
3 elected or appointed.

4 (b) The articles of incorporation may set forth:

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

6 (2) Provisions creating one or more designated bodies;

7 (3) The names of the initial members of a designated body;

8 (4) The names of the initial members, if any;

9 (5) Provisions not inconsistent with law regarding:

10 (i) Managing the business and regulating the affairs of the corporation;

11 (ii) Defining, limiting, and regulating the powers of the corporation, its board of
12 directors, any designated body, and the members, if any;

13 (iii) The characteristics, qualifications, rights, limitations, and obligations attaching
14 to each or any class of members; or

15 (iv) The distribution of assets on dissolution;

16 (6) Any provision that this Act requires or permits to be set forth in the articles or
17 bylaws;

18 (7) A provision permitting or making obligatory indemnification of a director for
19 liability, as defined in sections 106 and 107 of this Act, to any person for any action
20 taken, or any failure to take any action, as a director, except liability for:

21 (i) Receipt of a financial benefit to which the director is not entitled;

22 (ii) An intentional infliction of harm;

23 (iii) A violation of section 90 of this Act; or

24 (iv) An intentional violation of criminal law; and

25 (8) Provisions required if the corporation is to be exempt from taxation under federal,
26 state, or local law.

27 (c) The liability of a director of a nonprofit corporation may be eliminated or limited by a
28 provision of the articles of incorporation that a director is not liable to the corporation or its

1 members for money damages for any action taken, or any failure to take any action, as a
2 director, except liability for:

3 (1) The amount of a financial benefit received by the director to which the director is not
4 entitled;

5 (2) An intentional infliction of harm;

6 (3) A violation of section 90 of this Act; or

7 (4) An intentional violation of criminal law.

8 (d) The articles of incorporation need not set forth any of the corporate powers enumerated
9 in this Act.

10 (e) See sections 28(a) purposes, 90 standards of liability for directors, and 113 variation of
11 indemnification.

12 Section 23. That the code be amended by adding a NEW SECTION to read:

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

15 (b) The filing of the articles of incorporation by the Office of the Secretary of State is
16 conclusive proof that the incorporators satisfied all conditions precedent to incorporation except
17 in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the
18 nonprofit corporation.

19 Section 24. That the code be amended by adding a NEW SECTION to read:

20 Each nonprofit corporation authorized to conduct activities in this state must continuously
21 maintain in this state:

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

23 (2) A registered agent pursuant to chapter 59-11.

24 Section 25. That the code be amended by adding a NEW SECTION to read:

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

28 Section 26. That the code be amended by adding a NEW SECTION to read:

29 (a) After incorporation:

1 (1) If initial directors or members of a designated body are named in the articles of
2 incorporation, those persons must hold an organizational meeting, as appropriate, at
3 the call of a majority of them, to complete the organization of the nonprofit
4 corporation by electing directors, when the organization of the corporation is to be
5 completed by a designated body, appointing officers, adopting bylaws, and carrying
6 on any other business brought before the meeting;

7 (2) If initial directors or members of a designated body are not named in the articles, the
8 incorporator or incorporators must hold an organizational meeting at the call of a
9 majority of the incorporators:

10 (i) To elect directors and complete the organization of the nonprofit corporation;
11 or

12 (ii) To elect a board of directors who shall complete the organization of the
13 corporation.

14 (b) Action required or permitted by this Act to be taken by incorporators at an organizational
15 meeting may be taken without a meeting if the action taken is evidenced by one or more
16 consents in the form of a record describing the action taken and signed by each incorporator.

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

18 Section 27. That the code be amended by adding a NEW SECTION to read:

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

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

24 Section 28. That the code be amended by adding a NEW SECTION to read:

25 (a) Every nonprofit corporation has the purpose of engaging in any lawful activity unless a
26 more limited purpose is set forth in the articles of incorporation.

27 (b) A corporation engaging in an activity that is subject to regulation pursuant to another
28 statute of this state may incorporate pursuant to this Act only if incorporating pursuant to this
29 Act is not prohibited by the other statute. The corporation is subject to all the limitations of the
30 other statute.

31 Section 29. That the code be amended by adding a NEW SECTION to read:

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

- 1 (1) To sue and be sued, complain, and defend in its corporate name;
- 2 (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile
3 of it, by impressing or affixing it or in any other manner reproducing it;
- 4 (3) To make and amend bylaws, not inconsistent with its articles of incorporation or with
5 the laws of this state, for managing and regulating the affairs of the corporation;
- 6 (4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and
7 otherwise deal with, real or personal property, or any legal or equitable interest in
8 property, wherever located;
- 9 (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or
10 any part of its property;
- 11 (6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell,
12 mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other
13 interests in, or obligations of, any other entity;
- 14 (7) To make contracts and guarantees, incur liabilities, borrow money, issue notes,
15 bonds, and other obligations, and secure any of its obligations by mortgage or pledge
16 of any of its property or income;
- 17 (8) To lend money, invest and reinvest its funds, and receive and hold real and personal
18 property as security for repayment, except as limited by section 92 of this Act;
- 19 (9) To be a promoter, partner, member, associate, or manager of any partnership, joint
20 venture, trust, or other entity;
- 21 (10) To conduct its activities, locate offices, and exercise the powers granted by this Act
22 within or without this state;
- 23 (11) To elect directors and appoint officers, employees, and agents of the corporation,
24 define their duties, fix their compensation, and lend them money and credit except
25 as limited by section 92 of this Act;
- 26 (12) To pay pensions and establish pension plans, pension trusts, and benefit or incentive
27 plans for any or all of its current or former directors, officers, employees, and agents;
- 28 (13) To make donations for charitable purposes;
- 29 (14) To impose dues, assessments, admission, and transfer fees on its members;
- 30 (15) To establish conditions for admission of members, admit members, and issue
31 memberships;
- 32 (16) To carry on a business; and

1 (17) To make payments or donations, or do any other act, not inconsistent with law, that
2 furthers the purposes, activities, and affairs of the corporation.

3 Section 30. That the code be amended by adding a NEW SECTION to read:

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

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

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

10 (b) During an emergency, unless the articles of incorporation or bylaws provide otherwise:

11 (1) Notice of a meeting of the board of directors need be given only to those directors it
12 is practicable to reach and may be given in any practicable manner; and

13 (2) One or more officers of the nonprofit corporation present at a meeting of the board
14 of directors may be deemed to be directors for the meeting, in order of rank and
15 within the same rank in order of seniority.

16 (c) Corporate action taken in good faith during an emergency to further the ordinary affairs
17 of the nonprofit corporation:

18 (1) Binds the corporation; and

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

20 (d) An emergency exists for purposes of this section if a quorum of the directors cannot
21 readily be assembled because of some catastrophic event.

22 Section 31. That the code be amended by adding a NEW SECTION to read:

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

25 (b) The power of a nonprofit corporation to act may be challenged:

26 (1) In a derivative proceeding pursuant to sections 167 to 175, inclusive, of this Act, by
27 a member, director, or member of a designated body against the corporation to enjoin
28 the act;

29 (2) In a proceeding by the corporation, directly, derivatively, or through a receiver,
30 trustee, or other legal representative, against an incumbent or former director or
31 member of a designated body, officer, employee, or agent of the corporation; or

1 (3) In a proceeding by the attorney general.

2 (c) In a proceeding by a member, director, or member of a designated body under
3 subdivision (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the
4 act, if equitable and if all affected persons are parties to the proceeding, and may award damages
5 for loss, other than anticipated profit, suffered by the corporation or another party because of
6 enjoining the unauthorized act.

7 Section 32. That the code be amended by adding a NEW SECTION to read:

8 (a) The name of a nonprofit corporation may not contain language stating or implying that
9 the corporation is organized for a purpose other than that permitted by section 28 and its articles
10 of incorporation.

11 (b) Except as authorized by paragraph (c) or (d), the name of a nonprofit corporation must
12 be distinguishable upon the records of the Office of the Secretary of State from:

13 (1) The name of a nonprofit or business corporation incorporated or authorized to
14 conduct activities or transact business in this state;

15 (2) The name of a filing entity organized under the laws of this state or authorized to
16 transact business in this state;

17 (3) A name reserved or registered under section 33 or 34 of this Act;

18 (4) The fictitious name adopted by a foreign nonprofit or business corporation or filing
19 entity authorized to conduct activities or transact business in this state because its real
20 name is unavailable;

21 (5) A name of any other corporation or limited liability company, whether for profit or
22 not for profit, organized under the laws of this state; or the name of any foreign
23 entity, whether for profit or not for profit, authorized to engage in any business in this
24 state; or any corporate name reserved or required to be registered with the Office of
25 the Secretary of State, or the name of any limited partnership certified or registered
26 in this state; and

27 (6) A fictitious name registered pursuant to § 37-11-1.

28 (c) A nonprofit corporation may apply for authorization to use a name that is not
29 distinguishable upon the records of the Office of the Secretary of State from one or more of the
30 names described in paragraph (b). The Office of the Secretary of State shall permit use of the
31 name applied for if:

32 (1) The other entity consents to the use in writing and submits an undertaking in form
33 satisfactory to the Office of the Secretary of State to change its name to a name that
34 is distinguishable upon the records of the Office of the Secretary of State from the
35 name of the applying corporation; or

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

4 (d) A nonprofit corporation may use a name that is otherwise unavailable pursuant to
5 paragraph (b) if the nonprofit corporation wishing to use the name:

6 (1) Has merged with the other entity;

7 (2) Has been formed by reorganization of the other entity; or

8 (3) Has acquired all or substantially all of the assets, including the name, of the other
9 entity.

10 (e) A name is distinguishable upon the records of the Office of the Secretary of State only
11 if the name differs from every other name of record in a way other than:

12 (1) Use of punctuation marks;

13 (2) Use of a definite or indefinite article; and

14 (3) Use of any of the following terms, or an abbreviation thereof, in any language to
15 designate the status of an entity: corporation, company, incorporated, limited,
16 association, fund, syndicate, limited partnership, limited liability company, limited
17 liability partnership, limited liability limited partnership, trust, statutory trust, or
18 business trust.

19 (f) This Act does not control the use of fictitious names.

20 Section 33. That the code be amended by adding a NEW SECTION to read:

21 A person may reserve the exclusive use of a nonprofit corporate name, including a fictitious
22 name for a foreign nonprofit corporation whose nonprofit corporate name is not available, by
23 delivering an application to the Office of the Secretary of State for filing. The application shall
24 set forth the name and address of the applicant and the name proposed to be reserved. If the
25 Office of the Secretary of State finds that the nonprofit corporate name applied for is available,
26 the Office of the Secretary of State shall reserve the name for the applicant's exclusive use for
27 a nonrenewable one-hundred-twenty-day period.

28 The owner of a reserved nonprofit corporate name may transfer the reservation to another
29 person by delivering to the Office of the Secretary of State a signed notice of the transfer that
30 states the name and address of the transferee.

31 Section 34. That the code be amended by adding a NEW SECTION to read:

32 A nonqualified foreign nonprofit corporation may register its corporate name, or its
33 corporate name with any addition required by sections 199 and 200 of this Act, if the name is
34 distinguishable upon the records of the Office of the Secretary of State from the nonprofit

1 corporate names that are not available under section 32 of this Act. A nonqualified foreign
2 nonprofit corporation registers corporate name, or its corporate name with any addition required
3 by sections 199 and 200 of this Act, by delivering to the Office of the Secretary of State for
4 filing an application:

5 (1) Setting forth its corporate name, or its corporate name with any addition required by
6 sections 199 and 200 of this Act, the state or country and date of its incorporation,
7 and a brief description of the nature of the activities in which it is engaged; and

8 (2) Accompanied by a certificate of existence, or a document of similar import, from the
9 state or country of incorporation.

10 The name is registered for the applicant's exclusive use upon the effective date of the
11 application.

12 Section 35. That the code be amended by adding a NEW SECTION to read:

13 (a) A nonprofit corporation is not required to have members.

14 (b) Where the articles of incorporation or bylaws of a nonprofit corporation do not provide
15 that it shall have members, or where a corporation has in fact no members entitled to vote on
16 a matter, any provision of this Act or any other provision of law requiring notice to, the presence
17 of, or the vote, consent, or other action by members of the corporation in connection with the
18 matter is satisfied by notice to, the presence of, or the vote, consent, or other action by the board
19 of directors or a designated body of the corporation.

20 Section 36. That the code be amended by adding a NEW SECTION to read:

21 (a) The articles of incorporation or bylaws of a membership corporation may establish
22 criteria or procedures for admission of members.

23 (b) A person may not be admitted as a member without the person's consent.

24 (c) If a membership corporation provides certificates of membership to the members, the
25 certificates may not be registered or transferable except as provided in the articles of
26 incorporation or bylaws.

27 (d) A person is not a member of a nonprofit corporation unless the person meets the
28 definition of a member in section 13 of this Act, regardless of whether the corporation
29 designates or refers to the person as a member.

30 Section 37. That the code be amended by adding a NEW SECTION to read:

31 Except as provided in its articles of incorporation or bylaws, a membership corporation may
32 admit members for no consideration or for such consideration as is determined by the board of
33 directors. The consideration may take any form, including promissory notes, intangible property,
34 or past or future services. Payment of the consideration may be made at such times and upon

1 such terms as are set forth in or authorized by the articles of incorporation, bylaws, or a
2 resolution of the board.

3 Section 38. That the code be amended by adding a NEW SECTION to read:

4 (a) Except as otherwise provided in the articles of incorporation or bylaws, each member of
5 a membership corporation has the same rights and obligations as every other member with
6 respect to voting, dissolution, membership transfer, and other matters.

7 (b) See section 153(a) of this Act, bylaw amendments requiring member approval.

8 Section 39. That the code be amended by adding a NEW SECTION to read:

9 (a) Except as provided in the articles of incorporation or bylaws, a member of a membership
10 corporation may not transfer a membership or any right arising therefrom.

11 (b) Where the right to transfer a membership has been provided, a restriction on that right
12 is not binding with respect to a member holding a membership issued prior to the adoption of
13 the restriction unless the restriction is approved by the affected member.

14 Section 40. That the code be amended by adding a NEW SECTION to read:

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

17 Section 41. That the code be amended by adding a NEW SECTION to read:

18 (a) A membership corporation may levy dues, assessments, and fees on its members to the
19 extent authorized in the articles of incorporation or bylaws. Dues, assessments, and fees may
20 be imposed on all members, or to the members of a single class, or to members of different
21 classes in different amounts or proportions. A member of a class may be made exempt from
22 dues, assessments, and fees to the extent provided in the articles or bylaws.

23 (b) The amount and method of collection of dues, assessments, and fees may be fixed in the
24 articles of incorporation or bylaws, or the articles or bylaws may authorize the board of directors
25 or members to fix the amount and method of collection.

26 (c) The articles of incorporation or bylaws may provide reasonable means, such as
27 termination and reinstatement of membership, to enforce the collection of dues, assessments,
28 and fees.

29 Section 42. That the code be amended by adding a NEW SECTION to read:

30 (a) A proceeding may not be brought by a creditor of a membership corporation to reach the
31 liability, if any, of a member to the corporation unless final judgment has been rendered in favor
32 of the creditor against the corporation and execution has been returned unsatisfied in whole or
33 in part or unless the proceeding would be useless.

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

5 Section 43. That the code be amended by adding a NEW SECTION to read:

6 (a) A member of a membership corporation may resign at any time.

7 (b) The resignation of a member does not relieve the member from any obligations incurred
8 or commitments made prior to resignation.

9 Section 44. That the code be amended by adding a NEW SECTION to read:

10 (a) A membership in a membership corporation may be terminated or suspended for the
11 reasons and in the manner provided in the articles of incorporation or bylaws.

12 (b) A proceeding challenging a termination or suspension for any reason must be
13 commenced within one year after the effective date of the termination or suspension.

14 (c) The termination or suspension of a member does not relieve the member from any
15 obligations incurred or commitments made prior to the termination or suspension.

16 (d) See section 153(a) of this Act, bylaw amendments requiring member approval.

17 Section 45. That the code be amended by adding a NEW SECTION to read:

18 (a) Except as provided in the articles of incorporation or bylaws, a membership corporation
19 that is not a charitable corporation may not purchase any of its memberships or any right arising
20 therefrom.

21 (b) See section 153(a) of this Act, bylaw amendments requiring member approval.

22 Section 46. That the code be amended by adding a NEW SECTION to read:

23 (a) A membership corporation may provide in its articles of incorporation or bylaws for
24 delegates.

25 (b) The articles of incorporation or bylaws may set forth provisions relating to:

26 (1) The characteristics, qualifications, rights, limitations, and obligations of delegates
27 including their selection and removal;

28 (2) Calling, noticing, holding, and conducting meetings of delegates; and

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

30 (c) An assembly or other organized group of delegates constitutes a designated body.

1 Section 47. That the code be amended by adding a NEW SECTION to read:

2 (a) Except as permitted by section 45 or 48 of this Act, no nonprofit corporation may pay
3 dividends or make distributions of any part of its assets, income, or profits to its members,
4 directors, members of a designated body, or officers.

5 (b) This section does not apply to a contract or transaction authorized pursuant to section
6 114 of this Act.

7 Section 48. That the code be amended by adding a NEW SECTION to read:

8 (a) A nonprofit corporation may pay reasonable compensation or reimburse reasonable
9 expenses to members, directors, members of a designated body, or officers for services
10 rendered.

11 (b) A nonprofit corporation may confer benefits upon or make contributions to members or
12 nonmembers in conformity with its purposes, repurchase its memberships only to the extent
13 provided in section 45 of this Act, or repay capital contributions, except when:

14 (1) The corporation is currently insolvent or would thereby be made insolvent or
15 rendered unable to carry on its purposes; or

16 (2) The fair value of the assets of the corporation remaining after the conferring of
17 benefits, contribution, repurchase, or repayment would be insufficient to meet its
18 liabilities.

19 (c) A nonprofit corporation may make distributions of cash or property to members upon
20 dissolution or final liquidation only as permitted pursuant to this Act.

21 Section 49. That the code be amended by adding a NEW SECTION to read:

22 (a) A membership corporation that is not a charitable corporation may provide in its articles
23 of incorporation or bylaws that members, upon or subsequent to admission, must make capital
24 contributions. Except as provided in the articles or bylaws, the amount shall be fixed by the
25 board of directors. The requirement of a capital contribution may apply to all members, or to
26 the members of a single class, or to members of different classes in different amounts or
27 proportions.

28 (b) The adoption or amendment of a capital contribution requirement, whether or not
29 approved by the members, does not apply to a member who did not vote in favor of the adoption
30 or amendment until thirty days after the member has been given notice of the adoption or
31 amendment.

32 Section 50. That the code be amended by adding a NEW SECTION to read:

33 (a) No nonprofit corporation may issue bonds or other evidences of indebtedness except for
34 money or other property, tangible or intangible, or labor or services actually received by or
35 performed for the corporation or for its benefit or in its formation or reorganization, or a

1 combination thereof. In the absence of fraud, the judgment of the board of directors or the
2 members as to the value of the consideration received by the corporation is conclusive.

3 (b) The board of directors or the members may authorize a mortgage or pledge of, or the
4 creation of a security interest in, all or any part of the property of the nonprofit corporation, or
5 any interest therein. Unless otherwise required in the articles of incorporation or bylaws, the
6 vote or consent of the members may not be required to make effective such action by the board.

7 Section 51. That the code be amended by adding a NEW SECTION to read:

8 (a) Except as provided in paragraph (b), a nonprofit corporation that is a private foundation
9 as defined in section 509(a) of the Internal Revenue Code shall:

10 (1) Distribute such amounts for each taxable year at such time and in such manner as not
11 to subject the corporation to tax under section 4942 of the Internal Revenue Code;

12 (2) Not engage in any act of self-dealing as defined in section 4941(d) of the Internal
13 Revenue Code;

14 (3) Not retain any excess business holdings as defined in section 4943(c) of the Internal
15 Revenue Code;

16 (4) Not make any investments in such manner as to subject the corporation to tax under
17 section 4944 of the Internal Revenue Code; and

18 (5) Not make any taxable expenditure as defined in section 4945(d) of the Internal
19 Revenue Code.

20 (b) Paragraph (a) does not apply to a nonprofit corporation incorporated before January 1,
21 1970, that has been properly relieved from the requirements of section 508(e)(1) of the Internal
22 Revenue Code by a timely judicial proceeding.

23 Section 52. That the code be amended by adding a NEW SECTION to read:

24 (a) A membership corporation shall hold a meeting of members annually at a time stated in
25 or fixed in accordance with the articles of incorporation or bylaws.

26 (b) A membership corporation may hold regular meetings on a regional or other basis at
27 times stated in or fixed in accordance with the articles of incorporation or bylaws.

28 (c) Except as provided in paragraph (e), annual and regular meetings of the members may
29 be held in or out of this state at the place stated in or fixed in accordance with the articles of
30 incorporation or bylaws. If no place is stated in or fixed in accordance with the articles or
31 bylaws, annual and regular meetings shall be held at the nonprofit corporation's principal office.

32 (d) The failure to hold an annual or regular meeting at the time stated in or fixed in
33 accordance with the articles of incorporation or bylaws does not affect the validity of any
34 corporate action.

1 (e) The articles of incorporation or bylaws may provide that an annual or regular meeting
2 of members does not need to be held at a geographic location if the meeting is held by means
3 of the internet or other electronic communications technology in a fashion pursuant to which
4 the members have the opportunity to read or hear the proceedings substantially concurrently
5 with their occurrence, vote on matters submitted to the members, pose questions, and make
6 comments.

7 Section 53. That the code be amended by adding a NEW SECTION to read:

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

9 (1) At the call of its board of directors or the persons authorized to do so by the articles
10 of incorporation or bylaws; or

11 (2) If the holders of at least five percent, or such other amount up to twenty-five percent
12 as the articles of incorporation or bylaws specifies, of all the votes entitled to be cast
13 on an issue proposed to be considered at the proposed special meeting sign, date, and
14 deliver to the corporation one or more demands in the form of a record for the
15 meeting describing the purpose for which it is to be held.

16 (b) Unless otherwise provided in the articles of incorporation or bylaws, a demand for a
17 special meeting may be revoked by notice to that effect received by the membership corporation
18 from the members calling the meeting prior to the receipt by the corporation of demands
19 sufficient in number to require the holding of a special meeting.

20 (c) If not otherwise fixed pursuant to section 54 or 58 of this Act, the record date for
21 determining members entitled to demand a special meeting is the date the first member signs
22 a demand.

23 (d) Except as provided in paragraph (f), special meetings of the members may be held in or
24 out of this state at the place stated in or fixed in accordance with the articles of incorporation
25 or bylaws. If no place is stated or fixed in accordance with the articles or bylaws, special
26 meetings shall be held at the corporation's principal office.

27 (e) Only business within the purpose or purposes described in the meeting notice required
28 pursuant to section 56(c) of this Act may be conducted at a special meeting of the members.

29 (f) The articles of incorporation or bylaws may provide that a special meeting of members
30 does not need to be held at a geographic location if the meeting is held by means of the internet
31 or other electronic communications technology in a fashion pursuant to which the members have
32 the opportunity to read or hear the proceedings substantially concurrently with their occurrence,
33 vote on matters submitted to the members, pose questions, and make comments.

34 Section 54. That the code be amended by adding a NEW SECTION to read:

35 (a) The circuit court of the county where the principal office of a membership corporation,
36 if not in this state, its registered office, is located may summarily order a meeting to be held:

1 (1) On application of any member entitled to participate in an annual or regular meeting
2 if an annual meeting was not held within the earlier of six months after the end of the
3 corporation's fiscal year or fifteen months after its last annual meeting; or

4 (2) On application of a member who signed a demand for a special meeting pursuant to
5 section 53 of this Act, if:

6 (i) Notice of the special meeting was not given within thirty days after the date
7 the demand was delivered to the corporation's secretary; or

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

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

15 Section 55. That the code be amended by adding a NEW SECTION to read:

16 (a) Except as provided in the articles of incorporation or bylaws, action required or permitted
17 pursuant to this Act to be taken at a meeting of the members may be taken without a meeting
18 if the action is taken by all the members entitled to vote on the action. The action must be
19 evidenced by one or more consents in the form of a record bearing the date of signature and
20 describing the action taken, signed by all the members entitled to vote on the action, and
21 delivered to the membership corporation for inclusion in the minutes or filing with the corporate
22 records.

23 (b) If not otherwise fixed pursuant to section 54 or 58 of this Act, the record date for
24 determining members entitled to take action without a meeting is the date the first member signs
25 the consent under paragraph (a). A consent is not effective to take the corporate action referred
26 to therein unless, within sixty days after the earliest date appearing on a consent delivered to the
27 membership corporation in the manner required pursuant to this section, consents signed by
28 members entitled to cast the required number of votes on the action are received by the
29 corporation. A consent may be revoked by a signed notice in the form of a record to that effect
30 received by the corporation prior to receipt by the corporation of unrevoked consents sufficient
31 in number to take corporate action.

32 (c) A consent signed pursuant to this section has the effect of a meeting vote and may be
33 described as such.

34 (d) If the articles of incorporation, or the bylaws require that notice of proposed corporate
35 action be given to members not entitled to vote on the action and the action is to be taken by
36 consent of the members entitled to vote, the membership corporation must deliver to the
37 members not entitled to vote notice of the proposed action at least ten days before the action is
38 taken. The notice must contain or be accompanied by the same material that would have been

1 required to be delivered to members not entitled to vote in a notice of meeting at which the
2 proposed action would have been submitted to the members for action.

3 Section 56. That the code be amended by adding a NEW SECTION to read:

4 (a) A membership corporation must give notice to the members of the date, time, and place
5 of each annual, regular, or special meeting of the members. Except as provided in the articles
6 of incorporation or the bylaws:

7 (1) The notice must be given no fewer than ten nor more than sixty days before the
8 meeting date; and

9 (2) The corporation must give notice only to members entitled to vote at the meeting.

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

12 (c) Notice of a special meeting must include a description of the purpose for which the
13 meeting is called.

14 (d) If not otherwise fixed pursuant to section 54 or 58 of this Act, the record date for
15 determining members entitled to notice of and to vote at an annual or special meeting of the
16 members is the day before the first notice is given to members.

17 (e) Unless the articles of incorporation or bylaws require otherwise, if an annual, regular,
18 or special meeting of the members is adjourned to a different date, time, or place, notice need
19 not be given of the new date, time, or place if the new date, time, or place is announced at the
20 meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed
21 pursuant to section 58 of this Act, notice of the adjourned meeting must be given pursuant to
22 this section to the members entitled to vote on the new record date.

23 Section 57. That the code be amended by adding a NEW SECTION to read:

24 (a) A member may waive any notice required pursuant to this Act, the articles of
25 incorporation, or the bylaws before or after the date and time stated in the notice or of the
26 meeting or action. The waiver must be in the form of a record, be signed by the member entitled
27 to the notice, and be delivered to the membership corporation for inclusion in the minutes or
28 filing with the corporate records.

29 (b) The attendance of a member at a meeting:

30 (1) Waives objection to lack of notice or defective notice of the meeting, unless the
31 member at the beginning of the meeting objects to holding the meeting or transacting
32 business at the meeting;

33 (2) Waives objection to consideration of a particular matter at the meeting that is not
34 within the purpose described in the meeting notice, unless the member objects at the
35 meeting to considering the matter.

1 Section 58. That the code be amended by adding a NEW SECTION to read:

2 (a) The articles of incorporation or bylaws may fix or provide the manner of fixing the
3 record date to determine the members entitled to notice of a meeting of the members, to demand
4 a special meeting, to vote, or to take any other action. If the articles or bylaws do not fix or
5 provide for fixing a record date, the board of directors of the membership corporation may fix
6 a future date as the record date. A membership corporation comprised of a single member is not
7 required to fix a record date.

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

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

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

17 Section 59. That the code be amended by adding a NEW SECTION to read:

18 (a) At each meeting of members, an individual must preside as chair. The chair shall be
19 appointed:

20 (1) As provided in the articles of incorporation or bylaws;

21 (2) In the absence of a provision in the articles or bylaws, by the board of directors; or

22 (3) In the absence of both a provision in the articles or bylaws and an appointment by the
23 board, by the members at the meeting.

24 (b) Except as provided in the articles of incorporation or bylaws, the chair shall determine
25 the order of business and shall have the authority to establish rules for the conduct of the
26 meeting.

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

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

32 Section 60. That the code be amended by adding a NEW SECTION to read:

1 (a) Unless otherwise provided in the articles of incorporation or bylaws, any action that may
2 be taken at any annual, regular, or special meeting of members may be taken without a meeting
3 if the membership corporation delivers a ballot to every member entitled to vote on the matter.

4 (b) A ballot must:

5 (1) Be in the form of a record;

6 (2) Set forth each proposed action;

7 (3) Provide an opportunity to vote for, or withhold a vote for, each candidate for election
8 as a director; and

9 (4) Provide an opportunity to vote for or against each other proposed action.

10 (c) Approval by ballot pursuant to this section of action other than election of directors is
11 valid only when the number of votes cast by ballot equals or exceeds the quorum required to be
12 present at a meeting authorizing the action, and the number of approvals equals or exceeds the
13 number of votes that would be required to approve the matter at a meeting at which the total
14 number of votes cast was the same as the number of votes cast by ballot.

15 (d) All solicitations for votes by ballot must:

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

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

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

21 (e) Except as otherwise provided in the articles of incorporation or bylaws, a ballot may not
22 be revoked.

23 Section 61. That the code be amended by adding a NEW SECTION to read:

24 (a) After fixing a record date for a meeting, a membership corporation shall prepare a list
25 of the names of all its members who are entitled to notice of that meeting of the members. The
26 list must show the address of and number of votes each member is entitled to cast at the
27 meeting. A membership corporation comprised of a single member is not required to prepare
28 a membership list.

29 (b) The list of members must be available for inspection by any member, beginning two
30 business days after notice of the meeting is given for which the list was prepared and continuing
31 through the meeting, at the membership corporation's principal office or at a place identified in
32 the meeting notice in the city where the meeting will be held. A member or the member's agent
33 is entitled on demand in the form of a record to inspect and, subject to the requirements of

1 section 210(c) of this Act, to copy the list, during regular business hours and at the member's
2 expense, during the period it is available for inspection.

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

6 (d) If a membership corporation refuses to allow a member or the member's agent to inspect
7 the list of members before or at the meeting, or copy the list as permitted by paragraph (b), the
8 circuit court of the county where the corporation's principal office or, if none in this state, its
9 registered office, is located, on application of the member, may:

- 10 (1) Summarily order the inspection or copying at the corporation's expense;
- 11 (2) Postpone the meeting for which the list was prepared until the inspection or copying
12 is complete;
- 13 (3) Order the corporation to pay the member's costs, including reasonable counsel fees,
14 incurred to obtain the order; and
- 15 (4) Order other appropriate relief.

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

18 (f) Instead of making the list of members available as provided in paragraph (b), a
19 membership corporation may state in a notice of meeting that the corporation has elected to
20 proceed pursuant to this paragraph. A member of a corporation that elects to proceed pursuant
21 to this paragraph must state in the member's demand for inspection a proper purpose for which
22 inspection is demanded. Within ten business days after receiving a demand pursuant to this
23 paragraph, the corporation must deliver to the member making the demand an offer of a
24 reasonable alternative method of achieving the purpose identified in the demand without
25 providing access to or a copy of the list of members. An alternative method that reasonably and
26 in a timely manner accomplishes the proper purpose set forth in the demand relieves the
27 corporation from making the list of members available pursuant to paragraph (b), unless within
28 a reasonable time after acceptance of the offer the corporation fails to do the things it offered
29 to do. Any rejection of the corporation's offer must be in the form of a record and must indicate
30 the reasons the alternative proposed by the corporation does not meet the proper purpose of the
31 demand.

32 Section 62. That the code be amended by adding a NEW SECTION to read:

33 Except as provided in the articles of incorporation or bylaws, each member is entitled to one
34 vote on each matter voted on by the members.

35 Section 63. That the code be amended by adding a NEW SECTION to read:

1 (a) Except as otherwise provided in the articles of incorporation or bylaws, a member may
2 vote in person or by proxy.

3 (b) A member or the member's agent or attorney-in-fact may appoint a proxy to vote or
4 otherwise act for the member by signing an appointment form in the form of a record. An
5 appointment form must contain or be accompanied by information from which it can be
6 determined that the member or the member's agent or attorney-in-fact authorized the
7 appointment of the proxy.

8 (c) An appointment of a proxy is effective when a signed appointment in the form of a
9 record is received by the inspectors of election, the officer or agent of the membership
10 corporation authorized to tabulate votes, or the secretary. An appointment is valid for eleven
11 months unless a longer period, which may not exceed three years, is expressly provided in the
12 appointment form.

13 (d) The death or incapacity of the member appointing a proxy does not affect the right of the
14 membership corporation to accept the proxy's authority unless notice of the death or incapacity
15 is received by the inspectors of election, the officer or agent authorized to tabulate votes, or the
16 secretary before the proxy exercises his authority under the appointment.

17 (e) Subject to section 64 of this Act and to any express limitation on the proxy's authority
18 stated in the appointment form, a membership corporation is entitled to accept the proxy's vote
19 or other action as that of the member making the appointment.

20 Section 64. That the code be amended by adding a NEW SECTION to read:

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

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

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

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

34 (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the
35 member and, if the corporation requests, evidence of this status acceptable to the
36 corporation has been presented with respect to the ballot, consent, waiver, or proxy
37 appointment;

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

5 (5) Two or more persons are the member as co-tenants or fiduciaries and the name
6 signed purports to be the name of at least one of the co-owners and the person
7 signing appears to be acting on behalf of all the co-owners.

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

12 (d) The membership corporation and its officer or agent who accepts or rejects a ballot,
13 consent, waiver, or proxy appointment in good faith and in accordance with the standards of this
14 section or section 63(b) of this Act are not liable in damages to the member for the
15 consequences of the acceptance or rejection.

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

19 Section 65. That the code be amended by adding a NEW SECTION to read:

20 (a) Members entitled to vote as a separate voting group may take action on a matter at a
21 meeting only if one-tenth of the members exist with respect to that matter. Except as provided
22 in the articles of incorporation or bylaws, a majority of the votes entitled to be cast on the matter
23 by the voting group constitutes a quorum of that voting group for action on that matter.

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

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

31 (d) An amendment of the articles of incorporation or bylaws adding, changing, or deleting
32 a quorum or voting requirement for a voting group greater than specified in paragraph (a) or (c)
33 is governed by section 67 of this Act.

34 (e) If a meeting cannot be organized because a quorum is not present, those members present
35 may adjourn the meeting to such time and place as they may determine. Except as provided in
36 the articles of incorporation or bylaws, when a meeting that has been adjourned for lack of a
37 quorum is reconvened, those members present, although less than a quorum as fixed in this
38 section, the articles, or the bylaws, nonetheless constitute a quorum.

1 (f) The election of directors is governed by 68 of this Act.

2 Section 66. That the code be amended by adding a NEW SECTION to read:

3 (a) If this Act, the articles of incorporation, or the bylaws provide for voting by a single
4 voting group on a matter, action on that matter is taken when voted upon by that voting group
5 pursuant to section 65 of this Act.

6 (b) If this Act, the articles of incorporation, or the bylaws provide for voting by two or more
7 voting groups on a matter, action on that matter is taken only when voted upon by each of those
8 voting groups counted separately as provided in section 65 of this Act.

9 Section 67. That the code be amended by adding a NEW SECTION to read:

10 (a) The articles of incorporation or bylaws may provide for a higher or lower quorum or
11 voting requirement for members, or voting groups of members, than is provided for by this Act.

12 (b) An amendment to the articles of incorporation or bylaws that adds, changes, or deletes
13 a greater quorum or voting requirement must meet the same quorum requirement and be adopted
14 by the same vote and voting groups required to take action under the quorum and voting
15 requirements then in effect.

16 Section 68. That the code be amended by adding a NEW SECTION to read:

17 (a) Except as provided in the articles of incorporation or bylaws, directors of a membership
18 corporation are elected by a plurality of the votes cast by the members entitled to vote in the
19 election at a meeting at which a quorum is present.

20 (b) Members do not have a right to cumulate their votes for directors.

21 Section 69. That the code be amended by adding a NEW SECTION to read:

22 (a) A membership corporation may appoint one or more inspectors to act at a meeting of
23 members and make a report in the form of a record of the inspectors' determinations. Each
24 inspector shall execute the duties of inspector impartially and according to the best of the
25 inspector's ability.

26

27 (b) The inspectors shall:

28 (1) Ascertain the number of members and their voting power;

29 (2) Determine the members present at a meeting;

30 (3) Determine the validity of proxies and ballots;

31 (4) Count all votes; and

32 (5) Determine the result.

1 (c) An inspector may, but need not, be a director, member of a designated body, member,
2 officer, or employee of the membership corporation. A person who is a candidate for office to
3 be filled at the meeting may not be an inspector.

4 Section 70. That the code be amended by adding a NEW SECTION to read:

5 (a) Two or more members may provide for the manner in which they will vote by signing
6 an agreement in the form of a record for that purpose. A voting agreement may be valid for a
7 period of up to ten years.

8 (b) A voting agreement created pursuant to this section is specifically enforceable, except
9 that a voting agreement is not enforceable to the extent that enforcement of the agreement would
10 violate the purposes of the membership corporation.

11 Section 71. That the code be amended by adding a NEW SECTION to read:

12 (a) A nonprofit corporation must have a board of directors.

13 (b) Except as provided in section 82 of this Act, the business and affairs of the corporation
14 must be managed by or under the direction, and subject to the oversight, of its board of
15 directors.

16 Section 72. That the code be amended by adding a NEW SECTION to read:

17 A director of a nonprofit corporation must be an individual. The articles of incorporation or
18 bylaws may prescribe other qualifications for directors. A director need not be a resident of this
19 state or a member of the corporation unless the articles or bylaws so prescribe.

20 Section 73. That the code be amended by adding a NEW SECTION to read:

21 (a) A board of directors must consist of three or more directors, with the number specified
22 in or fixed in accordance with the articles of incorporation or bylaws.

23 (b) The number of directors may be increased or decreased, but to no fewer than three, from
24 time to time by amendment to, or in the manner provided in, the articles of incorporation or
25 bylaws.

26 Section 74. That the code be amended by adding a NEW SECTION to read:

27 (a) The directors of a membership corporation, other than any initial directors named in the
28 articles of incorporation or elected by the incorporators, shall be elected at the first annual
29 meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide
30 some other time or method of election, or provide that some or all of the directors are appointed
31 by some other person or designated in some other manner.

32 (b) The directors of a nonmembership corporation, other than any initial directors named in
33 the articles of incorporation or elected by the incorporators, shall be elected, appointed, or
34 designated as provided in the articles or bylaws. If no method of designation or appointment is

1 set forth in the articles or bylaws, the directors, other than any initial directors, shall be elected
2 by the board.

3 Section 75. That the code be amended by adding a NEW SECTION to read:

4 (a) The articles of incorporation or bylaws may specify the terms of directors. If a term is
5 not specified in the articles or bylaws, the term of a director is one year. Except for directors
6 who are appointed by persons who are not members or who are designated in a manner other
7 than by election or appointment, the term of a director may not exceed twelve years.

8 (b) A decrease in the number of directors or term of office does not shorten an incumbent
9 director's term.

10 (c) Except as provided in the articles of incorporation or bylaws, the term of a director
11 elected to fill a vacancy expires at the end of the unexpired term that the director is filling.

12 (d) Despite the expiration of a director's term, the director continues to serve until the
13 director's successor is elected, appointed, or designated and until the director's successor takes
14 office unless otherwise provided in the articles of incorporation or bylaws.

15 Section 76. That the code be amended by adding a NEW SECTION to read:

16 The articles of incorporation or bylaws may provide for staggering the terms of directors by
17 dividing the total number of directors into groups of one or more directors. The terms of office
18 and number of directors in each group do not need to be uniform.

19 Section 77. That the code be amended by adding a NEW SECTION to read:

20 (a) A director may resign at any time by delivering a signed notice in the form of a record
21 to the chair of the board of directors or to an executive officer or the secretary of the
22 corporation.

23 (b) A resignation is effective when the notice is delivered unless the notice specifies a later
24 effective time.

25 Section 78. That the code be amended by adding a NEW SECTION to read:

26 (a) Removal of directors of a membership corporation is subject to the following provisions:

27 (1) Except as provided in the articles of incorporation or bylaws, the members may
28 remove, with or without cause, one or more directors who have been elected by the
29 members, unless the articles of incorporation or bylaws provide that directors may
30 be removed only for cause. The articles or bylaws may specify what constitutes cause
31 for removal. See section 153(a) of this Act, bylaw amendments requiring member
32 approval;

33 (2) Except as provided in the articles of incorporation or bylaws, if a director is elected
34 by a voting group of members, or by a chapter or other organizational unit, or by a

1 region or other geographic grouping, only the members of that voting group or
2 chapter, unit, region, or grouping may participate in the vote to remove the director;

3 (3) The notice of a meeting of members at which removal of a director is to be
4 considered must state that the purpose, or one of the purposes, of the meeting is
5 removal of the director; and

6 (4) The board of directors of a membership corporation may not remove a director
7 except as provided in paragraph (c) or in the articles of incorporation or bylaws.

8 (b) The board of directors may remove a director of a nonmembership corporation:

9 (1) With or without cause, unless the articles of incorporation or bylaws provide that
10 directors may be removed only for cause. The articles or bylaws may specify what
11 constitutes cause for removal; or

12 (2) As provided in paragraph (c).

13 (c) The board of directors of a membership corporation or nonmembership corporation may
14 remove a director who:

15 (1) Has been declared of unsound mind by a final order of court;

16 (2) Has been convicted of a felony;

17 (3) Has been found by a final order of court to have breached a duty as a director under
18 sections 90 to 92, inclusive, of this Act;

19 (4) Has missed the number of board meetings specified in the articles of incorporation
20 or bylaws, if the articles or bylaws provided that a director may be removed for
21 missing the specified number of board meetings; or

22 (5) Does not satisfy at the time any of the qualifications for directors set forth in the
23 articles of incorporation or bylaws, if the decision that the director fails to satisfy a
24 qualification is made by the vote of a majority of the directors who meet all of the
25 required qualifications.

26 (d) A director who is designated in the articles of incorporation or bylaws may be removed
27 by an amendment to the articles or bylaws deleting or changing the designation. See section 155
28 of this Act, approval of amendments by third persons.

29 (e) Except as provided in the articles of incorporation or bylaws, a director who is appointed
30 by persons other than the members may be removed with or without cause by those persons.

31 Section 79. That the code be amended by adding a NEW SECTION to read:

1 (a) The circuit court of the county where the principal office of a nonprofit corporation is
2 located, or, if none in this state, in Hughes County, may remove a director from office in a
3 proceeding commenced by or in the right of the corporation if the court finds that:

4 (1) The director engaged in fraudulent conduct with respect to the corporation or its
5 members, grossly abused the position of director, or intentionally inflicted harm on
6 the corporation; and

7 (2) Considering the director's course of conduct and the inadequacy of other available
8 remedies, removal would be in the best interest of the corporation.

9 (b) A member, individual director, or member of a designated body proceeding on behalf
10 of the nonprofit corporation under paragraph (a) shall comply with all of the requirements of
11 sections 164 to 166, inclusive, of this Act.

12 (c) The court, in addition to removing the director, may bar the director from being
13 reelected, redesignated, or reappointed for a period prescribed by the court.

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

15 (e) If a proceeding is commenced pursuant to this section to remove a director of a charitable
16 corporation, the plaintiff must give the attorney general notice in record form of the
17 commencement of the proceeding.

18 Section 80. That the code be amended by adding a NEW SECTION to read:

19 (a) Except as otherwise provided in paragraph (b), the articles of incorporation, or the
20 bylaws, if a vacancy occurs on the board of directors, including a vacancy resulting from an
21 increase in the number of directors, the vacancy may be filled by a majority of the directors
22 remaining in office even if they constitute less than a quorum.

23 (b) Except as provided in the articles of incorporation or bylaws, a vacancy in the position
24 of a director who is:

25 (1) Elected by a voting group of members, by a chapter or other organizational unit of
26 members, or by a region or other geographic grouping of members, may be filled
27 during the first three months after the vacancy occurs only by that voting group or
28 chapter, unit, region, or grouping;

29 (2) Appointed by persons other than the members, may be filled only by those persons;
30 or

31 (3) Designated in the articles of incorporation or bylaws may not be filled by action of
32 the board of directors.

33 (c) A vacancy that will occur at a specific later time by reason of a resignation effective at
34 a later time pursuant to section 77(b) of this Act, or otherwise, may be filled before the vacancy
35 occurs but the new director may not take office until the vacancy occurs.

1 Section 81. That the code be amended by adding a NEW SECTION to read:

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

4 Section 82. That the code be amended by adding a NEW SECTION to read:

5 (a) Some, but less than all, of the powers, authority or functions of the board of directors of
6 a nonprofit corporation under this Act may be vested by the articles of incorporation or bylaws
7 in a designated body. If such a designated body is created:

8 (1) The provisions of sections 71 to 115, inclusive, of this Act and other provisions of
9 law on the rights, duties, and liabilities of the board of directors or directors
10 individually also apply to the designated body and to the members of the designated
11 body individually. The provisions of this Act and other provisions of law on
12 meetings, notice, and the manner of acting of the board of directors also apply to the
13 designated body in the absence of an applicable rule in the articles of incorporation,
14 bylaws or internal operating rules of the designated body;

15 (2) To the extent the powers, authority, or functions of the board of directors have been
16 vested in the designated body, the directors are relieved from their duties and
17 liabilities with respect to those powers, authority, and functions;

18 (3) A provision of the articles of incorporation regarding indemnification of directors or
19 limiting the liability of directors adopted pursuant to subdivision 22(b)(8) or section
20 22(c) of this Act applies to members of the designated body, except as otherwise
21 provided in the articles.

22 (b) Some, but less than all, of the rights or obligations of the members of a nonprofit
23 corporation under this Act may be vested by the articles of incorporation or bylaws in a
24 designated body. If such a designated body is created:

25 (1) The provisions of sections 71 to 115, inclusive, of this Act, and other provisions of
26 law on the rights and obligations of members also apply to the designated body and
27 to the members of the designated body individually. The provisions of this Act and
28 other provisions of law on meetings, notice, and the manner of acting of members
29 also apply to the designated body in the absence of an applicable provision in the
30 articles of incorporation, bylaws or internal operating rules of the designated body;

31 (2) To the extent the rights or obligations of the members are vested in the designated
32 body, the members are relieved from responsibility with respect to those rights and
33 obligations.

34 (c) The articles of incorporation or bylaws may prescribe qualifications for members of a
35 designated body. Except as otherwise provided by the articles or bylaws, a member of a
36 designated body does not need to be:

37 (1) An individual;

1 (2) A director, officer, or member of the nonprofit corporation; or

2 (3) A resident of this state.

3 (d) See section 153(a) of this Act, bylaw amendments requiring member approval.

4 Section 83. That the code be amended by adding a NEW SECTION to read:

5 The board of directors shall hold a meeting annually at a time stated in or fixed in
6 accordance with the articles of incorporation or bylaws.

7 Section 84. That the code be amended by adding a NEW SECTION to read:

8 (a) The board of directors may hold regular or special meetings in or out of this state.

9 (b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors
10 may permit any or all directors to participate in a regular or special meeting by, or conduct the
11 meeting through the use of, any means of communication by which all directors participating
12 may simultaneously hear each other during the meeting. A director participating in a meeting
13 by this means is considered to be present in person at the meeting.

14 Section 85. That the code be amended by adding a NEW SECTION to read:

15 (a) Except to the extent that the articles of incorporation or bylaws require that action by the
16 board of directors be taken at a meeting, action required or permitted pursuant to this Act to be
17 taken by the board of directors may be taken without a meeting if each director signs a consent
18 in the form of a record describing the action to be taken and delivers it to the nonprofit
19 corporation.

20 (b) Action taken pursuant to this section is the act of the board of directors when one or
21 more consents signed by all the directors are delivered to the nonprofit corporation. The consent
22 may specify the time at which the action taken in the consent is to be effective. A director's
23 consent may be withdrawn by a revocation in the form of a record signed by the director and
24 delivered to the corporation prior to delivery to the corporation of unrevoked consents signed
25 by all the directors.

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

28 Section 86. That the code be amended by adding a NEW SECTION to read:

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

32 (b) Unless the articles of incorporation or bylaws provide for a longer or shorter period,
33 special meetings of the board of directors must be preceded by at least two days' notice of the

1 date, time, and place of the meeting. The notice need not describe the purpose of the special
2 meeting unless required by the articles of incorporation or bylaws.

3 (c) Unless the articles of incorporation or bylaws provide otherwise, the chair of the board,
4 the highest ranking officer of the corporation, or twenty percent of the directors then in office
5 may call and give notice of a meeting of the board of directors.

6 (d) The articles of incorporation or bylaws may authorize oral notice of meetings of the
7 board of directors.

8 Section 87. That the code be amended by adding a NEW SECTION to read:

9 (a) Unless otherwise required by law, a director may waive any notice required by this Act,
10 the articles of incorporation, or the bylaws before or after the date and time stated in the notice.
11 Except as provided by paragraph (b), the waiver must be in the form of a record, signed by the
12 director entitled to the notice, and filed with the minutes or corporate records.

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

17 Section 88. That the code be amended by adding a NEW SECTION to read:

18 (a) Except as provided in paragraph (b), the articles of incorporation, or the bylaws, a
19 quorum of the board of directors consists of a majority of the directors in office before a meeting
20 begins.

21 (b) The articles of incorporation or bylaws may authorize a quorum of the board of directors
22 to consist of no fewer than the greater of one-third of the number of directors in office or two
23 directors.

24 (c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors
25 present is the act of the board of directors unless a greater vote is required by the articles of
26 incorporation or bylaws.

27 (d) A director who is present at a meeting of the board of directors when corporate action
28 is taken is considered to have assented to the action taken unless one of the following applies:

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

31 (2) The director dissents or abstains from the action and:

32 (i) The dissent or abstention is entered in the minutes of the meeting; or

1 (ii) The director delivers notice in the form of a record of the director's dissent or
2 abstention to the presiding officer of the meeting before its adjournment or to
3 the corporation promptly after adjournment of the meeting.

4 (e) The right of dissent or abstention is not available to a director who votes in favor of the
5 action taken.

6 Section 89. That the code be amended by adding a NEW SECTION to read:

7 (a) Unless this Act, the articles of incorporation, or the bylaws provide otherwise, a board
8 of directors may create one or more committees of the board that consist of one or more
9 directors.

10 (b) Unless this Act otherwise provides, the creation of a committee and appointment of
11 directors to it must be approved by the greater of:

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

13 (2) The number of directors required by the articles of incorporation or bylaws to take
14 action pursuant to section 88 of this Act.

15 (c) Sections 84 to 88, inclusive, of this Act, apply both to committees of the board and to
16 their members.

17 (d) To the extent authorized by the board of directors or in the articles of incorporation or
18 bylaws, each committee may exercise the powers of the board of directors pursuant to section
19 71 of this Act except as limited by paragraph (e).

20 (e) A committee may not, however:

21 (1) In the case of a membership corporation, approve or propose to members action that
22 this Act requires be approved by members;

23 (2) Fill vacancies on the board of directors or, subject to paragraph (g), on any of its
24 committees; or

25 (3) Adopt, amend, or repeal bylaws.

26 (f) The creation of, delegation of authority to, or action by a committee does not alone
27 constitute compliance by a director with the standards of conduct described in section 90 of this
28 Act.

29 (g) The board of directors may appoint one or more directors as alternate members of any
30 committee to replace any absent or disqualified member during the member's absence or
31 disqualification.

32 (h) A nonprofit corporation may create or authorize the creation of one or more advisory
33 committees whose members need not be directors. An advisory committee:

1 (1) Is not a committee of the board; and

2 (2) May not exercise any of the powers of the board.

3 Section 90. That the code be amended by adding a NEW SECTION to read:

4 (a) Each member of the board of directors, when discharging the duties of a director, shall
5 act:

6 (1) In good faith; and

7 (2) In a manner the director reasonably believes to be in the best interests of the
8 nonprofit corporation.

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

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

19 (d) In discharging board or committee duties a director who does not have knowledge that
20 makes reliance unwarranted may rely on the performance by any of the persons specified in
21 subdivision (f)(1), (f)(3), or (f)(4) to whom the board may have delegated, formally or
22 informally by course of conduct, the authority or duty to perform one or more of the board's
23 functions that are delegable under applicable law.

24 (e) In discharging board or committee duties, a director who does not have knowledge that
25 makes reliance unwarranted may rely on information, opinions, reports, or statements, including
26 financial statements and other financial data, prepared or presented by any of the persons
27 specified in paragraph (f).

28 (f) A director may rely, in accordance with paragraph (d) or (e), on:

29 (1) One or more officers, employees, or volunteers of the nonprofit corporation whom
30 the director reasonably believes to be reliable and competent in the functions
31 performed or the information, opinions, reports, or statements provided;

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

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

- 1 (ii) As to which the particular person merits confidence;
- 2 (3) A committee of the board of directors of which the director is not a member if the
3 director reasonably believes the committee merits confidence; or
- 4 (4) In the case of a corporation engaged in religious activity, religious authorities and
5 ministers, priests, rabbis, imams, or other persons whose positions or duties the
6 director reasonably believes justify reliance and confidence and whom the director
7 believes to be reliable and competent in the matters presented.
- 8 (g) A director is not a trustee with respect to the nonprofit corporation or with respect to any
9 property held or administered by the corporation, including property that may be subject to
10 restrictions imposed by the donor or transferor of the property.

11 Section 91. That the code be amended by adding a NEW SECTION to read:

- 12 (a) A nonprofit corporation may not lend money to or guarantee the obligation of a director
13 or officer of the corporation.
- 14 (b) This section does not apply to:
- 15 (1) An advance to pay reimbursable expenses reasonably expected to be incurred by a
16 director or officer;
- 17 (2) An advance to pay premiums on life insurance if the advance is secured by the cash
18 value of the policy;
- 19 (3) Advances pursuant to sections 105 to 113, inclusive, of this Act;
- 20 (4) Loans or advances pursuant to employee benefit plans;
- 21 (5) A loan secured by the principal residence of an officer; or
- 22 (6) A loan to pay relocation expenses of an officer.
- 23 (c) The fact that a loan or guarantee is made in violation of this section does not affect the
24 borrower's liability on the loan.

25 Section 92. That the code be amended by adding a NEW SECTION to read:

- 26 (a) A director who votes for or assents to a distribution made in violation of this Act is
27 personally liable to the nonprofit corporation for the amount of the distribution that exceeds
28 what could have been distributed without violating this Act if the party asserting liability
29 establishes that, when taking the action, the director did not comply with section 90 of this Act.
- 30 (b) A director held liable under subsection paragraph (a) for an unlawful distribution is
31 entitled to:

1 (1) Contribution from every other director who could be held liable under paragraph (a)
2 for the unlawful distribution; and

3 (2) Recoupment from each person of the pro-rata portion of the amount of the unlawful
4 distribution the person received, whether or not the person knew the distribution was
5 made in violation of this Act.

6 (c) A proceeding to enforce:

7 (1) The liability of a director under subsection paragraph (a) is barred unless it is
8 commenced within two years after the date on which the distribution was made; or

9 (2) Contribution or recoupment under paragraph (b) is barred unless it is commenced
10 within one year after the liability of the claimant has been finally adjudicated under
11 paragraph (a).

12 (d) This section is subject to, and modified by, sections 98 to 103, inclusive, of this Act, as
13 to any director serving without compensation.

14 Section 93. That the code be amended by adding a NEW SECTION to read:

15 (a) The officers of a nonprofit corporation are the individuals who hold the offices described
16 in its articles of incorporation or bylaws, or are appointed or elected in accordance with the
17 articles and bylaws or as authorized by the board of directors.

18 (b) The articles of incorporation or bylaws or the board of directors must assign to one of
19 the officers responsibility for preparing or supervising the preparation of the minutes of the
20 meetings of the board of directors and the members, if any, and for maintaining and
21 authenticating the records of the corporation required to be kept under sections 209(a) and
22 209(e) of this Act.

23 (c) The same individual may simultaneously hold more than one office in a nonprofit
24 corporation.

25 Section 94. That the code be amended by adding a NEW SECTION to read:

26 Each officer has the authority and must perform the duties set forth in the articles of
27 incorporation or bylaws or, to the extent consistent with the articles and bylaws, the duties
28 prescribed by the board of directors or by direction of an officer authorized by the board of
29 directors to prescribe the duties of other officers.

30 Section 95. That the code be amended by adding a NEW SECTION to read:

31 (a) An officer with discretionary authority must discharge the duties under that authority:

32 (1) In good faith;

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

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

5 (b) The duty of an officer includes the obligation to inform:

6 (1) The superior officer to whom, or the board of directors or the committee thereof to
7 which, the officer reports, of information about the affairs of the nonprofit
8 corporation known to the officer, within the scope of the officer's functions, and
9 known to the officer to be material to the superior officer, board, or committee; and

10 (2) The superior officer, or another appropriate person within the nonprofit corporation,
11 or the board of directors, or a committee thereof, of any actual or probable material
12 violation of law involving the corporation or material breach of duty to the
13 corporation by an officer, employee, or agent of the corporation, that the officer
14 believes has occurred or is likely to occur.

15 (c) In discharging the duties, an officer who does not have knowledge that makes reliance
16 unwarranted may rely on information, opinions, reports, or statements, including financial
17 statements and other financial data, if prepared or presented by:

18 (1) One or more officers or employees of the nonprofit corporation whom the officer
19 reasonably believes to be reliable and competent in the functions performed or the
20 information, opinions, reports, or statements provided;

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

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

24 (ii) As to which the particular person merits confidence;

25 (3) In the case of a corporation engaged in religious activity, religious authorities and
26 ministers, priests, rabbis, imams, or other persons whose positions or duties the
27 officer reasonably believes justify reliance and confidence and whom the officer
28 believes to be reliable and competent in the matters presented.

29 Section 96. That the code be amended by adding a NEW SECTION to read:

30 (a) An officer may resign at any time by delivering notice to the nonprofit corporation. A
31 resignation is effective when the notice is delivered unless the notice specifies a later effective
32 time. If a resignation is made effective at a later time and the board of directors or the appointing
33 officer accepts the future effective time, the board or the appointing officer may designate a
34 successor before the effective time if the board or the appointing officer provides that the
35 successor does not take office until the effective time.

1 (b) Except as provided in the articles of incorporation or bylaws, an officer may be removed
2 at any time with or without cause by:

3 (1) The board of directors;

4 (2) The officer who appointed the officer being removed, unless the board provides
5 otherwise; or

6 (3) Any other officer authorized by the articles, the bylaws, or the board.

7 (c) For purposes of this section, the term, appointing officer, means the officer, including
8 any successor to that officer, who appointed the officer resigning or being removed.

9 Section 97. That the code be amended by adding a NEW SECTION to read:

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

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

14 Section 98. That the code be amended by adding a NEW SECTION to read:

15 The directors, officers, committee members, and employees of the corporation shall not, as
16 such, be liable on its obligations.

17 Section 99. That the code be amended by adding a NEW SECTION to read:

18 No director, trustee, committee member, or officer serving without compensation, other than
19 reimbursement for actual expenses, of any corporation organized pursuant to this Act, or under
20 similar laws of another state, and which is exempt from taxation pursuant to section 501(a) of
21 the Internal Revenue Code, 26 U.S.C. section 501(a), and is listed as an exempt organization
22 in section 501(c) of the Internal Revenue Code, 26 U.S.C. section 501(c), or any hospital
23 organized pursuant to chapter 34-8, 34-9, or 34-10, is liable, and no cause of action may be
24 brought, for damages resulting from the exercise of judgment or discretion in connection with
25 the duties or responsibilities of such director, trustee, committee member, or officer while acting
26 in an official capacity as such director, trustee, committee member, or officer, unless the act or
27 omission involved willful or wanton misconduct. The immunity provided pursuant to this
28 section also applies to any designated body, any member of a designated body, and to any
29 member of an advisory committee, serving without compensation, other than reimbursement
30 for actual expenses, of any corporation described by this section. The immunity provided by this
31 section is in addition to the immunity provided by sections 100 to 103, inclusive, of this Act.

32 Section 100. That the code be amended by adding a NEW SECTION to read:

33 Terms used in sections 100 to 103, inclusive, of this Act, mean:

- 1 (1) "Free clinic," a clinic in which health care services are offered voluntarily through a
 2 nonprofit corporation by health care professionals licensed or certified pursuant to
 3 the laws of this state to patients without charge or at a charge based on a sliding fee
 4 scale or the ability to pay;
- 5 (2) "Governmental entity," any county, municipality, township, school district, chartered
 6 governmental units, or other special districts, including any association, authority,
 7 board, commission, division, office, or task force of such governmental entity or of
 8 the State of South Dakota;
- 9 (3) "Nonprofit corporation," any corporation organized pursuant to this Act, and which
 10 is exempt from taxation pursuant to section 501(a) of the Internal Revenue Code, 26
 11 U.S.C. section 501(a);
- 12 (4) "Nonprofit organization," any organization which is exempt from taxation pursuant
 13 to section 501(c) of the Internal Revenue Code, 26 U.S.C. section 501(c) as amended;
- 14 (5) "Volunteer," an individual performing services for a nonprofit organization, a
 15 nonprofit corporation, a hospital organized pursuant to chapter 34-8, 34-9, or 34-10,
 16 or a governmental entity without compensation, other than reimbursement for actual
 17 expenses incurred. The term includes a volunteer serving as a director, officer,
 18 trustee, designated body, member of a designated body, committee member, advisory
 19 committee member, or direct service volunteer.

20 Section 101. That the code be amended by adding a NEW SECTION to read:

21 Any volunteer of a nonprofit organization, a nonprofit corporation, a free clinic, any hospital
 22 organized pursuant to chapter 34-8, 34-9, or 34-10, or a governmental entity shall be immune
 23 from civil liability in any action brought in any court in this state on the basis of any act or
 24 omission resulting in damage or injury if:

- 25 (1) The individual was acting in good faith and within the scope of such individual's
 26 official functions and duties for the nonprofit organization, the nonprofit corporation,
 27 the free clinic, a hospital organized pursuant to chapter 34-8, 34-9, or 34-10, or a
 28 governmental entity; and
- 29 (2) The damage or injury was not caused by gross negligence or willful and wanton
 30 misconduct by such individual.

31 Section 102. That the code be amended by adding a NEW SECTION to read:

32 No immunity provided pursuant to sections 98 to 104, inclusive, of this Act, extends to any
 33 person causing personal injury or wrongful death resulting from the negligent operation of a
 34 motor vehicle.

35 Section 103. That the code be amended by adding a NEW SECTION to read:

1 To the extent that any volunteer, nonprofit corporation, nonprofit organization,
2 governmental entity, or hospital organized pursuant to chapter 34-8, 34-9, or 34-10 participates
3 in a risk sharing pool or purchases liability insurance and to the extent that coverage is afforded
4 thereunder, the immunity provided by section 101 of this Act is deemed to have been waived
5 and may not be raised by way of affirmative defense. This section does not apply to a volunteer
6 serving as a director, officer, trustee, designated body, member of a designated body, committee
7 member, or advisory committee member.

8 Section 104. That the code be amended by adding a NEW SECTION to read:

9 Sections 98 to 103, inclusive, of this Act, may not be construed to constitute a modification
10 or repeal of §§ 20-9-3, 20-9-4, 20-9-4.1, 34-48A-23, and 34-48A-24.

11 Section 105. That the code be amended by adding a NEW SECTION to read:

12 Terms used in sections 105 to 113, inclusive, of this Act, mean:

13 (1) "Corporation," any domestic or foreign predecessor entity of a nonprofit corporation
14 in a merger, conversion, or domestication;

15 (2) "Director" or "officer," an individual who is or was a director or officer, respectively,
16 of a nonprofit corporation or who, while a director or officer of the corporation, is or
17 was serving at the corporation's request as a director, officer, partner, trustee,
18 employee, or agent of another domestic or foreign corporation, partnership, joint
19 venture, trust, employee benefit plan, or other entity. A director or officer is
20 considered to be serving an employee benefit plan at the corporation's request if the
21 individual's duties to the corporation also impose duties on, or otherwise involve
22 services by, the individual to the plan or to participants in or beneficiaries of the plan.
23 The term, director, includes a member of a designated body. The terms, director or
24 officer, includes, unless the context requires otherwise, the estate or personal
25 representative of a director or officer;

26 (3) "Disinterested director," a director who, at the time of a vote referred to in section
27 108(c) of this Act or a vote or selection referred to in section 110(b) or 110(c) of this
28 Act, is not:

29 (i) A party to the proceeding; or

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

35 (4) "Expenses," includes attorney's fees;

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

4 (6) "Official capacity,":

5 (i) When used with respect to a director, the office of director in a nonprofit
6 corporation; and

7 (ii) When used with respect to an officer, as contemplated in section 110 of this
8 Act, the office in a corporation held by the officer. The term, official capacity,
9 does not include service for any other domestic or foreign corporation or any
10 partnership, joint venture, trust, employee benefit plan, or other entity;

11 (7) "Party," an individual who was, is, or is threatened to be made, a defendant or
12 respondent in a proceeding;

13 (8) "Proceeding," includes a threatened, pending, or completed proceeding.

14 Section 106. That the code be amended by adding a NEW SECTION to read:

15 (a) Except as otherwise provided in this section, a nonprofit corporation may indemnify an
16 individual who is a party to a proceeding because the individual is or was a director against
17 liability incurred in the proceeding if the individual:

18 (1) Acted in good faith; and

19 (2) Reasonably believed:

20 (i) In the case of conduct in an official capacity, that the conduct was in the best
21 interests of the corporation; and

22 (ii) In all other cases, that the individual's conduct was at least not opposed to the
23 best interests of the corporation; and

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

26 (4) The individual engaged in conduct for which broader indemnification has been made
27 permissible or obligatory under a provision of the articles of incorporation, as
28 authorized by subdivision 22(b)(8) of this Act.

29 (b) A director's conduct with respect to an employee benefit plan for a purpose the director
30 reasonably believed to be in the interests of the participants in and the beneficiaries of the plan
31 is conduct that satisfies the requirement of subsection(a)(2)(ii).

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

4 (d) Unless ordered by a court pursuant to subdivision 109(a)(3) of this Act, a nonprofit
5 corporation may not indemnify a director:

6 (1) In connection with a proceeding by or in the right of the corporation, except for
7 reasonable expenses incurred in connection with the proceeding if it is determined
8 that the director has met the relevant standard of conduct under paragraph (a); or

9 (2) In connection with any proceeding with respect to conduct for which the director was
10 adjudged liable on the basis that the director received a financial benefit to which the
11 director was not entitled, whether or not involving action in an official capacity.

12 Section 107. That the code be amended by adding a NEW SECTION to read:

13 A nonprofit corporation must indemnify a director to the extent the director was successful,
14 on the merits or otherwise, in the defense of any proceeding to which the director was a party
15 because the director was a director of the corporation against reasonable expenses incurred by
16 the director in connection with the proceeding.

17 Section 108. That the code be amended by adding a NEW SECTION to read:

18 (a) A nonprofit corporation may, before final disposition of a proceeding, advance funds to
19 pay for or reimburse the reasonable expenses incurred by an individual who is a party to a
20 proceeding because the individual is or was a director if the individual delivers to the
21 corporation:

22 (1) An affirmation in the form of a record of the individual's good faith belief that the
23 individual has met the relevant standard of conduct described in section 106 of this
24 Act, or that the proceeding involves conduct for which liability has been eliminated
25 by sections 98 to 103, inclusive, of this Act, or under a provision of the articles of
26 incorporation as authorized pursuant to section 22(c) of this Act; and

27 (2) An undertaking in the form of a record to repay any funds advanced if the individual
28 is not entitled to mandatory indemnification pursuant to section 107 of this Act and
29 it is ultimately determined pursuant to section 109 or 110 of this Act that the
30 individual does not meet the relevant standard of conduct described in section 106
31 of this Act.

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

35 (c) Authorizations pursuant to this section must be made:

36 (1) By the board of directors:

- 1 (i) If there are two or more disinterested directors, by a majority vote of all the
2 disinterested directors, a majority of whom constitute a quorum for that
3 purpose, or by a majority of the members of a committee of two or more
4 disinterested directors appointed by such a vote; or
- 5 (ii) If there are fewer than two disinterested directors, by the vote necessary for
6 action by the board in accordance with section 90 of this Act, in which
7 authorization directors who do not qualify as disinterested directors may
8 participate; or
- 9 (2) By the members.

10 Section 109. That the code be amended by adding a NEW SECTION to read:

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

- 15 (1) Order indemnification if the court determines that the director is entitled to
16 mandatory indemnification pursuant to section 107 of this Act;
- 17 (2) Order indemnification or advance for expenses if the court determines that the
18 director is entitled to indemnification or advance for expenses pursuant to a provision
19 authorized by section 113 (a) of this Act; or
- 20 (3) Order indemnification or advance for expenses if the court determines, in view of all
21 the relevant circumstances, that it is fair and reasonable:
- 22 (i) To indemnify the director; or
- 23 (ii) To advance expenses to the director, even if the director has not met the
24 relevant standard of conduct set forth in section 106(a) of this Act, failed to
25 comply with section 108 of this Act, or was adjudged liable in a proceeding
26 referred to in subdivision 106(d)(1) or 106(d)(2) of this Act, but if the director
27 was adjudged so liable his or her indemnification must be limited to
28 reasonable expenses incurred in connection with the proceeding.

29 (b) If the court determines that the director is entitled to indemnification pursuant to
30 subdivision (a)(1) or to indemnification or advance for expenses pursuant to subdivision (a)(2),
31 it must also order the nonprofit corporation to pay the director's reasonable expenses incurred
32 in connection with obtaining court-ordered indemnification or advance for expenses. If the court
33 determines that the director is entitled to indemnification or advance for expenses pursuant to
34 subdivision (a)(3), it may also order the corporation to pay the director's reasonable expenses
35 to obtain court-ordered indemnification or advance for expenses.

36 Section 110. That the code be amended by adding a NEW SECTION to read:

1 (a) A nonprofit corporation may not indemnify a director pursuant to section 106 of this Act
2 unless authorized for a specific proceeding after a determination has been made that
3 indemnification of the director is permissible because the director has met the relevant standard
4 of conduct set forth in section 106 of this Act.

5 (b) The determination may be made:

6 (1) If there are two or more disinterested directors, by a majority vote of all the
7 disinterested directors, a majority of whom constitute a quorum for that purpose, or
8 by a majority of the members of a committee of two or more disinterested directors
9 appointed by such a vote;

10 (2) By special legal counsel:

11 (i) Selected in the manner prescribed in subdivision (1); or

12 (ii) If there are fewer than two disinterested directors, selected by the board of
13 directors, in which selection directors who do not qualify as disinterested
14 directors may participate; or

15 (3) By the members.

16 (c) Authorization of indemnification must be made in the same manner as the determination
17 that indemnification is permissible, except that if there are fewer than two disinterested directors
18 or if the determination is made by special legal counsel, authorization of indemnification must
19 be made by those entitled under subsection (b)(2)(ii) to select special legal counsel.

20 Section 111. That the code be amended by adding a NEW SECTION to read:

21 (a) A nonprofit corporation may indemnify and advance expenses pursuant to sections 105
22 to 113, inclusive, of this Act, to an officer of the corporation who is a party to a proceeding
23 because the officer is or was an officer of the corporation:

24 (1) To the same extent as a director; and

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

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

31 (ii) Liability arising out of conduct that constitutes:

32 (A) Receipt by the officer of a financial benefit to which the officer is not
33 entitled;

- 1 (B) An intentional infliction of harm on the corporation or the members; or
2 (C) An intentional violation of criminal law.

3 (b) The provisions of subdivision (a)(2) apply to an officer who is also a director if the basis
4 on which the officer is made a party to the proceeding is an act or omission solely as an officer.

5 (c) An officer of a corporation who is not a director is entitled to mandatory indemnification
6 pursuant to section 107 of this Act, and may apply to a court pursuant to section 109 of this Act
7 for indemnification or an advance for expenses, in each case to the same extent to which a
8 director may be entitled to indemnification or advance for expenses under those provisions.

9 Section 112. That the code be amended by adding a NEW SECTION to read:

10 A nonprofit corporation may purchase and maintain insurance on behalf of an individual
11 who is or was a director or officer of the corporation, or who, while a director or officer of the
12 corporation, serves or served at the corporation's request as a director, officer, partner, trustee,
13 employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust,
14 employee benefit plan, or other entity, against liability asserted against or incurred by the
15 individual in that capacity or arising from the individual's status as a director or officer, whether
16 or not the corporation would have power to indemnify or advance expenses to the individual
17 against the same liability pursuant to sections 105 to 113, inclusive, of this Act.

18 Section 113. That the code be amended by adding a NEW SECTION to read:

19 (a) A nonprofit corporation may, by a provision in its articles of incorporation or bylaws or
20 in a resolution adopted or a contract approved by its board of directors or members, obligate
21 itself in advance of the act or omission giving rise to a proceeding to provide indemnification
22 as permitted pursuant to section 106 of this Act or advance funds to pay for or reimburse
23 expenses as permitted pursuant to section 108 of this Act. An obligatory provision satisfies the
24 requirements for authorization referred to in sections 108(c) and 110(c) of this Act. Any such
25 provision that obligates the corporation to provide indemnification to the fullest extent permitted
26 by law obligates the corporation to advance funds to pay for or reimburse expenses in
27 accordance with section 108 of this Act to the fullest extent permitted by law, unless the
28 provision specifically provides otherwise.

29 (b) Any provision pursuant to paragraph (a) may not obligate the nonprofit corporation to
30 indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to
31 conduct with respect to the predecessor, unless otherwise specifically provided. Any provision
32 for indemnification or advance for expenses in the organic records, articles of incorporation,
33 bylaws, or a resolution of the governors, board of directors, members or interest holders of a
34 predecessor of the corporation in a fundamental transaction, or in a contract to which the
35 predecessor is a party, existing at the time the fundamental transaction takes effect, is governed
36 by:

37 (1) Subdivision 121(a)(2) of this Act in the case of a domestication;

38 (2) Subdivision 126(a)(2) of this Act in the case of a for-profit conversion;

1 (3) Subdivision 134(a)(2) of this Act in the case of a foreign for-profit domestication and
2 conversion;

3 (4) Subdivision 140(a)(2) of this Act in the case of an entity conversion; or

4 (5) Subdivision 162(a)(4) of this Act in the case of a merger.

5 (c) A nonprofit corporation may, by a provision in its articles of incorporation or bylaws,
6 limit any of the rights to indemnification or advance for expenses created by or pursuant to
7 sections 105 to 113, inclusive, of this Act.

8 (d) Sections 105 to 113, inclusive, of this Act, do not limit a nonprofit corporation's power
9 to pay or reimburse expenses incurred by a director or an officer in connection with appearance
10 as a witness in a proceeding at a time when the director or officer is not a party.

11 (e) Sections 105 to 113, inclusive, of this Act, do not limit a nonprofit corporation's power
12 to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee,
13 agent, or volunteer.

14 Section 114. That the code be amended by adding a NEW SECTION to read:

15 (a) A contract or transaction between a nonprofit corporation and one or more of its
16 members, directors, members of a designated body, or officers or between a nonprofit
17 corporation and any other entity in which one or more of its directors, members of a designated
18 body, or officers are directors or officers, hold a similar position, or have a financial interest,
19 is not void or voidable solely for that reason, or solely because the member, director, member
20 of a designated body, or officer is present at or participates in the meeting of the board of
21 directors that authorizes the contract or transaction, or solely because his, her or their votes are
22 counted for that purpose, if:

23 (1) The material facts as to the relationship or interest and as to the contract or
24 transaction are disclosed or are known to the board of directors and the board in good
25 faith authorizes the contract or transaction by the affirmative votes of a majority of
26 the disinterested directors even though the disinterested directors are less than a
27 quorum;

28 (2) The material facts as to the relationship or interest of the member, director, or officer
29 and as to the contract or transaction are disclosed or are known to the members
30 entitled to vote thereon, if any, and the contract or transaction is specifically
31 approved in good faith by vote of those members; or

32 (3) The contract or transaction is fair as to the corporation as of the time it is authorized,
33 approved, or ratified by the board of directors or the members.

34 (b) Common or interested directors may be counted in determining the presence of a quorum
35 at a meeting of the board that authorizes a contract or transaction specified in paragraph (a).

1 (c) This section is applicable except as otherwise restricted in the articles of incorporation
2 or bylaws.

3 Section 115. That the code be amended by adding a NEW SECTION to read:

4 (a) The taking advantage, directly or indirectly, by a director of a business opportunity may
5 not be the subject of equitable relief, or give rise to an award of damages or other sanctions
6 against the director, in a proceeding by or in the right of the nonprofit corporation on the ground
7 that the opportunity should have first been offered to the corporation, if before becoming legally
8 obligated or entitled respecting the opportunity the director brings it to the attention of the
9 corporation and action by the members or the directors disclaiming the corporation's interest in
10 the opportunity is taken in compliance with the procedures set forth in section 114 of this Act,
11 as if the decision being made concerned a conflicting interest transaction.

12 (b) In any proceeding seeking equitable relief or other remedies, based upon an alleged
13 improper taking advantage of a business opportunity by a director, the fact that the director did
14 not employ the procedure described in paragraph (a) before taking advantage of the opportunity
15 does not support an inference that the opportunity should have been first presented to the
16 nonprofit corporation or alter the burden of proof otherwise applicable to establish that the
17 director breached a duty to the corporation in the circumstances.

18 (c) For purposes of this section, director, includes a member of a designated body.

19 Section 116. That the code be amended by adding a NEW SECTION to read:

20 Terms used in section 116 to 141, inclusive, of this Act, mean:

21 (1) "Conversion," a transaction authorized by sections 123 to 127, inclusive, of this Act,
22 sections 132 to 135, inclusive, of this Act, or sections 136 to 141, inclusive, of this
23 Act;

24 (2) "Converting corporation," the domestic or foreign nonprofit or business corporation
25 that approves a conversion pursuant to section 116 to 141, inclusive, of this Act, or
26 its organic law;

27 (3) "Converting entity," the domestic or foreign entity that approves a conversion
28 pursuant to section 136 of this Act, or its organic law;

29 (4) "Domesticated corporation," the domesticating corporation as it continues in
30 existence after a domestication;

31 (5) "Domesticating corporation," the domestic nonprofit corporation that adopts a plan
32 of domestication pursuant to section 119 of this Act, or the foreign nonprofit
33 corporation that approves a domestication pursuant to its organic law;

34 (6) "Domestication," a transaction authorized by sections 118 to 122, inclusive, of this
35 Act.

1 (7) "Surviving corporation," the corporation as it continues in existence immediately
2 after consummation of a for-profit conversion pursuant to sections 123 to 127,
3 inclusive, of this Act, a foreign for-profit conversion and domestication pursuant to
4 sections 132 to 135, inclusive, of this Act, or an entity conversion pursuant to
5 sections 136 to 141, inclusive, of this Act;

6 (8) "Surviving entity," the unincorporated entity as it continues in existence immediately
7 after consummation of an entity conversion pursuant to sections 136 to 141,
8 inclusive, of this Act.

9 Section 117. That the code be amended by adding a NEW SECTION to read:

10 (a) If a domestic or foreign nonprofit corporation or eligible entity may not be a party to a
11 merger or sale of its assets without the approval of the attorney general, the Division of
12 Insurance or the Public Utilities Commission, the corporation or eligible entity may not be a
13 party to a transaction pursuant to sections 116 to 141, inclusive, of this Act, without the prior
14 approval of that agency.

15 (b) Property held in trust by an entity or otherwise dedicated to a charitable purpose
16 expressed or intended by the original donor may not be diverted from its purpose by any
17 transaction pursuant to sections 116 to 141, inclusive, of this Act, unless the entity obtains an
18 appropriate order of court specifying the disposition of the property pursuant to the law of this
19 state on cy pres or otherwise dealing with the nondiversion of charitable assets.

20 (c) Unless an entity that is a party to a transaction pursuant to sections 116 to 141, inclusive,
21 of this Act, obtains an appropriate order of court under the law of this state on cy pres or
22 otherwise dealing with the nondiversion of charitable assets, the transaction may not affect:

23 (1) Any restriction imposed upon the entity by its organic records that may not be
24 amended by its board of directors, governors, members, or interest holders or by a
25 designated body;

26 (2) Any restriction imposed upon property held by the entity by virtue of any trust under
27 which it holds that property; or

28 (3) The existing rights of persons other than members, shareholders, or interest holders
29 of the entity.

30 (d) A person who is a member, interest holder, or otherwise affiliated with a charitable
31 corporation or an unincorporated entity with a charitable purpose may not receive a direct or
32 indirect financial benefit in connection with a transaction pursuant to sections 116 to 141,
33 inclusive, of this Act, to which the charitable corporation or unincorporated entity is a party
34 unless the person is itself a charitable corporation or unincorporated entity with a charitable
35 purpose. This paragraph does not apply to the receipt of reasonable compensation for services
36 rendered.

37 (e) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust
38 or otherwise, made before or after a transaction pursuant to sections 116 to 141, inclusive, of

1 this Act, to or for the entity that is the subject of the transaction, shall inure to the entity as it
2 continues in existence after the transaction, subject to the express terms of the will or other
3 instrument.

4 (f) The attorney general shall receive notice of any action by a domestic or foreign nonprofit
5 corporation or eligible entity that affects charitable assets by cy pres or diversion.

6 Section 118. That the code be amended by adding a NEW SECTION to read:

7 (a) A foreign nonprofit corporation may become a domestic nonprofit corporation only if
8 the domestication is authorized by the law of the foreign jurisdiction.

9 (b) A domestic nonprofit corporation may become a foreign nonprofit corporation if the
10 domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the
11 laws of the foreign jurisdiction require the adoption of a plan of domestication, the
12 domestication must be approved by the adoption by the corporation of a plan of domestication
13 in the manner provided pursuant to sections 118 to 122, inclusive, of this Act.

14 (c) The plan of domestication must include:

15 (1) A statement of the jurisdiction in which the corporation is to be domesticated;

16 (2) The terms and conditions of the domestication;

17 (3) The manner and basis of canceling or reclassifying the memberships of the
18 corporation following its domestication into memberships, obligations, rights to
19 acquire memberships, cash, other property, or any combination of the foregoing; and

20 (4) Any desired amendments to the articles of incorporation or bylaws of the corporation
21 following its domestication.

22 (d) The plan of domestication may also include a provision that the plan may be amended
23 prior to filing the document required by the laws of this state or the other jurisdiction to
24 consummate the domestication; except that, subsequent to approval of the plan by the members,
25 the plan may not be amended without the approval of the members to change:

26 (1) The amount or kind of memberships, obligations, rights to acquire memberships,
27 cash, or other property to be received by the members under the plan;

28 (2) The articles of incorporation as they will be in effect immediately following the
29 domestication, except for changes permitted pursuant to section 146 of this Act or
30 by comparable provisions of the laws of the other jurisdiction; or

31 (3) Any of the other terms or conditions of the plan if the change would adversely affect
32 any of the members in any material respect.

33 (e) If any debt security, note or similar evidence of indebtedness for money borrowed,
34 whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a

1 domestic nonprofit corporation before the effective date of this Act contains a provision
2 applying to a merger of the corporation and the document does not refer to a domestication of
3 the corporation, the provision shall be deemed to apply to a domestication of the corporation
4 until such time as the provision is amended subsequent to that date.

5 (f) See section 117 of this Act, restrictions and required approvals.

6 Section 119. That the code be amended by adding a NEW SECTION to read:

7 In the case of a domestication of a domestic nonprofit corporation in a foreign jurisdiction:

8 (1) The plan of domestication must be adopted by the board of directors;

9 (2) After adopting the plan of domestication the board of directors must submit the plan
10 to the members for their approval, if there are members entitled to vote on the plan.
11 The board of directors must also transmit to the members a recommendation that the
12 members approve the plan, unless the board of directors makes a determination that
13 because of conflicts of interest or other special circumstances it should not make such
14 a recommendation, in which case the board of directors must transmit to the members
15 the basis for that determination;

16 (3) The board of directors may condition its submission of the plan of domestication to
17 the members on any basis;

18 (4) If the approval of the members is to be given at a meeting, the corporation must
19 notify each member, whether or not entitled to vote, of the meeting of members at
20 which the plan of domestication is to be submitted for approval. The notice must
21 state that the purpose, or one of the purposes, of the meeting is to consider the plan
22 and must contain or be accompanied by a copy or summary of the plan. The notice
23 must include or be accompanied by a copy of the articles of incorporation and bylaws
24 as they will be in effect immediately after the domestication;

25 (5) Unless the articles of incorporation or bylaws, or the board of directors acting
26 pursuant to subdivision (3), requires a greater vote or a greater number of votes to be
27 present, the approval of the plan of domestication by the members requires the
28 approval of the members at a meeting at which a quorum exists, and, if any class of
29 members is entitled to vote as a separate group on the plan, the approval of each such
30 separate voting group at a meeting at which a quorum of the voting group exists;

31 (6) Separate voting by voting groups is required by each class of members that:

32 (i) Are to be reclassified under the plan of domestication into a different class of
33 memberships, or into obligations, rights to acquire memberships, cash, other
34 property, or any combination of the foregoing;

35 (ii) Would be entitled to vote as a separate group on a provision of the plan that,
36 if contained in a proposed amendment to articles of incorporation, would
37 require action by separate voting groups under section 145 of this Act; or

1 (iii) Is entitled under the articles of incorporation or bylaws to vote as a voting
2 group to approve an amendment of the articles;

3 (7) If any provision of the articles of incorporation, bylaws, or an agreement to which
4 any of the directors, members of a designated body, or members are parties, adopted
5 or entered into before the effective date of this Act, applies to a merger of the
6 corporation and that document does not refer to a domestication of the corporation,
7 the provision shall be deemed to apply to a domestication of the corporation until
8 such time as the provision is amended subsequent to that date.

9 Section 120. That the code be amended by adding a NEW SECTION to read:

10 (a) Articles of domestication must be signed on behalf of the domesticating corporation by
11 any officer or other duly authorized representative. The articles must set forth:

12 (1) The name and jurisdiction of incorporation of the domesticating corporation;

13 (2) The name and jurisdiction of incorporation of the domesticated entity; and

14 (3) If the domesticating corporation is a domestic nonprofit corporation, a statement that
15 the plan of domestication was approved in accordance with sections 123 to 127,
16 inclusive, of this Act or, if the domesticating corporation is a foreign nonprofit
17 corporation, a statement that the domestication was approved in accordance with the
18 law of its jurisdiction of incorporation.

19 (b) If the domesticated corporation is a domestic nonprofit corporation, the articles of
20 domestication shall either contain all of the provisions that section 22(a) of this Act requires to
21 be set forth in articles of incorporation and any other desired provisions that sections 22(b) and
22 22(c) of this Act permits to be included in articles of incorporation, or shall have attached
23 articles of incorporation. In either case, provisions that would not be required to be included in
24 restated articles of incorporation may be omitted, except that the name and address of the initial
25 registered agent of the domesticated corporation must be included. The name of the
26 domesticated corporation must satisfy the requirements of section 32 of this Act.

27 (c) The articles of domestication must be delivered to the Office of the Secretary of State
28 for filing, and take effect at the effective time provided in section 5 of this Act.

29 (d) If the domesticating corporation is a qualified foreign nonprofit corporation, its
30 certificate of authority is cancelled automatically on the effective date of its domestication.

31 Section 121. That the code be amended by adding a NEW SECTION to read:

32 (a) Except as otherwise provided in section 117 of this Act, when a domestication becomes
33 effective:

34 (1) The title to all real and personal property, both tangible and intangible, of the
35 domesticating corporation remains in the domesticated corporation without reversion
36 or impairment;

- 1 (2) The liabilities of the domesticating corporation remain the liabilities of the
2 domesticated corporation;
- 3 (3) An action or proceeding pending against the domesticating corporation continues
4 against the domesticated corporation as if the domestication had not occurred;
- 5 (4) The articles of domestication, or the articles of incorporation attached to the articles
6 of domestication, constitute the articles of incorporation of a foreign corporation
7 domesticating in this state;
- 8 (5) The memberships in the domesticating corporation are reclassified into memberships,
9 obligations, rights to acquire memberships, or cash or other property in accordance
10 with the terms of the domestication, and the members are entitled only to the rights
11 provided by those terms; and
- 12 (6) The domesticating corporation is deemed to:
- 13 (i) Be incorporated under and subject to the organic law of the domesticated
14 corporation for all purposes; and
- 15 (ii) Be the same corporation without interruption as the domesticating corporation.
- 16 (b) The interest holder liability of a member in a foreign nonprofit corporation that is
17 domesticated in this state is as follows:
- 18 (1) The domestication does not discharge any interest holder liability under the laws of
19 the foreign jurisdiction to the extent any such interest holder liability arose before the
20 effective time of the articles of domestication;
- 21 (2) The member does not have interest holder liability under the laws of the foreign
22 jurisdiction for any debt, obligation, or liability of the corporation that arises after the
23 effective time of the articles of domestication;
- 24 (3) The provisions of the laws of the foreign jurisdiction continue to apply to the
25 collection or discharge of any interest holder liability preserved by subdivision (1),
26 as if the domestication had not occurred;
- 27 (4) The member has whatever rights of contribution from other members are provided
28 by the laws of the foreign jurisdiction with respect to any interest holder liability
29 preserved by subdivision (1), as if the domestication had not occurred.
- 30 Section 122. That the code be amended by adding a NEW SECTION to read:
- 31 (a) Unless otherwise provided in a plan of domestication of a domestic nonprofit
32 corporation, after the plan has been adopted and approved as required pursuant to sections 118
33 to 122, inclusive, of this Act, and at any time before the domestication has become effective,
34 it may be abandoned by the board of directors without action by the members.

1 (b) If a domestication is abandoned under paragraph (a) after articles of domestication have
2 been filed with the Office of the Secretary of State but before the domestication has become
3 effective, a statement that the domestication has been abandoned in accordance with this
4 section, signed by an officer or other duly authorized representative, must be delivered to the
5 Office of the Secretary of State for filing prior to the effective date of the domestication. The
6 statement takes effect upon filing and the domestication is abandoned and does not become
7 effective.

8 (c) If the domestication of a foreign nonprofit corporation in this state is abandoned in
9 accordance with the laws of the foreign jurisdiction after articles of domestication are filed with
10 the Office of the Secretary of State, a statement that the domestication has been abandoned,
11 signed by an officer or other duly authorized representative, must be delivered to the Office of
12 the Secretary of State for filing. The statement takes effect upon filing and the domestication
13 is abandoned and does not become effective.

14 Section 123. That the code be amended by adding a NEW SECTION to read:

15 (a) A domestic nonprofit corporation may become a domestic business corporation pursuant
16 to a plan of for-profit conversion.

17 (b) A domestic nonprofit corporation may become a foreign business corporation if the
18 for-profit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether
19 the laws of the foreign jurisdiction require the adoption of a plan of for-profit conversion, the
20 foreign for-profit conversion shall be approved by the adoption by the domestic nonprofit
21 corporation of a plan of for-profit conversion in the manner provided in sections 123 to 127,
22 inclusive, of this Act.

23 (c) The plan of for-profit conversion must include:

24 (1) The terms and conditions of the conversion;

25 (2) The manner and basis of:

26 (i) Issuing at least one share in the corporation following its conversion; and

27 (ii) Otherwise reclassifying the memberships in the corporation, if any, following
28 its conversion into shares and other securities, obligations, rights to acquire
29 shares or other securities, cash, other property, or any combination of the
30 foregoing;

31 (3) Any desired amendments to the articles of incorporation or bylaws of the corporation
32 following its conversion; and

33 (4) If the domestic nonprofit corporation is to be converted to a foreign business
34 corporation, a statement of the jurisdiction in which the corporation will be
35 incorporated after the conversion.

1 (d) The plan of for-profit conversion may also include a provision that the plan may be
2 amended prior to filing articles of for-profit conversion, except that subsequent to approval of
3 the plan by the members the plan may not be amended without the approval of the members to
4 change:

5 (1) The amount or kind of shares and other securities, obligations, rights to acquire
6 shares or other securities, cash, or other property to be received by the members
7 under the plan;

8 (2) The articles of incorporation as they will be in effect immediately following the
9 conversion, except for changes permitted pursuant to section 146 of this Act; or

10 (3) Any of the other terms or conditions of the plan if the change would adversely affect
11 any of the members in any material respect.

12 (e) If any debt security, note, or similar evidence of indebtedness for money borrowed,
13 whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a
14 domestic nonprofit corporation before the effective date of this Act contains a provision
15 applying to a merger of the corporation and the document does not refer to a for-profit
16 conversion of the corporation, the provision shall be deemed to apply to a for-profit conversion
17 of the corporation until such time as the provision is amended subsequent to that date.

18 (f) The attorney general be provided with notice of the proposed for-profit conversion prior
19 to any conversion.

20 (g) See section 117 of this Act, restrictions and required approvals.

21 Section 124. That the code be amended by adding a NEW SECTION to read:

22 In the case of a conversion of a domestic nonprofit corporation to a domestic or foreign
23 business corporation:

24 (1) The plan of for-profit conversion must be adopted by the board of directors;

25 (2) After adopting the plan of for-profit conversion, the board of directors must submit
26 the plan to the members for their approval if there are members entitled to vote on
27 the plan. The board of directors must also transmit to the members a recommendation
28 that the members approve the plan, unless the board of directors makes a
29 determination that because of conflicts of interest or other special circumstances it
30 should not make such a recommendation, in which case the board of directors must
31 transmit to the members the basis for that determination;

32 (3) The board of directors may condition its submission of the plan of for-profit
33 conversion to the members on any basis;

34 (4) If the approval of the members is to be given at a meeting, the corporation must
35 notify each member of the meeting of members at which the plan of for-profit
36 conversion is to be submitted for approval. The notice must state that the purpose,

1 or one of the purposes, of the meeting is to consider the plan and must contain or be
2 accompanied by a copy or summary of the plan. The notice shall include or be
3 accompanied by a copy of the articles of incorporation as they will be in effect
4 immediately after the for-profit conversion;

5 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
6 subdivision (3), require a greater vote or a greater number of votes to be present, the
7 approval of the plan of for-profit conversion by the members requires the approval
8 of each class of members entitled to vote, voting as a separate voting group at a
9 meeting at which a quorum of the voting group exists;

10 (6) If any provision of the articles of incorporation, bylaws or an agreement to which any
11 of the directors or members are parties, adopted or entered into before the effective
12 date of this Act, applies to a merger of the corporation and the document does not
13 refer to a for-profit conversion of the corporation, the provision shall be deemed to
14 apply to a for-profit conversion of the corporation until such time as the provision is
15 amended subsequent to that date.

16 Section 125. That the code be amended by adding a NEW SECTION to read:

17 (a) Articles of for-profit conversion must be signed on behalf of the converting corporation
18 by any officer or other duly authorized representative. The articles must set forth:

19 (1) If the surviving corporation is a domestic business corporation, the name of the
20 corporation immediately before the filing of the articles of for-profit conversion and
21 if that name does not satisfy the requirements of the applicable business corporation
22 act, or the corporation desires to change its name in connection with the conversion,
23 a name that satisfies the requirements of the applicable business corporation act;

24 (2) If the surviving corporation is a foreign business corporation, its name after the
25 conversion and its jurisdiction of incorporation; and

26 (3) A statement that the plan of for-profit conversion was duly approved by the members
27 in the manner required by this Act and the articles of incorporation.

28 (b) If the surviving corporation is a domestic business corporation, the articles of for-profit
29 conversion shall either contain all of the provisions that the applicable business corporation act
30 requires to be set forth in articles of incorporation of a domestic business corporation and any
31 other desired provisions permitted by the applicable business corporation act, or shall have
32 attached articles of incorporation that satisfy the requirements of the business corporation act.
33 In either case, provisions that would not be required to be included in restated articles of
34 incorporation of a domestic business corporation may be omitted, except that the name and
35 address of the initial registered agent of the business corporation must be included.

36 (c) The articles of for-profit conversion must be delivered to the Office of the Secretary of
37 State for filing, and take effect at the effective time provided pursuant to section 5 of this Act.

38 Section 126. That the code be amended by adding a NEW SECTION to read:

1 (a) Except as otherwise provided pursuant to section 117 of this Act, when a conversion of
2 a domestic nonprofit corporation to a domestic or foreign business corporation becomes
3 effective:

4 (1) The title to all real and personal property, both tangible and intangible, of the
5 corporation remains in the corporation without reversion or impairment;

6 (2) The liabilities of the corporation remain the liabilities of the corporation;

7 (3) An action or proceeding pending against the corporation continues against the
8 corporation as if the conversion had not occurred;

9 (4) The articles of incorporation of the domestic or foreign business corporation become
10 effective;

11 (5) The memberships of the corporation are reclassified into shares or other securities,
12 obligations, rights to acquire shares or other securities, or into cash or other property
13 in accordance with the plan of conversion, and the members are entitled only to the
14 rights provided in the plan of for-profit conversion; and

15 (6) The corporation is deemed to:

16 (i) Be a domestic or foreign business corporation for all purposes; and

17 (ii) Be the same corporation without interruption as the nonprofit corporation.

18 (b) The interest holder liability of a member in a domestic nonprofit corporation that
19 converts to a domestic business corporation is as follows:

20 (1) The conversion does not discharge any interest holder liability of the member as a
21 member of the nonprofit corporation to the extent any such interest holder liability
22 arose before the effective time of the articles of for-profit conversion;

23 (2) The member does not have interest holder liability for any debt, obligation or liability
24 of the business corporation that arises after the effective time of the articles of
25 for-profit conversion;

26 (3) The laws of this state continue to apply to the collection or discharge of any interest
27 holder liability preserved by subdivision(1), as if the conversion had not occurred;

28 (4) The member has whatever rights of contribution from other members are provided
29 by the laws of this state with respect to any interest holder liability preserved by
30 subdivision (1), as if the conversion had not occurred.

31 (c) A member who becomes subject to interest holder liability for some or all of the debts,
32 obligations or liabilities of the business corporation has interest holder liability only for those
33 debts, obligations, or liabilities of the business corporation that arise after the effective time of
34 the articles of for-profit conversion.

1 Section 127. That the code be amended by adding a NEW SECTION to read:

2 (a) Unless otherwise provided in a plan of for-profit conversion of a domestic nonprofit
3 corporation, after the plan has been adopted and approved as required by sections 123 to 127,
4 inclusive, of this Act, and at any time before the for-profit conversion has become effective, it
5 may be abandoned by the board of directors without action by the members.

6 (b) If a for-profit conversion is abandoned under paragraph (a) after articles of for-profit
7 conversion are filed with the Office of the Secretary of State but before the for-profit conversion
8 becomes effective, a statement that the for-profit conversion has been abandoned in accordance
9 with this section, signed by an officer or other duly authorized representative, must be delivered
10 to the Office of the Secretary of State for filing prior to the effective date of the for-profit
11 conversion. The statement takes effect upon filing and the for-profit conversion is abandoned
12 and does not become effective.

13 Section 128. That the code be amended by adding a NEW SECTION to read:

14 A domestic business corporation may become a domestic nonprofit corporation pursuant to
15 a plan of nonprofit conversion only if incorporating pursuant to this Act is not prohibited in
16 another statute of this state. If the law of a domestic business corporation entity does not provide
17 procedures for the approval of either an entity conversion or a merger, a plan of entity
18 conversion must be adopted and approved, and the entity conversion effectuated in accordance
19 with this Act.

20 Section 129. That the code be amended by adding a NEW SECTION to read:

21 (a) The plan of nonprofit conversion must be adopted by the shareholders. The plan for
22 nonprofit conversion must include:

23 (1) The terms and conditions of the conversion;

24 (2) The manner and basis of reclassifying the shareholders in the corporation;

25 (3) Any desired amendments to the articles of incorporation or bylaws of the corporation
26 following its conversion;

27 (4) The plan for nonprofit conversion may also include a provision that the plan may be
28 amended prior to filing articles of nonprofit conversion;

29 (5) The articles of incorporation as they will be in effect immediately following the
30 conversion; or

31 (6) Any of the terms or conditions of the plan if the change would adversely affect any
32 of the shareholders in any material respect.

33 (b) After the plan for nonprofit conversion is authorized, the articles of conversion must be
34 signed on behalf of the converting corporation by any officer or other duly authorized
35 representative. The articles shall set forth:

1 (1) The name of the corporation immediately before the filing of the articles of
2 conversion and, if that name is unavailable for use in this state or the corporation
3 desires to change its name in connection with the conversion, a name that satisfies
4 the requirements of section 32 of this Act;

5 (2) The jurisdiction of incorporation of the corporation immediately before the filing of
6 the articles of conversion and the date the corporation was incorporated; and

7 (3) A statement that the conversion of the corporation in this state was duly authorized
8 as required by the laws of this state.

9 (c) The articles of conversion shall either contain all of the provisions that section 22(a) of
10 this Act requires to be set forth in articles of incorporation and any other desired provisions that
11 sections 22(b) and 22(c) of this Act permits to be included in articles of incorporation, or shall
12 have attached articles of incorporation. In either case, provisions that would not be required to
13 be included in restated articles of incorporation may be omitted, except that the name and
14 address of the initial registered agent of the domestic business corporation must be included.

15 (d) The articles of conversion must be delivered to the Office of the Secretary of State for
16 filing, and take effect at the effective time provided pursuant to section 5 of this Act.

17 Section 130. That the code be amended by adding a NEW SECTION to read:

18 (a) When a conversion of a domestic business corporation to a domestic nonprofit
19 corporation becomes effective:

20 (1) The title to all real and personal property, both tangible and intangible, of the
21 corporation remains in the corporation without reversion or impairment;

22 (2) The liabilities of the corporation remain the liabilities of the corporation;

23 (3) An action or proceeding pending against the corporation continues against the
24 corporation as if the conversion had not occurred;

25 (4) The articles of conversion, or the articles of incorporation attached to the articles of
26 conversion, constitute the articles of incorporation of the corporation;

27 (5) Memberships, securities, obligations, rights to acquire memberships or securities of
28 the corporation, or cash or other property shall be issued or paid as provided pursuant
29 to the laws of this state; and

30 (6) The corporation is deemed to:

31 (i) Be a domestic nonprofit corporation for all purposes; and

32 (ii) Be the same corporation without interruption.

1 (b) The interest holder liability of a shareholder of the domestic business corporation who
2 becomes a member of the domestic nonprofit corporation in the conversion is as follows:

3 (1) The conversion does not discharge any interest holder liability under the laws of this
4 state to the extent any such interest holder liability arose before the effective time of
5 the articles of conversion;

6 (2) The member does not have interest holder liability under the laws of this state for any
7 debt, obligation, or liability of the corporation that arises after the effective time of
8 the articles of conversion;

9 (3) The provisions of the laws of this state continue to apply to the collection or
10 discharge of any interest holder liability preserved by subdivision (1), as if the
11 conversion had not occurred;

12 (4) The member has whatever rights of contribution from other members are provided
13 by the laws of this state with respect to any interest holder liability preserved by
14 subdivision (1), as if the conversion had not occurred.

15 (c) A shareholder of a domestic business corporation who becomes subject to interest holder
16 liability for some or all of the debts, obligations, or liabilities of the corporation as a result of
17 its conversion in this state has interest holder liability only for those debts, obligations, or
18 liabilities of the corporation that arise after the effective time of the articles of conversion.

19 Section 131. That the code be amended by adding a NEW SECTION to read:

20 If the conversion of a domestic business corporation to a domestic nonprofit corporation is
21 abandoned in accordance with the laws of this state after articles of conversion have been filed
22 with the Office of the Secretary of State, a statement that the conversion has been abandoned,
23 signed by an officer or other duly authorized representative, must be delivered to the Office of
24 the Secretary of State for filing. The statement takes effect upon filing and the conversion is
25 abandoned and does not become effective.

26 Section 132. That the code be amended by adding a NEW SECTION to read:

27 A foreign business corporation may become a domestic nonprofit corporation if the
28 domestication and conversion is permitted by the law of the foreign jurisdiction.

29 Section 133. That the code be amended by adding a NEW SECTION to read:

30 (a) After the conversion of a foreign business corporation to a domestic nonprofit
31 corporation is authorized as required by the laws of the foreign jurisdiction, articles of
32 domestication and conversion shall be signed by any officer or other duly authorized
33 representative. The articles shall set forth:

34 (1) The name of the corporation immediately before the filing of the articles of
35 domestication and conversion and, if that name is unavailable for use in this state or

1 the corporation desires to change its name in connection with the domestication and
2 conversion, a name that satisfies the requirements of section 32 of this Act;

3 (2) The jurisdiction of incorporation of the corporation immediately before the filing of
4 the articles of domestication and conversion and the date the corporation was
5 incorporated in that jurisdiction; and

6 (3) A statement that the domestication and conversion of the corporation in this state was
7 duly authorized as required by the laws of the jurisdiction in which the corporation
8 was incorporated immediately before its domestication and conversion in this state.

9 (b) The articles of domestication and conversion shall either contain all of the provisions
10 that section 22(a) of this Act requires to be set forth in articles of incorporation and any other
11 desired provisions that sections 22(b) and 22(c) of this Act permits to be included in articles of
12 incorporation, or shall have attached articles of incorporation. In either case, provisions that
13 would not be required to be included in restated articles of incorporation may be omitted, except
14 that the name and address of the initial registered agent of the domestic business corporation
15 must be included.

16 (c) The articles of domestication and conversion must be delivered to the Office of the
17 Secretary of State for filing, and take effect at the effective time provided pursuant to section
18 5 of this Act.

19 (d) If the foreign business corporation is authorized to transact business in this state under
20 the business corporation act, its certificate of authority shall be cancelled automatically on the
21 effective date of its domestication and conversion.

22 Section 1 34. That the code be amended by adding a NEW SECTION to read:

23 (a) When a domestication and conversion of a foreign business corporation to a domestic
24 nonprofit corporation becomes effective:

25 (1) The title to all real and personal property, both tangible and intangible, of the
26 corporation remains in the corporation without reversion or impairment;

27 (2) The liabilities of the corporation remain the liabilities of the corporation;

28 (3) An action or proceeding pending against the corporation continues against the
29 corporation as if the domestication and conversion had not occurred;

30 (4) The articles of domestication and conversion, or the articles of incorporation attached
31 to the articles of domestication and conversion, constitute the articles of
32 incorporation of the corporation;

33 (5) Memberships, securities, obligations, rights to acquire memberships or securities of
34 the corporation, or cash or other property shall be issued or paid as provided pursuant
35 to the laws of the foreign jurisdiction; and

1 (6) The corporation is deemed to:

2 (i) Be a domestic corporation for all purposes; and

3 (ii) Be the same corporation without interruption as the foreign business
4 corporation.

5 (b) The interest holder liability of a shareholder of the foreign business corporation who
6 becomes a member of the domestic nonprofit corporation in the domestication and conversion
7 is as follows:

8 (1) The domestication and conversion does not discharge any interest holder liability
9 under the laws of the foreign jurisdiction to the extent any such interest holder
10 liability arose before the effective time of the articles of domestication and
11 conversion;

12 (2) The member does not have interest holder liability under the laws of the foreign
13 jurisdiction for any debt, obligation, or liability of the corporation that arises after the
14 effective time of the articles of domestication and conversion;

15 (3) The provisions of the laws of the foreign jurisdiction continue to apply to the
16 collection or discharge of any interest holder liability preserved by subdivision (1),
17 as if the domestication and conversion had not occurred;

18 (4) The member has whatever rights of contribution from other members are provided
19 by the laws of the foreign jurisdiction with respect to any interest holder liability
20 preserved by subdivision (1), as if the domestication and conversion had not
21 occurred.

22 (c) A shareholder of a foreign business corporation who becomes subject to interest holder
23 liability for some or all of the debts, obligations, or liabilities of the corporation as a result of
24 its domestication and conversion in this state has interest holder liability only for those debts,
25 obligations, or liabilities of the corporation that arise after the effective time of the articles of
26 domestication and conversion.

27 Section 135. That the code be amended by adding a NEW SECTION to read:

28 If the domestication and conversion of a foreign business corporation to a domestic
29 nonprofit corporation is abandoned in accordance with the laws of the foreign jurisdiction after
30 articles of domestication and conversion have been filed with the Office of the Secretary of
31 State, a statement that the domestication and conversion has been abandoned, signed by an
32 officer or other duly authorized representative, must be delivered to the Office of the Secretary
33 of State for filing. The statement takes effect upon filing and the domestication and conversion
34 is abandoned and does not become effective.

35 Section 136. That the code be amended by adding a NEW SECTION to read:

1 (a) A domestic nonprofit corporation may become a domestic unincorporated entity pursuant
2 to a plan of entity conversion.

3 (b) A domestic nonprofit corporation may become a foreign unincorporated entity if the
4 entity conversion is permitted by the laws of the foreign jurisdiction.

5 (c) A domestic unincorporated entity may become a domestic nonprofit corporation. If the
6 organic law of a domestic unincorporated entity does not provide procedures for the approval
7 of an entity conversion, the conversion must be adopted and approved, and the entity conversion
8 effectuated, in the same manner as a merger of the unincorporated entity, and its interest holders
9 will be entitled to appraisal rights if appraisal rights are available upon any type of merger under
10 the organic law of the unincorporated entity. If the organic law of a domestic unincorporated
11 entity does not provide procedures for the approval of either an entity conversion or a merger,
12 a plan of entity conversion must be adopted and approved, the entity conversion effectuated, and
13 appraisal rights exercised, in accordance with the procedures in sections 136 to 141, inclusive,
14 of this Act. Without limiting the provisions of this paragraph, a domestic unincorporated entity
15 whose organic law does not provide procedures for the approval of an entity conversion is
16 subject to paragraph (e) and section 138 of this Act. For purposes of applying sections 136 to
17 141, inclusive, of this Act:

18 (1) The unincorporated entity, its interest holders, interests and organic records taken
19 together, are deemed to be a domestic nonprofit corporation, members, memberships
20 and articles of incorporation, respectively and vice versa, as the context may require;
21 and

22 (2) If the business and affairs of the unincorporated entity are managed by a group of
23 persons that is not identical to the interest holders, that group is deemed to be the
24 board of directors.

25 (d) A foreign unincorporated entity may become a domestic nonprofit corporation if the law
26 of the foreign jurisdiction authorizes it to become a nonprofit corporation in another jurisdiction.

27 (e) If any debt security, note, or similar evidence of indebtedness for money borrowed,
28 whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a
29 domestic nonprofit corporation before the effective date of this Act, applies to a merger of the
30 corporation and the document does not refer to an entity conversion of the corporation, the
31 provision shall be deemed to apply to an entity conversion of the corporation until such time as
32 the provision is amended subsequent to that date.

33 (f) See section 117 of this Act, restrictions and required approvals.

34 Section 137. That the code be amended by adding a NEW SECTION to read:

35 (a) A plan of entity conversion must include:

36 (1) A statement of the type of unincorporated entity the surviving entity will be and, if
37 it will be a foreign unincorporated entity, its jurisdiction of organization;

- 1 (2) The terms and conditions of the conversion;
- 2 (3) The manner and basis of converting the memberships in the domestic nonprofit
3 corporation following its conversion into interests or other securities, obligations,
4 rights to acquire interests or other securities, cash, other property, or any combination
5 of the foregoing; and
- 6 (4) The full text, as they will be in effect immediately following the conversion, of the
7 organic documents of the surviving entity.

8 (b) The plan of entity conversion may also include a provision that the plan may be amended
9 prior to filing articles of entity conversion, except that subsequent to approval of the plan by the
10 members the plan may not be amended to change:

- 11 (1) The amount or kind of memberships or other securities, interests, obligations, rights
12 to acquire memberships, securities or interests, cash, or other property to be received
13 under the plan by the members;
- 14 (2) The organic documents that will be in effect immediately following the conversion,
15 except for changes permitted by a provision of the organic law of the surviving entity
16 comparable to section 146 of this Act; or
- 17 (3) Any of the other terms or conditions of the plan if the change would adversely affect
18 any of the members in any material respect.

19 Section 138. That the code be amended by adding a NEW SECTION to read:

20 In the case of an entity conversion of a domestic nonprofit corporation to a domestic or
21 foreign unincorporated entity:

- 22 (1) The plan of entity conversion must be adopted by the board of directors;
- 23 (2) After adopting the plan of entity conversion, the board of directors must submit the
24 plan to the members for their approval if there are members entitled to vote on the
25 plan. The board of directors must also transmit to the members a recommendation
26 that the members approve the plan, unless the board of directors makes a
27 determination that because of conflicts of interest or other special circumstances it
28 should not make such a recommendation, in which case the board of directors must
29 transmit to the members the basis for that determination;
- 30 (3) The board of directors may condition its submission of the plan of entity conversion
31 to the members on any basis;
- 32 (4) If the approval of the members is to be given at a meeting, the corporation must
33 notify each member entitled to vote, of the meeting of members at which the plan of
34 entity conversion is to be submitted for approval. The notice must state that the
35 purpose, or one of the purposes, of the meeting is to consider the plan and must
36 contain or be accompanied by a copy or summary of the plan. The notice shall

1 include or be accompanied by a copy of the organic documents as they will be in
2 effect immediately after the entity conversion;

3 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
4 subdivision (3), requires a greater vote or a greater number of votes to be present, the
5 approval of the plan of entity conversion by the members requires the approval of
6 each class of members entitled to vote, voting as a separate voting group at a meeting
7 at which a quorum of the voting group exists;

8 (6) If any provision of the articles of incorporation, bylaws, or an agreement to which
9 any of the directors or members are parties, adopted or entered into before the
10 effective date of sections 136 to 141, inclusive, of this Act, applies to a merger of the
11 corporation and the document does not refer to an entity conversion of the
12 corporation, the provision shall be deemed to apply to an entity conversion of the
13 corporation until such time as the provision is subsequently amended;

14 (7) If as a result of the conversion one or more members of the corporation would
15 become subject to interest holder liability for the debts, obligations, or liabilities of
16 any other person or entity, approval of the plan of conversion shall require the
17 execution, by each such member, of a separate written consent to become subject to
18 such interest holder liability.

19 Section 139. That the code be amended by adding a NEW SECTION to read:

20 (a) After the conversion of a domestic nonprofit corporation to a domestic or foreign
21 unincorporated entity has been adopted and approved as required by this Act, articles of entity
22 conversion must be signed on behalf of the converting corporation by any officer or other duly
23 authorized representative. The articles must:

24 (1) Set forth the name of the corporation immediately before the filing of the articles of
25 entity conversion and the name to which the name of the corporation is to be
26 changed, which shall be a name that satisfies the organic law of the surviving entity
27 if the surviving entity is a domestic entity;

28 (2) State the type of unincorporated entity that the surviving entity will be and its
29 jurisdiction of organization;

30 (3) State that the plan of entity conversion was duly approved in the manner required by
31 this Act;

32 (4) If the surviving entity is a domestic filing entity, either contain all of the provisions
33 required to be set forth in its public organic record and any other desired provisions
34 that are permitted, or have attached a public organic record.

35 (b) After the conversion of a domestic unincorporated entity to a domestic nonprofit
36 corporation is adopted and approved as required by the organic law of the unincorporated entity,
37 articles of entity conversion must be signed on behalf of the unincorporated entity by any officer
38 or other duly authorized representative. The articles must:

- 1 (1) Set forth the name of the unincorporated entity immediately before the filing of the
2 articles of entity conversion and the name to which the name of the unincorporated
3 entity is to be changed, which shall be a name that satisfies the requirements of
4 section 32 of this Act;
- 5 (2) Set forth a statement that the plan of entity conversion was duly approved in
6 accordance with the organic law of the unincorporated entity;
- 7 (3) Either contain all of the provisions that section 22(a) of this Act requires to be set
8 forth in articles of incorporation and any other desired provisions that sections 22(b)
9 and 22(c) of this Act permits to be included in articles of incorporation, or have
10 attached articles of incorporation.

11 (c) After the conversion of a foreign unincorporated entity to a domestic nonprofit
12 corporation is authorized as required by the laws of the foreign jurisdiction, articles of entity
13 conversion shall be executed on behalf of the foreign unincorporated entity by any officer or
14 other duly authorized representative. The articles must:

- 15 (1) Set forth the name of the unincorporated entity immediately before the filing of the
16 articles of entity conversion and the name to which the name of the unincorporated
17 entity is to be changed, which shall be a name that satisfies the requirements of
18 section 32 of this Act;
- 19 (2) Set forth the jurisdiction under the laws of which the unincorporated entity was
20 organized immediately before the filing of the articles of entity conversion and the
21 date on which the unincorporated entity was organized in that jurisdiction;
- 22 (3) Set forth a statement that the conversion of the unincorporated entity was duly
23 approved in the manner required by the law of the foreign jurisdiction; and
- 24 (4) Either contain all of the provisions that section 22(a) of this Act requires to be set
25 forth in articles of incorporation and any other desired provisions that sections 22(b)
26 and 22(c) of this Act permits to be included in articles of incorporation, or have
27 attached articles of incorporation; except that, in either case, provisions that would
28 not be required to be included in restated articles of incorporation of a domestic
29 nonprofit corporation may be omitted.

30 (d) The articles of entity conversion must be delivered to the Office of the Secretary of State
31 for filing, and take effect at the effective time provided in section 5 of this Act. Articles of entity
32 conversion filed pursuant to section 139(a) or 139(b) of this Act may be combined with any
33 required conversion filing under the organic law of the domestic unincorporated entity if the
34 combined filing satisfies the requirements of both this section and the other organic law.

35 (e) If the converting entity is a foreign unincorporated entity that is authorized to conduct
36 activities or transact business in this state under a provision of law similar to sections 194 to
37 207, inclusive, of this Act, its certificate of authority or other type of foreign qualification is
38 cancelled automatically on the effective date of its conversion.

1 Section 140. That the code be amended by adding a NEW SECTION to read:

2 (a) Except as otherwise provided in section 117 of this Act, when a conversion under
3 sections 136 to 141, inclusive, of this Act becomes effective:

4 (1) The title to all real and personal property, both tangible and intangible, of the
5 converting entity remains in the surviving entity without reversion or impairment;

6 (2) The liabilities of the converting entity remain the liabilities of the surviving entity;

7 (3) An action or proceeding pending against the converting entity continues against the
8 surviving entity as if the conversion had not occurred;

9 (4) In the case of a surviving entity that is a filing entity, its articles of incorporation or
10 public organic record and its private organic rules become effective;

11 (5) In the case of a surviving entity that is a nonfiling entity, its private organic rules
12 becomes effective;

13 (6) The memberships or interests of the converting entity are reclassified into
14 memberships, interests, other securities, obligations, rights to acquire memberships,
15 interests or securities, or into cash or other property in accordance with the plan of
16 conversion; and the members or interest holders of the converting entity are entitled
17 only to the rights provided to them under the terms of the conversion and to any
18 appraisal rights they may have under the organic law of the converting entity; and

19 (7) The surviving entity is deemed to:

20 (i) Be incorporated or organized under and subject to the organic law of the
21 converting entity for all purposes; and

22 (ii) Be the same nonprofit corporation or unincorporated entity without
23 interruption as the converting entity.

24 (b) A member who is subject to interest holder liability for some or all of the debts,
25 obligations, or liabilities of the surviving entity has interest holder liability only for those debts,
26 obligations, or liabilities of the surviving entity that arise after the effective time of the articles
27 of entity conversion.

28 (c) The interest holder liability of an interest holder in an unincorporated entity that converts
29 to a domestic nonprofit corporation is as follows:

30 (1) The conversion does not discharge any interest holder liability under the organic law
31 of the unincorporated entity to the extent any such interest holder liability arose
32 before the effective time of the articles of entity conversion;

- 1 (2) The interest holder does not have interest holder liability under the organic law of the
2 unincorporated entity for any debt, obligation, or liability of the corporation that
3 arises after the effective time of the articles of entity conversion;
- 4 (3) The provisions of the organic law of the unincorporated entity continue to apply to
5 the collection or discharge of any interest holder liability preserved by subdivision
6 (1), as if the conversion had not occurred;
- 7 (4) The interest holder has whatever rights of contribution from other interest holders are
8 provided by the organic law of the unincorporated entity with respect to any interest
9 holder liability preserved by subdivision (1), as if the conversion had not occurred.

10 Section 141. That the code be amended by adding a NEW SECTION to read:

11 (a) Unless otherwise provided in a plan of entity conversion of a domestic nonprofit
12 corporation, after the plan is adopted and approved as required by sections 136 to 141, inclusive,
13 of this Act, and at any time before the entity conversion has become effective, it may be
14 abandoned by the board of directors without action by the members.

15 (b) If an entity conversion is abandoned after articles of entity conversion are filed with the
16 Office of the Secretary of State but before the entity conversion becomes effective, a statement
17 that the entity conversion has been abandoned in accordance with this section, signed by an
18 officer or other duly authorized representative, must be delivered to the Office of the Secretary
19 of State for filing prior to the effective date of the entity conversion. Upon filing, the statement
20 takes effect and the entity conversion is abandoned and does not become effective.

21 Section 142. That the code be amended by adding a NEW SECTION to read:

22 A nonprofit corporation may amend its articles of incorporation at any time to add or change
23 a provision that is required or permitted in the articles as of the effective date of the amendment
24 or to delete a provision that is not required to be contained in the articles.

25 Section 143. That the code be amended by adding a NEW SECTION to read:

26 If a membership corporation has not yet issued memberships, its board of directors, or its
27 incorporators if it has no board of directors, may adopt one or more amendments to the articles
28 of incorporation after receiving the vote of a majority of the directors in office or of the
29 incorporators.

30 Section 144. That the code be amended by adding a NEW SECTION to read:

31 (a) If the members are entitled to vote on an amendment to the articles of incorporation, an
32 amendment to the articles of incorporation of a membership corporation must be adopted in the
33 following manner:

- 34 (1) Except as provided in subdivision (5), the proposed amendment must be adopted by
35 the board of directors;

- 1 (2) Except as provided in sections 146, 148, and 149 of this Act, a proposed amendment
2 must be submitted to the members entitled to vote for their approval;
- 3 (3) The board of directors must transmit to the members a recommendation that the
4 members approve the amendment, unless the board of directors makes a
5 determination that because of conflicts of interest or other special circumstances it
6 should not make such a recommendation, in which case the board of directors must
7 transmit to the members the basis for that determination;
- 8 (4) The board of directors may condition its submission of the amendment to the
9 members on any basis;
- 10 (5) Except as provided in the articles of incorporation or bylaws, an amendment may be
11 proposed by ten percent or more of the members entitled to vote on the amendment
12 or by such greater or lesser number of members as is specified in the articles.
13 Subdivisions (1), (3), and (4) do not apply to an amendment proposed by the
14 members under this paragraph;
- 15 (6) If the amendment is required to be approved by the members, and the approval is to
16 be given at a meeting, the corporation must give notice to each member entitled to
17 vote on the amendment of the meeting of members at which the amendment is to be
18 submitted for approval. The notice must state that the purpose, or one of the
19 purposes, of the meeting is to consider the amendment and must contain or be
20 accompanied by a copy of the amendment;
- 21 (7) Unless the articles of incorporation or bylaws, or the board of directors acting
22 pursuant to subdivision (4), requires a greater vote or a greater number of members
23 to be present, the approval of an amendment requires at least a majority of the vote
24 entitled to be cast by members present or represented by proxy at any meeting of the
25 members;
- 26 (8) In addition to the adoption and approval of an amendment by the board of directors
27 and members as required pursuant to this section, an amendment must also be
28 approved by a designated body whose approval is required by the articles of
29 incorporation or bylaws.
- 30 (b) Unless the articles of incorporation provide otherwise, the board of directors of a
31 membership corporation may adopt amendments to the corporation's articles of incorporation
32 without approval of the members to:
- 33 (1) Extend the duration of the corporation if it was incorporated at a time when limited
34 duration was required by law;
- 35 (2) Delete the names and addresses of the initial directors or members of a designated
36 body;
- 37 (3) Delete the name and address of the initial registered agent or registered office, if a
38 statement of change is on file with the Office of the Secretary of State;

1 (4) Change the corporation name by substituting or deleting the word corporation,
2 incorporated, company, limited, or the abbreviation corp., inc., co., or ltd., for a
3 similar word or abbreviation in the name;

4 (5) Restate without change all of the then operative provisions of the articles.

5 (c) Where there are no members entitled to vote on an amendment to the articles of
6 incorporation, the board of directors may adopt amendments to the corporation's articles of
7 incorporation.

8 Section 145. That the code be amended by adding a NEW SECTION to read:

9 (a) Except as provided in the articles of incorporation or bylaws, if a nonprofit corporation
10 has more than one class of members, the members of each class are entitled to vote as a separate
11 voting group, if member voting is otherwise required by this Act on a proposed amendment to
12 the articles of incorporation if the amendment would:

13 (1) Effect an exchange or reclassification of all or part of the memberships of the class
14 into memberships of another class;

15 (2) Effect an exchange or reclassification, or create the right of exchange, of all or part
16 of the memberships of another class into memberships of the class;

17 (3) Change the rights, preferences, or limitations of all or part of the memberships of the
18 class in a manner different than the amendment would affect another class;

19 (4) Change the rights, preferences, or limitations of all or part of the memberships of the
20 class by changing the rights, preferences, or limitations of another class;

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

22 (6) Increase the number of memberships authorized for another class; or

23 (7) Authorize a new class of memberships.

24 (b) If a class of members will be divided into two or more classes by an amendment to the
25 articles of incorporation, the amendment must be approved by a majority of the members of
26 each class that will be created.

27 Section 146. That the code be amended by adding a NEW SECTION to read:

28 Except as otherwise provided in the articles of incorporation, the board of directors of a
29 nonmembership corporation may adopt amendments to the corporation's articles. An
30 amendment adopted by the board of directors pursuant to this subsection must also be approved:

31 (1) By a designated body whose approval is required by the articles of incorporation or
32 bylaws;

1 (2) If the amendment changes or deletes a provision regarding the appointment of a
2 director by persons other than the board, by those persons as if they constituted a
3 voting group; and

4 (3) If the amendment changes or deletes a provisions regarding the designation of a
5 director, by the individual designated at the time as that director.

6 Section 147. That the code be amended by adding a NEW SECTION to read:

7 After an amendment to the articles of incorporation is adopted and approved in the manner
8 required by this Act and by the articles of incorporation, the nonprofit corporation must deliver
9 to the Office of the Secretary of State, for filing, articles of amendment, which must set forth:

10 (1) The name of the corporation;

11 (2) The text of the amendment adopted;

12 (3) If the amendment provides for an exchange, reclassification, or cancellation of
13 memberships, provisions for implementing the amendment if not contained in the
14 amendment itself;

15 (4) The date of the amendment's adoption; and

16 (5) If the amendment:

17 (i) Was adopted by the incorporators, board of directors, or a designated body
18 without member approval, a statement that the amendment was adopted by the
19 incorporators or by the board of directors or designated body, as the case may
20 be, and that member approval was not required; or

21 (ii) Required approval by the members, a statement that the amendment was duly
22 approved by the members in the manner required by this Act and by the
23 articles of incorporation and bylaws.

24 Section 148. That the code be amended by adding a NEW SECTION to read:

25 (a) The board of directors of a nonprofit corporation may restate its articles of incorporation
26 at any time, without approval by the members or any other person unless otherwise required in
27 its articles of incorporation or bylaws, to consolidate all amendments into a single document
28 without substantive change.

29 (b) If restated articles of a membership corporation include one or more new amendments
30 that require member approval, the amendments must be adopted and approved as provided in
31 sections 144 and 145 of this Act.

32 (c) A nonprofit corporation that restates its articles of incorporation must deliver to the
33 Office of the Secretary of State for filing articles of amendment pursuant to section 147 of this

1 Act which include a statement that the articles of amendment are a restatement that consolidates
2 all amendments into a single record.

3 (d) Duly adopted restated articles of incorporation supersede the original articles of
4 incorporation and all amendments thereto.

5 (e) The Office of the Secretary of State shall certify restated articles of incorporation as the
6 articles of incorporation currently in effect.

7 Section 149. That the code be amended by adding a NEW SECTION to read:

8 (a) A nonprofit corporation's articles of incorporation may be amended without action by
9 the board of directors, a designated body, or the members to carry out a plan of reorganization
10 ordered or decreed by a court of competent jurisdiction under the authority of a law of the
11 United States.

12 (b) An individual designated by the court shall deliver to the Office of the Secretary of State
13 for filing articles of amendment setting forth:

14 (1) The name of the corporation;

15 (2) The text of each amendment approved by the court;

16 (3) The date of the court's order or decree approving the articles of amendment;

17 (4) The title of the reorganization proceeding in which the order or decree was entered;
18 and

19 (5) A statement that the court had jurisdiction of the proceeding under federal statute.

20 (c) This section does not apply after entry of a final decree in the reorganization proceeding
21 even though the court retains jurisdiction of the proceeding for limited purposes unrelated to
22 consummation of the reorganization plan.

23 Section 150. That the code be amended by adding a NEW SECTION to read:

24 (a) Except as provided in paragraphs (b), (c), and (d), an amendment to the articles of
25 incorporation does not affect a cause of action existing against or in favor of the nonprofit
26 corporation, a proceeding to which the corporation is a party, or the existing rights of persons
27 other than members of the corporation or persons referred to in the articles. An amendment
28 changing a corporation's name does not abate a proceeding brought by or against the corporation
29 in its former name.

30 (b) Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable
31 purpose expressed or intended by the original donor may not be diverted from its purpose by an
32 amendment of its articles of incorporation unless the corporation obtains an appropriate order
33 of court pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion
34 of charitable assets.

1 (c) Unless a nonprofit corporation obtains an appropriate order of court under the law of this
2 state on cy pres or otherwise dealing with the nondiversion of charitable assets, an amendment
3 of its articles of incorporation may not affect:

4 (1) Any restriction imposed upon property held by the corporation by virtue of any trust
5 under which it holds that property; or

6 (2) The existing rights of persons other than its members.

7 (d) The attorney general shall be provided with notice of any action by a nonprofit
8 corporation in paragraphs (b) and (c) hereof.

9 (e) A person who is a member or otherwise affiliated with a charitable corporation may not
10 receive a direct or indirect financial benefit in connection with an amendment of the articles of
11 incorporation unless the person is itself a charitable corporation or an unincorporated entity with
12 a charitable purpose. This paragraph does not apply to the receipt of reasonable compensation
13 for services rendered.

14 Section 151. That the code be amended by adding a NEW SECTION to read:

15 (a) Except as provided in the articles of incorporation or bylaws, the members of a
16 membership corporation may amend or repeal the corporation's bylaws.

17 (b) The board of directors of a membership corporation or nonmembership corporation may
18 amend or repeal the corporation's bylaws, unless the articles of incorporation or bylaws or
19 section 152 or 153 of this Act reserve that power exclusively to the members or a designated
20 body in whole or part.

21 Section 152. That the code be amended by adding a NEW SECTION to read:

22 (a) A bylaw that increases a quorum or voting requirement for the board of directors or a
23 designated body may be amended or repealed:

24 (1) If originally adopted by the members, only by the members, unless the bylaws
25 otherwise provide;

26 (2) If adopted by the board of directors or designated body, either by the members or by
27 the board of directors or designated body.

28 (b) A bylaw adopted or amended by the members that increases a quorum or voting
29 requirement for the board of directors or a designated body may provide that it can be amended
30 or repealed only by a specified vote of either the members or the board of directors or designated
31 body.

32 (c) Action by the board of directors or a designated body under paragraph (a) to amend or
33 repeal a bylaw that changes the quorum or voting requirement for the board of directors or a
34 designated body must meet the same quorum requirement and be adopted by the same vote

1 required to take action under the quorum and voting requirement then in effect or proposed to
2 be adopted, whichever is greater.

3 Section 153. That the code be amended by adding a NEW SECTION to read:

4 (a) Except as provided in the articles of incorporation or bylaws, the board of directors or
5 designated body of a membership corporation that has one or more members at the time may
6 not adopt or amend a bylaw under:

7 (1) Section 38 of this Act providing that some of the members shall have different rights
8 or obligations than other members with respect to voting, dissolution, transfer of
9 memberships, or other matters;

10 (2) Section 41 of this Act levying dues, assessments, or fees on some or all of the
11 members;

12 (3) Section 44 of this Act relating to the termination or suspension of members;

13 (4) Section 45 of this Act authorizing the purchase of memberships;

14 (5) Section 78(a) of this Act:

15 (i) Requiring cause to remove a director; or

16 (ii) Specifying what constitutes cause to remove a director;

17 (6) Section 78(e) of this Act relating to the removal of a director who is designated in a
18 manner other than election or appointment; or

19 (7) Section 82 of this Act.

20 (b) The board of directors or designated body of a membership corporation may not amend
21 the articles of incorporation or bylaws to vary the application of paragraph (a) to the corporation.

22 (c) If a nonprofit corporation has more than one class of members, the members of a class
23 are entitled to vote as a separate voting group on an amendment to the bylaws that:

24 (1) Is described in paragraph (a) if the amendment would affect the members of that class
25 differently than the members of another class; or

26 (2) Has any of the effects described in section 145 of this Act.

27 (d) If a class of members will be divided into two or more classes by an amendment to the
28 bylaws, the amendment must be approved by a majority of the members of each class that will
29 be created.

30 Section 154. That the code be amended by adding a NEW SECTION to read:

1 (a) Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable
2 purpose expressed or intended by the original donor may not be diverted from its purpose by an
3 amendment of its bylaws unless the corporation obtains an appropriate order of court pursuant
4 to the laws of this state on cy pres or otherwise dealing with the nondiversion of charitable
5 assets.

6 (b) Unless a nonprofit corporation obtains an appropriate order of court under the laws of
7 this state on cy pres or otherwise dealing with the nondiversion of charitable assets, an
8 amendment of its bylaws may not affect:

9 (1) Any restriction imposed upon property held by the corporation by virtue of any trust
10 under which it holds that property; or

11 (2) The existing rights of persons other than its members.

12 (c) A person who is a member or otherwise affiliated with a charitable corporation may not
13 receive a direct or indirect financial benefit in connection with an amendment of the bylaws
14 unless the person is itself a charitable corporation or an unincorporated entity with a charitable
15 purpose. This paragraph does not apply to the receipt of reasonable compensation for services
16 rendered.

17 (d) The attorney general shall be provided with notice of any action by a nonprofit
18 corporation in paragraphs (b) and (c) hereof.

19 Section 155. That the code be amended by adding a NEW SECTION to read:

20 (a) The articles of incorporation may require that an amendment to the articles be approved
21 in the form of a record by a specified person or group of persons in addition to the board of
22 directors and members.

23 (b) The articles of incorporation or bylaws may require that an amendment to the bylaws be
24 approved in the form of a record by a specified person or group of persons in addition to the
25 board of directors and members.

26 (c) A requirement in the articles of incorporation or bylaws described in paragraphs (a) or
27 (b) may only be amended with the approval in the form of a record of the specified person or
28 group of persons.

29 Section 156. That the code be amended by adding a NEW SECTION to read:

30 (a) Terms used in sections 156 to 163, inclusive, of this Act mean:

31 (1) "Exchanging entity," the domestic or foreign nonprofit corporation or eligible entity
32 in which all of one or more classes of memberships or classes or series of eligible
33 interests are to be acquired in a membership exchange;

34 (2) "Membership exchange," a transaction pursuant to section 158 of this Act;

1 (3) "Merger," a transaction pursuant to section 157 of this Act;

2 (4) "Party to a merger" or "party to a membership exchange," any domestic or foreign
3 nonprofit corporation or eligible entity that:

4 (i) Will merge under a plan of merger;

5 (ii) Will acquire memberships or eligible interests of another corporation or an
6 eligible entity in a membership exchange; or

7 (iii) Is an exchanging entity;

8 (5) "Survivor," in a merger means the corporation or eligible entity into which one or
9 more other corporations or eligible entities are merged. A survivor of a merger may
10 preexist the merger or be created by the merger.

11 (b) Property held in trust by an entity otherwise dedicated to a charitable purpose expressed
12 or intended by the original donor may not be diverted from its purpose by a transaction pursuant
13 to sections 156 to 163, inclusive, of this Act, unless the entity obtains an appropriate order of
14 the circuit court pursuant to the laws of this state on cy pres or otherwise dealing with the
15 nondiversion of charitable assets. The attorney general shall be provided with notice of any
16 action concerning the same.

17 (c) Unless an entity that is a party to a transaction pursuant to sections 156 to 163, inclusive,
18 of this Act, obtains an appropriate order of the circuit court under the laws of this state on cy
19 pres or otherwise dealing with the nondiversion of charitable assets, the transaction may not
20 affect:

21 (1) Any restriction imposed upon the entity by its organic documents that may not be
22 amended by its governors, members, or interest holders;

23 (2) Any restriction imposed upon property held by the entity by virtue of any trust under
24 which it holds that property; or

25 (3) The existing rights of persons other than members, shareholders, or interest holders
26 of the entity.

27 (d) A person who is a member, interest holder, or otherwise affiliated with a charitable
28 corporation or an unincorporated entity with a charitable purpose may not receive a direct or
29 indirect financial benefit in connection with a transaction pursuant to sections 156 to 163,
30 inclusive, of this Act, to which the charitable corporation or unincorporated entity is a party
31 unless the person is itself a charitable corporation or unincorporated entity with a charitable
32 purpose. This paragraph does not apply to the receipt of reasonable compensation for services
33 rendered.

34 Section 157. That the code be amended by adding a NEW SECTION to read:

1 (a) One or more domestic nonprofit corporations may merge with one or more domestic or
2 foreign nonprofit corporations or eligible entities pursuant to a plan of merger or two or more
3 foreign nonprofit corporations or domestic or foreign eligible entities may merge into a new
4 domestic nonprofit corporation to be created in the merger in the manner provided in sections
5 156 to 163, inclusive, of this Act.

6 (b) A foreign nonprofit corporation, or a foreign eligible entity, may be a party to a merger
7 with a domestic nonprofit corporation, or may be created by the terms of the plan of merger,
8 only if the merger is permitted by the organic law of the corporation or eligible entity.

9 (c) If the organic law of a domestic eligible entity does not prohibit a merger with a
10 nonprofit corporation but does not provide procedures for the approval of such a merger, a plan
11 of merger may be adopted and approved, and the merger may be effectuated, in accordance with
12 the procedures in sections 156 to 163, inclusive, of this Act. For the purposes of applying
13 sections 156 to 163, inclusive, of this Act:

14 (1) The eligible entity, its interest holders, eligible interests, and organic records, shall
15 be deemed to be a domestic nonprofit corporation, members, memberships, and
16 articles of incorporation and bylaws, respectively, as the context may require; and

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

20 (d) The plan of merger must be in the form of a record and include:

21 (1) The name of each domestic or foreign nonprofit corporation or eligible entity that
22 will merge and the name of the domestic or foreign nonprofit corporation or eligible
23 entity that will be the survivor of the merger;

24 (2) The terms and conditions of the merger;

25 (3) The manner and basis of converting the memberships of each merging domestic or
26 foreign nonprofit membership corporation and the eligible interests of each merging
27 domestic or foreign eligible entity into memberships, eligible interests, securities, or
28 obligations; rights to acquire memberships, eligible interests, securities, or
29 obligations; cash; other property or other consideration; or any combination of the
30 foregoing;

31 (4) The articles of incorporation and bylaws of any corporation, or the organic records
32 of any eligible entity, to be created by the merger; or if a new corporation or eligible
33 entity is not to be created by the merger, any amendments to the survivor's articles
34 or bylaws or organic records; and

35 (5) Any other provisions relating to the merger that the parties desire be included in the
36 plan of merger.

1 (e) The plan of merger may also include a provision that the plan may be amended prior to
2 filing articles of merger, but if the members of a domestic corporation that is a party to the
3 merger are required or permitted to vote on the plan, the plan must provide that subsequent to
4 approval of the plan by such members the plan may not be amended to change:

5 (1) The amount or kind of memberships, eligible interests, securities, or obligations;
6 rights to acquire memberships, eligible interests, securities, or obligations; cash; or
7 other property or other consideration to be received by the members of or owners of
8 eligible interests in any party to the merger;

9 (2) The articles of incorporation or bylaws of any corporation, or the organic records of
10 any unincorporated entity, that will survive or be created as a result of the merger,
11 except for changes permitted by section 146 of this Act or by comparable provisions
12 of the organic law of any such foreign nonprofit or business corporation or domestic
13 or foreign unincorporated entity; or

14 (3) Any of the other terms or conditions of the plan, if the change would adversely affect
15 such members in any material respect.

16 (f) See sections 156(b), 156(c), and 156(d), of this Act, restrictions.

17 Section 158. That the code be amended by adding a NEW SECTION to read:

18 (a) Through a membership exchange:

19 (1) A domestic nonprofit corporation may acquire, pursuant to a plan of membership
20 exchange, all of the memberships of one or more classes of another domestic or
21 foreign nonprofit corporation, or all of the eligible interests of one or more classes
22 or series of eligible interests of a domestic or foreign eligible entity, in exchange for
23 memberships, eligible interests, securities, or obligations; rights to acquire
24 memberships, eligible interests, securities, or obligations; cash; other property or
25 other consideration; or any combination of the foregoing;

26 (2) All of the memberships of one or more classes of a domestic nonprofit corporation
27 may be acquired by another domestic or foreign nonprofit corporation or eligible
28 entity, in exchange for memberships, eligible interests, securities, obligations; rights
29 to acquire memberships, eligible interests, securities, or obligations; cash; other
30 property or other consideration; or any combination of the foregoing, pursuant to a
31 plan of membership exchange;

32 (b) A foreign nonprofit corporation or eligible entity may be a party to a membership
33 exchange only if the membership exchange is permitted by the organic law of the corporation
34 or eligible entity.

35 (c) If the organic law of a domestic eligible entity does not prohibit a membership exchange
36 with a nonprofit corporation but does not provide procedures for the approval of an exchange
37 of interests similar to a membership exchange, a plan of membership exchange may be adopted
38 and approved, and the membership exchange effectuated, in accordance with the procedures,

1 if any, for a merger. If the organic law of a domestic eligible entity does not provide procedures
2 for either an interest exchange or a merger, a plan of membership exchange may be adopted and
3 approved, and the membership exchange effectuated, in accordance with the procedures in
4 sections 156 to 163, inclusive, of this Act. For the purposes of applying sections 156 to 163,
5 inclusive, of this Act:

6 (1) The eligible entity, its interest holders, eligible interests, and organic documents shall
7 be deemed to be a domestic nonprofit corporation, members, memberships, and
8 articles of incorporation and bylaws, respectively, as the context may require; and

9 (2) If the business and affairs of the eligible entity are managed by a group of persons
10 that is not identical to the interest holders, that group shall be deemed to be the board
11 of directors.

12 (d) The plan of membership exchange must be in the form of a record and include:

13 (1) The name of each domestic or foreign nonprofit corporation or eligible entity whose
14 memberships or eligible interests will be acquired and the name of the corporation
15 or eligible entity that will acquire those memberships or eligible interests;

16 (2) The terms and conditions of the membership exchange;

17 (3) The manner and basis of exchanging the memberships of a corporation or the eligible
18 interests in an eligible entity whose memberships or eligible interests will be acquired
19 under the membership exchange into memberships, eligible interests, securities, or
20 obligations; rights to acquire memberships, eligible interests, securities, or
21 obligations; cash; other property or other consideration; or any combination of the
22 foregoing;

23 (4) Any changes desired to be made in the organic records of the exchanging entity; and

24 (5) Any other provisions relating to the membership exchange that the parties desire be
25 included in the plan of exchange.

26 (e) The plan of membership exchange may also include a provision that the plan may be
27 amended prior to filing articles of membership exchange, but if the members of a domestic
28 nonprofit corporation that is a party to the membership exchange are required or permitted to
29 vote on the plan, the plan must provide that subsequent to approval of the plan by such members
30 the plan may not be amended to change:

31 (1) The amount or kind of memberships, eligible interests, securities, or obligations;
32 rights to acquire memberships, eligible interests, securities, or obligations; cash; or
33 other property or other consideration to be issued by the domestic nonprofit
34 corporation or to be received by its members, as the case may be; or

35 (2) Any of the other terms or conditions of the plan if the change would adversely affect
36 such members in any material respect.

1 (f) Section 158 of this Act does not limit the power of a domestic nonprofit corporation to
2 acquire memberships in another corporation or eligible interests in an eligible entity in a
3 transaction other than a membership exchange.

4 (g) If any debt security, note, or similar evidence of indebtedness for money borrowed,
5 whether secured or unsecured, or a contract of any kind, issued, incurred, or signed by a
6 domestic exchanging entity before the effective date of this Act contains a provision applying
7 to a merger or change in control of the exchanging entity that does not refer to a membership
8 exchange, the provision shall be deemed to apply to a membership exchange of the exchanging
9 entity until such time as the provision is amended subsequent to that date.

10 (h) See sections 156(b), 156(c), and 156(d), of this Act, restrictions.

11 Section 159. That the code be amended by adding a NEW SECTION to read:

12 In the case of a nonprofit corporation that is a party to a merger or membership exchange:

13 (1) The plan of merger or membership exchange must be adopted by the board of
14 directors;

15 (2) Except as provided in subdivision (8), section 160 of this Act, or the articles of
16 incorporation or bylaws, after adopting the plan of merger or membership exchange
17 the board of directors must submit the plan to the members entitled to vote on the
18 plan for their approval. The board of directors must also transmit to the members a
19 recommendation that the members approve the plan, unless the board of directors
20 makes a determination that because of conflicts of interest or other special
21 circumstances it should not make such a recommendation, in which case the board
22 of directors must transmit to the members the basis for that determination;

23 (3) The board of directors may condition its submission of the plan of merger or
24 membership exchange to the members on any basis;

25 (4) If the plan of merger or membership exchange is required to be approved by the
26 members, and if the approval is to be given at a meeting, the nonprofit corporation
27 must give notice to each member entitled to vote on the merger or membership
28 exchange of the meeting of members at which the plan is to be submitted for
29 approval. The notice must state that the purpose, or one of the purposes, of the
30 meeting is to consider the plan and must contain or be accompanied by a copy or
31 summary of the plan. If the corporation is to be merged into an existing corporation
32 or eligible entity, the notice shall also include or be accompanied by a copy or
33 summary of the articles of incorporation and bylaws or organic records of that
34 corporation or eligible entity. If the corporation is to be merged into a corporation or
35 eligible entity that is to be created pursuant to the merger, the notice shall include or
36 be accompanied by a copy or a summary of the articles of incorporation and bylaws
37 or organic records of the new corporation or eligible entity;

38 (5) Unless the articles of incorporation or bylaws, or the board of directors acting
39 pursuant to subdivision (3), requires a greater vote or a greater number of votes to be

1 present, the approval of the plan of merger or membership exchange by the members
2 requires the approval of the members at a meeting at which a quorum exists, and, if
3 any class of memberships is entitled to vote as a separate group on the plan of merger
4 or membership exchange, the approval of each such separate voting group at a
5 meeting at which a quorum of the voting group exists;

6 (6) Separate voting by voting groups is required:

7 (i) On a plan of merger, by each class of memberships that:

8 (A) Are to be converted into memberships, eligible interests, securities, or
9 obligations; rights to acquire memberships, eligible interests, securities,
10 or obligations; cash; other property or other consideration; or any
11 combination of the foregoing; or

12 (B) Would be entitled to vote as a separate group on a provision in the plan
13 that, if contained in a proposed amendment to articles of incorporation,
14 would require action by separate voting groups pursuant to section 145
15 of this Act;

16 (ii) On a plan of membership exchange, by each class of memberships included
17 in the exchange, with each class constituting a separate voting group; and

18 (iii) On a plan of merger or membership exchange, if the voting group is entitled
19 under the articles of incorporation to vote as a voting group to approve a plan
20 of merger or membership exchange;

21 (7) If as a result of a merger or membership exchange one or more members of a
22 domestic nonprofit corporation would become subject to owner liability for the debts,
23 obligations or liabilities of any other person or entity, approval of the plan of merger
24 or membership exchange requires the signature, by each such member, of a separate
25 record consenting to become subject to such owner liability;

26 (8) If a domestic nonprofit corporation that is a party to a merger does not have any
27 members entitled to vote thereon, a plan of merger shall be deemed adopted by the
28 corporation when it is adopted by the board of directors pursuant to subdivision (1);

29 (9) In addition to the adoption and approval of the plan of merger by the board of
30 directors and members as required by this section, the plan of merger must also be
31 approved in the form of a record by any person or group of persons whose approval
32 is required pursuant to section 155 of this Act to amend the articles of incorporation
33 or bylaws.

34 Section 160. That the code be amended by adding a NEW SECTION to read:

35 (a) A domestic or foreign entity that holds a membership in a domestic nonprofit corporation
36 that carries at least eighty percent of the voting power of each class of membership of the
37 controlled corporation that has voting power may merge the controlled corporation into itself

1 or into another such controlled corporation, or merge itself into the controlled corporation,
2 without the approval of the board of directors, designated body or members of the controlled
3 corporation, unless the articles of incorporation or bylaws of any of the corporations or the
4 organic records of a controlling unincorporated entity otherwise provide.

5 (b) If pursuant to paragraph (a) approval of a merger by the members of a controlled
6 corporation is not required, the controlling entity shall, within ten days after the effective date
7 of the merger, notify each of the members of the controlled corporation that the merger has
8 become effective.

9 (c) Except as provided in paragraphs (a) and (b), a merger between a controlling entity and
10 a controlled corporation is governed by the provisions of sections 156 to 163, inclusive, of this
11 Act, applicable to mergers generally.

12 (d) A merger pursuant to this section must also be approved in a record by a designated body
13 whose approval is required to amend the articles of incorporation of the controlled corporation.

14 Section 161. That the code be amended by adding a NEW SECTION to read:

15 (a) After a plan of merger or membership exchange is adopted and approved as required by
16 this Act, articles of merger or membership exchange shall be signed on behalf of each party to
17 the merger or membership exchange by any officer or other duly authorized representative. The
18 articles shall set forth:

19 (1) The names of the parties to the merger or membership exchange;

20 (2) If the articles of incorporation of the survivor of a merger or an exchanging nonprofit
21 corporation are amended, or if a new corporation is created as a result of a merger,
22 the amendments to the articles of incorporation of the survivor or exchanging
23 corporation or the articles of incorporation of the new corporation;

24 (3) If the plan of merger or membership exchange required approval by the members of
25 a domestic nonprofit corporation that was a party to the merger or membership
26 exchange, a statement that the plan was duly approved by the members and, if voting
27 by any separate voting group was required, by each such separate voting group, in the
28 manner required by this Act and the articles of incorporation or bylaws;

29 (4) If the plan of merger or membership exchange did not require approval by the
30 members of a domestic nonprofit corporation that was a party to the merger or
31 membership exchange, a statement to that effect; and

32 (5) As to each foreign nonprofit corporation or eligible entity that was a party to the
33 merger or membership exchange, a statement that the participation of the foreign
34 corporation or eligible entity was duly authorized as required by the organic law of
35 the corporation or eligible entity.

36 (b) Articles of merger or membership exchange must be delivered to the Office of the
37 Secretary of State for filing by the survivor of the merger or the acquiring corporation or eligible

1 entity in a membership exchange and shall take effect at the effective time provided pursuant
2 to section 5 of this Act. Articles of merger or membership exchange filed under this section may
3 be combined with any filing required under the organic law of any domestic eligible entity
4 involved in the transaction if the combined filing satisfies the requirements of both this section
5 and the other organic law.

6 Section 162. That the code be amended by adding a NEW SECTION to read:

7 (a) Subject to sections 156(b), 156(c), and 156(d) of this Act, when a merger becomes
8 effective:

9 (1) The domestic or foreign nonprofit corporation or eligible entity that is designated in
10 the plan of merger as the survivor continues or comes into existence, as the case may
11 be;

12 (2) The separate existence of every domestic or foreign nonprofit corporation or eligible
13 entity that is merged into the survivor ceases;

14 (3) All property owned by, and every contract and other right possessed by, each
15 domestic or foreign nonprofit corporation or eligible entity that merges into the
16 survivor is vested in the survivor without reversion or impairment;

17 (4) All liabilities of each domestic or foreign nonprofit corporation or eligible entity that
18 is merged into the survivor are vested in the survivor;

19 (5) The name of the survivor may, but need not be, substituted in any pending
20 proceeding for the name of any party to the merger whose separate existence ceased
21 in the merger;

22 (6) The articles of incorporation and bylaws or organic records of the survivor are
23 amended to the extent provided in the plan of merger;

24 (7) The articles of incorporation and bylaws or organic records of a survivor that is
25 created by the merger become effective; and

26 (8) The memberships of each corporation that is a party to the merger, and the eligible
27 interests in an eligible entity that is a party to a merger, that are to be converted under
28 the plan of merger into memberships, eligible interests, securities, or obligations;
29 rights to acquire memberships, eligible interests, securities, or obligations; cash;
30 other property or other consideration; or any combination of the foregoing; are
31 converted.

32 (b) Subject to sections 156(b), 156(c), and 156(d) of this Act, when a membership exchange
33 becomes effective:

34 (1) The memberships or eligible interests in the exchanging entity that are to be
35 exchanged under the plan of membership exchange into memberships, eligible
36 interests, securities, or obligations; rights to acquire memberships, eligible interests,

1 securities, or obligations; cash; other property or other consideration; or any
2 combination of the foregoing; are exchanged; and

3 (2) The articles of incorporation and bylaws or organic records of the exchanging entity
4 are amended to the extent provided in the plan of membership exchange.

5 (c) A person who is subject to owner liability for some or all of the debts, obligations, or
6 liabilities of any entity as a result of a merger or membership exchange has owner liability only
7 to the extent provided in the organic law of the entity and only for those debts, obligations, and
8 liabilities that arise after the effective time of the articles of merger or membership exchange.

9 (d) The effect of a merger or membership exchange on the owner liability of a person who
10 had owner liability for some or all of the debts, obligations, or liabilities of a party to the merger
11 or membership exchange is as follows:

12 (1) The merger or membership exchange does not discharge any owner liability under
13 the organic law of the entity in which the person was a member, shareholder, or
14 interest holder to the extent any such owner liability arose before the effective time
15 of the articles of merger or membership exchange;

16 (2) The person does not have owner liability under the organic law of the entity in which
17 the person was a member, shareholder, or interest holder prior to the merger or
18 membership exchange for any debt, obligation, or liability that arises after the
19 effective time of the articles of merger or membership exchange;

20 (3) The provisions of the organic law of any entity for which the person had owner
21 liability before the merger or membership exchange continue to apply to the
22 collection or discharge of any owner liability preserved by subdivision (1), as if the
23 merger or membership exchange had not occurred;

24 (4) The person has whatever rights of contribution from other persons are provided by
25 the organic law of the entity for which the person had owner liability with respect to
26 any owner liability preserved by subdivision (1), as if the merger or membership
27 exchange had not occurred.

28 (e) A devise, bequest, gift, grant, or promise contained in a will or other instrument, in trust
29 or otherwise, made before or after a merger, to or for any of the parties to the merger, shall inure
30 to the survivor, subject to the express terms of the will or other instrument.

31 Section 163. That the code be amended by adding a NEW SECTION to read:

32 (a) Unless otherwise provided in a plan of merger or membership exchange or in the organic
33 law of a foreign nonprofit corporation or a domestic or foreign eligible entity that is a party to
34 a merger or a membership exchange, after the plan has been adopted and approved as required
35 pursuant to sections 156 to 163, inclusive, of this Act, and at any time before the merger or
36 membership exchange becomes effective, it may be abandoned by a domestic nonprofit
37 corporation that is a party thereto without action by its members, in accordance with any
38 procedures set forth in the plan of merger or membership exchange or, if no such procedures are

1 set forth in the plan, in the manner determined by the board of directors, subject to any
2 contractual rights of other parties to the merger or membership exchange.

3 (b) If a merger or membership exchange is abandoned pursuant to paragraph (a) after articles
4 of merger or membership exchange have been filed with the Office of the Secretary of State but
5 before the merger or membership exchange becomes effective, a statement that the merger or
6 membership exchange has been abandoned in accordance with this section, executed on behalf
7 of a party to the merger or membership exchange by an officer or other duly authorized
8 representative, shall be delivered to the Office of the Secretary of State for filing prior to the
9 effective date of the merger or membership exchange. Upon filing, the statement shall take
10 effect and the merger or membership exchange shall be deemed abandoned and shall not
11 become effective.

12 Section 164. That the code be amended by adding a NEW SECTION to read:

13 (a) Approval of the members of a nonprofit corporation is not required, unless the articles
14 of incorporation or bylaws otherwise provide:

15 (1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets:

16 (i) In the usual and regular course of its activities; or

17 (ii) If the corporation and its consolidated subsidiaries retain an activity that
18 represented or was supported by at least thirty-three percent of total assets at
19 the end of the most recently completed fiscal year;

20 (2) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or
21 without recourse, or otherwise encumber any or all of the corporation's assets,
22 whether or not in the usual and regular course of business its activities; or

23 (3) To transfer any or all of the corporation's assets to one or more corporations or other
24 entities all of the memberships or interests of which are owned by the corporation.

25 (b) See section 166 of this Act, restrictions on dispositions of assets.

26 Section 165. That the code be amended by adding a NEW SECTION to read:

27 (a) Except as provided in the articles of incorporation or bylaws, a sale, lease, exchange, or
28 other disposition of assets, other than a disposition described in section 164 of this Act, requires
29 approval of the corporation's members.

30 (b) A disposition that requires approval of the members under paragraph (a) must be
31 initiated by a resolution by the board of directors authorizing the disposition. After adoption of
32 the resolution, the board of directors must submit the proposed disposition to the members for
33 their approval. The board of directors must also transmit to the members a recommendation that
34 the members approve the proposed disposition, unless the board of directors makes a
35 determination that because of conflicts of interest or other special circumstances it should not

1 make such a recommendation, in which case the board of directors must transmit to the
2 members the basis for that determination.

3 (c) The board of directors may condition its submission of a disposition to the members
4 under paragraph (b) on any basis.

5 (d) If a disposition is required to be approved by the members under paragraph (a), and if
6 the approval is to be given at a meeting, the nonprofit corporation must give notice to each
7 member entitled to vote, of the meeting of members at which the disposition is to be submitted
8 for approval. The notice must state that the purpose, or one of the purposes, of the meeting is
9 to consider the disposition and must contain a description of the disposition, including the terms
10 and conditions thereof and the consideration to be received by the corporation.

11 (e) Unless the articles of incorporation or bylaws, or the board of directors acting pursuant
12 to paragraph (c), requires a greater vote, or a greater number of votes to be present, the approval
13 of a disposition by the members requires the approval of the members at a meeting at which a
14 quorum exists, and, if any class of members is entitled to vote as a separate group on the
15 disposition, the approval of each such separate voting group at a meeting at which a quorum of
16 the voting group exists.

17 (f) After a disposition has been approved by the members under paragraph (e), and at any
18 time before the disposition has been consummated, it may be abandoned by the nonprofit
19 corporation without action by the members, subject to any contractual rights of other parties to
20 the disposition.

21 (g) A disposition of assets in the course of dissolution pursuant to sections 176 to 193,
22 inclusive, of this Act, is not governed by this section.

23 (h) The assets of a direct or indirect consolidated subsidiary are deemed the assets of the
24 parent nonprofit corporation for the purposes of this section.

25 (i) In addition to the approval of a disposition of assets by the board of directors and
26 members as required by this section, the disposition must also be approved in the form of a
27 record by any person or group of persons whose approval is required pursuant to section 155 of
28 this Act to amend the articles of incorporation or bylaws.

29 (j) See section 166 of this Act, restrictions on dispositions of assets.

30 Section 166. That the code be amended by adding a NEW SECTION to read:

31 (a) Property held in trust otherwise dedicated to a charitable purpose expressed or intended
32 by the original donor may not be diverted from its purpose by a transaction described in section
33 164 or 165 of this Act unless the nonprofit corporation obtains an appropriate order from court
34 pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of
35 charitable assets. The attorney general shall be provided with notice of any action concerning
36 the same.

1 (b) A person who is a member or otherwise affiliated with a charitable corporation may not
2 receive a direct or indirect financial benefit in connection with a disposition of assets unless the
3 person is a charitable corporation or an unincorporated entity that has a charitable purpose. This
4 paragraph does not apply to the receipt of reasonable compensation for services rendered.

5 Section 167. That the code be amended by adding a NEW SECTION to read:

6 For the purposes of sections 167 to 175, inclusive, of this Act, derivative proceeding, is a
7 civil suit in the right of a domestic nonprofit corporation or, to the extent provided in section
8 174 of this Act, in the right of a foreign nonprofit corporation.

9 Section 168. That the code be amended by adding a NEW SECTION to read:

10 (a) A derivative proceeding may be brought by:

11 (1) A member or members having five percent or more of the voting power, or by fifty
12 members, whichever is less; or

13 (2) Any director or member of a designated body.

14 (b) The plaintiff in a derivative proceeding must be a member, director, or member of a
15 designated body at the time of bringing the proceeding. A plaintiff who is a member must also
16 have been a member at the time of any action complained of in the derivative proceeding.

17 Section 169. That the code be amended by adding a NEW SECTION to read:

18 No person may commence a derivative proceeding until:

19 (1) A demand in the form of a record has been delivered to the nonprofit corporation to
20 take suitable action; and

21 (2) Ninety days have expired from the date the demand is effective unless the person was
22 notified earlier that the demand is rejected by the corporation or unless irreparable
23 injury to the corporation would result by waiting for the expiration of the ninety-day
24 period.

25 Section 170. That the code be amended by adding a NEW SECTION to read:

26 (a) If the nonprofit corporation commences an inquiry into the allegations made in the
27 demand or complaint, the court may stay any derivative proceeding for such period as the court
28 deems appropriate.

29 (b) See section 174 of this Act, applicability to foreign corporations.

30 Section 171. That the code be amended by adding a NEW SECTION to read:

31 (a) A derivative proceeding may be dismissed by the court on motion by the nonprofit
32 corporation if one of the groups specified in paragraph (b) or (e) determining in good faith after

1 conducting a reasonable inquiry upon which its conclusions are based that the maintenance of
2 the derivative proceeding is not in the best interests of the corporation.

3 (b) Unless a panel is appointed pursuant to paragraph (e), the determination in paragraph (a)
4 shall be made by:

5 (1) A majority vote of independent directors present at a meeting of the board of
6 directors if the independent directors constitute a quorum; or

7 (2) A majority vote of a committee consisting of two or more independent directors
8 appointed by majority vote of independent directors present at a meeting of the board
9 of directors, whether or not such independent directors constituted a quorum.

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

12 (1) That a majority of the board of directors did not consist of independent directors at
13 the time the determination is made; or

14 (2) That the requirements of paragraph (a) have not been met.

15 (d) If a majority of the board of directors does not consist of independent directors at the
16 time the determination is made, the nonprofit corporation has the burden of proving that the
17 requirements of paragraph (a) have been met. If a majority of the board of directors consists of
18 independent directors at the time the determination is made, the plaintiff has the burden of
19 proving that the requirements of paragraph (a) have not been met.

20 (e) The court may appoint a panel of one or more independent persons upon motion by the
21 nonprofit corporation to make a determination whether the maintenance of the derivative
22 proceeding is in the best interests of the corporation. In such case, the plaintiff has the burden
23 of proving that the requirements of paragraph (a) have not been met.

24 (f) A person is independent for purposes of this section if the person does not have:

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

26 (2) A material relationship with a person who has such an interest.

27 (g) None of the following shall by itself cause a director to be considered not independent
28 for purposes of this section:

29 (1) The nomination, election, or appointment of the director by persons who are
30 defendants in the derivative proceeding or against whom action is demanded;

31 (2) The naming of the director as a defendant in the derivative proceeding or as a person
32 against whom action is demanded; or

1 (3) The approval by the director of the act being challenged in the derivative proceeding
2 or demand if the act resulted in no personal benefit to the director.

3 Section 172. That the code be amended by adding a NEW SECTION to read:

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

8 (b) See section 174 of this Act, applicability to foreign corporations.

9 Section 173. That the code be amended by adding a NEW SECTION to read:

10 (a) In any derivative proceeding brought pursuant to subdivision 168(a)(1) of this Act, the
11 nonprofit corporation is entitled at any stage of the proceeding to seek an order requiring the
12 plaintiffs to give security for reasonable expenses, including attorney fees and expenses, that
13 may be incurred by the corporation in connection with the proceeding, to which security the
14 corporation may have recourse in such amount as the court determines upon termination of the
15 proceeding. The amount of security may be increased or decreased in the discretion of the court
16 upon a showing that the security provided has or may become inadequate or excessive. Security
17 may be denied or limited in the discretion of the court upon a preliminary showing, by
18 application and upon such types of proof as may be required by the court, establishing prima
19 facie that the requirement of full or partial security would impose undue hardship on plaintiffs
20 and serious injustice would result.

21 (b) On termination of the derivative proceeding the court may:

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

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

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

35 (c) See section 174 of this Act, applicability to foreign corporations.

36 Section 174. That the code be amended by adding a NEW SECTION to read:

1 In any derivative proceeding in the right of a foreign nonprofit corporation, the matters
2 covered by section 167 to 175 inclusive, of this Act shall be governed by the laws of the
3 jurisdiction of incorporation of the foreign corporation except for sections 170, 172, and 173
4 of this Act.

5 Section 175. That the code be amended by adding a NEW SECTION to read:

6 The plaintiff in a derivative proceeding must notify the attorney general within ten days after
7 commencing the proceeding if it involves a charitable corporation.

8 Section 176. That the code be amended by adding a NEW SECTION to read:

9 A majority of the incorporators or directors of a nonprofit corporation that has not
10 commenced activity, or of a membership corporation that has not admitted any members, may
11 dissolve the corporation by delivering to the Office of the Secretary of State for filing articles
12 of dissolution that set forth:

13 (1) The name of the corporation;

14 (2) The date of its incorporation;

15 (3) Either:

16 (i) That the corporation has not commenced activity; or

17 (ii) That the corporation is a membership corporation and has not admitted any
18 members;

19 (4) That no debt of the corporation remains unpaid;

20 (5) That, except as provided in the articles of incorporation or bylaws, the net assets of
21 the corporation remaining after winding up have been distributed to the members, if
22 members were admitted; and

23 (6) That a majority of the incorporators or directors authorized the dissolution.

24 Section 177. That the code be amended by adding a NEW SECTION to read:

25 (a) The board of directors of a membership corporation may propose dissolution for
26 submission to the members.

27 (b) For a proposal to dissolve to be adopted:

28 (1) The board of directors must recommend dissolution to the members, unless the board
29 of directors determines that because of conflict of interest or other special
30 circumstances it should make no recommendation and communicates the basis for
31 its determination to the members; and

1 (2) The members entitled to vote must approve the proposal to dissolve as provided in
2 paragraph (e).

3 (c) The board of directors may condition its submission of the proposal for dissolution on
4 any basis.

5 (d) The nonprofit corporation must give notice to each member entitled to vote of the
6 proposed meeting of members. The notice must also state:

7 (1) That the purpose, or one of the purposes, of the meeting is to consider dissolving the
8 corporation; and

9 (2) How the assets of the corporation will be distributed after all creditors are paid, or
10 how the distribution of assets will be determined.

11 (e) Unless the articles of incorporation, the bylaws, or the board of directors acting pursuant
12 to paragraph (c), requires a greater vote or a greater number of members to be present, the
13 adoption of the proposal to dissolve by the members requires the approval of the members at
14 a meeting of at least two-thirds of the votes entitled to be cast by members present or
15 represented by proxy.

16 (f) If the nonprofit corporation does not have any members entitled to vote on its dissolution,
17 a proposal to dissolve shall be deemed adopted by the corporation when it has been adopted by
18 a majority the board of directors.

19 (g) A charitable corporation must give the attorney general notice in the form of a record that
20 it intends to dissolve before the time it delivers articles of dissolution to the Office of the
21 Secretary of State.

22 Section 178. That the code be amended by adding a NEW SECTION to read:

23 At any time after dissolution is authorized, the nonprofit corporation may dissolve by
24 delivering to the Office of the Secretary of State for filing articles of dissolution setting forth:

25 (1) The name of the nonprofit corporation;

26 (2) The date dissolution was authorized; and

27 (3) If dissolution was approved by the members, a statement that the proposal to dissolve
28 was duly approved by the members in the manner required by this chapter and by the
29 articles of incorporation. A nonprofit corporation is dissolved upon the effective date
30 of its articles of dissolution. The term, dissolved nonprofit corporation, means a
31 nonprofit corporation whose articles of dissolution have become effective and
32 includes a successor entity to which the remaining assets of the corporation are
33 transferred subject to its liabilities for purposes of liquidation.

34 Section 179. That the code be amended by adding a NEW SECTION to read:

1 A nonprofit corporation may revoke its dissolution within one hundred twenty days of its
2 effective date. Revocation of dissolution must be authorized in the same manner as the
3 dissolution was authorized unless that authorization permitted revocation by action of the board
4 of directors alone, in which event the board of directors may revoke the dissolution. After the
5 revocation of dissolution is authorized, the nonprofit corporation may revoke the dissolution by
6 delivering to the Office of the Secretary of State for filing articles of revocation of dissolution,
7 together with a copy of its articles of dissolution, that set forth:

8 (1) The name of the nonprofit corporation;

9 (2) The effective date of the dissolution that was revoked;

10 (3) The date that the revocation of dissolution was authorized;

11 (4) If the corporation's board of directors, or incorporators, revoked the dissolution, a
12 statement to that effect;

13 (5) If the nonprofit corporation's board of directors revoked a dissolution authorized by
14 the members, a statement that revocation was permitted by action by the board of
15 directors alone pursuant to that authorization; and

16 (6) If member action was required to revoke the dissolution, the information required by
17 section 178 of this Act. Revocation of dissolution is effective upon the effective date
18 of the articles of revocation of dissolution. When the revocation of dissolution is
19 effective, it relates back to and takes effect as of the effective date of the dissolution
20 and the nonprofit corporation resumes carrying on its business as if dissolution had
21 never occurred.

22 Section 180. That the code be amended by adding a NEW SECTION to read:

23 (a) A dissolved nonprofit corporation continues its corporate existence but may not carry on
24 any activities except those appropriate to wind up and liquidate its affairs, including:

25 (1) Collecting its assets;

26 (2) Disposing of its properties that will not be distributed in kind;

27 (3) Discharging or making provision for discharging its liabilities;

28 (4) Distributing its remaining property as required by law and its articles of incorporation
29 and bylaws; and otherwise as approved when the dissolution was approved or among
30 the members per capita; and

31 (5) Doing every other act necessary to wind up and liquidate its activities and affairs.

32 (b) Dissolution of a nonprofit corporation does not:

33 (1) Transfer title to the corporation's property;

- 1 (2) Subject its directors, members of a designated body, or officers to standards of
2 conduct different from those prescribed in sections 71 to 115 of this Act;
- 3 (3) Change quorum or voting requirements for its board of directors or members; change
4 provisions for selection, resignation, or removal of its directors or officers or both;
5 or change provisions for amending its bylaws;
- 6 (4) Prevent commencement of a proceeding by or against the corporation in its corporate
7 name;
- 8 (5) Abate or suspend a proceeding pending by or against the corporation on the effective
9 date of dissolution; or
- 10 (6) Terminate the authority of the registered agent of the corporation.

11 (c) Property held in trust or otherwise dedicated to a charitable purpose that is expressed or
12 intended by the original donor may not be diverted from its purpose by the dissolution of a
13 nonprofit corporation unless and until the corporation obtains an order of circuit court pursuant
14 to the laws of this state on cy pres or otherwise dealing with the nondiversion of charitable
15 assets. The attorney general shall be provided with notice of any action concerning the same.

16 (d) A person who is a member or otherwise affiliated with a charitable corporation may not
17 receive a direct or indirect financial benefit in connection with the dissolution of the corporation
18 unless the person is a charitable corporation or an unincorporated entity that has a charitable
19 purpose. This paragraph does not apply to the receipt of reasonable compensation for services
20 rendered.

21 Section 181. That the code be amended by adding a NEW SECTION to read:

22 (a) A dissolved nonprofit corporation may dispose of the known claims against it by
23 delivering notice to its known claimants of the dissolution at any time after its effective date.

24 (b) The notice must be in the form of a record and:

25 (1) Describe information that must be included in a claim;

26 (2) Provide a mailing address where a claim may be sent;

27 (3) State the deadline, which may not be fewer than one hundred twenty days from the
28 effective date of the notice, by which the dissolved nonprofit corporation must
29 receive the claim; and

30 (4) State that the claim will be barred if not received by the deadline.

31 (c) A claim against the dissolved nonprofit corporation is barred:

32 (1) If a claimant who is given notice pursuant to paragraph (b) does not deliver the claim
33 to the dissolved corporation by the deadline; or

1 (2) If a claimant whose claim is rejected by the dissolved corporation does not
2 commence a proceeding to enforce the claim within 90 days from the effective date
3 of the rejection notice.

4 (d) For purposes of this section, claim, does not include a contingent liability or a claim
5 based on an event occurring after the effective date of dissolution.

6 Section 182. That the code be amended by adding a NEW SECTION to read:

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

10 (b) The notice must:

11 (1) Be published one time in a newspaper of general circulation in the county where the
12 principal office of the dissolved nonprofit corporation, or, if none in this state, its
13 registered office, is or was last located;

14 (2) Describe the information that must be included in a claim and provide a mailing
15 address where the claim must be sent; and

16 (3) State that a claim against the dissolved corporation will be barred unless a proceeding
17 to enforce the claim is commenced within three years after the publication of the
18 notice.

19 (c) If the dissolved nonprofit corporation publishes a newspaper notice in accordance with
20 paragraph (b), the claim of each of the following claimants is barred unless the claimant
21 commences a proceeding to enforce the claim against the dissolved corporation within three
22 years after the publication date of the newspaper notice:

23 (1) A claimant who is given notice pursuant to section 181 of this Act;

24 (2) A claimant whose claim is timely sent to the dissolved corporation but not acted on;
25 or

26 (3) A claimant whose claim is contingent or based on an event occurring after the
27 effective date of dissolution.

28 (d) A claim that is not barred by section 181(b) or section 182(c) of this Act may be
29 enforced:

30 (1) Against the dissolved nonprofit corporation, to the extent of its undistributed assets;
31 or

32 (2) Except as provided in section 183(d) of this Act, if the assets are distributed in
33 liquidation, against any person, other than a creditor of the dissolved corporation, to
34 whom the corporation distributed its property to the extent of the distributee's pro rata

1 share of the claim or the corporate assets distributed to the distribute in liquidation,
2 whichever is less, but a distributee's total liability for all claims under this section
3 may not exceed the total amount of assets distributed to the distributee.

4 Section 183. That the code be amended by adding a NEW SECTION to read:

5 (a) A dissolved nonprofit corporation that publishes a notice pursuant to section 182 of this
6 Act may file an application with the circuit court of the county where the dissolved corporation's
7 principal office, or, if none in this state, its registered office, is located for a determination of
8 the amount and form of security to be provided for payment of claims that are contingent or
9 have not been made known to the dissolved corporation or that are based on an event occurring
10 after the effective date of dissolution but that, based on the facts known to the dissolved
11 corporation, are reasonably estimated to arise after the effective date of dissolution. Provision
12 need not be made for any claim that is or is reasonably anticipated to be barred pursuant to
13 section 182(c) of this Act.

14 (b) Within ten days after the filing of the application, notice of the proceeding must be given
15 by the dissolved nonprofit corporation to each claimant holding a contingent claim whose
16 contingent claim is shown on the records of the dissolved corporation.

17 (c) The court may appoint a guardian ad litem to represent all claimants whose identities are
18 unknown in any proceeding brought pursuant to this section. The reasonable fees and expenses
19 of the guardian, including all reasonable expert witness fees, must be paid by the dissolved
20 nonprofit corporation.

21 (d) Provision by the dissolved nonprofit corporation for security in the amount and the form
22 ordered by the court pursuant to section 183(a) of this Act satisfies the dissolved corporation's
23 obligations with respect to claims that are contingent, have not been made known to the
24 dissolved corporation or are based on an event occurring after the effective date of dissolution,
25 and such claims may not be enforced against a person who received assets in liquidation.

26 Section 184. That the code be amended by adding a NEW SECTION to read:

27 (a) Directors shall cause the dissolved nonprofit corporation to discharge or make reasonable
28 provision for the payment of claims and make distributions of assets after payment or provision
29 for claims.

30 (b) Directors of a dissolved nonprofit corporation that has disposed of claims pursuant to
31 section 181, 182, or 183 of this Act shall not be liable for breach of paragraph (a) with respect
32 to claims against the dissolved corporation that are barred or satisfied pursuant to sections 181,
33 182, or 183 of this Act.

34 Section 185. That the code be amended by adding a NEW SECTION to read:

35 The Office of the Secretary of State may commence a proceeding pursuant to section 186
36 of this Act to administratively dissolve a nonprofit corporation if:

- 1 (1) The nonprofit corporation does not pay within sixty days after they are due any filing
2 fees or penalties imposed by sections 176 to 193, inclusive, of this Act, or other law;
- 3 (2) The nonprofit corporation does not deliver its annual report to the Office of the
4 Secretary of State within sixty days after it is due;
- 5 (3) The nonprofit corporation is without a registered agent in this state for sixty days or
6 more;
- 7 (4) The nonprofit corporation does not notify the Office of the Secretary of State within
8 sixty days that its registered agent has been changed or that its registered agent has
9 resigned; or
- 10 (5) The nonprofit corporation's period of duration stated in its articles of incorporation
11 expires.

12 Section 186. That the code be amended by adding a NEW SECTION to read:

13 If the Office of the Secretary of State determines that one or more grounds exist pursuant
14 to section 185 of this Act for dissolving a nonprofit corporation, the Office of the Secretary of
15 State shall serve the nonprofit corporation with written notice of that determination. If the
16 nonprofit corporation does not correct each ground for dissolution or demonstrate to the
17 reasonable satisfaction of the Office of the Secretary of State that each ground determined by
18 the Office of the Secretary of State does not exist within sixty days after service of the notice
19 is perfected, the Office of the Secretary of State shall administratively dissolve the corporation
20 by signing a certificate of dissolution that recites the ground or grounds for dissolution and its
21 effective date. The Office of the Secretary of State shall file the original of the certificate and
22 serve a copy on the corporation. A nonprofit corporation administratively dissolved continues
23 its corporate existence but may not carry on any business except that necessary to wind up and
24 liquidate its business and affairs pursuant to section 180 of this Act and notify claimants
25 pursuant to sections 181 and 182 of this Act. The administrative dissolution of a nonprofit
26 corporation does not terminate the authority of its registered agent.

27 Section 187. That the code be amended by adding a NEW SECTION to read:

28 A nonprofit corporation administratively dissolved pursuant to section 186 of this Act may
29 apply to the Office of the Secretary of State for reinstatement any time after the effective date
30 of dissolution. The application must:

- 31 (1) Recite the name of the corporation and the effective date of its administrative
32 dissolution;
- 33 (2) State that the ground or grounds for dissolution either did not exist or have been
34 eliminated;
- 35 (3) State that the nonprofit corporation's name satisfies the requirements of section 32
36 of this Act; and

1 (4) Contain a certificate from the Department of Revenue in this state reciting that all
2 taxes and fees administered and collected by the department which are owed by the
3 nonprofit corporation have been paid. If the Office of the Secretary of State
4 determines that the application contains the information required by this section and
5 that the information is correct, the Office of the Secretary of State shall cancel the
6 certificate of dissolution and prepare a certificate of reinstatement that recites that
7 determination and the effective date of reinstatement, file the original of the
8 certificate, and serve a copy on the corporation. When the reinstatement is effective,
9 it relates back to and takes effect as of the effective date of the administrative
10 dissolution and the nonprofit corporation resumes carrying on its business as if the
11 administrative dissolution had never occurred.

12 Section 188. That the code be amended by adding a NEW SECTION to read:

13 If the Office of the Secretary of State denies a nonprofit corporation's application for
14 reinstatement following administrative dissolution, the Office of the Secretary of State shall
15 serve the nonprofit corporation with a written notice that explains the reason or reasons for
16 denial.

17 The nonprofit corporation may appeal the denial of reinstatement to the circuit court within
18 thirty days after service of the notice of denial is perfected. The nonprofit corporation appeals
19 by petitioning the court to set aside the dissolution and attaching to the petition copies of the
20 Office of the Secretary of State's certificate of dissolution, the nonprofit corporation's
21 application for reinstatement, and the Office of the Secretary of State's notice of denial.

22 The court may summarily order the Office of the Secretary of State to reinstate the dissolved
23 nonprofit corporation or may take other action the court considers appropriate. The court's final
24 decision may be appealed as in other civil proceedings.

25 Section 189. That the code be amended by adding a NEW SECTION to read:

26 The circuit court may dissolve a nonprofit corporation:

27 (1) In a proceeding by the attorney general, if it is established that:

28 (i) The corporation obtained its articles of incorporation through fraud; or

29 (ii) The corporation has exceeded or abused, and is continuing to exceed or abuse
30 the authority conferred upon it by law;

31 (2) Except as provided in the articles of incorporation or bylaws, in a proceeding by fifty
32 members or members holding at least five percent of the voting power, whichever is
33 less, or by a director or member of a designated body, if it is established that:

34 (i) The directors or a designated body are deadlocked in the management of the
35 corporate affairs, the members, if any, are unable to break the deadlock, and
36 irreparable injury to the corporation or its mission is threatened or being
37 suffered because of the deadlock;

- 1 (ii) The directors or those in control of the corporation have acted, are acting, or
2 will act in a manner that is illegal, oppressive, or fraudulent;
- 3 (iii) The members are deadlocked in voting power and have failed, for a period that
4 includes at least two consecutive annual meeting dates, to elect successors to
5 directors whose terms have, or otherwise would have, expired;
- 6 (iv) The corporate assets are being misapplied or wasted; or
- 7 (v) The corporation has insufficient assets to continue its activities and it is no
8 longer able to assemble a quorum of directors or members;
- 9 (3) In a proceeding by a creditor, if it is established that:
- 10 (i) The creditor's claim has been reduced to judgment, the execution on the
11 judgment returned unsatisfied, and the corporation is insolvent; or
- 12 (ii) The corporation has admitted in a record that the creditor's claim is due and
13 owing and the corporation is insolvent; or
- 14 (4) In a proceeding by the corporation to have its voluntary dissolution continued under
15 court supervision.

16 Section 190. That the code be amended by adding a NEW SECTION to read:

17 (a) Venue for a proceeding by the attorney general to dissolve a nonprofit corporation lies
18 in the county in which the registered office of the corporation is situated, or in the circuit court
19 for Hughes County. Venue for a proceeding brought by any other party named in section 189
20 of this Act lies in the county where a corporation's principal office, or, if none in this state, its
21 registered office, is or was last located.

22 (b) It is not necessary to make directors or members parties to a proceeding to dissolve a
23 nonprofit corporation unless relief is sought against them individually.

24 (c) A court in a proceeding brought to dissolve a nonprofit corporation may issue
25 injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court
26 directs, take other action required to preserve the corporate assets wherever located, and carry
27 on the activities of the corporation until a full hearing can be held.

28 Section 191. That the code be amended by adding a NEW SECTION to read:

29 (a) A court in a judicial proceeding brought to dissolve a nonprofit corporation may appoint
30 one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs
31 of the corporation. The court shall hold a hearing, after giving notice to all parties to the
32 proceeding and any interested persons designated by the court, before appointing a receiver or
33 custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the
34 corporation and all of its property wherever located.

1 (b) The court may require the receiver or custodian to post bond, with or without sureties,
2 in an amount the court directs.

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

5 (1) The receiver:

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

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

10 (2) The custodian may exercise all of the powers of the corporation, through or in place
11 of its board of directors and any designated body, to the extent necessary to manage
12 the affairs of the corporation consistent with its mission and in the best interests of
13 its members, if any, and creditors.

14 (d) During a receivership, the court may redesignate the receiver a custodian, and during a
15 custodianship may redesignate the custodian a receiver, if doing so is consistent with the
16 mission of the nonprofit corporation and in the best interests of the corporation, its members,
17 and creditors.

18 (e) The court from time to time during the receivership or custodianship may order
19 compensation paid and expense disbursements or reimbursements made to the receiver or
20 custodian and counsel from the assets of the nonprofit corporation or proceeds from the sale of
21 the assets.

22 (f) This section does not apply to a nonprofit corporation that is a religious organization.

23 Section 192. That the code be amended by adding a NEW SECTION to read:

24 (a) If after a hearing the court determines that one or more grounds for judicial dissolution
25 described in section 188 of this Act exist, it may enter a decree dissolving the nonprofit
26 corporation and specifying the effective date of the dissolution, and the clerk of the court shall
27 deliver a certified copy of the decree to the Office of the Secretary of State, who shall file it.

28 (b) After entering the decree of dissolution, the court shall direct the winding-up and
29 liquidation of the nonprofit corporation's affairs in accordance with section 180 of this Act and
30 the notification of claimants in accordance with sections 181 and 182 of this Act.

31 Section 193. That the code be amended by adding a NEW SECTION to read:

32 Assets of a dissolved nonprofit corporation that should be transferred to a creditor, claimant,
33 or member of the corporation who cannot be found or who is not competent to receive them
34 shall be reduced to cash and deposited with the state treasurer or other appropriate state official
35 for safekeeping. When the creditor, claimant, or member furnishes satisfactory proof of

1 entitlement to the amount deposited, the state treasurer or other appropriate state official shall
2 pay the amount held.

3 Section 194. That the code be amended by adding a NEW SECTION to read:

4 (a) A foreign nonprofit corporation may not conduct activities in this state until it obtains
5 a certificate of authority from the Office of the Secretary of State.

6 (b) The following activities, among others, do not constitute conducting activities within the
7 meaning of paragraph (a):

8 (1) Maintaining, defending, or settling any proceeding;

9 (2) Holding meetings of the board of directors, a designated body, members, or delegates
10 or carrying on other activities concerning internal corporate affairs;

11 (3) Maintaining bank accounts;

12 (4) Maintaining offices or agencies for the transfer, exchange, and registration of
13 memberships or securities or maintaining trustees or depositaries with respect to
14 those memberships or securities;

15 (5) Selling through independent contractors;

16 (6) Soliciting or obtaining orders, whether by mail, electronically, or through employees
17 or agents or otherwise, if the orders require acceptance outside this state before they
18 become contracts;

19 (7) Creating or acquiring indebtedness, mortgages, and security interests in real or
20 personal property;

21 (8) Securing or collecting debts or enforcing mortgages and security interests in property
22 securing the debts;

23 (9) Owning, without more, real or personal property;

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

26 (11) Soliciting or accepting contributions;

27 (12) Conducting activities in interstate commerce.

28 (c) The list of activities in paragraph (b) is not exhaustive.

29 Section 195. That the code be amended by adding a NEW SECTION to read:

1 (a) A foreign nonprofit corporation conducting activities in this state without a certificate
2 of authority may not maintain a proceeding in any court in this state until it obtains a certificate
3 of authority.

4 (b) The successor to a foreign nonprofit corporation that conducted activities in this state
5 without a certificate of authority and the assignee of a cause of action arising out of those
6 activities may not maintain a proceeding based on that cause of action in any court in this state
7 until the foreign corporation or its successor obtains a certificate of authority.

8 (c) A court may stay a proceeding commenced by a foreign nonprofit corporation, its
9 successor, or assignee until it determines whether the foreign corporation or its successor
10 requires a certificate of authority. If it so determines, the court may further stay the proceeding
11 until the foreign corporation or its successor obtains the certificate.

12 (d) Notwithstanding paragraphs (a) and (b), the failure of a foreign corporation to obtain a
13 certificate of authority does not impair the validity of its corporate acts or prevent it from
14 defending any proceeding in this state.

15 Section 196. That the code be amended by adding a NEW SECTION to read:

16 A foreign nonprofit corporation may apply for a certificate of authority to conduct activities
17 in this state by delivering an application to the Office of the Secretary of State for filing. The
18 application must set forth:

- 19 (1) The name of the foreign corporation or, if its name is unavailable for use in this state,
20 a corporate name that satisfies the requirements of section 199 of this Act;
- 21 (2) The name of the state or country under whose law it is incorporated;
- 22 (3) Its date of incorporation and period of duration, if any;
- 23 (4) The street address of its principal office; and
- 24 (5) The address of its registered office in this state and the name of its registered agent
25 at that office; and
- 26 (6) The names and usual business addresses of its current directors and officers.

27 Section 197. That the code be amended by adding a NEW SECTION to read:

28 (a) A foreign nonprofit corporation authorized to conduct activities in this state must obtain
29 an amended certificate of authority from the Office of the Secretary of State if it changes:

- 30 (1) Its name;
- 31 (2) The period of its duration; or
- 32 (3) The state or country of its incorporation.

1 (b) The requirements of section 196 of this Act for obtaining an original certificate of
2 authority apply to obtaining an amended certificate pursuant to this section.

3 Section 198. That the code be amended by adding a NEW SECTION to read:

4 (a) A certificate of authority authorizes the foreign nonprofit corporation to which it is
5 issued to conduct activities in this state, subject to the right of the state to revoke the certificate
6 as provided in this Act.

7 (b) A foreign nonprofit corporation with a valid certificate of authority has the same but no
8 greater rights and has the same but no greater privileges as, and except as otherwise provided
9 by this Act is subject to the same duties, restrictions, penalties, and liabilities now or later
10 imposed on, a domestic nonprofit corporation of like character.

11 (c) This Act does not authorize this state to regulate the organization or internal affairs of
12 a foreign nonprofit corporation authorized to conduct activities in this state.

13 Section 199. That the code be amended by adding a NEW SECTION to read:

14 (a) If the name of a foreign nonprofit corporation does not satisfy the requirements of section
15 32 of this Act, the foreign corporation, to obtain or maintain a certificate of authority to conduct
16 activities in this state, may use a fictitious name to conduct activities in this state if its real name
17 is unavailable and it delivers to the Office of the Secretary of State for filing a copy of the
18 resolution of its board of directors, certified by its secretary, adopting the fictitious name.

19 (b) Except as authorized by paragraphs (c) and (d), the name, including a fictitious name,
20 of a foreign nonprofit corporation must be distinguishable upon the records of the Office of the
21 Secretary of State from:

22 (1) A name that is not available pursuant to section 32 of this Act; or

23 (2) A name reserved or registered pursuant to sections 33 and 34 of this Act or other law
24 of this state.

25 (c) A foreign nonprofit corporation may apply to the Office of the Secretary of State for
26 authorization to use in this state the name of another domestic or qualified foreign nonprofit
27 corporation, domestic or qualified foreign business corporation, or domestic or qualified foreign
28 filing entity that is not distinguishable upon the records of the Office of the Secretary of State
29 from the name applied for. The Office of the Secretary of State shall authorize use of the name
30 applied for if:

31 (1) The other corporation or entity consents to the use and submits an undertaking in the
32 form of a record satisfactory to the Office of the Secretary of State to change its name
33 to a name that is distinguishable upon the records of the Office of the Secretary of
34 State from the name of the applying corporation; or

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

4 (d) A foreign nonprofit corporation may use in this state the name, including the fictitious
5 name, of another domestic or foreign nonprofit or business corporation or other entity that is
6 used in this state if the other corporation or entity is incorporated, organized, or authorized to
7 conduct activities or transact business or conduct activities in this state and the foreign
8 corporation:

9 (1) Has merged with the other corporation or entity;

10 (2) Has been formed by reorganization of the other corporation or entity; or

11 (3) Has acquired all or substantially all of the assets, including the name, of the other
12 corporation or entity.

13 (e) If a foreign nonprofit corporation authorized to conduct activities in this state changes
14 its name to one that does not satisfy the requirements of section 32 of this Act, it may not
15 conduct activities in this state under the changed name until it adopts a name satisfying the
16 requirements of section 32 of this Act and obtains an amended certificate of authority pursuant
17 to section 197 of this Act.

18 Section 200. That the code be amended by adding a NEW SECTION to read:

19 Each foreign nonprofit corporation authorized to conduct activities in this state must
20 continuously maintain in this state:

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

22 (2) A registered agent pursuant to chapter 59-11.

23 Section 201. That the code be amended by adding a NEW SECTION to read:

24 (a) A foreign nonprofit corporation authorized to conduct activities in this state may apply
25 for a certificate of withdrawal by delivering an application to the Office of the Secretary of State
26 for filing. The application must set forth:

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

29 (2) That it is not conducting activities in this state and that it surrenders its authority to
30 conduct activities in this state;

31 (3) That it revokes the authority of its registered agent to accept service on its behalf and
32 appoints the Office of the Secretary of State as its agent for service of process in any
33 proceeding based on a cause of action arising during the time it was authorized to
34 conduct activities in this state;

1 (4) A mailing address to which the Office of the Secretary of State may mail a copy of
2 any process served on the secretary under subdivision (3).

3 (b) After the withdrawal of the foreign nonprofit corporation is effective, service of process
4 on the Office of the Secretary of State pursuant to this section with respect to activities of the
5 foreign corporation in this state prior to withdrawal is service on the foreign corporation. Upon
6 receipt of process, the Office of the Secretary of State shall mail a copy of the process to the
7 foreign corporation at the mailing address set forth under subdivision (a)(4).

8 Section 202. That the code be amended by adding a NEW SECTION to read:

9 A foreign nonprofit corporation authorized to conduct activities in this state that converts
10 to a domestic business corporation or any form of domestic filing entity shall be deemed to have
11 withdrawn on the effective date of the conversion.

12 Section 203. That the code be amended by adding a NEW SECTION to read:

13 (a) A foreign nonprofit corporation authorized to conduct activities in this state that converts
14 to a domestic or foreign nonfiling entity must apply for a certificate of withdrawal by delivering
15 an application to the Office of the Secretary of State for filing. The application must set forth:

16 (1) The name of the foreign nonprofit corporation and the name of the state or country
17 under whose laws it was incorporated before the conversion;

18 (2) That it surrenders its authority to conduct activities in this state as a foreign nonprofit
19 corporation;

20 (3) The type of unincorporated entity to which it has been converted and the jurisdiction
21 whose laws govern its internal affairs;

22 (4) If it has been converted to a foreign unincorporated entity:

23 (i) That it revokes the authority of its registered agent to accept service on its
24 behalf and appoints the Office of the Secretary of State as its agent for service
25 of process in any proceeding based on a cause of action arising during the time
26 it was authorized to conduct activities in this state;

27 (ii) A mailing address to which the Office of the Secretary of State may mail a
28 copy of any process served on the Office of the Secretary of State under
29 subsection (i); and

30 (iii) A commitment to notify the Office of the Secretary of State in the future of
31 any change in its mailing address.

32 (b) After the withdrawal pursuant to this section of a corporation that has converted to a
33 foreign unincorporated entity is effective, service of process on the Office of the Secretary of
34 State is service on the foreign unincorporated entity. Upon receipt of process, the Office of the

1 Secretary of State must mail a copy of the process to the foreign unincorporated entity at the
2 mailing address set forth under subdivision (a)(4).

3 (c) After the withdrawal pursuant to this section of a corporation that has converted to a
4 domestic unincorporated entity is effective, service of process must be made on the
5 unincorporated entity in accordance with the regular procedures for service of process on the
6 form of unincorporated entity to which the corporation was converted.

7 Section 204. That the code be amended by adding a NEW SECTION to read:

8 (a) A foreign nonprofit corporation authorized to conduct activities in this state that converts
9 to a foreign business corporation or to any form of foreign unincorporated entity that is required
10 to obtain a certificate of authority or make a similar type of filing with the Office of the
11 Secretary of State if it transacts business in this state must file with the Office of the Secretary
12 of State an application for transfer of authority executed by any officer or other duly authorized
13 representative. The application must set forth:

14 (1) The name of the corporation;

15 (2) The type of entity to which it has been converted and the jurisdiction whose laws
16 govern its internal affairs;

17 (3) Any other information that would be required in a filing under the laws of this state
18 by an entity of the type the corporation has become seeking authority to conduct
19 activities or transact business in this state.

20 (b) The application for transfer of authority shall be delivered to the Office of the Secretary
21 of State for filing and shall take effect at the effective time provided in section 5 of this Act.

22 (c) Upon the effectiveness of the application for transfer of authority, the authority of the
23 corporation pursuant to sections 194 to 207, inclusive, of this Act to conduct activities in this
24 state shall be transferred without interruption to the converted entity which shall thereafter hold
25 such authority subject to the provisions of the laws of this state applicable to that type of entity.

26 Section 205. That the code be amended by adding a NEW SECTION to read:

27 The Office of the Secretary of State may commence a proceeding pursuant to section 206
28 of this Act to revoke the certificate of authority of a foreign corporation authorized to conduct
29 activities in this state if:

30 (1) The foreign nonprofit corporation does not deliver its annual report to the Office of
31 the Secretary of State within sixty days after it is due;

32 (2) The foreign nonprofit corporation does not pay within sixty days after they are due
33 any franchise taxes or penalties imposed by this Act or other law;

34 (3) The foreign nonprofit corporation is without a registered agent in this state for sixty
35 days or more;

- 1 (4) The foreign nonprofit corporation does not inform the Office of the Secretary of State
2 by an appropriate filing that its registered agent has changed or that its registered
3 agent has resigned within sixty days of the change or resignation;
- 4 (5) An incorporator, director, officer, or agent of the foreign nonprofit corporation signed
5 a document knowing it was false in any material respect with intent that the
6 document be delivered to the Office of the Secretary of State for filing;
- 7 (6) The Office of the Secretary of State receives a duly authenticated certificate from the
8 Office of the Secretary of State or other official having custody of corporate records
9 in the state or country under whose law the foreign nonprofit corporation is
10 incorporated stating that it has been dissolved or disappeared as the result of a
11 merger.

12 Section 206. That the code be amended by adding a NEW SECTION to read:

13 (a) If the Office of the Secretary of State determines that one or more grounds exist pursuant
14 to section 205 of this Act for revocation of a certificate of authority, the Office of the Secretary
15 of State shall serve the foreign nonprofit corporation with written notice of that determination.
16 If the foreign nonprofit corporation does not correct each ground for revocation or demonstrate
17 to the reasonable satisfaction of the Office of the Secretary of State that each ground determined
18 by the Office of the Secretary of State does not exist within sixty days after service of the notice,
19 the Office of the Secretary of State may revoke the foreign nonprofit corporation's certificate
20 of authority by signing a certificate of revocation that recites the ground or grounds for
21 revocation and its effective date. The Office of the Secretary of State shall file the original of
22 the certificate and serve a copy on the foreign corporation. The authority of a foreign nonprofit
23 corporation to conduct activities in this state ceases on the date shown on the certificate
24 revoking its certificate of authority.

25 (b) The Office of the Secretary of State's revocation of a foreign nonprofit corporation's
26 certificate of authority appoints the Office of the Secretary of State the foreign nonprofit
27 corporation's agent for service of process in any proceeding based on a cause of action which
28 arose during the time the foreign nonprofit corporation was authorized to conduct activities in
29 this state. Service of process on the Office of the Secretary of State pursuant to this section is
30 service on the foreign nonprofit corporation. Upon receipt of process, the Office of the Secretary
31 of State shall mail a copy of the process to the secretary of the foreign nonprofit corporation at
32 its principal office shown in its most recent annual report or in any subsequent communication
33 received from the nonprofit corporation stating the current mailing address of its principal
34 office, or, if none are on file, in its application for a certificate of authority. Revocation of a
35 foreign nonprofit corporation's certificate of authority does not terminate the authority of the
36 registered agent of the nonprofit corporation.

37 Section 207. That the code be amended by adding a NEW SECTION to read:

38 A foreign nonprofit corporation may appeal the Office of the Secretary of State's revocation
39 of its certificate of authority to the circuit court within thirty days after service of the certificate
40 of revocation. The foreign nonprofit corporation appeals by petitioning the court to set aside the
41 revocation and attaching to the petition copies of its certificate of authority and the Office of the

1 Secretary of State's certificate of revocation. The court may summarily order the Office of the
2 Secretary of State to reinstate the certificate of authority or may take any other action the court
3 considers appropriate.

4 The court's final decision may be appealed as in other civil proceedings.

5 Section 208. That the code be amended by adding a NEW SECTION to read:

6 Any domestic nonprofit corporation authorized to engage in business in this state shall file
7 a report pursuant to §§ 59-11-24 to 59-11-26, inclusive.

8 Section 209. That the code be amended by adding a NEW SECTION to read:

9 (a) A nonprofit corporation must keep as permanent records minutes of all meetings of its
10 members, board of directors, and any designated body, a record of all actions taken by the
11 members, board of directors, or members of a designated body without a meeting, and a record
12 of all actions taken by a committee of the board of directors or a designated body on behalf of
13 the corporation.

14 (b) A nonprofit corporation must maintain appropriate accounting records.

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

18 (d) A nonprofit corporation must maintain its records in written form or in any other form
19 of a record.

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

21 (1) Its articles of incorporation or restated articles of incorporation and all amendments
22 to them currently in effect;

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

24 (3) The minutes and records described in paragraph (a) for the past three years;

25 (4) All communications in the form of a record to members generally within the past
26 three years, including the financial statements furnished for the past three years
27 pursuant to section 216 of this Act;

28 (5) A list of the names and business addresses of its current directors and officers; and

29 (6) Its most recent annual report delivered to the Office of the Secretary of State.

30 Section 210. That the code be amended by adding a NEW SECTION to read:

1 (a) A member of a nonprofit corporation is entitled to inspect and copy, during regular
2 business hours at the corporation's principal office, any of the records of the corporation
3 described in section 209(e) of this Act if the member delivers to the corporation a signed notice
4 in the form of a record at least five business days before the date on which the member wishes
5 to inspect and copy.

6 (b) A member of a nonprofit corporation is entitled to inspect and copy, during regular
7 business hours at a reasonable location specified by the corporation, any of the following
8 records of the corporation if the member meets the requirements of paragraph (c) and delivers
9 to the corporation a signed notice in the form of a record at least five business days before the
10 date on which the member wishes to inspect and copy:

11 (1) Excerpts from any records required to be maintained pursuant to section 209(a) of
12 this Act, to the extent not subject to inspection pursuant to section 210(a) of this Act;

13 (2) Accounting records of the corporation; and

14 (3) Subject to section 215 of this Act, the membership list.

15 (c) A member may inspect and copy the records described in paragraph (b) only if:

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

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

19 (3) The records are directly connected with this purpose.

20 (d) The right of inspection granted by this section may not be abolished or limited by a
21 nonprofit corporation's the articles of incorporation or bylaws.

22 (e) This section does not affect:

23 (1) The right of a member to inspect records pursuant to section 61 of this Act or, if the
24 member is in litigation with the corporation, to the same extent as any other litigant;
25 or

26 (2) The power of a court, independently of this Act, to compel the production of
27 corporate records for examination.

28 Section 211. That the code be amended by adding a NEW SECTION to read:

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

31 (b) The right to copy records pursuant to section 210 of this Act includes, if reasonable, the
32 right to receive copies. Copies may be provided through an electronic transmission if available
33 and so requested by the member.

1 (c) The nonprofit corporation may comply at its expense with a member's demand to inspect
2 the record of members pursuant to subdivision 210(b)(3) of this Act by providing the member
3 with a list of members that was compiled no earlier than the date of the member's demand.

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

7 Section 212. That the code be amended by adding a NEW SECTION to read:

8 (a) If a nonprofit corporation does not allow a member who complies with section 210 (a)
9 of this Act to inspect and copy any records required by that paragraph to be available for
10 inspection, the circuit court of the county where the corporation's principal office, or, if none
11 in this state, its registered office, is located may summarily order inspection and copying of the
12 records demanded at the corporation's expense upon application of the member.

13 (b) If a nonprofit corporation does not within a reasonable time allow a member to inspect
14 and copy any other record, the member who complies with sections 210(b) and 210(c) of this
15 Act may apply to the circuit court in the county where the corporation's principal office is
16 located, or, if none in this state, in Hughes County, for an order to permit inspection and copying
17 of the records demanded. The court shall dispose of an application under this paragraph on an
18 expedited basis.

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

24 (d) If the court orders inspection and copying of the records demanded, it may impose
25 reasonable restrictions on the use or distribution of the records by the demanding member.

26 Section 213. That the code be amended by adding a NEW SECTION to read:

27 (a) A director of a nonprofit corporation is entitled to inspect and copy the books, records,
28 and documents of the corporation at any reasonable time to the extent reasonably related to the
29 performance of the director's duties as a director, including duties as a member of a committee,
30 but not for any other purpose or in any manner that would violate any duty to the corporation
31 or law other than this Act.

32 (b) The circuit court of the county where the nonprofit corporation's principal office is
33 located, or if none in this state, in Hughes County, may order inspection and copying of the
34 books, records, and documents at the corporation's expense, upon application of a director who
35 has been refused such inspection rights, unless the corporation establishes that the director is
36 not entitled to such inspection rights. The court shall dispose of an application pursuant to this
37 paragraph on an expedited basis.

1 (c) If an order is issued, the court may include provisions protecting the nonprofit
2 corporation from undue burden or expense, and prohibiting the director from using information
3 obtained upon exercise of the inspection rights in a manner that would violate a duty to the
4 corporation, and may also order the corporation to reimburse the director for the director's costs,
5 including reasonable attorney's fees, incurred in connection with the application.

6 Section 214. That the code be amended by adding a NEW SECTION to read:

7 (a) Whenever notice would otherwise be required to be given under any provision of this Act
8 to a member, the notice need not be given if notice of two consecutive annual meetings, and all
9 notices of meetings during the period between such two consecutive annual meetings have been
10 returned undeliverable or could not be delivered.

11 (b) If a member delivers to the nonprofit corporation a notice setting forth the member's
12 then-current address, the requirement that notice be given to that member is reinstated.

13 Section 215. That the code be amended by adding a NEW SECTION to read:

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

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

21 (2) Used for any commercial purpose; or

22 (3) Sold to or purchased by any person.

23 (b) Instead of making a membership list available for inspection and copying pursuant to
24 sections 209 to 215, inclusive, of this Act, a nonprofit corporation may elect to proceed under
25 the procedures set forth in section 61(f) of this Act.

26 Section 216. That the code be amended by adding a NEW SECTION to read:

27 (a) On demand in the form of a record from a member, a corporation must furnish that
28 member with its latest annual financial statements, which may be consolidated or combined
29 statements of the corporation and one or more of its subsidiaries, as appropriate, that include a
30 balance sheet as of the end of the fiscal year and a statement of operations for the year. If
31 financial statements are prepared for the corporation on the basis of generally accepted
32 accounting principles, the annual financial statements must also be prepared on that basis.

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

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

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

6 Section 217. That the code be amended by adding a NEW SECTION to read:

7 (a) This Act governs only a nonprofit corporation organized:

8 (1) After July 1, 2016;

9 (2) Before July 1, 2016, which elects, as provided by paragraph (b), to be governed by
10 this Act.

11 (b) A nonprofit corporation existing before July 1, 2016 may voluntarily elect, in the manner
12 provided in its bylaws or by law for amending the bylaws, to be governed by this Act.

13 Section 218. That the code be amended by adding a NEW SECTION to read:

14 A foreign nonprofit corporation authorized to conduct activities in this state on the effective
15 date of this Act is subject to this Act but is not required to obtain a new certificate of authority
16 to conduct activities under this Act.

17 Section 219. That the code be amended by adding a NEW SECTION to read:

18 (a) Except as provided in paragraph (b), the repeal of a statute by this Act does not affect:

19 (1) The operation of the statute or any action taken under it before its repeal;

20 (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued,
21 or incurred under the statute before its repeal;

22 (3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred
23 because of the violation, before its repeal;

24 (4) Any proceeding, reorganization, or dissolution commenced under the statute before
25 its repeal, and the proceeding, reorganization, or dissolution may be completed in
26 accordance with the statute as if it had not been repealed.

27 (b) If a penalty or punishment imposed for violation of a statute repealed by this Act is
28 reduced by this Act, the penalty or punishment if not already imposed shall be imposed in
29 accordance with this Act.

30 (c) Members of a nonprofit corporation who were entitled to cumulate their votes for the
31 election of directors on the effective date of this Act shall continue to be entitled to cumulate

1 their votes for the election of directors until otherwise provided in the articles of incorporation
2 or bylaws of the corporation.

3 (d) This Act modifies, limits, or supersedes the federal Electronic Signatures in Global and
4 National Commerce Act, 15 U.S.C. § 7001 et seq., but this Act does not modify, limit, or
5 supersede section 101(c) of that Act or authorize electronic delivery of any of the notices
6 described in section 103(b) of that Act.

7 Section 220. That the code be amended by adding a NEW SECTION to read:

8 If any provision of this Act or its application to any person or circumstance is held invalid
9 by a court of competent jurisdiction, the invalidity does not affect other provisions or
10 applications of this Act that can be given effect without the invalid provision or application, and
11 to this end the provisions of this Act are severable.

12 Section 221. That the code be amended by adding a NEW SECTION to read:

13 In applying and construing this Act, consideration must be given to the need to promote
14 consistency of the law with respect to its subject matter among states that enact it.

15 Section 222. This Act takes effect July 1, 2016."

16 1068rc

17 On the printed bill, delete everything after the enacting clause and insert:

18 " Section 1. That § 47-22-4 be amended to read:

19 47-22-4. Corporations may be organized under this chapter for any lawful purpose,
20 including, but not limited to, any one or more of the following purposes:

- 21 (1) Agricultural;
- 22 (2) Animal husbandry;
- 23 (3) Athletic;
- 24 (4) Benevolent;
- 25 (5) Charitable;
- 26 (6) Civic;
- 27 (7) Cultural;
- 28 (8) Educational;
- 29 (9) Eleemosynary;
- 30 (10) Fraternal;
- 31 (11) Horticultural;
- 32 (12) Literary;
- 33 (13) Patriotic;
- 34 (14) Political;
- 35 (15) Religious;
- 36 (16) Scientific;

- 1 (17) Social; and
2 (18) Professional, commercial, industrial, or trade association. However, labor unions,
3 cooperative organizations, other than housing cooperatives, communals, and
4 organizations subject to any of the provisions of the banking laws of this state may
5 not be organized under this chapter. Notwithstanding any other provision of this title,
6 any insurance organization formed under this chapter is subject to Title 58.

7 Section 2. That § 47-22-5 be amended to read:

8 47-22-5. ~~Three~~ One or more natural persons of the age of majority may act as incorporators
9 of a corporation by delivering to the secretary of state the articles of incorporation for such
10 corporation. Delivery may be made by electronic transmission if and to the extent permitted by
11 the Office of the Secretary of State. If the document is filed in typewritten or printed form and
12 not transmitted electronically, the Office of the Secretary of State may require one exact or
13 conformed copy to be delivered with the document.

14 Section 3. That chapter 47-22 be amended by adding a NEW SECTION to read:

15 Notwithstanding any provision to the contrary in chapters 47-22 to 47-28, inclusive, filings
16 with the Office of Secretary of State may be made by electronic transmission if and to the extent
17 permitted by the Office of Secretary of State.

18 Section 4. That chapter 47-22 be amended by adding a NEW SECTION to read:

19 Notwithstanding any provision to the contrary in chapters 47-22 to 47-28, inclusive, filings
20 with the Office of Secretary of State may specify delayed effective time and date, and if it does
21 so the document becomes effective at the time and date specified. If a delayed effective date is
22 indicated, but no time is specified, the document is effective at the close of business on that
23 date. A delayed effective date for a document may not be later than the ninetieth day after the
24 date it is filed.

25 Section 5. That § 47-23-2.1 be amended to read:

26 47-23-2.1. No director, trustee, committee member, or officer serving without compensation,
27 other than reimbursement for actual expenses, of any corporation organized under this chapter
28 or under similar laws of another state, ~~and which is exempt from taxation pursuant to Section~~
29 ~~501(a) of the Internal Revenue Code, 26 U.S.C. Section 501(a) and is listed as an exempt~~
30 ~~organization in Section 501(c) of the Internal Revenue Code, 26 U.S.C. Section 501(c),~~ or any
31 hospital organized pursuant to chapter 34-8, 34-9, or 34-10 is liable, and no cause of action may
32 be brought, for damages resulting from the exercise of judgment or discretion in connection
33 with the duties or responsibilities of such director, trustee, committee member, or officer while
34 acting in an official capacity as such director, trustee, committee member, or officer, unless the
35 act or omission involved willful or wanton misconduct. The immunity provided by this section
36 applies to any member of an advisory board, serving without compensation, other than
37 reimbursement for actual expenses, of any corporation described by this section.

38 Section 6. That § 47-23-4 be amended to read:

1 47-23-4. An annual meeting of the members of a corporation shall be held at such time as
2 may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall
3 not work a forfeiture or dissolution of the corporation. The articles of incorporation or bylaws
4 may provide that an annual or regular meeting of members does not need to be held at a
5 geographic location and may instead be held by any means of electronic communication which
6 allows the members to read or hear the proceedings substantially concurrently with their
7 occurrence, vote on matters submitted to the members, pose questions, and make comments.

8 Section 7. That § 47-23-6 be amended to read:

9 47-23-6. Any action required by chapters 47-22 to 47-28, inclusive, to be taken at a meeting
10 of the members or directors of a corporation, or any action which may be taken at a meeting of
11 the members or directors or of a committee of directors, may be taken without a meeting if a
12 consent in writing, setting forth the action so taken, shall be signed by all the members entitled
13 to vote with respect to the subject matter thereof, or all of the directors, or all of the members
14 of the committee of directors, as the case may be. If permitted in the articles of incorporation
15 or the bylaws, such consent and signature may be transmitted by any reasonable means
16 including, but not limited to, traditional mail, hand delivery, email, or electronic facsimile.

17 Such consent shall have the same force and effect as a unanimous vote, and may be stated
18 as such in any articles or document filed with the secretary of state under chapters 47-22 to 47-
19 28, inclusive.

20 Section 8. That § 47-23-7 be amended to read:

21 47-23-7. Unless otherwise provided in the articles of incorporation or the bylaws, written
22 notice stating the place, day, and hour of the meeting and, in the case of a special meeting, the
23 purpose or purposes for which the meeting is called, shall be delivered not less than ten nor
24 more than fifty days before the date of the meeting, either personally or by mail, by or at the
25 direction of the president, or the secretary, or the officers or persons calling the meeting, to each
26 member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered
27 when deposited in the United States mail addressed to the member at his address as it appears
28 on the records of the corporation, with postage thereon prepaid. If permitted in the articles of
29 incorporation or the bylaws, notice of meetings may be given by any reasonable means
30 including, but not limited to, traditional mail, hand delivery, email, or electronic facsimile.

31 Section 9. That § 47-23-9 be amended to read:

32 47-23-9. A member entitled to vote may vote in person or, unless the articles of
33 incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the
34 member or by his duly authorized attorney in fact. No proxy shall be valid after eleven months
35 from the date of its execution, unless otherwise provided in the proxy. ~~Where directors or~~
36 ~~officers are to be elected by members, the bylaws may provide that such elections may be~~
37 ~~conducted by mail.~~ Except as otherwise provided in the articles of incorporation or bylaws, any
38 action that may be taken at any annual, regular, or special meeting of members may be taken
39 without a meeting if the corporation delivers a ballot to every member entitled to vote on the
40 matter. Each ballot must:

- 1 (1) Set forth each proposed action;
- 2 (2) Provide an opportunity to vote for or against, or withhold a vote for, each proposed
- 3 action;
- 4 (3) Be delivered to each member by any means of transmission set forth in the bylaws
- 5 or articles of incorporation. If no method is set forth in the bylaws or articles of
- 6 incorporation, ballots may be delivered by any reasonable means, including, but not
- 7 limited to, traditional mail, hand delivery, email, or electronic facsimile;
- 8 (4) Indicate the number of responses needed to meet the quorum requirements;
- 9 (5) State the percentage of approvals necessary to approve each matter other than
- 10 election of directors; and
- 11 (6) Specify the time by which a ballot must be received in order to be counted.

12 Unless otherwise provided in the articles of incorporation or bylaws, approval by ballot,
13 pursuant to this section, of action other than election of directors is valid only when the number
14 of votes cast by ballot equals or exceeds the quorum required to be present at a meeting
15 authorizing the action, and the number of approvals equals or exceeds the number of votes that
16 would be required to approve the matter at a meeting at which the total number of votes cast was
17 the same as the number of votes cast by ballot. Except as otherwise provided in the articles of
18 incorporation or bylaws, a ballot may not be revoked.

19 Section 10. That § 47-23-13 be amended to read:

20 47-23-13. ~~The~~ Except as authorized by § 47-23-22, the affairs of a corporation shall be
21 managed by a board of directors. Directors need not be members of the corporation unless the
22 articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws
23 may prescribe other qualifications for directors.

24 Section 11. That § 47-23-22 be amended to read:

25 47-23-22. If the articles of incorporation or the bylaws so provide, the board of directors;
26 ~~by resolution adopted by a majority of the directors in office;~~ may designate one or more
27 committees each of which shall consist of ~~two~~ one or more directors, ~~which and such additional~~
28 members as specified in the resolution which such additional members need not be a director
29 or member of the nonprofit corporation, or resident of the state. Such committees, to the extent
30 provided in such resolution, in the articles of incorporation or in the bylaws of the corporation,
31 shall have and exercise the authority or function of the board of directors in the management of
32 the corporation; but the. The designation of such committees and the delegation thereto of
33 authority shall not operate to relieve the board of directors, or any individual director of any
34 responsibility imposed upon it or ~~him~~ any individual director by law except those
35 responsibilities related to the authority or function the committee is authorized to exercise.
36 Other committees not having and exercising the authority of the board of directors in the
37 management of the corporation may be designated by a resolution adopted by a majority of the
38 directors present at a meeting at which a quorum is present. Members of committees created
39 under this section have the same rights of indemnification and immunity as are provided to the
40 board of directors in chapters 47-22 to 47-28, inclusive, unless otherwise provided in the articles
41 of incorporation or bylaws.

42 Section 12. That § 47-24-1 be amended to read:

1 47-24-1. Each corporation shall keep correct and complete books and records of account and
 2 shall keep minutes of the proceedings of its members, board of directors, and committees having
 3 any of the authority of the board of directors; and shall keep at its registered office or principal
 4 office a record of the names and addresses of its members entitled to vote. If authorized by the
 5 articles of incorporation or bylaws, the records required by this section may be kept in electronic
 6 format.

7 Section 13. That § 47-24-17 be amended to read:

8 47-24-17. ~~Upon~~ At least ten days prior to the sale, transfer, conversion, or merger of at least
 9 thirty percent of the assets of a nonprofit corporation, the corporation shall give written notice
 10 to the attorney general. The following information shall, within sixty days of such sale, transfer,
 11 or merger, be submitted to the secretary of state:

- 12 (1) Name and address of the parties involved in the sale, transfer, conversion, or merger;
- 13 (2) Terms and conditions of the sale, transfer, conversion, or merger;
- 14 (3) Dollar value of the assets being sold, transferred, converted, or merged, including an
 15 account of how the value was determined; and
- 16 (4) An explanation of how the sale, transfer, conversion, or merger furthers the purpose
 17 of the nonprofit corporation.

18 The information shall be submitted on forms provided by the secretary of state.

19 Section 14. That the code be amended by adding a NEW SECTION to read:

20 At least ten days prior to a meeting to dissolve under chapter 47-26, or conversion from a
 21 nonprofit corporation to a domestic business corporation or other business entity authorized by
 22 law, the corporation shall provide notice to the attorney general which notice shall include a
 23 copy of the plan for distribution of assets required pursuant to § 47-26-6 or plan of conversion
 24 pursuant to section 23 or 24 of this Act.

25 Section 15. That the code be amended by adding a NEW SECTION to read:

26 If so provided in the articles of incorporation or bylaws of the corporation, any written notice
 27 required to be provided to any member or director pursuant to any provision of chapters 47-22
 28 to 47-28, inclusive, may be sent by any reasonable means of transmission set forth in the articles
 29 of incorporation or bylaws of the corporation, including, but not limited to, traditional mail,
 30 hand delivery, email, or electronic facsimile.

31 Section 16. That the code be amended by adding a NEW SECTION to read:

32 Terms used in sections 16 to 37, inclusive, of this Act, mean:

- 33 (1) "Conversion," a transaction authorized by sections 23 to 37, inclusive, of this Act;
- 34 (2) "Converting corporation," the domestic or foreign nonprofit or business corporation
 35 that approves a conversion pursuant to sections 23 to 37, inclusive, of this Act, or the
 36 applicable laws of the foreign jurisdiction;

- 1 (3) "Converting entity," the domestic or foreign entity that approves a conversion
2 pursuant to sections 23 to 37, inclusive, of this Act;
- 3 (4) "Domesticated corporation," the domesticating corporation as it continues in
4 existence after a domestication;
- 5 (5) "Domesticating corporation," the domestic nonprofit corporation that adopts a plan
6 of domestication pursuant to sections 18 to 22, inclusive, of this Act, or the foreign
7 nonprofit corporation that approves a domestication pursuant to the applicable laws
8 of the foreign jurisdiction;
- 9 (6) "Domestication," a transaction authorized by sections 18 to 22, inclusive, of this Act;
- 10 (7) "Surviving corporation," the corporation as it continues in existence immediately
11 after consummation of a for-profit conversion pursuant to sections 18 to 37,
12 inclusive, of this Act;
- 13 (8) "Surviving entity," the unincorporated entity as it continues in existence immediately
14 after consummation of an entity conversion pursuant to sections 18 to 37, inclusive,
15 of this Act.

16 Section 17. That the code be amended by adding a NEW SECTION to read:

17 If a domestic or foreign nonprofit corporation may not be a party to a merger or sale of its
18 assets without the approval of the attorney general, the Division of Insurance, or the Public
19 Utilities Commission, the corporation may not be a party to a conversion or domestication
20 without the prior approval of that agency.

21 Section 18. That the code be amended by adding a NEW SECTION to read:

22 (a) A foreign nonprofit corporation may become a domestic nonprofit corporation only if
23 the domestication is authorized by the laws of the foreign jurisdiction.

24 (b) A domestic nonprofit corporation may become a foreign nonprofit corporation if the
25 domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the
26 laws of the foreign jurisdiction require the adoption of a plan of domestication, the
27 domestication must be approved by the adoption by the corporation of a plan of domestication.

28 (c) The plan of domestication must include:

- 29 (1) A statement of the jurisdiction in which the corporation is to be domesticated;
- 30 (2) The terms and conditions of the domestication;
- 31 (3) The manner and basis of canceling or reclassifying the memberships of the
32 corporation following its domestication into memberships, obligations, rights to
33 acquire memberships, cash, other property, or any combination of the foregoing; and
- 34 (4) Any desired amendments to the articles of incorporation or bylaws of the corporation
35 following its domestication.

36 (d) The plan of domestication may also include a provision that the plan may be amended
37 prior to filing the document required by the laws of this state or the other jurisdiction to
38 consummate the domestication; except that, subsequent to approval of the plan by the members,
39 the plan may not be amended without the approval of the members to change:

- 1 (1) The amount or kind of memberships, obligations, rights to acquire memberships,
2 cash, or other property to be received by the members under the plan;
- 3 (2) The articles of incorporation to be in effect immediately following the domestication;
4 or
- 5 (3) Any of the other terms or conditions of the plan if the change would adversely affect
6 any of the members in any material respect.

7 (e) If any debt security, note or similar evidence of indebtedness for money borrowed,
8 whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a
9 domestic nonprofit corporation before the effective date of this Act contains a provision
10 applying to a merger of the corporation and the document does not refer to a domestication of
11 the corporation, the provision shall be deemed to apply to a domestication of the corporation
12 until such time as the provision is amended subsequent to that date.

13 Section 19. That the code be amended by adding a NEW SECTION to read:

14 In the case of a domestication of a domestic nonprofit corporation in a foreign jurisdiction:

- 15 (1) The plan of domestication must be adopted by the board of directors;
- 16 (2) After adopting the plan of domestication the board of directors must submit the plan
17 to the members for their approval, if there are members entitled to vote on the plan.
18 The board of directors must also transmit to the members a recommendation that the
19 members approve the plan, unless the board of directors makes a determination that
20 because of conflicts of interest or other special circumstances it should not make such
21 a recommendation, in which case the board of directors must transmit to the members
22 the basis for that determination;
- 23 (3) The board of directors may condition its submission of the plan of domestication to
24 the members on any basis;
- 25 (4) If the approval of the members is to be given at a meeting, the corporation must
26 notify each member, whether or not entitled to vote, of the meeting of members at
27 which the plan of domestication is to be submitted for approval. The notice must
28 state that the purpose, or one of the purposes, of the meeting is to consider the plan
29 and must contain or be accompanied by a copy or summary of the plan. The notice
30 must include or be accompanied by a copy of the proposed articles of incorporation
31 and bylaws to be in effect immediately after the domestication;
- 32 (5) Unless the articles of incorporation or bylaws, or the board of directors acting
33 pursuant to subdivision (3) of this section, requires a greater vote or a greater number
34 of votes to be present, the approval of the plan of domestication by the members
35 requires the approval of the members at a meeting at which a quorum exists, and, if
36 any class of members is entitled to vote as a separate group on the plan, the approval
37 of each such separate class at a meeting at which a quorum of the class exists;
- 38 (6) Separate voting by classes is required by each class of members that:
 - 39 (i) Are to be reclassified under the plan of domestication into a different class of
40 memberships, or into obligations, rights to acquire memberships, cash, other
41 property, or any combination of the foregoing;
 - 42 (ii) Would be entitled to vote as a separate group on a provision of the plan that,
43 if contained in a proposed amendment to articles of incorporation, would
44 require action by separate classes; or

- 1 (iii) Is entitled under the articles of incorporation or bylaws to vote as a class to
2 approve an amendment of the articles of incorporation;
- 3 (7) If any provision of the articles of incorporation, bylaws, or an agreement to which
4 any of the directors, members of a designated body, or members are parties, adopted
5 or entered into before the effective date of this Act, applies to a merger of the
6 corporation and that document does not refer to a domestication of the corporation,
7 the provision shall be deemed to apply to a domestication of the corporation until
8 such time as the provision is amended subsequent to that date.

9 Section 20. That the code be amended by adding a NEW SECTION to read:

10 (a) Articles of domestication must be signed on behalf of the domesticating corporation by
11 any officer or other duly authorized representative. The articles of domestication must set forth:

- 12 (1) The name and jurisdiction of incorporation of the domesticating corporation;
13 (2) The name and jurisdiction of incorporation of the domesticated entity; and
14 (3) If the domesticating corporation is a domestic nonprofit corporation, a statement that
15 the plan of domestication was approved in accordance with the laws of this state, or,
16 if the domesticating corporation is a foreign nonprofit corporation, a statement that
17 the domestication was approved in accordance with the laws of its jurisdiction of
18 incorporation.

19 (b) If the domesticated corporation is a domestic nonprofit corporation, the articles of
20 domestication shall contain all of the provisions required to be contained in the articles of
21 incorporation of a nonprofit corporation as set forth in § 47-22-6. The name of the domesticated
22 corporation must satisfy the requirements of §§ 47-22-7 and 47-22-8.1.

23 (c) The articles of domestication must be delivered to the Office of the Secretary of State
24 for filing.

25 (d) If the domesticating corporation is a qualified foreign nonprofit corporation, its
26 certificate of authority is cancelled automatically on the effective date of its domestication.

27 Section 21. That the code be amended by adding a NEW SECTION to read:

28 (a) Except as otherwise prohibited by law, when a domestication becomes effective:

- 29 (1) The title to all real and personal property, both tangible and intangible, of the
30 domesticating corporation remains in the domesticated corporation without reversion
31 or impairment;
- 32 (2) The liabilities of the domesticating corporation remain the liabilities of the
33 domesticated corporation;
- 34 (3) An action or proceeding pending against the domesticating corporation continues
35 against the domesticated corporation as if the domestication had not occurred;
- 36 (4) The articles of domestication, or the articles of incorporation attached to the articles
37 of domestication, constitute the articles of incorporation of a foreign corporation
38 domesticating in this state;

- 1 (5) The memberships in the domesticating corporation are reclassified into memberships,
2 obligations, rights to acquire memberships, or cash or other property in accordance
3 with the terms of the domestication, and the members are entitled only to the rights
4 provided by those terms; and
- 5 (6) The domesticating corporation is deemed to:
- 6 (i) Be incorporated under and subject to the same body of law of as the
7 domesticated corporation for all purposes; and
- 8 (ii) Be the same corporation without interruption as the domesticating corporation.

9 (b) The personal liability of a member in a foreign nonprofit corporation that is domesticated
10 in this state is as follows:

- 11 (1) The domestication does not discharge any personal liability under the laws of the
12 foreign jurisdiction to the extent any such personal liability arose before the effective
13 time of the articles of domestication;
- 14 (2) The member does not have personal liability under the laws of the foreign
15 jurisdiction for any debt, obligation, or liability of the corporation that arises after the
16 effective time of the articles of domestication;
- 17 (3) The provisions of the laws of the foreign jurisdiction continue to apply to the
18 collection or discharge of any personal liability preserved by subdivision (1), as if the
19 domestication had not occurred;
- 20 (4) The member has whatever rights of contribution from other members are provided
21 by the laws of the foreign jurisdiction with respect to any personal liability preserved
22 by subdivision (1), as if the domestication had not occurred.

23 Section 22. That the code be amended by adding a NEW SECTION to read:

24 (a) Unless otherwise provided in a plan of domestication of a domestic nonprofit
25 corporation, after the plan has been adopted and approved, and at any time before the
26 domestication has become effective, it may be abandoned by the board of directors without
27 action by the members.

28 (b) If a domestication is abandoned under paragraph (a) after articles of domestication have
29 been filed with the Office of the Secretary of State but before the domestication has become
30 effective, a statement that the domestication has been abandoned in accordance with this
31 section, signed by an officer or other duly authorized representative, must be delivered to the
32 Office of the Secretary of State for filing prior to the effective date of the domestication. The
33 statement takes effect upon filing and the domestication is abandoned and does not become
34 effective.

35 (c) If the domestication of a foreign nonprofit corporation in this state is abandoned in
36 accordance with the laws of the foreign jurisdiction after articles of domestication are filed with
37 the Office of the Secretary of State, a statement that the domestication has been abandoned,
38 signed by an officer or other duly authorized representative, must be delivered to the Office of
39 the Secretary of State for filing. The statement takes effect upon filing and the domestication
40 is abandoned and does not become effective.

41 Section 23. That the code be amended by adding a NEW SECTION to read:

1 (a) A domestic nonprofit corporation may become a domestic business corporation pursuant
2 to a plan of for-profit conversion.

3 (b) A domestic nonprofit corporation may become a foreign business corporation if the
4 for-profit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether
5 the laws of the foreign jurisdiction require the adoption of a plan of for-profit conversion, the
6 foreign for-profit conversion shall be approved by the adoption by the domestic nonprofit
7 corporation of a plan of for-profit conversion.

8 (c) The plan of for-profit conversion must include:

9 (1) The terms and conditions of the conversion;

10 (2) The manner and basis of:

11 (i) Issuing at least one share in the corporation following its conversion; and

12 (ii) Otherwise reclassifying the memberships in the corporation, if any, following
13 its conversion into shares and other securities, obligations, rights to acquire
14 shares or other securities, cash, other property, or any combination of the
15 foregoing;

16 (3) Any desired amendments to the articles of incorporation or bylaws of the corporation
17 following its conversion; and

18 (4) If the domestic nonprofit corporation is to be converted to a foreign business
19 corporation, a statement of the jurisdiction in which the corporation will be
20 incorporated after the conversion.

21 (d) The plan of for-profit conversion may also include a provision that the plan may be
22 amended prior to filing articles of for-profit conversion, except that subsequent to approval of
23 the plan by the members the plan may not be amended without the approval of the members to
24 change:

25 (1) The amount or kind of shares and other securities, obligations, rights to acquire
26 shares or other securities, cash, or other property to be received by the members
27 under the plan;

28 (2) The articles of incorporation to be in effect immediately following the conversion;
29 or

30 (3) Any of the other terms or conditions of the plan if the change would adversely affect
31 any of the members in any material respect.

32 (e) If any debt security, note, or similar evidence of indebtedness for money borrowed,
33 whether secured or unsecured, or a contract of any kind, issued, incurred, or executed by a
34 domestic nonprofit corporation before the effective date of this Act contains a provision
35 applying to a merger of the corporation and the document does not refer to a for-profit
36 conversion of the corporation, the provision shall be deemed to apply to a for-profit conversion
37 of the corporation until such time as the provision is amended subsequent to that date.

38 (f) The attorney general shall be provided with notice of the proposed for-profit conversion
39 at least ten days prior to any conversion.

40 Section 24. That the code be amended by adding a NEW SECTION to read:

1 In the case of a conversion of a domestic nonprofit corporation to a domestic or foreign
2 business corporation:

- 3 (1) The plan of for-profit conversion must be adopted by the board of directors;
- 4 (2) After adopting the plan of for-profit conversion, the board of directors must submit
5 the plan to the members for their approval if there are members entitled to vote on
6 the plan. The board of directors must also transmit to the members a recommendation
7 that the members approve the plan, unless the board of directors makes a
8 determination that because of conflicts of interest or other special circumstances it
9 should not make such a recommendation, in which case the board of directors must
10 transmit to the members the basis for that determination;
- 11 (3) The board of directors may condition its submission of the plan of for-profit
12 conversion to the members on any basis;
- 13 (4) If the approval of the members is to be given at a meeting, the corporation must
14 notify each member of the meeting of members at which the plan of for-profit
15 conversion is to be submitted for approval. The notice must state that the purpose,
16 or one of the purposes, of the meeting is to consider the plan and must contain or be
17 accompanied by a copy or summary of the plan. The notice shall include or be
18 accompanied by a copy of the proposed articles of incorporation to be in effect
19 immediately after the for-profit conversion;
- 20 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
21 subdivision (3), require a greater vote or a greater number of votes to be present, the
22 approval of the plan of for-profit conversion by the members requires the approval
23 of each class of members of the corporation voting as a separate class at a meeting
24 at which a quorum of the class exists; and
- 25 (6) If any provision of the articles of incorporation, bylaws, or an agreement to which
26 any of the directors or members are parties, adopted or entered into before the
27 effective date of this Act, applies to a merger of the corporation and the document
28 does not refer to a for-profit conversion of the corporation, the provision shall be
29 deemed to apply to a for-profit conversion of the corporation until such time as the
30 provision is amended subsequent to that date.

31 Section 25. That the code be amended by adding a NEW SECTION to read:

32 (a) Articles of for-profit conversion must be signed on behalf of the converting corporation
33 by any officer or other duly authorized representative. The articles must set forth:

- 34 (1) If the surviving corporation is a domestic business corporation, the name of the
35 corporation immediately before the filing of the articles of for-profit conversion and
36 if that name does not satisfy the requirements of the business corporation act, or the
37 corporation desires to change its name in connection with the conversion, a name that
38 satisfies the requirements of the business corporation act;
- 39 (2) If the surviving corporation is a foreign business corporation, its name after the
40 conversion and its jurisdiction of incorporation; and
- 41 (3) A statement that the plan of for-profit conversion was duly approved by the members
42 in the manner required by this Act and the articles of incorporation.

1 (b) If the surviving corporation is a domestic business corporation, the articles of for-profit
2 conversion shall either contain all of the provisions that the business corporation act requires
3 to be set forth in the articles of incorporation of a domestic business corporation and any other
4 desired provisions permitted by the business corporation act, or shall have attached articles of
5 incorporation that satisfy the requirements of the business corporation act. In either case,
6 provisions that would not be required to be included in restated articles of incorporation of a
7 domestic business corporation may be omitted, except that the name and address of the initial
8 registered agent of the business corporation must be included.

9 (c) The articles of for-profit conversion must be delivered to the Office of the Secretary of
10 State for filing.

11 Section 26. That the code be amended by adding a NEW SECTION to read:

12 (a) Except as otherwise prohibited by law, when a conversion of a domestic nonprofit
13 corporation to a domestic or foreign business corporation becomes effective:

- 14 (1) The title to all real and personal property, both tangible and intangible, of the
15 corporation remains in the corporation without reversion or impairment;
- 16 (2) The liabilities of the corporation remain the liabilities of the corporation;
- 17 (3) An action or proceeding pending against the corporation continues against the
18 corporation as if the conversion had not occurred;
- 19 (4) The articles of incorporation of the domestic or foreign business corporation become
20 effective;
- 21 (5) The memberships of the corporation are reclassified into shares or other securities,
22 obligations, rights to acquire shares or other securities, or into cash or other property
23 in accordance with the plan of conversion, and the members are entitled only to the
24 rights provided in the plan of for-profit conversion; and
- 25 (6) The corporation is deemed to:
 - 26 (i) Be a domestic or foreign business corporation for all purposes; and
 - 27 (ii) Be the same corporation without interruption as the nonprofit corporation.

28 (b) The personal liability of a member in a domestic nonprofit corporation that converts to
29 a domestic business corporation is as follows:

- 30 (1) The conversion does not discharge any personal liability of the member as a member
31 of the nonprofit corporation to the extent any such personal liability arose before the
32 effective time of the articles of for-profit conversion;
- 33 (2) The member does not have personal liability for any debt, obligation, or liability of
34 the business corporation that arises after the effective time of the articles of for-profit
35 conversion;
- 36 (3) The laws of this state continue to apply to the collection or discharge of any personal
37 liability preserved by subdivision (1), as if the conversion had not occurred;
- 38 (4) The member has whatever rights of contribution from other members are provided
39 by the laws of this state with respect to any personal liability preserved by
40 subdivision (1), as if the conversion had not occurred.

1 (c) A member who becomes subject to personal liability for some or all of the debts,
2 obligations, or liabilities of the business corporation has personal liability only for those debts,
3 obligations, or liabilities of the business corporation that arise after the effective time of the
4 articles of for-profit conversion.

5 Section 27. That the code be amended by adding a NEW SECTION to read:

6 (a) Unless otherwise provided in a plan of for-profit conversion of a domestic nonprofit
7 corporation, after the plan has been adopted and approved, and at any time before the for-profit
8 conversion has become effective, it may be abandoned by the board of directors without action
9 by the members.

10 (b) If a for-profit conversion is abandoned under paragraph (a) after articles of for-profit
11 conversion are filed with the Office of the Secretary of State but before the for-profit conversion
12 has become effective, a statement that the for-profit conversion has been abandoned in
13 accordance with this section, signed by an officer or other duly authorized representative, must
14 be delivered to the Office of the Secretary of State for filing prior to the effective date of the
15 for-profit conversion. The statement takes effect upon filing and the for-profit conversion is
16 abandoned and does not become effective.

17 Section 28. That the code be amended by adding a NEW SECTION to read:

18 A foreign business corporation may become a domestic nonprofit corporation if the
19 domestication and conversion is permitted by the laws of the foreign jurisdiction.

20 Section 29. That the code be amended by adding a NEW SECTION to read:

21 (a) After the conversion of a foreign business corporation to a domestic nonprofit
22 corporation is authorized as required by the laws of the foreign jurisdiction, articles of
23 domestication and conversion shall be signed by any officer or other duly authorized
24 representative. The articles shall set forth:

- 25 (1) The name of the corporation immediately before the filing of the articles of
26 domestication and conversion and, if that name is unavailable for use in this state or
27 the corporation desires to change its name in connection with the domestication and
28 conversion, a name that satisfies the requirements §§ 47-22-7 and 47-22-8.1;
- 29 (2) The jurisdiction of incorporation of the corporation immediately before the filing of
30 the articles of domestication and conversion and the date the corporation was
31 incorporated in that jurisdiction; and
- 32 (3) A statement that the domestication and conversion of the corporation in this state was
33 duly authorized as required by the laws of the jurisdiction in which the corporation
34 was incorporated immediately before its domestication and conversion in this state.

35 (b) The articles of domestication and conversion shall contain all of the provisions required
36 to be contained in the articles of incorporation of a nonprofit corporation as set forth in
37 § 47-22-6. The name of the domesticated corporation must satisfy the requirements of
38 §§ 47-22-7 and 47-2-2-8.1.

1 (c) The articles of domestication and conversion must be delivered to the Office of the
2 Secretary of State for filing.

3 Section 30. That the code be amended by adding a NEW SECTION to read:

4 (a) When a domestication and conversion of a foreign business corporation to a domestic
5 nonprofit corporation becomes effective:

- 6 (1) The title to all real and personal property, both tangible and intangible, of the
7 corporation remains in the corporation without reversion or impairment;
- 8 (2) The liabilities of the corporation remain the liabilities of the corporation;
- 9 (3) An action or proceeding pending against the corporation continues against the
10 corporation as if the domestication and conversion had not occurred;
- 11 (4) The articles of domestication and conversion, or the articles of incorporation attached
12 to the articles of domestication and conversion, constitute the articles of
13 incorporation of the corporation;
- 14 (5) Memberships, securities, obligations, rights to acquire memberships or securities of
15 the corporation, or cash or other property shall be issued or paid as provided pursuant
16 to the laws of the foreign jurisdiction; and
- 17 (6) The corporation is deemed to:
 - 18 (i) Be a domestic corporation for all purposes; and
 - 19 (ii) Be the same corporation without interruption as the foreign business
20 corporation.

21 (b) The personal liability of a shareholder of the foreign business corporation who becomes
22 a member of the domestic nonprofit corporation in the domestication and conversion is as
23 follows:

- 24 (1) The domestication and conversion does not discharge any personal liability under the
25 laws of the foreign jurisdiction to the extent any such personal liability arose before
26 the effective time of the articles of domestication and conversion;
- 27 (2) The member does not have personal liability under the laws of the foreign
28 jurisdiction for any debt, obligation, or liability of the corporation that arises after the
29 effective time of the articles of domestication and conversion;
- 30 (3) The provisions of the laws of the foreign jurisdiction continue to apply to the
31 collection or discharge of any personal liability preserved by subdivision (1), as if the
32 domestication and conversion had not occurred;
- 33 (4) The member has whatever rights of contribution from other members are provided
34 by the laws of the foreign jurisdiction with respect to any personal liability preserved
35 by subdivision (1), as if the domestication and conversion had not occurred.

36 (c) A shareholder of a foreign business corporation who becomes subject to personal liability
37 for some or all of the debts, obligations, or liabilities of the corporation as a result of its
38 domestication and conversion in this state has personal liability only for those debts, obligations,
39 or liabilities of the corporation that arise after the effective time of the articles of domestication
40 and conversion.

41 Section 31. That the code be amended by adding a NEW SECTION to read:

1 If the domestication and conversion of a foreign business corporation to a domestic
2 nonprofit corporation is abandoned in accordance with the laws of the foreign jurisdiction after
3 articles of domestication and conversion have been filed with the Office of the Secretary of
4 State, a statement that the domestication and conversion has been abandoned, signed by an
5 officer or other duly authorized representative, must be delivered to the Office of the Secretary
6 of State for filing. The statement takes effect upon filing and the domestication and conversion
7 is abandoned and does not become effective.

8 Section 32. That the code be amended by adding a NEW SECTION to read:

9 (a) Except as otherwise prohibited by law, when a conversion under sections 28 to 37,
10 inclusive, of this Act, becomes effective:

- 11 (1) The title to all real and personal property, both tangible and intangible, of the
12 converting entity remains in the surviving entity without reversion or impairment;
- 13 (2) The liabilities of the converting entity remain the liabilities of the surviving entity;
- 14 (3) An action or proceeding pending against the converting entity continues against the
15 surviving entity as if the conversion had not occurred;
- 16 (4) In the case of a surviving entity that is a filing entity, its articles of incorporation or
17 governing documents and rules become effective;
- 18 (5) The memberships or interests of the converting entity are reclassified into
19 memberships, interests, other securities, obligations, rights to acquire memberships,
20 interests or securities, or into cash or other property in accordance with the plan of
21 conversion; and the members or of the converting entity are entitled only to the rights
22 provided to them under the terms of the conversion and to any appraisal rights they
23 may have under the governing law of the converting entity; and
- 24 (6) The surviving entity is deemed to:
 - 25 (i) Be incorporated or organized under and subject to the governing law of the
26 converting entity for all purposes; and
 - 27 (ii) Be the same nonprofit corporation or unincorporated entity without
28 interruption as the converting entity.

29 (b) A member who is subject to personal liability for some or all of the debts, obligations,
30 or liabilities of the surviving entity has personal liability only for those debts, obligations, or
31 liabilities of the surviving entity that arise after the effective time of the articles of entity
32 conversion.

33 Section 33. That the code be amended by adding a NEW SECTION to read:

34 (a) Unless otherwise provided in a plan of entity conversion of a domestic nonprofit
35 corporation, after the plan is adopted and at any time before the entity conversion has become
36 effective, it may be abandoned by the board of directors without action by the members.

37 (b) If an entity conversion is abandoned after articles of entity conversion are filed with the
38 Office of the Secretary of State but before the entity conversion becomes effective, a statement
39 that the entity conversion has been abandoned in accordance with this section, signed by an
40 officer or other duly authorized representative, must be delivered to the Office of the Secretary

1 of State for filing prior to the effective date of the entity conversion. Upon filing, the statement
2 takes effect and the entity conversion is abandoned and does not become effective.

3 Section 34. That the code be amended by adding a NEW SECTION to read:

4 A domestic business corporation may become a domestic nonprofit corporation pursuant to
5 a plan of nonprofit conversion only if incorporating pursuant to this Act is not prohibited by any
6 other law of this state. If the law of a domestic business corporation does not provide procedures
7 for the approval of either a nonprofit conversion or a merger, a plan of nonprofit conversion
8 must be adopted and approved, and the conversion effectuated in accordance with this Act.

9 Section 35. That the code be amended by adding a NEW SECTION to read:

10 (a) The plan of nonprofit conversion must be adopted by the shareholders. The plan for
11 nonprofit
12 conversion must include:

- 13 (1) The terms and conditions of the conversion;
- 14 (2) The manner and basis of reclassifying the shareholders in the corporation;
- 15 (3) Any desired amendments to the articles of incorporation or bylaws of the corporation
16 following its conversion;
- 17 (4) The articles of incorporation to be in effect immediately following the conversion;
18 and
- 19 (5) Any of the terms or conditions of the plan if the change would adversely affect any
20 of the shareholders in any material respect.

21 The plan for nonprofit conversion may also include a provision that the plan may be
22 amended prior to filing articles of nonprofit conversion.

23
24 (b) After the plan for nonprofit conversion is authorized, the articles of conversion must be
25 signed on behalf of the converting corporation by any officer or other duly authorized
26 representative.

27 The articles shall set forth:

- 28 (1) The name of the corporation immediately before the filing of the articles of
29 conversion and, if that name is unavailable for use in this state or the corporation
30 desires to change its name in connection with the conversion, a name that satisfies
31 the requirements of §§ 47-22-7 and 47-2-8.1;
- 32 (2) The jurisdiction of incorporation of the corporation immediately before the filing of
33 the articles of conversion and the date the corporation was incorporated; and
- 34 (3) A statement that the conversion of the corporation in this state was duly authorized
35 as required by the laws of this state.

36 (c) The articles of conversion shall contain all of the provisions required to be contained in
37 the articles of incorporation of a nonprofit corporation as set forth in § 47-22-6 and any other
38 desired provisions permitted to be included. Provisions that would not be required to be
39 included in restated articles of incorporation may be omitted, except that the name and address
40 of the initial registered agent of the domestic business corporation must be included.

1 (d) The articles of nonprofit conversion must be delivered to the Office of the Secretary of
2 State for filing.

3 Section 36. That the code be amended by adding a NEW SECTION to read:
4

5 (a) When a conversion of a domestic business corporation to a domestic nonprofit
6 corporation becomes effective:

- 7 (1) The title to all real and personal property, both tangible and intangible, of the
8 corporation remains in the corporation without reversion or impairment;
- 9 (2) The liabilities of the corporation remain the liabilities of the corporation;
- 10 (3) An action or proceeding pending against the corporation continues against the
11 corporation as if the conversion had not occurred;
- 12 (4) The articles of conversion, or the articles of incorporation attached to the articles of
13 conversion, constitute the articles of incorporation of the corporation;
- 14 (5) Memberships, securities, obligations, rights to acquire memberships or securities of
15 the corporation, or cash or other property shall be issued or paid as provided pursuant
16 to the laws of this state; and
- 17 (6) The corporation is deemed to:
 - 18 (i) Be a domestic nonprofit corporation for all purposes; and
 - 19 (ii) Be the same corporation without interruption.

20 (b) The personal liability of a shareholder of the domestic business corporation who
21 becomes a member of the domestic nonprofit corporation in the conversion is as follows:

- 22 (1) The conversion does not discharge any personal liability under the laws of this state
23 to the extent any such personal liability arose before the effective time of the articles
24 of conversion;
- 25 (2) The member does not have personal liability under the laws of this state for any debt,
26 obligation, or liability of the corporation that arises after the effective time of the
27 articles of conversion;
- 28 (3) The provisions of the laws of this state continue to apply to the collection or
29 discharge of any personal liability preserved by subdivision (1), as if the conversion
30 had not occurred;
- 31 (4) The member has whatever rights of contribution from other members are provided
32 by the laws of this state with respect to any personal liability preserved by
33 subdivision (1), as if the conversion had not occurred.

34 (c) A shareholder of a domestic business corporation who becomes subject to personal
35 liability for some or all of the debts, obligations, or liabilities of the corporation as a result of
36 its conversion in this state has personal liability only for those debts, obligations, or liabilities
37 of the corporation that arise after the effective time of the articles of conversion.

38 Section 37. That the code be amended by adding a NEW SECTION to read:

39 If the conversion of a domestic business corporation to a domestic nonprofit corporation is
40 abandoned in accordance with the laws of this state after articles of conversion have been filed
41 with the Office of the Secretary of State, a statement that the conversion has been abandoned,
42 signed by an officer or other duly authorized representative, must be delivered to the Office of

1 the Secretary of State for filing. The statement takes effect upon filing and the conversion is
2 abandoned and does not become effective."

3 1068rta

4 On page 1, line 1, of the printed bill, delete everything after "Act to" and insert "revise
5 provisions related to the conversion of nonprofit corporations."

6 And that as so amended said bill do pass.

7 Also MR. SPEAKER:

8 The Committee on Judiciary respectfully reports that it has had under consideration HB
9 1088 and returns the same with the recommendation that said bill be amended as follows:

10 1088yb

11 On page 1, line 8, of the printed bill, delete "this Act" and insert "chapters 34-20B or 22-
12 24A".

13 On page 2, line 3, before "this" insert "the chapters listed in section 20 of".

14 On page 2, line 5, delete "section 21 of this Act" and insert "subdivision 34-20B-70(4) or
15 22-24A-15(4)".

16 On page 2, line 8, delete "of the crimes listed in" and insert "any crime in the chapters
17 listed in section 20 of".

18 On page 2, line 10, delete "section 22" and insert "subdivision 34-20B-70(4) or 22-24A-
19 15(4)".

20 On page 2, line 17, delete "listed in" and insert "in the chapters listed in section 20 of".

21 On page 2, line 19, delete "section 22 of this Act" and insert "subdivision 34-20B-70(4)
22 or 22-24A-15(4)".

23 On page 2, line 23, delete "listed in" and insert "in the chapters listed in section 20 of".

24 On page 3, line 23, delete "listed in this chapter" and insert "in the chapters listed in section
25 20 of this Act".

26 On page 4, line 3, delete "14, 15, or 23" and insert "14 or 15".

27 On page 4, line 16, delete everything after "subdivisions" and insert "34-20B-70(4), (6),
28 and (7) or 22-24A-15(4), (6), and (7), or section 1".

1 On page 5, line 7, delete "in a crime listed in this Act" and insert "of a crime".

2 On page 5, line 13, delete "section 21 of this Act" and insert "subdivisions 34-20B-70(2),
3 (3), (5), (6), and (7) or 22-24A-15(2), (3), (5), (6), and (7)".

4 On page 6, line 1, delete "or section 22 of this Act" and insert "of this Act or subdivision
5 34-20B-70(4) or 22-24A-15(4)".

6 On page 8, line 11, delete "Bureau of Narcotics and Dangerous Drugs" and insert "Division
7 of Criminal Investigation".

8 On page 8, delete lines 14 to 24, inclusive, and insert:

9 " Section 21. That § 34-20B-70 be amended to read:

10 34-20B-70. The following are subject to forfeiture pursuant to this Act and no property right
11 exists in them:

12 (1) All controlled drugs and substances and marijuana which have been manufactured,
13 distributed, dispensed, or acquired in violation of the provisions of this chapter or
14 chapter 22-42;

15 (2) All raw materials, products, and equipment of any kind which are used or intended
16 for use, in manufacturing, compounding, processing, importing, or exporting any
17 controlled drug or substance or marijuana in violation of the provisions of this
18 chapter or chapter 22-42;

19 (3) All property which is used, or intended for use, as a container for property described
20 in subdivisions (1) and (2);

21 (4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or
22 conceal, or which are used, or intended for use, to transport, or in any manner
23 facilitate the transportation, sale, receipt, possession, or concealment of marijuana in
24 excess of one-half pound or any quantity of any other property described in
25 subdivision (1) or (2), except as provided in §§ 34-20B-71 to 34-20B-73, inclusive.
26 This subdivision includes those instances in which a conveyance transports,
27 possesses or conceals marijuana or a controlled substance as described herein without
28 the necessity of showing that the conveyance is specifically being used to transport,
29 possess, or conceal or facilitate the transportation, possession, or concealment of
30 marijuana or a controlled substance in aid of any other offense;

31 (5) All books, records, and research, including formulas, microfilm, tapes, and data
32 which are used, or intended for use, in violation of this chapter;

33 (6) Any funds or other things of value used for the purposes of unlawfully purchasing,
34 attempting to purchase, distributing, or attempting to distribute any controlled drug
35 or substance or marijuana;

36 (7) Any assets, interest, profits, income, and proceeds acquired or derived from the
37 unlawful purchase, attempted purchase, distribution, or attempted distribution of any
38 controlled drug or substance or marijuana.

39 Property described in subdivision (1) shall be deemed contraband and shall be summarily
40 forfeited to the state, property described in subdivisions (2), (3), (5), (6), and (7) is subject to

1 forfeiture under the terms of section 14 of this Act, and property described in subdivision (4)
2 is subject to forfeiture under the terms of section 15 of this Act.

3 Section 22. That § 22-24A-15 be amended to read:

4 22-24A-15. Any person who is convicted of an offense under §§ 22-19A-1, 22-24A-1 to 22-
5 24A-20, inclusive, 22-24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-
6 3, inclusive, and 22-23-2, 22-23-8, and 22-23-9 shall forfeit to the state, pursuant to this Act,
7 the person's interest in the following and no property right exists in them:

- 8 (1) Any photograph, film, videotape, book, digital media or visual depiction that has
9 been manufactured, distributed, purchased, possessed, acquired, or received in
10 violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-
11 14.1, and 43-43B-1 to 43-43B-3, inclusive;
- 12 (2) Any material, product, and equipment of any kind that is used or intended for use in
13 manufacturing, processing, publishing, selling, possessing, or distributing any visual
14 depiction proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1,
15 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive;
- 16 (3) Any property that is used, or intended for use, as a container for property described
17 in subdivisions (1) and (2) of this section, including any computers and digital media;
- 18 (4) Any conveyances including aircraft, vehicles, or vessels, that transport, possess, or
19 conceal, or that is used, or intended for use, to transport, or in any manner facilitate
20 any activity proscribed under §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-
21 24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3,
22 inclusive;
- 23 (5) Any book, record, and research, including microfilm, tape, and data that is used, or
24 intended for use, in violation of §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-
25 24B-1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, and 43-43B-1 to 43-43B-3,
26 inclusive;
- 27 (6) Any funds or other things of value used for the purposes of unlawfully carrying out
28 any activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-
29 1, 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and
30 22-23-2, 22-23-8, and 22-23-9; and
- 31 (7) Any asset, interest, profit, income, and proceed acquired or derived from the unlawful
32 activity proscribed by §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1,
33 22-49-1 to 22-49-3, inclusive, 23A-27-14.1, 43-43B-1 to 43-43B-3, inclusive, and
34 22-23-2, 22-23-8, and 22-23-9.

35 Any property described in subdivision (1) of this section shall be deemed contraband and
36 shall be summarily forfeited to the state. ~~Any other property seized and forfeited shall be used~~
37 ~~to reimburse the actual costs of the criminal investigation and prosecution. Any amount over~~
38 ~~and above the amount necessary to reimburse for the investigation and prosecution shall be used~~
39 ~~to satisfy any civil judgments received by victims. All remaining proceeds from the sale of any~~
40 ~~forfeited property shall be paid into the South Dakota internet crimes against children fund.~~
41 Property described in subdivisions (2), (3), (5), (6), and (7) is subject to forfeiture under the
42 terms of section 14 of this Act, and property described in subdivision (4) is subject to forfeiture
43 under the terms of section 15 of this Act."

44 Delete pages 9 to 12, inclusive

- 1 On page 13, delete line 1.
- 2 On page 17, delete lines 14 to 24, inclusive.
- 3 On page 18, delete lines 1 to 8, inclusive.
- 4 On page 20, delete lines 19 to 24, inclusive.
- 5 Delete page 21.
- 6 On page 22, delete lines 1 to 8, inclusive.
- 7 And that as so amended said bill do pass.

8 Also MR. SPEAKER:

9 The Committee on Judiciary respectfully reports that it has had under consideration HB
10 1134 and returns the same with the recommendation that said bill be amended as follows:

11 1134rb

12 On page 1 of the printed bill, delete lines 5 to 11, inclusive, and insert:

13 "

14 Each person vested with authority to take private property for public use may cause an
15 examination and survey to be made as necessary for its proposed facilities. The person or the
16 person's agents and officers may enter the private property for the purpose of the examination
17 and survey. Any person seeking to cause an examination or survey, where permission for
18 examination or survey has been denied, shall:

- 19 (1) Make a filing with the public utilities commission, whether for a permit under
20 chapter 49-41B or an informational filing regarding the project;
- 21 (2) Give thirty days written notice, including the filing and expected dates of entry, to the
22 owner and any tenant in possession of the private property; and
- 23 (3) Make a payment to the owner, or provide sufficient security for the payment, for any
24 actual damage done to the property by the entry.

25 This section does not apply to the state or its political subdivisions. This section is in
26 addition to and not in derogation of other existing law."

27 And that as so amended said bill do pass.

1 Also MR. SPEAKER:

2 The Committee on Judiciary respectfully reports that it has had under consideration HB
3 1225 and returns the same with the recommendation that said bill be amended as follows:

4 1225ra

5 On page 3, line 11, of the printed bill, delete "factually".

6 On page 3, line 14, delete "factually".

7 1225rb

8 On page 3, line 4, of the printed bill, delete "and".

9 On page 3, line 6, after "terrorism" insert: ";

10 (4) Any person or entity hindering the prosecution of terrorism; and

11

12 (5) Any person who provided material support or resources to the person or entity who
13 committed the act of terrorism".

14 On page 3, between lines 15 and 16, insert:

15 "

16 The proceeds from a forfeiture and disposition under this Act shall be used to satisfy any
17 judgment for a person injured as a result of the criminal offense under § 22-8-12. In the event
18 that there are multiple judgments of persons injured, the judgments shall be paid on a
19 proportionate basis based on the magnitude of the injury."

20 On page 3, line 16, after "of" insert "the remaining".

21 On page 3, line 16, delete "section" and insert "Act".

22 On page 4, line 8, after ";" insert "and".

23 On page 4, line 11, delete "; and" and insert ".".

24 On page 4, delete lines 12 to 14, inclusive.

25 1225rc

26 On page 5, line 9, of the printed bill, delete "five" and insert "three".

27 And that as so amended said bill do pass.

28

29

Respectfully submitted,
Mike Stevens, Vice-Chair

1

MESSAGES FROM THE SENATE

2 MR. SPEAKER:

3 I have the honor to return herewith HB 1090 and 1207 which have passed the Senate
4 without change.

5 Also MR. SPEAKER:

6 I have the honor to transmit herewith SB 45, 106, and 143 which have passed the Senate
7 and your favorable consideration is respectfully requested.

8

MOTIONS AND RESOLUTIONS

9 Rep. Hawley moved that the House do concur in Senate amendments to HCR 1013.

10 The question being on Rep. Hawley's motion that the House do concur in Senate
11 amendments to HCR 1013.

12 And the roll being called:

13 Yeas 68, Nays 0, Excused 2, Absent 0

14 Yeas:

15 Anderson; Bartling; Beal; Bolin; Bordeaux; Brunner; Campbell; Conzet; Craig; Cronin;
16 Deutsch; DiSanto; Dryden; Duvall; Feickert; Gibson; Gosch; Greenfield (Lana); Haggard (Don);
17 Harrison; Haugaard; Hawks; Hawley; Heinemann (Leslie); Holmes; Hunhoff (Jean); Hunt;
18 Jensen (Alex); Johns; Killer; Kirschman; Klumb; Langer; Latterell; Marty; May; McCleerey;
19 Mickelson; Munsterman; Novstrup (Al); Otten (Herman); Partridge; Peterson (Kent); Qualm;
20 Rasmussen; Ring; Romkema; Rounds; Rozum; Russell; Schaefer; Schoenbeck; Schoenfish;
21 Schrempp; Sly; Soli; Solum; Stalzer; Steinhauer; Stevens; Tulson; Werner; Westra; Wiik;
22 Willadsen; Wollmann; Zikmund; Speaker Wink

23 Excused:

24 Kaiser; Verchio

25 So the motion having received an affirmative vote of a majority of the members-elect, the
26 Speaker declared the motion carried and the amendments were concurred in.

27 Rep. Westra moved that SB 102 be referred from the Committee on Education to the
28 Committee on Commerce and Energy.

29 Which motion prevailed.

1 **CONSIDERATION OF REPORTS OF COMMITTEES**

2 Rep. Gosch moved that the reports of the Standing Committees on
3 State Affairs on HB 1190 as found on page 458 of the House Journal; also
4 Judiciary on HB 1153 as found on page 464 of the House Journal be adopted.
5 Which motion prevailed.

6 **FIRST READING OF SENATE BILLS AND JOINT RESOLUTIONS**

7 SB 45: FOR AN ACT ENTITLED, An Act to revise certain provisions of the building
8 South Dakota fund programs.
9 Was read the first time and referred to the Committee on State Affairs.

10 SB 106: FOR AN ACT ENTITLED, An Act to provide for the collection of sales taxes
11 from certain remote sellers, to establish certain Legislative findings, and to declare an
12 emergency.
13 Was read the first time and referred to the Committee on State Affairs.

14 SB 143: FOR AN ACT ENTITLED, An Act to require the Legislative Planning Committee
15 to implement a performance management review process.
16 Was read the first time and referred to the Committee on State Affairs.

17 **SECOND READING OF HOUSE BILLS AND JOINT RESOLUTIONS**

18 Rep. Gosch moved that HB 1182 be placed to precede HB 1127 on today's calendar.
19 Which motion prevailed.

20 HB 1182: FOR AN ACT ENTITLED, An Act to increase the state sales tax, the state use
21 tax, the excise tax on farm machinery, and amusement device tax for the purpose of increasing
22 education funding and reducing property taxes, and to declare an emergency.
23 Having had its second reading was up for reconsideration and final passage.

1 The question being "Shall HB 1182 pass as amended?"

2 And the roll being called:

3 Yeas 47, Nays 21, Excused 2, Absent 0

4 Yeas:

5 Anderson; Bartling; Bolin; Bordeaux; Conzet; Craig; Cronin; Deutsch; Dryden; Duvall; Gibson;
6 Harrison; Hawks; Hawley; Holmes; Hunhoff (Jean); Jensen (Alex); Johns; Killer; Kirschman;
7 Klumb; McCleerey; Mickelson; Munsterman; Novstrup (Al); Otten (Herman); Partridge;
8 Peterson (Kent); Rasmussen; Ring; Romkema; Rozum; Schaefer; Schoenbeck; Schoenfish;
9 Schrempp; Sly; Soli; Solum; Steinhauer; Stevens; Tulson; Werner; Willadsen; Wollmann;
10 Zikmund; Speaker Wink

11 Nays:

12 Beal; Brunner; Campbell; DiSanto; Feickert; Gosch; Greenfield (Lana); Haggart (Don);
13 Haugaard; Heinemann (Leslie); Hunt; Langer; Latterell; Marty; May; Qualm; Rounds; Russell;
14 Stalzer; Westra; Wiik

15 Excused:

16 Kaiser; Verchio

17 So the bill having received an affirmative vote of a two-thirds majority of the members-
18 elect, the Speaker declared the bill passed.

19 The question being on the title.

20 1182ctb

21 Rep. Mickelson moved that the title to HB 1182 be amended as follows:

22 On page 1, line 3, of the printed bill, after "taxes," insert "to provide for certain school
23 district reporting and penalties,".

24 Which motion prevailed and the title was so amended.

25 Rep. Gosch moved that the balance of the calendar including HB 1127, 1169, 1116, 1206,
26 1047, 1161, 1132, 1133, 1167, 1243, 1198, 1106, 1162, 1230, 1137, 1149, and 1224 and SB 52,
27 8, 2, 34, 120, 63, 114, 53, 59, and 75 be deferred to Tuesday, February 23, the 26th legislative
28 day.

29 Which motion prevailed.

30 There being no objection, the House reverted to Order of Business No. 5.

1

REPORTS OF STANDING COMMITTEES

2 MR. SPEAKER:

3 The Committee on Legislative Procedure respectfully reports that the Office of Engrossing
4 and Enrolling has carefully compared HB 1090 and 1207 and finds the same correctly enrolled.

5

Respectfully submitted,
Dean Wink, Chair

6

7

8

SIGNING OF BILLS

9 The Speaker publicly read the title to

10 HB 1090: FOR AN ACT ENTITLED, An Act to require certain statements and audits
11 concerning insurance pooling arrangements to be filed with the Department of Legislative
12 Audit.

13 HB 1207: FOR AN ACT ENTITLED, An Act to authorize the sale of certain surplus real
14 estate at the Human Services Center and to provide for the deposit of the proceeds.

15 And signed the same in the presence of the House.

16

COMMEMORATIONS

17 HC 1015 Introduced by: Representatives Johns, Bartling, Beal, Bordeaux, Craig, Cronin,
18 Deutsch, Duvall, Feickert, Gibson, Harrison, Hawks, Hawley, Hunhoff (Jean), Jensen (Alex),
19 Killer, Kirschman, Latterell, May, McCleerey, Otten (Herman), Partridge, Peterson (Kent),
20 Ring, Romkema, Rounds, Schoenbeck, Schrempp, Sly, Soli, Solum, Steinhauer, Tulson, and
21 Verchio and Senators Ewing, Bradford, Haverly, Monroe, Novstrup (David), Rusch, Soholt,
22 Vehle, and White

23 A LEGISLATIVE COMMEMORATION, Honoring Danika Gordon for the outstanding honor
24 of being named one of the top two youth volunteers in South Dakota in the twenty-first
25 annual Prudential Spirit of Community Awards.

26 WHEREAS, thirteen-year-old Danika Gordon, an esteemed resident of Whitewood, South
27 Dakota, and a student at Sturgis Williams Middle School, has achieved national recognition for
28 exemplary volunteer service by receiving a 2016 Prudential Spirit of Community Award; and

29 WHEREAS, this prestigious award honors young volunteers across America who have
30 demonstrated an extraordinary commitment to serving their communities; and

1 WHEREAS, Ms. Gordon earned this award by giving generously of her time and energy to
2 various monthly service projects as well as her own service project, Character Carnival, which
3 teaches elementary school students about respect, caring, kindness, and good character through
4 the concept of super heroes and super powers; and

5 WHEREAS, the success of this state, the strength of our communities, and the overall
6 vitality of American society depend, in great measure, upon the dedication of young people like
7 Ms. Gordon who use their considerable talents and resources to serve others:

8 NOW, THEREFORE, BE IT COMMEMORATED, by the Ninety-First Legislature of the
9 State of South Dakota, that the Legislature congratulates and honors Danika Gordon as a
10 recipient of a Prudential Spirit of Community Award, recognizes her outstanding record of
11 volunteer service, peer leadership, and community spirit, and extends best wishes for her
12 continued success and happiness.

13 Rep. Anderson moved that the House do now adjourn, which motion prevailed and at
14 3:54 p.m. the House adjourned.

15

Arlene Kvislen, Chief Clerk