

WEST PUBLISHING COMPANY

SELECTED CORPORATION AND PARTNERSHIP STATUTES, RULES AND FORMS

1993 EDITION

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**SELECTED
CORPORATION AND
PARTNERSHIP
STATUTES, RULES,
AND FORMS**

1993 EDITION

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PREFACE

This selection of corporation and partnership statutes, rules, and forms is intended to supplement casebooks and other teaching materials for courses in business organizations (including advanced courses on mergers, acquisition and reorganizations) and contains only the text of the act or statute that normally would be used in a business associations course.

Frequent revisions are planned not only to maintain the materials on a current basis but to serve better the needs of teachers and students in the subject matter areas. Suggestions of users and prospective users are requested. All will be carefully considered.

Suggestions received from casebook authors and teachers have been greatly appreciated. We have attempted to include as many as possible. The size of this supplement is evidence of our inclusion of these ideas.

We would like to thank Sue Ellen Shuerman, University of Arizona '93, and Marianne Sousong, University of Arizona '93, and the staffs of the Georgetown University Law Center and George Washington University National Law Center libraries for their considerable assistance in preparing the materials for this volume.

Further, we would like to acknowledge The American Bar Foundation and Law and Business, Inc. for their permission to use selected Official Comments to The Revised Model Business Corporation Act. Acknowledgment is also made to the National Conference of Commissioners on Uniform State Laws for permission to reproduce the official Text and Comments for the Uniform Partnership Act, the Revised Uniform Partnership Act, the Uniform Limited Partnership Act and the Revised Uniform Limited Partnership Act.

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June, 1993

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I. CORPORATIONS

A. REVISED MODEL BUSINESS CORPORATION ACT

(with selected Official Comments)

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CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER A. SHORT TITLE AND RESERVATION OF POWER

§ 1.01 Short Title

This Act shall be known and may be cited as the “[name of state] Business Corporation Act.”

§ 1.02 Reservation of Power to Amend or Repeal

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

SUBCHAPTER B. FILING DOCUMENTS

§ 1.20 Filing Requirements

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

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

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

(d) The document must be typewritten or printed.

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

(f) The document must be executed:

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

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

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

(g) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain: (1) the corporate seal, (2) an attestation by the secretary or an assistant secretary, (3) an acknowledgement, verification, or proof.

(h) If the secretary of state has prescribed a mandatory form for the document under section 1.21, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the secretary of state for filing and must be accompanied by one exact or conformed copy (except as provided in sections 5.03 and 15.09), the correct filing fee, and any franchise tax, license fee, or penalty required by this Act or other law.

§ 1.21 Forms

(a) The secretary of state may prescribe and furnish on request forms for: (1) an application for a certificate of existence, (2) a foreign corporation's application for a certificate of authority to transact business in this state, (3) a foreign corporation's application for a certificate of withdrawal, and (4) the annual report. If the secretary of state so requires, use of these forms is mandatory.

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

§ 1.22 Filing, Service and Copying Fees

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

<u>Document</u>	<u>Fee</u>
(1) Articles of incorporation	\$_____.
(2) Application for use of indistinguishable name	\$_____.
(3) Application for reserved name	\$_____.
(4) Notice of transfer of reserved name	\$_____.
(5) Application for registered name	\$_____.
(6) Application for renewal of registered name	\$_____.
(7) Corporation's statement of change of registered agent or registered office or both	\$_____.
(8) Agent's statement of change of registered office for each affected corporation not to exceed a total of	\$_____.
(9) Agent's statement of resignation	No fee.
(10) Amendment of articles of incorporation	\$_____.

<u>Document</u>	<u>Fee</u>
(11) Restatement of articles of incorporation with amendment of articles	\$_____.
(12) Articles of merger or share exchange	\$_____.
(13) Articles of dissolution	\$_____.
(14) Articles of revocation of dissolution	\$_____.
(15) Certificate of administrative dissolution	No fee.
(16) Application for reinstatement following administrative dissolution	\$_____.
(17) Certificate of reinstatement	No fee.
(18) Certificate of judicial dissolution	No fee.
(19) Application for certificate of authority	\$_____.
(20) Application for amended certificate of authority	\$_____.
(21) Application for certificate of withdrawal	\$_____.
(22) Certificate of revocation of authority to transact business	No fee.
(23) Annual report	\$_____.
(24) Articles of correction	\$_____.
(25) Application for certificate of existence or authorization	\$_____.
(26) Any other document required or permitted to be filed by this Act.	\$_____.

(b) The secretary of state shall collect a fee of \$_____ each time process is served on him under this Act. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) \$_____ a page for copying; and
- (2) \$_____ for the certificate.

§ 1.23 Effective Time and Date of Document

(a) Except as provided in subsection (b) and section 1.24(c), a document accepted for filing is effective:

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

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

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document

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is effective at the close of business on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

§ 1.24 Correcting Filed Document

(a) A domestic or foreign corporation may correct a document filed by the secretary of state if the document (1) contains an incorrect statement or (2) was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) by preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

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

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

§ 1.25 Filing Duty of Secretary of State

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 1.20, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with his name and official title and the date and time of receipt, on both the original and the document copy and on the receipt for the filing fee. After filing a document, except as provided in sections 5.03 and 15.10, the secretary of state shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative.

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

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

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

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

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

§ 1.26 Appeal From Secretary of State's Refusal to File Document

(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal to the [name or describe] court [of the county where the corporations's principal office (or, if none in this state, its registered office) is or will be located] [of \$_____ county]. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

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

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

§ 1.27 Evidentiary Effect of Copy of Filed Document

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

§ 1.28 Certificate of Existence

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

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

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

(2) that (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) that the foreign corporation is authorized to transact business in this state;

(3) that all fees, taxes, and penalties owed to this state have been paid, if (i) payment is reflected in the records of the secretary of state and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(4) that its most recent annual report required by section 16.22 has been delivered to the secretary of state;

(5) that articles of dissolution have not been filed; and

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

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

§ 1.29 Penalty for Signing False Document

(a) A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

(b) An offense under this section is a [_____] misdemeanor [punishable by a fine of not to exceed \$_____].

SUBCHAPTER C. SECRETARY OF STATE

§ 1.30 Powers

The secretary of state has the power reasonably necessary to perform the duties required of him by this Act.

SUBCHAPTER D. DEFINITIONS

§ 1.40 Act Definitions

In this Act:

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

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

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

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

(5) "Deliver" includes mail.

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