

TITLE 17  
CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS

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CHAPTER 3  
PRACTICE OF PROFESSIONS BY CORPORATIONS

- 17-3-101. Practice of profession through licensed stockholder or employee authorized.**

A corporation organized under the Wyoming Business Corporation Act or the Wyoming Statutory Close Corporation Supplement, whose capital stock is owned exclusively by a person or persons licensed to practice a profession by the state of Wyoming or by an agency, office or instrumentality authorized by the laws of Wyoming to license individuals for the practice of such profession, may, by and through the person or persons of such

licensed stockholder or stockholders, or licensed employees, practice and offer professional services in such profession.

**17-3-102. Licensed stockholder or employee subject to certain requirements.**

No corporation may offer professional services or practice a profession except by and through the person or persons of its licensed stockholder or stockholders, or licensed employees, each of whom shall retain his professional license in good standing, and shall remain as fully liable and responsible for his professional activities, and subject to all rules, regulations, standards and requirements pertaining thereto, as though practicing individually rather than in a corporation.

**17-3-103. Words or initials to be contained in corporate name.**

The corporate name of every professional corporation shall contain either the words "A Professional Corporation" or the capital initials "P.C.". These words or initials shall be the last word of the name of the professional corporation.

**17-3-104. Language to be contained in articles of incorporation; location.**

The articles of incorporation of a professional practice corporation incorporated after the date of this act shall contain the following language: "All shareholders of the corporation are, and will continually be, licensed in the profession for which the corporation is formed, and no professional service will be offered by the corporation except by or under the supervision of licensed stockholders or licensed employees." This language shall be inserted in the articles immediately after the provisions pertaining to the aggregate number of shares which the corporation is authorized to issue.

CHAPTER 4  
SECURITIES

ARTICLE 1  
GENERAL PROVISIONS

**17-4-101. Short title.**

This act may be cited as the "Wyoming Uniform Securities Act."



**17-4-102. Definitions.**

(a) In this act, unless the context otherwise requires:

(i) "Administrator" means the secretary of state;

(ii) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act;

(iii) "Bank" means:

(A) A banking institution organized under the laws of the United States;

(B) A member bank of the federal reserve system;

(C) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of Public Law 87-722 (12 U.S.C. § 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this act; and

(D) A receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C) of this paragraph.

(iv) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) An agent;

(B) An issuer;

(C) A bank or savings institution if its activities as a broker-dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78c(a)(4) and (5)) or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(4));

(D) An international banking institution;

(E) A person excluded by rule adopted or order issued under this act.

(F) Repealed by Laws 2019, ch. 170, § 4.

(v) "Depository institution" means:

(A) A bank; or

(B) A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law. The term does not include:

(I) An insurance company or other organization primarily engaged in the business of insurance;

(II) A morris plan bank; or

(III) An industrial loan company that is not an "insured depository institution" as defined in section 3(c)(2) of the Federal Deposit Insurance Act, (12 U.S.C. 1813(c)(2)), or any successor federal statute.

(vi) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940;

(vii) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under section 18(b) of the Securities Act of 1933 (15

U.S.C. § 77r(b)) or rules or regulations adopted pursuant to that provision;

(viii) "Filing" means the receipt under this act of a record by the secretary of state or a designee of the secretary of state;

(ix) "Fraud," "deceit," and "defraud" are not limited to common law deceit;

(x) "Guaranteed" means guaranteed as to payment of all principal and all interest;

(xi) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) A depository institution or international banking institution;

(B) An insurance company;

(C) A separate account of an insurance company;

(D) An investment company as defined in the Investment Company Act of 1940;

(E) A broker-dealer registered under the Securities Exchange Act of 1934;

(F) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars (\$10,000,000.00) or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(G) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars (\$10,000,000.00) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee

Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this act, a depository institution, or an insurance company;

(H) A trust, if it has total assets in excess of ten million dollars (\$10,000,000.00), its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G) of this paragraph, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(J) An organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars (\$10,000,000.00);

(K) A small business investment company licensed by the small business administration under section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. § 681(c)) with total assets in excess of ten million dollars (\$10,000,000.00);

(M) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(22)) with total assets in excess of ten million dollars (\$10,000,000.00);

(N) A federal covered investment adviser acting for its own account;

(O) A "qualified institutional buyer" as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

(P) A "major United States institutional investor" as defined in rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

(Q) Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars (\$10,000,000.00) not organized for the specific purpose of evading this act; or

(R) Any other person specified by rule adopted or order issued under this act.

(xii) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state;

(xiii) "Insured" means insured as to payment of all principal and all interest;

(xiv) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933;

(xv) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) An investment adviser representative;

(B) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(D) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

(E) A federal covered investment adviser;

(F) A bank or savings institution;

(G) Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) Any other person excluded by rule adopted or order issued under this act.

(xvi) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) Performs only clerical or ministerial acts;

(B) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3a) and is:

(I) An "investment adviser representative" as that term is defined by rule adopted under section 203A of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-3a); or

(II) Not a "supervised person" as that term is defined in section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(25)).

(D) Is excluded by rule adopted or order issued under this act.

(xvii) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued;

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate;

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(xviii) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer;

(xix) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d));

(xx) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(xxi) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) An office at which the broker-dealer, investment adviser, or federal covered investment adviser

regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(xxii) "Predecessor act" means the act repealed and replaced by this act;

(xxiii) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price;

(xxiv) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser;

(xxv) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(xxvi) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(A) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;



(B) A gift of assessable stock involving an offer and sale; and

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

(xxvii) "Securities and exchange commission" means the United States securities and exchange commission;

(xxviii) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) Includes both a certificated and an uncertificated security;

(B) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period;

(C) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) Includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven

with those of either the person offering the investment, a third party, or other investors;

(E) Includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.

(F) Repealed by Laws 2019, ch. 170, § 4.

(xxix) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the municipal securities rulemaking board established under the Securities Exchange Act of 1934;

(xxx) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach or logically associate with the record an electronic symbol, sound, or process.

(xxxi) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(xxxii) "This act" means W.S. 17-4-101 through 17-4-701.

#### **17-4-103. References to federal statutes.**

As used in this act: "Securities Act of 1933" (15 U.S.C. § 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. § 78a et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. § 79 et seq.), "Investment Company Act of 1940" (15 U.S.C. § 80a-1 et seq.), "Investment Advisers Act of 1940" (15 U.S.C. § 80b-1 et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. § 1001 et seq.), "National Housing Act" (12 U.S.C. § 1701 et seq.), "Commodity Exchange Act" (7 U.S.C. § 1 et seq.), "Internal Revenue Code" (26 U.S.C. § 1 et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. § 78aaa et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat.

3227), "Small Business Investment Act of 1958" (15 U.S.C. § 661 et seq.), and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. § 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this act.

**17-4-104. References to federal agencies.**

A reference in this act to an agency or department of the United States is also a reference to a successor agency or department.

**17-4-105. Electronic records and signatures; applicability.**

(a) This act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)). This act authorizes the filing of records and signatures, when specified by provisions of this act or by a rule adopted or order issued under this act, in a manner consistent with section 104(a) of that act (15 U.S.C. § 7004(a)).

(b) The Financial Technology Sandbox Act shall apply to this act.

**17-4-106. Repealed and Recreated by Laws 2016, ch. 22, § 1.**

**17-4-107. Repealed and Recreated by Laws 2016, ch. 22, § 1.**

**17-4-108. Repealed and Recreated by Laws 2016, ch. 22, § 1.**

**17-4-109. Repealed and Recreated by Laws 2016, ch. 22, § 1.**

**17-4-110. Repealed and Recreated by Laws 2016, ch. 22, § 1.**

**17-4-111. Repealed and Recreated by Laws 2016, ch. 22, § 1.**

- 1. 17-4-112. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-113. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-114. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-115. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-116. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-117. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-118. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-119. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-120. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-121. Repealed and Recreated by Laws 2016, ch. 22, §
- 17-4-122. Repealed by Laws 2016, ch. 22, § 3.
- 3. 17-4-123. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-124. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-125. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-126. Repealed and Recreated by Laws 2016, ch. 22, §
- 1. 17-4-127. Repealed and Recreated by Laws 2016, ch. 22, §

1. 17-4-128. Repealed and Recreated by Laws 2016, ch. 22, §

1. 17-4-129. Repealed and Recreated by Laws 2016, ch. 22, §

1. 17-4-130. Repealed and Recreated by Laws 2016, ch. 22, §

1. 17-4-131. Repealed and Recreated by Laws 2016, ch. 22, §

1. 17-4-132. Repealed and Recreated by Laws 2016, ch. 22, §

## ARTICLE 2 EXEMPTIONS FROM REGISTRATION OF SECURITIES

### 17-4-201. Exempt securities.

(a) The following securities are exempt from the requirements of W.S. 17-4-301 through 17-4-306 and 17-4-504:

(i) A security, including a revenue obligation or a separate security as defined in rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one (1) or more states; by a political subdivision of one (1) or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the congress; or a certificate of deposit for any of the foregoing;

(ii) A security issued, insured or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(iii) A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) An international banking institution;

(B) A banking institution organized under the laws of the United States; a member bank of the federal reserve system; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the comptroller of currency pursuant to section 1 of Public Law 87-722 (12 U.S.C. § 92a); or

(C) Any other depository institution, unless by rule or order the secretary of state proceeds under W.S. 17-4-205.

(iv) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;

(v) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) Regulated in respect to its rates and charges by the United States or a state;

(B) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or

(C) A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act.

(vi) A federal covered security specified in section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this act; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a

facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission under section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78i(b));

(vii) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. § 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this act limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to subparagraph (B) of this paragraph the scope of the exemption and the grounds for denial or suspension, and requiring an issuer:

(A) To file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the secretary of state does not disallow the exemption within the period established by the rule;

(B) To file a request for exemption authorization for which a rule under this act may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with W.S. 17-4-611, and grounds for denial or suspension of the exemption; or

(C) To register under W.S. 17-4-304.

(viii) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and

operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; and

(ix) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(1)).

#### **17-4-202. Exempt transactions.**

(a) The following transactions are exempt from the requirements of W.S. 17-4-301 through 17-4-306 and 17-4-504:

(i) An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

(ii) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this act, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety (90) days, if, at the date of the transaction:

(A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) The security is sold at a price reasonably related to its current market price;

(C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this act or a record filed with the securities and exchange commission that is publicly available and contains:



(I) A description of the business and operations of the issuer; and

(II) The names of the issuer's executive officers and the names of the issuer's directors, if any; and

(III) An audited balance sheet of the issuer as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(IV) An audited income statement for each of the issuer's two (2) immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement.

(E) Any one (1) of the following requirements is met:

(I) The issuer of the security has a class of equity securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or designated for trading on the national association of securities dealers automated quotation system;

(II) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(III) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three (3) years; or

(IV) The issuer of the security has total assets of at least two million dollars (\$2,000,000.00) based on an audited balance sheet as of a date within eighteen (18) months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization.

(iii) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system;

(iv) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in an outstanding security if the guarantor of the security files reports with the securities and exchange commission under the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

(v) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act in a security that:

(A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one (1) of its four (4) highest rating categories; or

(B) Has a fixed maturity or a fixed interest or dividend, if:

(I) A default has not occurred during the current fiscal year or within the three (3) previous fiscal years or during the existence of the issuer and any predecessor if less than three (3) fiscal years, in the payment of principal, interest, or dividends on the security; and

(II) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve (12) months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person.

(vi) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this act effecting an unsolicited order or offer to purchase;

(vii) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this act;

(viii) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000.00) acting in the exercise of discretionary authority in a signed record for the account of others;

(ix) A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one (1) or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the secretary of state after a hearing;

(x) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(xi) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) A general solicitation or general advertisement of the transaction is not made; and

(C) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this act as a broker-dealer or as an agent.

(xii) A transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(xiii) A sale or offer to sell to:

(A) An institutional investor;

(B) A federal covered investment adviser; or

(C) Any other person exempted by rule adopted or order issued under this act.

(xiv) A sale or an offer to sell securities of an issuer, if the transaction is part of a single issue in which:

(A) Not more than twenty-five (25) purchasers are present in this state during any twelve (12) consecutive months, other than those designated in paragraph (xiii) of this subsection;

(B) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state; and

(D) The issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (xiii) of this subsection, are purchasing for investment.

(xv) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;

(xvi) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

(B) A stop order of which the offeror is aware has not been issued against the offeror by the secretary of state or the securities and exchange commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending.

(xvii) An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(A) A registration statement has been filed under this act, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the secretary of state under this act; and

(C) A stop order of which the offeror is aware has not been issued by the secretary of state under this act and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending.

(xviii) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(xix) A rescission offer, sale, or purchase under W.S. 17-4-510;

(xx) An offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this act;

(xxi) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisers;

(B) Family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) Former employees, directors, general partners, trustees, officers, consultants, and advisers if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent (50%) of their annual income from those organizations.

(xxii) A transaction involving:

(A) A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) An act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162).

(xxiii) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this act; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty (180) days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For

purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto Stock Exchange, Inc., is a designated securities exchange. After an administrative hearing in compliance with the Wyoming Administrative Procedure Act, the secretary of state, by rule adopted or order issued under this act, may revoke the designation of a securities exchange under this paragraph, if the secretary of state finds that revocation is necessary or appropriate in the public interest and for the protection of investors.

**17-4-203. Intrastate crowdfunding exemption.**

(a) Except as otherwise provided in this act, an offer or sale of a security by an issuer is exempt from the requirements of W.S. 17-4-301 through 17-4-306 and 17-4-504 if the offer or sale meets all of the following requirements:

(i) The issuer of the security is:

(A) An entity that is incorporated or organized under the laws of this state;

(B) A resident of this state under securities and exchange commission rule 147, (17 C.F.R. 230.147), or rule 147A, (17 C.F.R. 230.147A); and

(C) Authorized to do business in this state.

(ii) The transaction meets the requirements for the federal exemption for intrastate offerings under section 3(a)(11) of the Securities Act of 1933, (15 U.S.C. 77c(a)(11)), and securities and exchange commission rule 147, (17 C.F.R. 230.147), including, but not limited to, the requirements for determining whether an offeree or purchaser is a resident of this state, or under 15 U.S.C. 77e and securities and exchange commission rule 147A, (17 C.F.R. 230.147A). All of the following apply concerning these requirements:

(A) Each of the following is prima facie evidence that an individual is a resident of this state:

(I) A valid operator's license, chauffeur's license, or official personal identification card issued by this state;

(II) A current Wyoming voter registration;

(III) A signed affidavit showing that the purchaser is a resident of this state as defined by W.S. 22-1-102(a) (xxx); or

(IV) Any other record or documents issued by this state that establishes that the purchaser's principal residence is in this state.

(B) The provisions of securities and exchange commission rule 147, (17 C.F.R. 230.147), or rule 147A, (17 C.F.R. 230.147A), apply in determining the residency of an offeree or purchaser that is a corporation, partnership, trust, or other form of business organization;

(C) If a purchaser of a security that is exempt under this section resells that security within six (6) months after the closing of the particular offering in which the purchaser obtained that security to a person that is not a resident of this state, the original investment agreement between the issuer and the purchaser is void. If an agreement to purchase, or the purchase of, a security is void under this subparagraph, the issuer may recover damages from the misrepresenting offeree or purchaser. These damages include, but are not limited to, the issuer's expenses in resolving the misrepresentation. However, damages described in this subparagraph shall not exceed the amount of the person's investment in the security.

(iii) The sum of all cash and other consideration to be received for all sales of the security in reliance on this exemption does not exceed the following amounts:

(A) Two million dollars (\$2,000,000.00), less the aggregate amount received for all sales of securities by the issuer within the twelve (12) months before the first offer or sale made in reliance on this exemption, if the issuer has not made available to each prospective purchaser and the secretary of state audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, holding a certificate pursuant to W.S. 33-3-109, in accordance with the statements on auditing standards of the American Institute of Certified Public Accountants or the statements on standards for accounting and review services of the American Institute of Certified Public Accountants, as applicable;



(B) Four million dollars (\$4,000,000.00), less the aggregate amount received for all sales of securities by the issuer within the twelve (12) months before the first offer or sale made in reliance on this exemption, if the issuer has made available to each prospective purchaser and the secretary of state audited financial statements or reviewed financial statements for the issuer's most recently completed fiscal year, prepared by a certified public accountant, holding a certificate pursuant to W.S. 33-3-109, in accordance with the statements on auditing standards of the American Institute of Certified Public Accountants or the statements on standards for accounting and review services of the American Institute of Certified Public Accountants, as applicable.

(iv) The issuer has not accepted more than ten thousand dollars (\$10,000.00) from any single purchaser unless the purchaser is an accredited investor as defined by rule 501 of securities and exchange commission regulation D, (17 C.F.R. 230.501) who comes within any category listed in the definition of that rule or who the issuer reasonably believes comes within any category listed in the definition of that rule, at the time of the sale. The issuer may rely on confirmation that the purchaser is an accredited investor from information provided by the purchaser, a licensed broker-dealer or another third party in making a determination that the purchaser is an accredited investor;

(v) At least ten (10) days before an offer of securities is made in reliance on this exemption or the use of any publicly available website in connection with an offering of securities in reliance on this exemption, the issuer files a notice with the secretary of state, in writing or in electronic form as specified by the secretary of state, that contains all of the following:

(A) A notice of claim of exemption from registration, specifying that the issuer intends to conduct an offering in reliance on this exemption, accompanied by the filing fee specified in this section;

(B) A copy of the disclosure statement to be provided to prospective investors in connection with the offering. The disclosure statement shall be provided at the time the offer of securities is made to the prospective purchaser and shall contain all of the following:

(I) A description of the issuer, including its type of entity, the address and telephone number of its principal office, its formation history, its business plan, and the intended use of the offering proceeds, including any amounts to be paid, as compensation or otherwise, to any owner, executive officer, director, managing member, or other person occupying a similar status or performing similar functions on behalf of the issuer;

(II) The identity of each person that owns more than ten percent (10%) of the ownership interests of any class of securities of the issuer;

(III) The identity of the executive officers, directors, and managing members of the issuer, and any other individuals who occupy similar status or perform similar functions in the name of and on behalf of the issuer, including their titles and their prior experience;

(IV) The terms and conditions of the securities being offered and of any outstanding securities of the issuer, the minimum and maximum amount of securities being offered, if any, and either the percentage ownership of the issuer represented by the offered securities or the valuation of the issuer implied by the price of the offered securities;

(V) The identity of any person that the issuer has or intends to retain to assist the issuer in conducting the offering and sale of the securities, including the owner of any websites, if known, but excluding any person acting solely as an accountant or attorney and any employees whose primary job responsibilities involve the operating business of the issuer rather than assisting the issuer in raising capital, and for each person identified in response to this subdivision, a description of the consideration being paid to that person for that assistance;

(VI) A description of any litigation or legal proceedings involving the issuer or its management;

(VII) The name and address of any website that the issuer intends to use in connection with the offering, including its uniform resource locator (URL). If the issuer has not engaged a website described in this subdivision at the time the issuer files the disclosure statement described in this subparagraph with the secretary of state under this paragraph but subsequently does engage a website for use in connection

with the offering, the issuer shall provide the information described in this subdivision to the secretary of state by filing a supplemental notice;

(VIII) Additional information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. This discussion shall be concise and organized logically and need not present risks that could apply to any issuer or any offering.

(C) An escrow agreement with a bank or other depository institution located in this state, in which the purchaser funds will be deposited, that provides that all offering proceeds will be released to the issuer only when the aggregate capital raised from all purchasers is equal to or greater than the minimum target offering amount specified in the disclosure statement as necessary to implement the business plan and that all purchasers will receive a return of their subscription funds if that target offering amount is not raised by the time stated in the disclosure statement. The bank or other depository institution may contract with the issuer to collect reasonable fees for its escrow services regardless of whether the target offering amount is reached.

(vi) The issuer is not, either before or as a result of the offering, an investment company, as defined in section 3 of the Investment Company Act of 1940, (15 U.S.C. § 80a-3), or an entity that would be an investment company but for the exclusions provided in subsection (c) of that section, or subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, (15 U.S.C. §§ 78m and 78o(d));

(vii) The issuer informs each prospective purchaser that the securities are not registered under federal or state securities laws and that the securities are subject to limitations on transfer or resale and displays the following legend conspicuously on the cover page of the disclosure statement:

"IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE

ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (E) OF SEC RULE 147, (17 C.F.R. 230.147(E)), OR RULE 147A, (17 C.F.R. 230.147A(E)), AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME."

(viii) The issuer requires each purchaser to certify in writing, and to include as part of that certification his signature, and his initials next to each paragraph of the certification, as follows:

"I understand and acknowledge that:

I am investing in a high-risk, speculative business venture. I may lose all of my investment, and I can afford the loss of my investment. This offering has not been reviewed or approved by any state or federal securities commission or other regulatory authority and that no regulatory authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

The securities I am acquiring in this offering are illiquid, that the securities are subject to possible dilution, that there is no ready market for the sale of those securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment, and that, accordingly, I may be required to hold this investment indefinitely.

I may be subject to tax on my share of the taxable income and losses of the issuer, whether or not I have sold or otherwise disposed of my investment or received any dividends or other distributions from the issuer.

By entering into this transaction with the issuer, I am affirmatively representing myself as being a Wyoming resident at the time that this contract is formed, and if this representation is subsequently shown to be false, the contract is void.

If I resell any of the securities I am acquiring in this offering to a person that is not a Wyoming resident, within six

(6) months after the closing of the offering, my contract with the issuer for the purchase of these securities is void.".

(ix) If the offer and sale of securities under this section is made through an internet website, all of the following requirements are met:

(A) Before any offer of an investment opportunity to residents of this state through the use of a website, the issuer provides to the website and to the secretary of state evidence that the issuer is organized under the laws of this state and that it is authorized to do business in this state;

(B) The issuer obtains from each purchaser of a security under this section evidence that the purchaser is a resident of this state and, if applicable, an accredited investor;

(C) The website operator files a written notice with the secretary of state that includes the website operator's name, business address, and contact information and states that it is authorized to do business in this state and is being utilized to offer and sell securities under this exemption. Beginning twelve (12) months after the date of the written notice, a website operator that has filed a written notice under this subparagraph shall annually notify the secretary of state in writing of any changes in the information provided to the secretary of state under this subparagraph;

(D) The issuer and the website keep and maintain records of the offers and sales of securities made through the website and provide ready access to the records to the secretary of state on request. The secretary of state may access, inspect, and review any website described in this paragraph and its records.

(x) All payments for the purchase of securities are directed to and held by the bank or depository institution subject to the provisions of subparagraph (v) (C) of this subsection;

(xi) Offers or sales of a security are not made through an internet website unless the website has filed the written notice required under subparagraph (ix) (C) of this subsection with the secretary of state;

(xii) The issuer does not pay, directly or indirectly, any commission or remuneration to an executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer for offering or selling the securities unless he or she is registered as a broker-dealer, investment adviser, or investment adviser representative under article 4 of this act. An executive officer, director, managing member, or other individual who has a similar status or performs similar functions in the name of and on behalf of the issuer is exempt from the registration requirements under article 4 of this act if he or she does not receive, directly or indirectly, any commission or remuneration for offering or selling securities of the issuer that are exempt from registration under this section;

(xiii) Repealed by Laws 2018, ch. 71, § 2.

(xiv) The term of the offering does not exceed twelve (12) months after the date of the first offer.

(b) If the offer and sale of a security of an issuer is exempt under this section, the issuer shall provide a quarterly report to the issuer's purchasers until none of the securities issued under this section are outstanding. All of the following apply to the quarterly report described in this subsection:

(i) The issuer shall provide the report free of charge to the purchasers;

(ii) An issuer may satisfy the report requirement under this subsection by making the information available on an internet website if the information is made available within forty-five (45) days after the end of each fiscal quarter and remains available until the next quarterly report is issued;

(iii) The issuer shall file each report with the secretary of state and must provide a written copy of the report to any purchaser on request;

(iv) The report must include all of the following:

(A) The compensation received by each director and executive officer of the issuer, including cash compensation earned since the previous report and on an annual basis and any bonuses, stock options, other rights to receive securities of

the issuer or any affiliate of the issuer, or other compensation received;

(B) An analysis by management of the issuer of the business operations and financial condition of the issuer.

(c) The exemption provided in this section shall not be used in conjunction with any other exemption under this article, except offers and sales to controlling persons shall not count toward the limitation in paragraph (a)(iii) of this section.

(d) The exemption described in this section does not apply if an issuer or person that is affiliated with the issuer or offering is subject to any disqualification established by the secretary of state by rule or contained in rule 262 as promulgated under the Securities Act of 1933, (17 C.F.R. 230.262). However, this subsection does not apply if both of the following are met:

(i) On a showing of good cause and without prejudice to any other action by the secretary of state, the secretary of state determines that it is not necessary under the circumstances that an exemption be denied; and

(ii) The issuer establishes that it made factual inquiry into whether any disqualification existed under this subsection but did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under this subsection. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(e) The secretary of state may adopt rules to implement the provisions of this section and to protect purchasers that purchase securities that are exempt from registration under this section.

(f) The secretary of state shall charge a nonrefundable filing fee for filing an exemption notice required under subsection (a) of this section according to the following conditions:

(i) If the offering is being made by the issuer the filing fee is two hundred dollars (\$200.00);

(ii) Internet websites filing written notice shall pay a filing fee of one hundred dollars (\$100.00), for a period

of twelve (12) consecutive months following the date of written notice. Internet websites may file renewal notices every twelve (12) months accompanied by a one hundred dollar (\$100.00) renewal fee.

(g) A website through which an offer or sale of securities under this section is made is not subject to the broker-dealer, investment adviser, or investment adviser representative registration requirements under article 4 of this act if the website meets all of the following conditions:

(i) It does not offer investment advice or recommendations;

(ii) It does not solicit purchases, sales, or offers to buy the securities offered or displayed on the website;

(iii) It does not compensate employees, agents, or other persons for the solicitation or based on the sale of securities displayed or referenced on the website;

(iv) It does not hold, manage, possess, or otherwise handle purchaser funds or securities;

(v) It does not engage in any other activities that the secretary of state by rule determines are inappropriate for an exemption from the registration requirements under article 4 of this act.

(h) Except for W.S. 17-4-504, article 5 of this act applies to a violation of this section, including a violation concerning website operation.

(j) As used in this section, "controlling person" means an officer, director, partner, or trustee, or another individual who has similar status or performs similar functions, of or for the issuer or to a person that owns ten percent (10%) or more of the outstanding shares of any class or classes of securities of the issuer.

(k) The exemption described in this section may be referred to as the "Wyoming Invests Now (WIN) exemption".

#### **17-4-204. Additional exemptions and waivers.**

A rule adopted or order issued under this act may exempt a security, transaction, or offer; a rule under this act may



exempt a class of securities, transactions, or offers from any or all of the requirements of W.S. 17-4-301 through 17-4-306 and 17-4-504; and an order under this act may waive, in whole or in part, any or all of the conditions for an exemption or offer under W.S. 17-4-201 through 17-4-203.

**17-4-205. Denial, suspension, revocation, condition, or limitation of exemptions.**

(a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this act may deny, suspend application of, condition, limit, or revoke an exemption created under W.S. 17-4-201(a)(iii)(C), (vii) or (viii), or 17-4-202 and 17-4-203, or an exemption or waiver created under W.S. 17-4-204 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in W.S. 17-4-306(d) or 17-4-604 and only prospectively.

(b) A person does not violate W.S. 17-4-301, 17-4-303 through 17-4-306, 17-4-504, or 17-4-510 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

**17-4-206. Repealed by Laws 2019, ch. 170, § 4.**

ARTICLE 3  
REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED  
SECURITIES

**17-4-301. Securities registration requirement.**

(a) It is unlawful for a person to offer or sell a security in this state unless:

(i) The security is a federal covered security;

(ii) The security, transaction, or offer is exempted from registration under W.S. 17-4-201 through 17-4-204; or

(iii) The security is registered under this act.

**17-4-302. Notice filing.**

(a) With respect to a federal covered security, as defined in section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)), that is not otherwise exempt under W.S. 17-4-201 through 17-4-204, a rule adopted or order issued under this act may require the filing of any or all of the following records:

(i) Before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933 and a consent to service of process complying with W.S. 17-4-611 signed by the issuer and the payment of a fee of two hundred dollars (\$200.00);

(ii) After the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission under the Securities Act of 1933; and

(iii) To the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the securities and exchange commission and payment of a fee as set by rule.

(b) A notice filing under subsection (a) of this section is effective for two (2) years commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order under this act to be filed and by paying a renewal fee as set by rule. A previously filed consent to service of process complying with W.S. 17-4-611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(c) With respect to a security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(D)), a rule under this act may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with W.S. 17-4-611 signed by the issuer not later than

fifteen (15) days after the first sale of the federal covered security in this state and the payment of a fee as set by rule; and the payment of a fee for any late filing as set by rule.

(d) Except with respect to a federal security under section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(1)), if the secretary of state finds that there is a failure to comply with a notice or fee requirement of this section, the secretary of state may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the secretary of state.

#### **17-4-303. Securities registration by coordination.**

(a) A security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in W.S. 17-4-305 and a consent to service of process complying with W.S. 17-4-611:

(i) A copy of the latest form of prospectus filed under the Securities Act of 1933;

(ii) A copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this act;

(iii) Copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the secretary of state; and

(iv) An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

(i) A stop order under subsection (d) of this section or W.S. 17-4-306 or issued by the securities and exchange commission is not in effect and a proceeding is not pending against the issuer under W.S. 17-4-306; and

(ii) The registration statement has been on file for at least twenty (20) days or a shorter period provided by rule adopted or order issued under this act.

(d) The registrant shall promptly notify the secretary of state in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the secretary of state may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The secretary of state shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the secretary of state, the registration statement is automatically effective under this act when all the conditions are satisfied or waived. If the registrant notifies the secretary of state of the date when the federal registration statement is expected to become effective, the secretary of state shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the secretary of state intends the institution of a proceeding under W.S. 17-4-306. The notice by the secretary of state does not preclude the institution of such a proceeding.

**17-4-304. Securities registration by qualification.**

(a) A security may be registered by qualification under this section.

(b) A registration statement under this section must contain the information or records specified in W.S. 17-4-305, a consent to service of process complying with W.S. 17-4-611, and, if required by rule adopted under this act, the following information or records:

(i) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(ii) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five (5) years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three (3) years or proposed to be effected;

(iii) With respect to persons covered by paragraph (ii) of this subsection, the aggregate sum of the remuneration paid to those persons during the previous twelve (12) months and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(iv) With respect to a person owning of record or owning beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (ii) of this subsection other than the person's occupation;

(v) With respect to a promoter, if the issuer was organized within the previous three (3) years, the information or records specified in paragraph (ii) of this subsection, any

amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(vi) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three (3) years or proposed to be effected; and a statement of the reasons for making the offering;

(vii) The capitalization and long term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two (2) years or is obligated to issue its securities;

(viii) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(ix) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the

proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(x) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (ii), (iv), (v), (vi), or (viii) of this subsection and by any person that holds or will hold ten percent (10%) or more in the aggregate of those options;

(xi) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two (2) years, and a copy of the contract;

(xii) A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(xiii) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with W.S. 17-4-202(a)(xvii)(B);

(xiv) A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(xv) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(xvi) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(xvii) A balance sheet of the issuer as of a date within four (4) months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(xviii) Any additional information or records required by rule adopted or order issued under this act.

(c) A registration statement under this section becomes effective when the secretary of state so orders.

(d) A rule adopted or order issued under this act may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(i) The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;



(ii) The confirmation of a sale made by or for the account of the person;

(iii) Payment pursuant to such a sale; or

(iv) Delivery of the security pursuant to such a sale.

**17-4-305. Securities registration filings.**

(a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this act.

(b) A person filing a registration statement shall pay a filing fee of one-fiftieth of one percent (.0002) of the total dollar offering amount to be offered in this state, but the fee shall in no case be less than two hundred dollars (\$200.00) nor more than six hundred dollars (\$600.00) when filing an initial registration statement or renewing a previously filed registration statement. If a registration statement is withdrawn before the effective date or a preeffective stop order is issued under W.S. 17-4-306 the secretary of state shall retain one hundred dollars (\$100.00) of the fee.

(c) A registration statement filed under W.S. 17-4-303 or 17-4-304 must specify:

(i) The amount of securities to be offered in this state;

(ii) The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(iii) Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission, or a court.

(d) A record filed under this act or the predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) In the case of a nonissuer distribution, information or a record may not be required under subsection (j) of this section or W.S. 17-4-304, unless it is known to the person

filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A rule adopted or order issued under this act may require as a condition of registration that a security issued within the previous five (5) years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this act, but the secretary of state may not reject a depository institution solely because of its location in another state.

(g) A rule adopted or order issued under this act may require as a condition of registration that a security registered under this act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this act or preserved for a period specified by the rule or order, which may not be longer than five (5) years.

(h) Except while a stop order is in effect under W.S. 17-4-306, a registration statement is effective for one (1) year after its effective date, or for any longer period designated in an order under this act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one (1) year after its effective date. A registration statement may be withdrawn only with the approval of the secretary of state.

(j) While a registration statement is effective, a rule adopted or order issued under this act may require the person

that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(k) A registration statement may be amended after its effective date. The post effective amendment becomes effective when the secretary of state so orders. If a post effective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee specified in subsection (b) of this section. A post effective amendment relates back to the date of the offering of the additional securities being registered if, within one (1) year after the date of the sale, the amendment is filed and the additional registration fee is paid.

**17-4-306. Denial, suspension, and revocation of securities registration.**

(a) The secretary of state may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the secretary of state finds that the order is in the public interest and that:

(i) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under W.S. 17-4-305(k) as of its effective date, or a report under W.S. 17-4-305(j), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(ii) This act or a rule adopted or order issued under this act or a condition imposed under this act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(iii) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or

state law other than this act applicable to the offering, but the secretary of state may not institute a proceeding against an effective registration statement under this paragraph more than one (1) year after the date of the order or injunction on which it is based, and the secretary of state may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(iv) The issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(v) With respect to a security sought to be registered under W.S. 17-4-303, there has been a failure to comply with the undertaking required by W.S. 17-4-303(b) (iv);

(vi) The applicant or registrant has not paid the filing fee, but the secretary of state shall void the order if the deficiency is corrected; or

(vii) The offering:

(A) Will work or tend to work a fraud upon purchasers or would so operate;

(B) Has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) Is being made on terms that are unfair, unjust, or inequitable.

(b) To the extent practicable, the secretary of state by rule adopted or order issued under this act shall publish standards that provide notice of conduct that violates paragraph (a) (vii) of this section.

(c) The secretary of state may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the secretary of state when the registration statement became effective unless the proceeding is instituted within thirty (30) days after the registration statement became effective.

(d) The secretary of state may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the secretary of state shall promptly notify each person specified in subsection (e) of this section that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the secretary of state, within thirty (30) days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) A stop order may not be issued under this section without:

(i) Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(ii) An opportunity for hearing; and

(iii) Findings of fact and conclusions of law in a record in accordance with the Wyoming Administrative Procedure Act.

(f) The secretary of state may modify or vacate a stop order issued under this section if the secretary of state finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

#### **17-4-307. Waiver and modification.**

The secretary of state may waive or modify, in whole or in part, any or all of the requirements of W.S. 17-4-302, 17-4-303, and 17-4-304(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to W.S. 17-4-305(j).

BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER  
REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

**17-4-401. Broker-dealers registration requirement and  
exemptions.**

(a) It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this act as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d) of this section.

(b) The following persons are exempt from the registration requirement of subsection (a) of this section:

(i) A broker-dealer without a place of business in this state if its only transactions effected in this state are exclusively with or through:

(A) The issuer of the securities involved in the transactions;

(B) A broker-dealer registered as a broker-dealer under this act or not required to be registered as a broker-dealer under this act;

(C) An institutional investor;

(D) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record;

(E) A bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) A bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:

(I) The broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(II) Within forty-five (45) days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than seventy-five (75) days after the date on which the application is filed, or, if earlier, the date on which the secretary of state notifies the person that the secretary of state has denied the application for registration or has stayed the pendency of the application for good cause.

(G) Not more than one (1) customer in this state during the previous twelve (12) months, in addition to those customers specified in subparagraphs (A) through (F) and under subparagraph (H) of this paragraph, if the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and

(H) Any other person exempted by rule adopted or order issued under this act.

(ii) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

(c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the secretary of state under this act, the securities and exchange commission, or a self-regulatory organization. A broker-dealer or issuer does not

violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this act may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) A rule adopted or order issued under this act may permit:

(i) A broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) An individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(B) An individual from Canada or other foreign jurisdiction who is present in this state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) An individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction.

(ii) An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in paragraph (i) of this subsection.

#### **17-4-402. Agent registration requirement and exemptions.**

(a) It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection (b) of this section.



(b) The following individuals are exempt from the registration requirement of subsection (a) of this section:

(i) An individual who represents a broker-dealer in effecting transactions in this state limited to those described in section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. § 78(o)(2));

(ii) An individual who represents a broker-dealer that is exempt under W.S. 17-4-401(b) or (d);

(iii) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(iv) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by W.S. 17-4-202, other than W.S. 17-4-202(a)(xi) and (xiv);

(v) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(vi) An individual who represents a broker-dealer registered in this state under W.S. 17-4-401(a) or exempt from registration under W.S. 17-4-401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000.00) acting for the account of others pursuant to discretionary authority in a signed record;

(vii) An individual who represents an issuer in connection with the purchase of the issuer's own securities;

(viii) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(ix) Any other individual exempted by rule adopted or order issued under this act.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this act or an issuer that is offering, selling, or purchasing its securities in this state.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) of this section or exempt from registration under subsection (b) of this section.

#### **17-4-403. Investment adviser registration requirement.**

(a) It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this act as an investment adviser or is exempt from registration as an investment adviser under subsection (b) of this section.

(b) The following persons are exempt from the registration requirement of subsection (a) of this section:

(i) A person without a place of business in this state that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this act, or broker-dealers registered under this act;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) Any other client exempted by rule adopted or order issued under this act.

(ii) A person without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under paragraph (i) of this subsection; or

(iii) Any other person exempted by rule adopted or order issued under this act.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this act, the securities and exchange commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the secretary of state, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this act as an investment adviser representative who transacts business in this state on behalf of the investment adviser unless the individual is registered under W.S. 17-4-404(a) or is exempt from registration under W.S. 17-4-404(b).

**17-4-404. Investment adviser representative registration requirement and exemptions.**

(a) It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b) of this section.

(b) The following individuals are exempt from the registration requirement of subsection (a) of this section:

(i) An individual who is employed by or associated with an investment adviser that is exempt from registration under W.S. 17-4-403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of W.S. 17-4-405; and

(ii) Any other individual exempted by rule adopted or order issued under this act.

(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this act or a federal covered investment adviser that has made or is required to make a notice filing under W.S. 17-4-405.

(d) An individual may transact business as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser unless a rule adopted or order issued under this act prohibits or limits an individual from acting as an investment adviser representative for more than one (1) investment adviser or federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this act, the securities and exchange commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the secretary of state, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

(f) An investment adviser registered under this act, a federal covered investment adviser that has filed a notice under W.S. 17-4-405, or a broker-dealer registered under this act is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this act, a federal covered investment adviser who has filed a notice under

W.S. 17-4-405, or a broker-dealer registered under this act with which the individual is employed or associated as an investment adviser representative.

**17-4-405. Federal covered investment adviser notice filing requirement.**

(a) Except with respect to a federal covered investment adviser described in subsection (b) of this section, it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c) of this section.

(b) The following federal covered investment advisers are not required to comply with subsection (c) of this section:

(i) A federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) Federal covered investment advisers, investment advisers registered under this act, and broker-dealers registered under this act;

(B) Institutional investors;

(C) Bona fide preexisting clients whose principal places of residence are not in this state; or

(D) Other clients specified by rule adopted or order issued under this act.

(ii) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve (12) months, not more than five (5) clients that are resident in this state in addition to those specified under paragraph (i) of this subsection; and

(iii) Any other person excluded by rule adopted or order issued under this act.

(c) A person acting as a federal covered investment adviser, not excluded under subsection (b) of this section, shall file a notice, a consent to service of process complying with W.S. 17-4-611, and such records as have been filed with the securities and exchange commission under the Investment Advisers

Act of 1940 required by rule adopted or order issued under this act and pay the fees specified in W.S. 17-4-410(e).

(d) The notice under subsection (c) of this section becomes effective upon its filing.

**17-4-406. Registration by broker-dealer, agent, investment adviser, and investment adviser representative.**

(a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with W.S. 17-4-611, and paying the fee specified in W.S. 17-4-410 and any reasonable fees charged by the designee of the secretary of state for processing the filing. The application must contain:

(i) The information or record required for the filing of a uniform application; and

(ii) Upon request by the secretary of state, any other financial or other information or record that the secretary of state determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) of this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect and a proceeding is not pending under W.S. 17-4-412, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this act may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under W.S. 17-4-412, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this act, by paying the fee specified in W.S. 17-4-410, and by paying costs charged by the designee of the secretary of state for processing the filings.

(e) A rule adopted or order issued under this act may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this act may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

**17-4-407. Succession and change in registration of broker-dealer or investment adviser.**

(a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to W.S. 17-4-401 or 17-4-403 or a notice pursuant to W.S. 17-4-405 for the unexpired portion of the current registration or notice filing.

(b) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this act. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this act.

**17-4-408. Termination of employment or association of agent and investment adviser representative and transfer of employment or association.**

(a) If an agent registered under this act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant may do so.

(b) If an agent registered under this act terminates employment by or association with a broker-dealer registered under this act and begins employment by or association with another broker-dealer registered under this act; or if an investment adviser representative registered under this act terminates employment by or association with an investment adviser registered under this act or a federal covered investment adviser that has filed a notice under W.S. 17-4-405 and begins employment by or association with another investment adviser registered under this act or a federal covered investment adviser that has filed a notice under W.S. 17-4-405; then upon the filing by or on behalf of the registrant, within thirty (30) days after the termination, of an application for registration that complies with the requirement of W.S. 17-4-406(a) and payment of the filing fee required under W.S. 17-4-410, the registration of the agent or investment adviser representative is:

(i) Immediately effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve (12) months; or

(ii) Temporarily effective as of the date of the completed filing, if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository



record or successor record contains a new or amended disciplinary disclosure within the preceding twelve (12) months.

(c) The secretary of state may withdraw a temporary registration if there are or were grounds for discipline as specified in W.S. 17-4-412 and the secretary of state does so within thirty (30) days after the filing of the application. If the secretary of state does not withdraw the temporary registration within the thirty (30) day period, registration becomes automatically effective on the thirty-first day after filing.

(d) The secretary of state may prevent the effectiveness of a transfer of an agent or investment adviser representative under paragraph (b)(i) or (ii) of this section based on the public interest and the protection of investors.

(e) If the secretary of state determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this act may require the registration be cancelled or terminated or the application denied. The secretary of state may reinstate a cancelled or terminated registration, with or without hearing, and may make the registration retroactive.

**17-4-409. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative.**

Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty (60) days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this act unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this act. The secretary of state may institute a revocation or suspension proceeding under W.S. 17-4-412 within one (1) year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

**17-4-410. Filing fees.**

(a) A person shall pay a fee of two hundred dollars (\$200.00) when initially filing an application for registration as a broker-dealer and a fee of two hundred dollars (\$200.00) when filing a renewal of registration as a broker-dealer. If the filing results in a denial or withdrawal, the secretary of state shall retain the entire fee.

(b) The fee for an individual is forty-five dollars (\$45.00) when filing an application for registration as an agent, a fee of forty-five dollars (\$45.00) when filing a renewal of registration as an agent, and a fee of forty-five dollars (\$45.00) when filing for a change of registration as an agent. If the filing results in a denial or withdrawal, the secretary of state shall retain the entire fee.

(c) A person shall pay a fee of two hundred fifty dollars (\$250.00) when filing an application for registration as an investment adviser and a fee of two hundred fifty dollars (\$250.00) when filing a renewal of registration as an investment adviser. If the filing results in a denial or withdrawal, the secretary of state shall retain the entire fee.

(d) The fee for an individual is forty-five dollars (\$45.00) when filing an application for registration as an investment adviser representative, a fee of forty-five dollars (\$45.00) when filing a renewal of registration as an investment adviser representative, and a fee of forty-five dollars (\$45.00) when filing a change of registration as an investment adviser representative. If the filing results in a denial or withdrawal, the secretary of state shall retain the entire fee.

(e) A federal covered investment adviser required to file a notice under W.S. 17-4-405 shall pay an initial fee of two hundred fifty dollars (\$250.00) and an annual notice fee of two hundred fifty dollars (\$250.00).

(f) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this act.

(g) An investment adviser representative who is registered as an agent under W.S. 17-4-402 and who represents a person that is both registered as a broker-dealer under W.S. 17-4-401 and registered as an investment adviser under W.S. 17-4-403 or

required as a federal covered investment adviser to make a notice filing under W.S. 17-4-405 is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

**17-4-411. Post registration requirements.**

(a) Subject to section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(h)) or section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-22), a rule adopted or order issued under this act may establish minimum financial requirements for broker-dealers registered or required to be registered under this act and investment advisers registered or required to be registered under this act.

(b) Subject to section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(h)) or section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-22), a broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall file such financial reports as are required by a rule adopted or order issued under this act. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(h)) or section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-22):

(i) A broker-dealer registered or required to be registered under this act and an investment adviser registered or required to be registered under this act shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this act;

(ii) Broker-dealer records required to be maintained under paragraph (i) of this subsection may be maintained in any form of data storage acceptable under section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. § 78q(a)) if they are readily accessible to the secretary of state; and

(iii) Investment adviser records required to be maintained under paragraph (i) of this subsection may be

maintained in any form of data storage required by rule adopted or order issued under this act.

(d) The records of a broker-dealer registered or required to be registered under this act and of an investment adviser registered or required to be registered under this act are subject to such reasonable periodic, special, or other audits or inspections by a representative of the secretary of state, within or without this state, as the secretary of state considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The secretary of state may copy, and remove for audit or inspection copies of, all records the secretary of state reasonably considers necessary or appropriate to conduct the audit or inspection. The secretary of state may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(h)) or section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-22), a rule adopted or order issued under this act may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount as set by rule. The secretary of state may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this act whose net capital exceeds, or of an investment adviser registered under this act whose minimum financial requirements exceed, the amounts required by rule or order under this act. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in W.S. 17-4-509(k)(ii).

(f) Subject to section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. § 78o(h)) or section 222 of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this act may prohibit, limit,

or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) With respect to an investment adviser registered or required to be registered under this act, a rule adopted or order issued under this act may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) A rule adopted or order issued under this act may require an individual registered under W.S. 17-4-402 or 17-4-404 to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this act may require continuing education for an individual registered under W.S. 17-4-404.

**17-4-412. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.**

(a) If the secretary of state finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this act may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) If the secretary of state finds that the order is in the public interest and subsection (d) of this section authorizes the action, an order issued under this act may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the secretary of state may not:

(i) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of

another state that is reported to the secretary of state or a designee of the secretary of state more than one (1) year after the date of the order on which it is based; or

(ii) Under subparagraph (d)(v)(A) or (B) of this section, issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) If the secretary of state finds that the order is in the public interest and paragraph (d)(i) through (vi), (viii), (ix), (x), or (xii) and (xiii) of this section authorizes the action, an order under this act may censure, impose a bar or impose a civil penalty in an amount not to exceed a maximum of five thousand dollars (\$5,000.00) for a single violation or fifty thousand dollars (\$50,000.00) for more than one (1) violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) through (c) of this section if the person:

(i) Has filed an application for registration in this state under this act or the predecessor act within the previous ten (10) years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(ii) Willfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;

(iii) Has been convicted of a felony that relates to practice in securities and investing or to the ability to practice as a broker-dealer, agent, investment adviser, or investment adviser representative, as identified in rule by the secretary of state consistent with W.S. 33-1-304, or within the previous ten (10) years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or

an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(iv) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the secretary of state under this act or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(v) Is the subject of an order, issued after notice and opportunity for hearing by:

(A) The securities, depository institution, insurance, or other financial services regulator of a state or by the securities and exchange commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) The securities regulator of a state or the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) The securities and exchange commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) A court adjudicating a United States postal service fraud order;

(E) The insurance regulator of a state denying, suspending, or revoking registration as an insurance agent; or

(F) A depository institution regulator suspending or barring the person from the depository institution business.

(vi) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission; the federal trade commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that

the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(vii) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the secretary of state may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

(viii) Refuses to allow or otherwise impedes the secretary of state from conducting an audit or inspection under W.S. 17-4-411(d) or refuses access to a registrant's office to conduct an audit or inspection under W.S. 17-4-411(d);

(ix) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act within the previous ten (10) years;

(x) Has not paid the proper filing fee within thirty (30) days after having been notified by the secretary of state of a deficiency, but the secretary of state shall vacate an order under this paragraph when the deficiency is corrected;

(xi) After notice and opportunity for a hearing, has been found within the previous ten (10) years:

(A) By a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or



(C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction.

(xii) Is the subject of a cease and desist order issued by the securities and exchange commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(xiii) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years; or

(xiv) Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e) of this section. The secretary of state may require an applicant for registration under W.S. 17-4-402 or 17-4-404 who has not been registered in a state within the two (2) years preceding the filing of an application in this state to successfully complete an examination.

(e) A rule adopted or order issued under this act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this act may waive, in whole or in part, an examination as to an individual and a rule adopted under this act may waive, in whole or in part, an examination as to a class of individuals if the secretary of state determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The secretary of state may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the secretary of state shall promptly notify each person subject to the order

that the order has been issued, the reasons for the action, and that within fifteen (15) days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the secretary of state within thirty (30) days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) An order issued may not be issued under this section, except under subsection (f) of this section, without:

(i) Appropriate notice to the applicant or registrant;

(ii) Opportunity for hearing; and

(iii) Findings of fact and conclusions of law in a record in accordance with the Wyoming Administrative Procedure Act.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the secretary of state under subsections (a) through (c) of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(j) The secretary of state may not institute a proceeding under subsection (a), (b), or (c) of this section based solely on material facts actually known by the secretary of state unless an investigation or the proceeding is instituted within one (1) year after the secretary of state actually acquires knowledge of the material facts.

## ARTICLE 5 FRAUD AND LIABILITIES

### **17-4-501. General fraud.**

(a) It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

(i) To employ a device, scheme, or artifice to defraud;

(ii) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(iii) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

**17-4-502. Prohibited conduct in providing investment advice.**

(a) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

(i) To employ a device, scheme, or artifice to defraud another person; or

(ii) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) A rule adopted under this act may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(c) A rule adopted under this act may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

**17-4-503. Evidentiary burden.**

(a) In a civil action or administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) In a criminal proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

**17-4-504. Filing of sales and advertising literature.**

(a) Except as otherwise provided in subsection (b) of this section, a rule adopted or order issued under this act may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this act.

(b) This section does not apply to sales and advertising literature specified in subsection (a) of this section which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by W.S. 17-4-201 through 17-4-204 except as required pursuant to W.S. 17-4-201(a)(vii).

**17-4-505. Misleading filings.**

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

**17-4-506. Misrepresentations concerning registration or exemption.**

(a) The filing of an application for registration, a registration statement, a notice filing under this act, the registration of a person, the notice filing by a person, or the registration of a security under this act does not constitute a finding by the secretary of state that a record filed under this

act is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the secretary of state has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

#### **17-4-507. Qualified immunity.**

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the secretary of state, or designee of the secretary of state, the securities and exchange commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

#### **17-4-508. Criminal penalties.**

(a) A person that willfully violates this act, or a rule adopted or order issued under this act, except W.S. 17-4-504 or the notice filing requirements of W.S. 17-4-302 or 17-4-405, or that willfully violates W.S. 17-4-505 knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than five thousand dollars (\$5,000.00) or imprisoned not more than three (3) years, or both. An individual convicted of violating a rule or order under this act may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

(b) The attorney general or district attorney with or without a reference from the secretary of state, may institute criminal proceedings under this act.

(c) This act does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

#### **17-4-509. Civil Liability.**

(a) Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) A person is liable to the purchaser if the person sells a security in violation of W.S. 17-4-301 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(i) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at six percent (6%) per year from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (iii) of this subsection;

(ii) The tender referred to in paragraph (i) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (iii) of this subsection;

(iii) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at six percent (6%) per year from the date of the purchase, costs and reasonable attorneys' fees determined by the court.

(c) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or

omission. An action under this subsection is governed by the following:

(i) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (iii) of this subsection;

(ii) The tender referred to in paragraph (i) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (iii) of this subsection;

(iii) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at six percent (6%) per year from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of W.S. 17-4-401(a), 17-4-402(a), or 17-4-506 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in paragraphs (b)(i) through (iii) of this section, or, if a seller, for a remedy as specified in paragraphs (c)(i) through (iii) of this section.

(e) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of W.S. 17-4-403(a), 17-4-404(a), or 17-4-506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the rate of six percent (6%) per year from the date of payment, costs, and reasonable attorneys' fees determined by the court.

(f) A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on

the other person, is liable to the other person. An action under this subsection is governed by the following:

(i) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at six percent (6%) per year from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct;

(ii) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f) of this section:

(i) A person that directly or indirectly controls a person liable under subsections (b) through (f) of this section, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(ii) An individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f) of this section, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(iii) An individual who is an employee of or associated with a person liable under subsections (b) through (f) of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(iv) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that



materially aids the conduct giving rise to the liability under subsections (b) through (f) of this section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

(j) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(k) A person may not obtain relief:

(i) Under subsection (b) of this section for violation of W.S. 17-4-301, or under subsection (d) or (e) of this section, unless the action is instituted within one (1) year after the violation occurred; or

(ii) Under subsection (b) of this section, other than for violation of W.S. 17-4-301, or under subsection (c) or (f) of this section, unless the action is instituted within the earlier of two (2) years after discovery of the facts constituting the violation or five (5) years after the violation.

(m) A person that has made, or has engaged in the performance of, a contract in violation of this act or a rule adopted or order issued under this act, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this act, may not base an action on the contract.

(n) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this act or a rule adopted or order issued under this act is void.

(o) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist, but this act does not create a cause of action not specified in this section or W.S. 17-4-411(e).

#### **17-4-510. Rescission offers.**

(a) A purchaser, seller, or recipient of investment advice may not maintain an action under W.S. 17-4-509 if:

(i) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) An offer stating the respect in which liability under W.S. 17-4-509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this act to be furnished to that person at the time of the purchase, sale, or investment advice;

(B) If the basis for relief under this section may have been a violation of W.S. 17-4-509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at six percent (6%) per year from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at six percent (6%) per year from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(C) If the basis for relief under this section may have been a violation of W.S. 17-4-509(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at six percent (6%) per year from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at six percent (6%) per year from the date of the sale;

(D) If the basis for relief under this section may have been a violation of W.S. 17-4-509(d); and if the customer is a purchaser, an offer to pay as specified in

subparagraph (B) of this paragraph; or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C) of this paragraph;

(E) If the basis for relief under this section may have been a violation of W.S. 17-4-509(e), an offer to reimburse in cash the consideration paid for the advice and interest at six percent (6%) per year from the date of payment; or

(F) If the basis for relief under this section may have been a violation of W.S. 17-4-509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at six percent (6%) per year from the date of the violation causing the loss.

(ii) The offer under paragraph (i) of this subsection states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty (30) days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three (3) days, that the secretary of state, by order, specifies;

(iii) The offeror has the present ability to pay the amount offered or to tender the security under paragraph (i) of this subsection;

(iv) The offer under paragraph (i) of this subsection is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(v) The purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (i) of this subsection in a record within the period specified under paragraph (ii) of this subsection is paid in accordance with the terms of the offer.

## ARTICLE 6 ADMINISTRATION AND JUDICIAL REVIEW

### **17-4-601. Administration.**

(a) The secretary of state shall administer this act.

(b) It is unlawful for the secretary of state or an officer, employee, or designee of the secretary of state to use for personal benefit or the benefit of others records or other information obtained by or filed with the secretary of state that are not public under W.S. 17-4-607(b). This act does not authorize the secretary of state or an officer, employee, or designee of the secretary of state to disclose the record or information, except in accordance with W.S. 17-4-602, 17-4-607(c), or 17-4-608.

(c) This act does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) The secretary of state may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the secretary of state may collaborate with public and nonprofit organizations with an interest in investor education. The secretary of state may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the secretary of state to require participation or monetary contributions of a registrant in an investor education program.

#### **17-4-602. Investigations and subpoenas.**

(a) The secretary of state may:

(i) Conduct public or private investigations within or outside of this state which the secretary of state considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;

(ii) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the secretary of state determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(iii) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the secretary of state determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this act, the secretary of state or his designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the secretary of state considers relevant or material to the investigation.

(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the secretary of state under this act, the secretary of state may refer the matter to the attorney general or district attorney, who may apply to the Wyoming district court or a court of another state to enforce compliance. The court may:

(i) Hold the person in contempt;

(ii) Order the person to appear before the secretary of state;

(iii) Order the person to testify about the matter under investigation or in question;

(iv) Order the production of records;

(v) Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;

(vi) Impose a civil penalty of not less than five thousand dollars (\$5,000.00) and not greater than fifty thousand (\$50,000.00) for each violation; and

(vii) Grant any other necessary or appropriate relief.

(d) This section does not preclude a person from applying to Wyoming district court or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the secretary of state under this act or in an action or proceeding instituted by the secretary of state under this act on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the secretary of state may apply to the Wyoming district court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) At the request of the securities regulator of another state or a foreign jurisdiction, the secretary of state may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The secretary of state may provide the assistance by using the authority to investigate and the powers conferred by this section as the secretary of state determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this act or other law of this state if occurring in this state. In deciding whether to provide the assistance, the secretary of state may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the secretary of state on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of this state; and the availability of resources and employees of the secretary of state to carry out the request for assistance.

#### **17-4-603. Civil enforcement.**

(a) If the secretary of state believes that a person has engaged, is engaging, or is about to engage in an act, practice,

or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this act or a rule adopted or order issued under this act, the secretary of state may maintain an action in the Wyoming district court to enjoin the act, practice, or course of business and to enforce compliance with this act or a rule adopted or order issued under this act.

(b) In an action under this section and on a proper showing, the court may:

(i) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(ii) Order other appropriate or ancillary relief, which may include:

(A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the secretary of state, for the defendant or the defendant's assets;

(B) Ordering the secretary of state to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) Imposing a civil penalty up to five thousand dollars (\$5,000.00) for a single violation or up to fifty thousand dollars (\$50,000.00) for more than one (1) violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this act or the predecessor act or a rule adopted or order issued under this act or the predecessor act; and

(D) Ordering the payment of prejudgment and post judgment interest.

(iii) Order such other relief as the court considers appropriate.

(c) The secretary of state may not be required to post a bond in an action or proceeding under this act.

**17-4-604. Administrative enforcement.**

(a) If the secretary of state determines that a person has engaged, is engaging or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the secretary of state may:

(i) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act;

(ii) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under W.S. 17-4-401(b)(i)(D) or (F) or an investment adviser under W.S. 17-4-403(b)(i)(C); or

(iii) Issue an order under W.S. 17-4-205.

(b) An order under subsection (a) of this section is effective on the date of issuance. Upon issuance of the order, the secretary of state shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the secretary of state will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen (15) days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the secretary of state within thirty (30) days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) If a hearing is requested or ordered pursuant to subsection (b) of this section, a hearing must be held pursuant to the Wyoming Administrative Procedure Act. A final order may



not be issued unless the secretary of state makes findings of fact and conclusions of law in a record in accordance with the Wyoming Administrative Procedure Act. The final order may make final, vacate, or modify the order issued under subsection (a) of this section.

(d) In a final order under subsection (c) of this section, the secretary of state may impose a civil penalty up to five thousand dollars (\$5,000.00) for a single violation or up to fifty thousand dollars (\$50,000.00) for more than one (1) violation.

(e) In a final order, the secretary of state may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act.

(f) If a petition for judicial review of a final order is not filed in accordance with W.S. 17-4-609, the secretary of state may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the secretary of state may petition a court of competent jurisdiction to enforce the order. The court may not require the secretary of state to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than five thousand dollars (\$5,000.00) but not greater than fifty thousand dollars (\$50,000.00) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

**17-4-605. Rules, forms, orders, interpretative opinions, and hearings.**

(a) The secretary of state may:

(i) Issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this act and may repeal rules, including rules and

forms governing registration statements, applications, notice filings, reports, and other records;

(ii) By rule, define terms, whether or not used in this act, but those definitions may not be inconsistent with this act; and

(iii) By rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) Under this act, a rule or form may not be adopted or amended, or an order issued or amended, unless the secretary of state finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this act. In adopting, amending, and repealing rules and forms, W.S. 17-4-608 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) Subject to section 15(h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, the secretary of state may require that a financial statement filed under this act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this act. A rule adopted or order issued under this act may establish:

(i) Subject to section 15(h) of the Securities Exchange Act and section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this act;

(ii) Whether unconsolidated financial statements must be filed; and

(iii) Whether required financial statements must be audited by an independent certified public accountant.

(d) The secretary of state may provide interpretative opinions or issue determinations that the secretary of state will not institute a proceeding or an action under this act against a specified person for engaging in a specified act,

practice, or course of business if the determination is consistent with this act. A rule adopted or order issued under this act may establish a reasonable charge for interpretative opinions or determinations that the secretary of state will not institute an action or a proceeding under this act.

(e) A penalty under this act may not be imposed for, and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the secretary of state under this act.

(f) A hearing in an administrative proceeding under this act must be conducted in public unless the secretary of state for good cause consistent with this act determines that the hearing will not be so conducted.

#### **17-4-606. Administrative files and opinions.**

(a) The secretary of state shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this act or the predecessor act; and interpretative opinions or no action determinations issued under this act.

(b) The secretary of state shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) The secretary of state shall control the availability and dissemination of records, including the records identified as public records in W.S. 17-4-607, pursuant to the requirements set forth in the Wyoming Public Records Act, W.S. 16-4-201 through 16-4-205.

#### **17-4-607. Public records; confidentiality.**

(a) Except as otherwise provided in subsection (b) of this section, records obtained by the secretary of state or filed under this act, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) The following records are not public records and are not available for public examination under subsection (a) of this section:

(i) A record obtained by the secretary of state in connection with an audit or inspection under W.S. 17-4-411(d) or an investigation under W.S. 17-4-602;

(ii) A part of a record filed in connection with a registration statement under W.S. 17-4-301 and 17-4-303 through 17-4-305 or a record under W.S. 17-4-411(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(iii) A record that is not required to be provided to the secretary of state or filed under this act and is provided to the secretary of state only on the condition that the record will not be subject to public examination or disclosure;

(iv) A nonpublic record received from a person specified in W.S. 17-4-608(a); and

(v) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed; and

(vi) A record obtained by the secretary of state through a designee of the secretary of state that a rule or order under this act determines has been:

(A) Expunged from the secretary of state's records by the designee; or

(B) Determined to be nonpublic or nondisclosable by that designee if the secretary of state finds the determination to be in the public interest and for the protection of investors.

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in W.S. 17-4-608(a), the secretary of state may disclose a record obtained in connection with an audit or inspection under W.S. 17-4-411(d) or a record obtained in connection with an investigation under W.S. 17-4-602.

**17-4-608. Uniformity and cooperation with other agencies.**

(a) The secretary of state shall, in his discretion, cooperate, coordinate, consult, and, subject to W.S. 17-4-607, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this act, the secretary of state shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

(i) Maximizing effectiveness of regulation for the protection of investors;

(ii) Maximizing uniformity in federal and state regulatory standards; and

(iii) Minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(i) Establishing or employing one (1) or more designees as a central depository for registration and notice filings under this act and for records required or allowed to be maintained under this act;

(ii) Developing and maintaining uniform forms;

(iii) Conducting a joint examination or investigation;

(iv) Holding a joint administrative hearing;

(v) Instituting and prosecuting a joint civil or administrative proceeding;

(vi) Sharing and exchanging personnel;

(vii) Coordinating registrations under W.S. 17-4-301 and 17-4-401 through 17-4-404 and exemptions under W.S. 17-4-204;

(viii) Sharing and exchanging records, subject to W.S. 17-4-607;

(ix) Formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;

(x) Formulating common systems and procedures;

(xi) Notifying the public of proposed rules, forms, statements of policy, and guidelines;

(xii) Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

(xiii) Developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

#### **17-4-609. Judicial review.**

A final order issued by the secretary of state under this act is subject to judicial review in accordance with Wyoming Administrative Procedure Act.

#### **17-4-610. Jurisdiction.**

(a) W.S. 17-4-301, 17-4-302, 17-4-401(a), 17-4-402(a), 17-4-403(a), 17-4-404(a), 17-4-501, 17-4-506, 17-4-509, and 17-4-510 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(b) W.S. 17-4-401(a), 17-4-402(a), 17-4-403(a), 17-4-404(a), 17-4-501, 17-4-506, 17-4-509, and 17-4-510 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

(i) Originates from within this state; or

(ii) Is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

(i) Is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and

(ii) Has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds ( $\frac{2}{3}$ ) of its circulation outside this state during the previous twelve (12) months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(i) The program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(ii) The program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(iii) The program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(iv) The program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(f) W.S. 17-4-403(a), 17-4-404(a), 17-4-405(a), 17-4-502, 17-4-505, and 17-4-506 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

#### **17-4-611. Service of process.**

(a) A consent to service of process complying with W.S. 17-4-611 required by this act must be signed and filed in the form required by a rule or order under this act. A consent appointing the secretary of state the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this act or a rule adopted or order issued under this act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this act or a rule adopted or order issued under this act and the person has not filed a consent to service of process under subsection (a) of this section, the act, practice, or course of business constitutes the appointment of the secretary of state as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.



(c) Service under subsection (a) or (b) of this section may be made by providing a copy of the process to the office of the secretary of state, but it is not effective unless:

(i) The plaintiff, which may be the secretary of state, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(ii) The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the secretary of state in a proceeding before the secretary of state, allows.

(d) Service pursuant to subsection (c) of this section may be used in a proceeding before the secretary of state or by the secretary of state in a civil action in which the secretary of state is the moving party.

(e) If process is served under subsection (c) of this section, the court, or the secretary of state in a proceeding before the secretary of state, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

#### **17-4-612. Severability clause.**

If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

#### **17-4-613. Securities enforcement and compliance account; purposes.**

(a) There is created the securities enforcement and compliance account. Funds within the account shall only be expended by legislative appropriation. All funds within the account shall be invested by the state treasurer and all investment earnings from the account shall be credited to the general fund.

(b) The secretary of state shall credit sixty percent (60%) of all fees collected by the secretary of state under this act to the general fund and the balance to the securities enforcement and compliance account. Annually, on July 1, monies within the account in excess of three hundred fifty thousand dollars (\$350,000.00) in the securities enforcement and compliance account shall be credited to the general fund.

(c) The secretary of state may expend money within the account created in subsection (a) of this section as appropriated by the legislature to investigate, prosecute and otherwise ensure compliance with this act and to promote investor awareness which may include investment and antifraud publications and seminars.

(d) The secretary of state shall develop separately identifiable biennial expenditure requests using a base budget, standard budget and exception budget as provided in W.S. 9-2-1002 through 9-2-1014 for the purposes specified in this section and from the account created in subsection (a) of this section.

## ARTICLE 7 TRANSITION

### **17-4-701. Application of act to existing proceeding and existing rights and duties.**

(a) The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this act or may be instituted on the basis of conduct occurring before the effective date of this act, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five (5) years after the effective date of this act, whichever is earlier.

(b) All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this act had not been enacted. They are considered to have been filed, issued, or imposed under this act, but are exclusively governed by the predecessor act.

(c) The predecessor act exclusively applies to an offer or sale made within one (1) year after the effective date of this act pursuant to an offering made in good faith before the effective date of this act on the basis of an exemption available under the predecessor act.

CHAPTER 5  
LOAN, REAL ESTATE AND ABSTRACT COMPANIES

- 17-5-101. Repealed by Laws 1988, ch. 59, § 2.
- 17-5-102. Repealed by Laws 1988, ch. 59, § 2.
- 17-5-103. Repealed by Laws 1988, ch. 59, § 2.
- 17-5-104. Repealed by Laws 1988, ch. 59, § 2.
- 17-5-105. Repealed by Laws 1988, ch. 59, § 2.

CHAPTER 6  
NONPROFIT CORPORATIONS GENERALLY

- 17-6-101. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-102. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-103. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-104. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-105. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-106. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-107. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-108. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-109. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-110. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-111. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-112. Repealed by Laws 1992, ch. 53, § 3.

- 17-6-113. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-114. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-115. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-116. Repealed by Laws 1992, ch. 53, § 3.
- 17-6-117. Repealed by Laws 1992, ch. 53, § 3.

CHAPTER 7  
CHARITABLE, EDUCATIONAL, RELIGIOUS AND OTHER SOCIETIES

ARTICLE 1  
IN GENERAL

- 17-7-101. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-102. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-103. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-104. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-105. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-106. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-107. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-108. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-109. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-110. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-111. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-112. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-113. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-114. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-115. Repealed by Laws 1992, ch. 53, § 3.
- 17-7-116. Repealed by Laws 1992, ch. 53, § 3.

ARTICLE 2  
UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

**17-7-201. Repealed By Laws 2009, Ch. 185, § 2.**

**17-7-202. Repealed By Laws 2009, Ch. 185, § 2.**

**17-7-203. Repealed By Laws 2009, Ch. 185, § 2.**

**17-7-204. Repealed By Laws 2009, Ch. 185, § 2.**

**17-7-205. Repealed By Laws 2009, Ch. 185, § 2.**

ARTICLE 3  
UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

**17-7-301. Short title.**

This act shall be known and may be cited as the Uniform Prudent Management of Institutional Funds Act.

**17-7-302. Definitions.**

(a) As used in this act:

(i) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose or any other purpose the achievement of which is beneficial to the community;

(ii) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use;

(iii) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to or held by an institution as an institutional fund;

(iv) "Institution" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes;

(B) A government or governmental subdivision, agency or instrumentality to the extent that it holds funds exclusively for a charitable purpose; or

(C) A trust that had both charitable and noncharitable interests, after all noncharitable interests have been terminated.

(v) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

(A) Program-related assets;

(B) A fund held for an institution by a trustee that is not an institution; or

(C) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(vi) "Person" means as defined by W.S. 8-1-102;

(vii) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment;

(viii) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(ix) "This act" means W.S. 17-7-301 through 17-7-307.

**17-7-303. Standard of conduct in managing and investing institutional fund.**

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(i) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution and the skills available to the institution; and

(ii) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(d) An institution may pool two (2) or more institutional funds for purposes of management and investment.

(e) Except as otherwise provided by a gift instrument, the following rules shall apply:

(i) In managing and investing an institutional fund, the following factors if relevant shall be considered:

(A) General economic conditions;

(B) The possible effect of inflation or deflation;

(C) The expected tax consequences, if any, of investment decisions or strategies;

(D) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(E) The expected total return from income and the appreciation of investments;

(F) Other resources of the institution;

(G) The needs of the institution and the fund to make distributions and to preserve capital; and

(H) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(ii) Management and investment decisions about an individual asset shall be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy

having risk and return objectives reasonably suited to the fund and to the institution;

(iii) Except as otherwise provided by law other than this act, an institution may invest in any kind of property or type of investment consistent with this section;

(iv) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification;

(v) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this act;

(vi) A person who has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

**17-7-304. Appropriation for expenditure or accumulation of endowment fund; rules of construction.**

(a) Subject to subsection (d) of this section and to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(i) The duration and preservation of the endowment fund;



- (ii) The purposes of the institution and the endowment fund;
- (iii) General economic conditions;
- (iv) The possible effect of inflation or deflation;
- (v) The expected total return from income and the appreciation of investments;
- (vi) Other resources of the institution; and
- (vii) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section, a gift instrument shall specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues or profits", or "to preserve the principal intact" or words of similar import:

(i) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(ii) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

(d) The appropriation for expenditure in any year of an amount greater than seven percent (7%) of the fair market value of an endowment fund, calculated on the basis of market values determined at least quarterly and averaged over a period of not less than three (3) years immediately preceding the year in which the appropriation for expenditure is made, creates a rebuttable presumption of imprudence. For an endowment fund in existence for fewer than three (3) years, the fair market value of the endowment fund shall be calculated for the period the endowment fund has been in existence. This subsection shall not:

(i) Apply to an appropriation for expenditure permitted under law other than this act or by the gift instrument; or

(ii) Create a presumption of prudence for an appropriation for expenditure of an amount less than or equal to seven percent (7%) of the fair market value of the endowment fund.

**17-7-305. Delegation of management and investment functions.**

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this act, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(i) Selecting an agent;

(ii) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(iii) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers or employees as authorized by law of this state other than this act.

**17-7-306. Release or modification of restrictions on management, investment or purpose.**

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. If the institution is a governmental institution as defined by W.S. 17-7-302(a)(iv), the institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. If the institution is a governmental institution as defined by W.S. 17-7-302(a)(iv), the institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment or purposes of an institutional fund is unlawful, impracticable, impossible to achieve or wasteful, the institution, not less than sixty (60) days after notification to the attorney general, may release or modify the restriction, in whole or part, if:

(i) The institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars (\$25,000.00);

(ii) More than twenty (20) years have elapsed since the fund was established; and

(iii) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

**17-7-307. Reviewing compliance.**

Compliance with this act shall be determined in light of the facts and circumstances existing at the time a decision is made or action is taken.

CHAPTER 8  
CHURCHES AND RELIGIOUS SOCIETIES GENERALLY

**17-8-101. Incorporation by churches, parishes and societies having governing body; purposes generally.**

Churches, parishes, and societies of all religious bodies, sects, or denominations in this state, or a board of trustees of such churches, parishes, and societies of all religious bodies, having an episcopate, presbytery, synod, conference or other governing body, with spiritual jurisdiction extending over the whole state, or part thereof not less than six (6) counties, may become incorporated for religious, missionary, educational or charitable purposes in the manner hereinafter provided; or said incorporation may be limited to the purposes of acquiring and holding the legal title to property, real and personal, required for the use of such churches, parishes, or societies, or any of them, or of such general governing body, and for the purpose of conveying the same, and contracting with reference thereto.

**17-8-102. Organization meeting; officers.**

The chief or presiding or executive officer of the religious bodies, sects or denominations mentioned in the preceding section may, at such place in this state as he may appoint for the purpose, convene a meeting of himself and some other officer or officers, subordinate to himself, but having general jurisdiction throughout the state, or part of the state aforesaid, and one (1) or more priests, ministers or clergymen of the proposed church, parish or society, and at least two (2) laymen resident within the limits thereof, of which meeting the said chief or presiding or executive officer shall be president and one (1) of the other persons present shall be secretary.

**17-8-103. Contents, execution and filing of articles of incorporation; competency to transact business in corporate name.**

(a) The said five (5) or more persons, being so convened and organized as a meeting, shall adopt articles of incorporation which shall fix:

(i) The name of the church, parish or society so incorporated, or the name of the church, parish or society in whose behalf or interest the corporation is formed;

(ii) The object and purpose of the incorporation;

(iii) The amount of debts which it shall be competent to contract, beyond which amount the corporation shall have no power to contract debts binding at law or equity upon it, its members or its property;

(iv) The manner in which it may contract and become bound for debts and may convey, encumber or change its property;

(v) The manner in which the succession of the members of said corporation shall be regulated and vacancies in their number filled;

(vi) The time of the commencement and the termination of the corporation;

(vii) By what officers its affairs shall be conducted.

(b) Which articles, being subscribed and acknowledged by the persons present at said meeting and filed in the office of the secretary of state, and recorded in the office of the county clerk of the county where such church, parish or society shall be located, whereupon such corporation shall be competent to transact all business in any by its corporate name.

**17-8-104. Authority to make bylaws.**

Every incorporation under this act shall be authorized to make such bylaws as may be necessary to carry into effect fully all the purposes of such incorporation; provided, the same be not in conflict with the constitution of the United States, the laws of congress or of this state.

**17-8-105. Corporators and members of corporation.**

The persons attending said meeting shall be the corporators and members of the corporation until their places may be supplied by and under the provisions of the articles of incorporation.

**17-8-106. Incorporation by body of Christians for purposes of education, benevolence, charity and missions.**

If any body of Christians has or shall have, according to its order or mode of government, an organization, whether known as synod, presbytery, conference, episcopate or other name, with ecclesiastical or spiritual jurisdiction over its members throughout this state, and its authorities shall desire to engage in work of education, benevolence, charity and missions, which works shall be of like extensive operation and benefit, and not of limited or local service, and they shall deem an incorporation convenient for the more successful operation of said works, all, or any of them, its said authorities, with such persons as they may associate with them, may cause such incorporation to be formed in the manner and with the powers hereinbefore provided for the incorporation of a church, congregation or society.

**17-8-107. Applicability of general corporation laws.**

Corporations organized under the provisions of this act shall be subject to the laws of this state in respect to corporations which are applicable to them, save as herein expressly provided.

**17-8-108. Incorporation for establishing benevolent institutions and for holding real and personal property.**

If any presbytery, synod, conference, episcopate or other ecclesiastical body or association of Christians having jurisdiction over its members throughout the state, or a part thereof, extending over at least four (4) counties, and its authorities shall desire to establish missions, churches and other benevolent institutions and in this behalf to acquire property real and personal to aid in extending its spiritual jurisdiction and charities, and shall deem an incorporation necessary or convenient for the more effective accomplishment of its general objects, its authorities may cause such incorporation to be formed in the manner and with all the powers now provided by law for the incorporation of churches, congregations or societies and such other powers as are incident

and necessary to the successful performance of any or all its objects.

**17-8-109. Corporations; purposes for which such corporations may be formed.**

Corporations may be formed for acquiring, holding or disposing of church or religious society property, for the benefit of religion, for works of charity and for public worship in the manner hereinafter provided.

**17-8-110. Corporations; execution, acknowledgment and filing of articles of incorporation.**

Any person being the archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman, of any church or religious society, who shall have been duly chosen, elected or appointed, in conformity with the constitution, canons, rites, regulations, or discipline of said church or religious society, and in whom shall be vested the legal title to the property of such church or religious society, may make and subscribe written articles of incorporation in duplicate, acknowledge the same before some officer authorized to take acknowledgment, and file one (1) of such articles in the office of the secretary of state, and retain possession of the other.

**17-8-111. Corporations; contents of articles of incorporation; amendment of articles.**

(a) The articles of incorporation shall specify:

(i) The name of the corporation, by which it shall be known;

(ii) The object of said corporation;

(iii) The estimated value of the property at the time of making the articles of incorporation;

(iv) The title of the person making such articles.

Any corporation so formed shall have power from time to time to alter or amend its articles of incorporation; such amendment shall be made by the corporation sole, and executed by the same person who executed the original articles of incorporation, or by his successor in office, and shall be filed and recorded in

the same office and in the same manner as is provided for filing the original articles.

**17-8-112. Corporations; creation and powers generally.**

Upon making and filing for record articles of incorporation as herein provided, the person subscribing the same, and his successor in office by the name or title specified in the articles, shall thereafter be deemed, and is hereby created, a body politic and a corporation sole, with continual perpetual succession, and shall have power to acquire and possess, by donation, gift, bequest, devise, or purchase, and to hold and maintain property, real, personal, and mixed, and to grant, sell, convey, rent, or otherwise dispose of the same as may be necessary to carry on or promote the objects of the corporation; and shall have authority to borrow money and to give written obligations therefor, and to secure the payment thereof by mortgage or other lien, upon real or personal property, when necessary to promote said objects.

**17-8-113. Corporations; other powers.**

Such corporation shall have the power to contract and be contracted with, to sue and be sued, plead and be pleaded in all courts of justice, and to have and use a common seal by which all deeds and acts of such corporation may be authenticated.

**17-8-114. Corporations; execution of deeds and other written instruments.**

All deeds and other instruments of writing shall be made in the name of the corporation and signed by the person representing the corporation, in the official capacity designated in the articles of incorporation, and be sealed with the seal of the corporation, an impression of which seal shall be filed in the office of the secretary of state.

**17-8-115. Corporations; evidence of corporate existence.**

The articles of incorporation, or a certified copy of those filed and recorded in the office of the secretary of state, shall be evidence of the existence of such corporation.

**17-8-116. Corporations; vesting of title to property in successor; filing of certified copy of commission by successor.**



In the event of the death or resignation of any such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman, or of his removal therefrom by the person or body having authority to remove him, when such person is at the time a corporation sole, his successor in office, as such corporation sole, shall be vested with the title to any and all property held by his predecessor, as such corporation sole, with like power and authority over the same, and subject to all the legal liabilities and obligations with reference thereto. Such successor shall file in the office of the county clerk of each county wherein any of said real property is situated, a certified copy of his commission, certificate or letter of election or appointment.

**17-8-117. Vesting of title to property in successor when held beneficially by church official and not by corporation.**

In case of the death, resignation or removal of any such archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, or clergyman, who at the time of his death, resignation, or removal, was holding the title to trust property for the use or benefit of any church or religious society, and not incorporated as a corporation sole, the title to any and all such property held by him, of every nature and kind, shall not revert to the donor, nor vest in the heirs of such deceased person, but shall be deemed to be in abeyance, after such death, resignation, or removal, until his successor is duly appointed to fill such vacancy, and upon the appointment of such successor, the title to all the property held by his predecessor shall at once, without any other act or deed, vest in the person appointed to fill such vacancy.

CHAPTER 9  
SECRET OR BENEVOLENT SOCIETIES

**17-9-101. Repealed by Laws 1992, ch. 53, § 3.**

**17-9-102. Repealed by Laws 1992, ch. 53, § 3.**

**17-9-103. Repealed by Laws 1992, ch. 53, § 3.**

**17-9-104. Repealed by Laws 1992, ch. 53, § 3.**

**17-9-105. Repealed by Laws 1992, ch. 53, § 3.**

**17-9-106. Repealed by Laws 1992, ch. 53, § 3.**

**17-9-107. Repealed by Laws 1993, ch. 206, § 3.**

**17-9-108. Repealed by Laws 1993, ch. 206, § 3.**

CHAPTER 10  
COOPERATIVE MARKETING ASSOCIATIONS

ARTICLE 1  
IN GENERAL

**17-10-101. Purpose of chapter.**

In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation, and to eliminate speculation and waste; and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer; and to stabilize the marketing problems of agricultural products, this act is passed.

**17-10-102. Definitions; associations deemed nonprofit; short title.**

(a) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

(b) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(c) The term "association" or "cooperative" means any corporation organized under this act.

(d) The term "person" shall include individuals, firms, partnerships, corporations and associations.

(e) Associations organized hereunder shall be deemed nonprofit, inasmuch as they are not organized to make profits for themselves, as such, or for their members as such, but only for their members as producers.

(f) This act shall be referred to as the "Cooperative Marketing Act".

**17-10-103. Formation.**

Five (5) or more persons, qualified electors of the state of Wyoming, engaged in the production of agricultural products may form a nonprofit, cooperative association, with or without capital stock, under the provisions of this act.

**17-10-104. Purposes.**

An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, of the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies; or in the financing of the above enumerated activities; or in any one (1) or more of the activities specified herein.

**17-10-105. Certificate of incorporation; execution and contents.**

(a) The incorporators shall sign and acknowledge, in the manner required for the signing and acknowledgment of deeds, a certificate of incorporation showing the following facts:

(i) The name of the cooperative;

(ii) The purpose of the cooperative;

(iii) (A) If organized without capital stock, whether the property rights of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the articles of incorporation shall not be altered, amended, or repealed except by the written consent or the affirmative vote of three-fourths of the members;

(B) If organized with capital stock, the amount of such stock, the number of shares into which the capital stock is divided, and the par value of each share shall be given.

(iv) The period of duration for the cooperative, if the duration is not to be perpetual;

(v) The number of directors, not less than five (5) and the names of those who shall manage the concerns of the corporation for the first corporate year;

(vi) The name of the town or post office and the county where the principal office or place of business of the corporation shall be located;

(vii) Any further provisions, not inconsistent with law, which the incorporators may deem expedient to be embodied in such certificate.

**17-10-106. Certificate of incorporation; filing; fees; commencement of corporate existence.**

The certificate of incorporation shall be filed in the office of the secretary of state. The fees for filing or recording such certificate shall be the same as in the case of corporations formed under the general corporation laws. The corporation shall come into existence upon the filing of its certificate in the office of the secretary of state.

**17-10-107. Certificate of incorporation; amendment.**

The certificate of incorporation of any association organized under this act or which may elect to come under the provisions of this act may be amended in the following manner: the board of directors, by majority vote of its members, may pass a resolution setting forth the full text of the proposed amendment and also the full text of such section or sections as may be altered or repealed by such amendments. Upon such action by the board of directors, notice shall be mailed to each and every member containing a copy of the resolution so adopted, the full text of the proposed amendment and also the full text of such section or sections as will be altered or repealed by such amendment. Such notice shall also designate the time, not less than twenty (20) days from the mailing of such notice, and place of the meeting at which such proposed amendment shall be considered and voted upon. If a quorum of the members is registered as being present or represented by mail votes at such meeting, a majority of the members so present or represented by mail votes may adopt or reject such proposed amendment; provided that no amendment may be adopted inconsistent with W.S.

17-10-104. Such amendments shall be put into effect by the directors, who shall sign and acknowledge and file, as above provided by the general corporation law of this state, new or revised certificates containing such amendments and superseding the original certificate.

**17-10-108. Applicability of general corporation law relative to notice for service of process.**

Public notice of the filing of the original certificate and of all amended certificates shall be given in like manner as that required in the case of corporations formed under the general corporation law. The corporation shall also designate an agent and office for the service of papers and processes as required by the general corporation law.

**17-10-109. Powers.**

(a) Each cooperative formed under the provisions of this article shall have power:

(i) To have succession by its corporate name for the period limited in its certificate;

(ii) To sue and be sued, complain and defend in any court;

(iii) To establish and use a common seal and alter the same;

(iv) To hold, purchase and convey such real and personal property as the purpose of the corporation may require, including stock or membership in subsidiary, allied or similar cooperative corporations within or without this state;

(v) To appoint such officers and agents as the business may require, including in every case, a president and a secretary, and to fix their compensation;

(vi) To make bylaws not inconsistent with law for the management of its property, the regulation of its business and the transfer of its stock or membership;

(vii) To engage in any activity in connection with producing, marketing, selling, preserving, drying, processing, canning, packing, handling, storing or utilization of any agricultural products of its members; or the manufacturing or

marketing of the by-products thereof; or in connection with the purchase, hiring or use by its members of supplies, machinery or equipment, or in the financing of such activities, or in any one (1) or more of the activities specified in this paragraph;

(viii) To borrow money and to make advances to members upon products of members in the hands of the association;

(ix) To act as agent or representative of any member or members in any of the activities mentioned in paragraphs (vii) and (viii) of this subsection;

(x) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer or pledge shares of the capital stock or bonds, or memberships of any corporation or association organized under this act;

(xi) To establish reserves and invest the funds thereof in bonds or such other property as may be provided in the bylaws;

(xii) To do each and everything necessary, suitable or proper for the accomplishment of any one (1) of the purposes or the attainment of any one (1) or more of the objects herein enumerated; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition any other rights, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this act; and to do any such things anywhere.

#### **17-10-110. Members and stock generally.**

(a) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

(b) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention of security shall not affect the members' right to vote.

(c) Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

(d) No stockholder of a cooperative association shall hold more than twenty percent (20%) of the common stock of the association; and the association, in its bylaws, may limit the amount of common stock which one (1) member may own to any amount less than twenty percent (20%) of the common stock.

(e) No member or stockholder shall be entitled to more than one (1) vote.

(f) The bylaws shall prohibit the transfer of the common stock or membership of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock or membership certificate subject thereto.

(g) Any association organized with stock under this act may issue preferred stock, without the right to vote, and bearing a rate of interest not to exceed eight percent (8%). Such stock may be redeemable or retireable by the association on such terms and conditions as may be provided for by the certificate of incorporation and printed on the face of the certificate.

**17-10-111. Management by board of directors; composition and election of board; terms of office.**

The stock, property and concerns of such corporation shall be managed by the board of directors who shall be respectively members, stockholders or subscribers for stock and who shall, after the first corporate year, be annually elected by the members or stockholders at such time and place as shall be provided by the bylaws. The bylaws may provide that the directors be elected for staggered terms not to exceed three (3) years. Directors shall hold office until their successors have been elected and qualified. The bylaws may provide that the territory in which the association has members shall be divided into districts, and the directors shall be elected according to such districts. In such case the bylaws shall specify the number of directors to be elected by each district, the manner and

method of reapportioning the directors and redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such district, and the result of all such primary elections must be ratified by the next regular meeting of the association.

**17-10-112. Regular meetings; calling of special meetings; notice of meetings.**

In its bylaws each association shall provide for one (1) or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten percent (10%) of the members or stockholders may file a petition stating the specific business to be brought before the association, and demand a special meeting at any time. Such meeting must thereupon be called by the board of directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least twenty (20) days prior to the meeting. Provided, however, that the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation, published at the principal place of business of the association. Date of publication of such meeting is to be at least twenty (20) days before the date of such meeting.

**17-10-113. Removal of officers or directors.**

(a) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten percent (10%) of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members of the association, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting, and shall have an opportunity at the meeting, to be heard in person or by counsel, and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

(b) In case the bylaws provide for the election of directors by districts, with primary elections in each district, then the petition for the removal of a director must be signed by twenty percent (20%) of the members residing in the district



from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

**17-10-114. Liability of directors for excess of indebtedness over assets or capital.**

If the indebtedness of such corporation shall at any time exceed the amount of the assets of a nonstock corporation or the amount of subscribed capital stock of a stock company, the directors assenting thereto shall be personally and individually liable for such excess to the creditors.

**17-10-115. Apportionment of net profits by directors of corporation with capital stock.**

(a) The directors in any cooperative association organized under this article may set aside a portion of net income to create or maintain a capital reserve as they see fit or may set aside none, in their discretion. In addition to a capital reserve, the board may:

(i) Set aside an amount not to exceed five percent (5%) of the annual net income of the cooperative association for:

(A) Promoting and encouraging cooperative organization;

(B) Promotion, education or research activities which are beneficial to the cooperative, its members and products; and

(C) Any other endeavor or effort which the board deems is in the best interests of the cooperative or its members.

(ii) Establish and accumulate reserves for new buildings, machinery and equipment depreciation, losses and other purposes.

(b) Repealed By Laws 2001, Ch. 144, § 4.

**17-10-116. Repealed By Laws 2001, Ch. 144, § 4.**

**17-10-117. Sales contracts with members.**

Any association organized under this act, as agent to sell the products of members or purchase supplies for members may operate upon a nonprofit basis by contracting to pay the members, for products sold by said members to or through the association, the resale price minus a uniform charge to cover the expenses involved in the handling of said products; there shall also be set aside for a reserve fund a small percentage of the sale price, said percentage to be fixed by the bylaws; resale price to be the actual resale price to be based upon the average price during any period for products of the same type and quality; the uniform charges for expenses to be specified in the contract or made otherwise ascertainable or left for determination by the directors.

**17-10-118. Liability of directors upon payment of dividends or appointment when corporation insolvent; exception.**

If the directors of any corporation organized under this act shall declare and pay any dividend or apportionment of earnings or profits to members or nonmembers when the corporation is insolvent or when it would be rendered insolvent by such payment, such directors shall be jointly and severally liable for all debts of the corporation then existing and for all such debts thereafter incurred while they shall respectively continue in office. Any director may relieve himself from such liability at any time before the time fixed for the payment of such dividend or apportionment by filing a certificate in writing of his objection with the secretary of the corporation, and with the county clerk of the county in which the principal office is located.

**17-10-119. Preparation and disposition of financial statement.**

At the time of each dividend or apportionment of profits, and at least once in every year, the directors shall cause to be prepared a statement showing the financial condition of the corporation. This statement shall be in such form as shall fully exhibit the assets and liabilities of the corporation; its earnings and profits, purchases and sales, expenses and outlays, for the period covered by such dividend, apportionment of earnings, or yearly statement, and this statement, shall be in such form that good understanding of the financial condition of said company may be obtained from such statement. The directors shall cause one (1) copy of this statement to be mailed to each

member or stockholder of the corporation and one (1) copy to be kept on file with the secretary where the same may be examined by any member of the corporation at all reasonable times.

**17-10-120. Repealed by Laws 1992, ch. 53, § 3.**

**17-10-121. Marketing contracts generally.**

(a) The association and its members may make and execute marketing contracts, requiring the members to sell, for a period of time, not over ten (10) years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto, and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, if any; and other proper reserves; and in interest not exceeding six percent (6%) per annum upon common stock.

(b) The bylaws of the marketing contract may fix, as liquidated damages, specified sums to be paid by the member or stockholder to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses or fees in case any action is brought upon the contract by the association; and any such provision shall be valid and enforceable in the courts of this state.

(c) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract, and to a decree of specific performance thereof. Pending the adjudication of such an action, and upon filing a certified complaint, showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

**17-10-122. Inducing breach of marketing contract or spreading false reports of finances or management; penalty.**

Any person who, or any corporation whose officers or employees knowingly induces or attempts to induce any member or stockholder of an association organized hereunder to breach his

marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof, shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100.00), and not more than one thousand dollars (\$1,000.00), for each such offense and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars (\$500.00) for each such offense; provided, that this section shall not apply to a bona fide creditor of such association, or the agent or attorney of any such bona fide creditor, endeavoring to make collections of the indebtedness.

**17-10-123. Legality of associations.**

No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily, nor shall the marketing contracts or agreements between the association and its members, or any agreements authorized in this act be considered illegal or in restraint of trade.

**17-10-124. Applicability of conflicting laws.**

Any provisions of law which are in conflict with this act shall not be construed as applying to the associations herein provided for.

**17-10-125. Applicability of general corporation laws.**

The provisions of the general corporation laws of this state, and all powers and rights thereunder, shall apply to the associations organized hereunder, except where such provisions are in conflict with or inconsistent with the express provisions of this act.

**17-10-126. Agricultural product marketing contract.**

A cooperative organized under the provisions of this article and its patron members or patrons may make and execute a marketing contract under W.S. 17-10-214.

ARTICLE 2  
PROCESSING COOPERATIVE

**17-10-201. Title.**

This act may be cited as the "Wyoming Processing Cooperative law."

**17-10-202. Definitions.**

(a) As used in this article:

(i) "Address" means mailing address, including a zip code. In the case of a registered address, the term means the mailing address and the actual office location, which may not be a post office box;

(ii) "Articles" means the articles of organization of a cooperative as originally filed and subsequently amended;

(iii) "Association" means an organization conducting business on a cooperative plan under the laws of this state or another state that is chartered to conduct business under other laws of this state or another state;

(iv) "Board" means the board of directors of a cooperative;

(v) "Business entity" means a company, limited liability company, limited liability partnership or other legal entity, whether domestic or foreign, association or body vested with the power or function of a legal entity;

(vi) "Cooperative" means an association organized under this article conducting business on a cooperative plan as provided under this article;

(vii) "Domestic business entity" means a business entity organized under the laws of this state;

(viii) "Filed with the secretary of state" means that a document meeting the applicable requirements of this article, signed and accompanied by the required filing fee, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the document the word "Filed" or a similar word determined by the secretary of state and the month, day, and year of filing, record the document in the office of the secretary of state, and return a document to the person or entity who delivered it for filing;

(ix) "Foreign business entity" means a business entity that is not a domestic business entity;

(x) "Member" means a person or entity reflected on the books of the cooperative as the owner of governance rights of a membership interest of the cooperative and includes patron and nonpatron members;

(xi) "Membership interest" means a member's interest in a cooperative consisting of a member's financial rights, a member's right to assign financial rights, a member's governance rights and a member's right to assign governance rights. Membership interest includes patron membership interests and nonpatron membership interests;

(xii) "Members' meeting" means a regular or special members' meeting;

(xiii) "Nonpatron membership interest" means a membership interest that does not require the holder to conduct patronage business for or with the cooperative to receive financial rights or distributions;

(xiv) "Patron" means a person or entity who conducts patronage business with the cooperative;

(xv) "Patronage" means business, transactions, or services done for or with the cooperative as defined by the cooperative;

(xvi) "Patron member" means a member holding a patron membership interest;

(xvii) "Patron membership interest" means the membership interest requiring the holder to conduct patronage business for or with the cooperative, as specified by the cooperative to receive financial rights or distributions;

(xviii) "Signed" means that the signature of a person has been written on a document, and, with respect to a document required by this article to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this article, the articles or bylaws, or by a resolution approved by the directors or the members. A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically or in any other manner reproduced on the document;

(xix) "The act" means W.S. 17-10-201 through 17-10-253.

**17-10-203. Filing fee; rules and regulations; annual reports and license taxes.**

(a) Unless otherwise provided, the filing fee for documents filed under this article with the secretary of state shall be subject to the provisions of W.S. 17-16-122. The secretary of state shall promulgate rules and regulations necessary to implement the provisions of this article.

(b) The provisions of W.S. 17-16-1630 regarding the filing of reports, license taxes and records shall apply to cooperatives formed under this article.

**17-10-204. Registered agent; change of registered office or registered agent.**

(a) Each cooperative shall have and continuously maintain in this state:

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

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

(b) Repealed by Laws 2008, Ch. 90, § 3.

(c) Repealed by Laws 2008, Ch. 90, § 3.

(d) Repealed by Laws 2008, Ch. 90, § 3

(e) If any cooperative has failed for thirty (30) days to appoint and maintain a registered agent in this state, or has failed for thirty (30) days after change of its registered office or registered agent to file in the office of the secretary of state a statement of the change it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof and the forfeiture shall be made effective in the following manner. The secretary of state shall mail by first class mail, or by electronic means if the cooperative has consented to receive notices electronically, a notice of its failure to comply with aforesaid provisions. Unless compliance is made within thirty (30) days of mailing or

electronic submission of the notice, the cooperative shall be deemed defunct and to have forfeited its certificate of organization acquired under the laws of this state. Provided, that any defunct cooperative may at any time within two (2) years after the forfeiture of its certificate, in the manner herein provided, be revived and reinstated, by filing the necessary statement under this act and paying a reinstatement fee established by the secretary of state by rule, together with a penalty of one hundred dollars (\$100.00). The reinstatement fee shall not exceed the costs of providing the reinstatement service. The cooperative shall retain its registered name during the two (2) year reinstatement period under this section.

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

**17-10-205. Organizational purpose.**

A cooperative may be formed and organized on a cooperative plan as provided under this article to market, process, or otherwise change the form or marketability of crops, livestock and other agricultural products, including manufacturing and further processing of those products and other purposes that are necessary or convenient to facilitate the production or marketing of agricultural products by patron members and other purposes that are related to the business of the cooperative.

**17-10-206. Organizers.**

A cooperative may be organized by one (1) or more organizers who shall be adult natural persons, who may act for themselves as individuals or as the agents of other entities. The organizers forming the cooperative need not be members of the cooperative.

**17-10-207. Cooperative name.**

(a) The name of a cooperative shall distinguish the cooperative upon the records in the office of the secretary of state from the name of a domestic business entity or a foreign business entity, authorized or registered to do business in this state or a name the right to which is, at the time of organization, reserved or provided for by law.

(b) The cooperative name shall be reserved for the cooperative during its existence.

**17-10-208. Articles of organization.**



(a) The organizers shall prepare the articles, which shall include:

(i) The name of the cooperative;

(ii) The purpose of the cooperative;

(iii) The principal place of business for the cooperative and the name and address of its registered agent in this state;

(iv) The period of duration for the cooperative, if the duration is not to be perpetual;

(v) The capital structure of the cooperative including a statement of the classes and relative rights, preferences, and restrictions granted to or imposed upon each class of member interests, the rights to share in profits or distributions of the cooperative, and the authority to issue member interests, which may be designated to be determined by the board;

(vi) A provision designating the voting and governance rights, including which membership interests have voting power and any limitations or restrictions on the voting power, which shall be in accordance with the provisions of this article;

(vii) A statement that patron membership interests with voting power shall be restricted to one (1) vote for each member regardless of the amount of patron membership interests held in the affairs of the cooperative or a statement describing the allocation of voting power allocated as prescribed in this article;

(viii) A statement that membership interests held by a member are transferable only with the approval of the board or as provided in the bylaws;

(ix) The names, post office addresses, and terms of office of the directors of the first board;

(x) A statement as to how profits and losses will be allocated and cash will be distributed between patron membership interests collectively and nonpatron membership interests collectively, a statement that net income allocated to a patron

membership interests as determined by the board in excess of dividends and additions to reserves shall be distributed on the basis of patronage, and that the records of the cooperative shall include the interests of patron membership interests and nonpatron membership interests which may be further described in the bylaws, of any classes, and in the reserves; and

(xi) The registered address of the cooperative.

(b) The articles shall contain the provisions in subsection (a) of this section, except that the names, post office addresses of the directors of the first board may be omitted after their successors have been elected by the members or the articles are amended in their entirety.

(c) The articles may contain any other lawful provision.

(d) The articles shall be signed by the organizers.

(e) The original articles shall be filed with the secretary of state. The fee for filing the articles with the secretary of state shall be subject to the provisions of W.S. 17-16-122.

(f) When the articles of organization have been filed with the secretary of state and the required fee has been paid to the secretary of state, it shall be presumed that:

(i) All conditions precedent that are required to be performed by the organizers have been complied with;

(ii) The organization of the cooperative has been chartered by the state as a separate legal entity; and

(iii) The secretary of state shall issue a certificate of organization to the cooperative.

#### **17-10-209. Amendment of articles.**

(a) The articles of a cooperative shall be amended as follows:

(i) The board by majority vote shall pass a resolution stating the text of the proposed amendment. The text of the proposed amendment and an attached mail ballot, if the board has provided for a mail ballot in the resolution or alternative method approved by the board and stated in the

resolution, shall be mailed or distributed with a regular or special meeting notice to each member. The notice shall designate the time and place of the meeting for the proposed amendment to be considered and voted on;

(ii) If a quorum of the members is registered as being present or represented by alternative vote at the meeting, the proposed amendment is adopted:

(A) If approved by a majority of the votes cast;  
or

(B) For a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the amendment is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(b) After an amendment has been adopted by the members, the amendment shall be signed by the chair, vice-chair, records officer, or assistant records officer and a copy of the amendment filed in the office of the secretary of state.

(c) A certificate shall be prepared stating:

(i) The vote and meeting of the board adopting a resolution of the proposed amendment;

(ii) The notice given to members of the meeting at which the amendment was adopted;

(iii) The quorum registered at the meeting; and

(iv) The vote cast adopting the amendment.

(d) The certificate shall be signed by the chair, vice-chair, records officer or financial officer and filed with the records of the cooperative.

(e) A majority of directors may amend the articles if the cooperative does not have any members with voting rights.

**17-10-210. Amendment of organizational documents to be governed by this article.**

(a) A business entity organized and doing business under other statutes of this state or under the laws of other states that has or will conduct business as a cooperative may become subject to this article by amending its organizational documents to conform to the requirements of articles of organization under this article.

(b) A business entity organized under other statutes of this state may amend its articles in the manner provided under the statute that it is governed by for the adoption of amendments to comply with the provisions of this article and file the amended articles with the secretary of state to be a cooperative governed under this article. The status of the business entity under the other statutes terminates with the filing of articles to be governed under this article.

(c) A business entity organized under laws of other states shall amend its organizational documents in the manner required by the laws of the state where it was organized to comply with the provisions of this article. After the organizational documents are amended, the business entity shall file a certified copy of the organizational documents as amended with the secretary of state to comply with the provisions of this article with the fees and requirements prescribed for filing articles. After filing, the business entity is a cooperative in this state organized under and subject to the provisions of this article.

**17-10-211. Existence.**

(a) The existence of a cooperative shall begin when the articles are filed with the secretary of state.

(b) A cooperative shall have a perpetual duration unless the cooperative provides for a limited period of duration in the articles of organization.

**17-10-212. Bylaws.**

(a) A cooperative shall have bylaws governing the cooperative's business affairs, structure, the qualifications, classification, rights and obligations of members, and the classifications, allocations and distributions of membership interests.

(b) The bylaws of a cooperative may be adopted or amended by the directors as provided in subsection (c) of this section, or at a regular or special members' meeting if:

(i) The notice of the meeting contains a statement that the bylaws or restated bylaws will be voted upon and copies are included with the notice, or copies are available upon request from the cooperative and summary statement of the proposed bylaws or amendment is included with the notice;

(ii) A quorum is registered as being present or represented by mail or alternative voting method if the mail or alternative voting method is authorized by the board; and

(iii) The bylaws or amendment is approved by a majority vote cast, or for a cooperative with articles or bylaws requiring more than majority approval or other conditions for approval, the bylaws or amendment is approved by a proportion of the vote cast or a number of the total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(c) Until the next annual or special members' meeting, the majority of directors may adopt and amend bylaws for the cooperative that are consistent with subsection (d) of this section which may be further amended or repealed by the members at an annual or special members' meeting.

(d) Bylaws may contain any provision relating to the management or regulation of the affairs of the cooperative that are not inconsistent with law or the articles, and shall include the following:

(i) The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;

(ii) The qualifications of members and any limitations on their number;

(iii) The manner of admission, withdrawal, suspensions, and expulsion of members;

(iv) Generally the governance rights, financial rights, assignability of governance and financial rights, and other rights, privileges and obligations of members and their

membership interests, which may be further described in member control agreements.

**17-10-213. Powers.**

(a) In addition to other powers, a cooperative as an agent or otherwise:

(i) May perform every act and thing necessary or proper to the conduct of the cooperative's business or the accomplishment of the purposes of the cooperative;

(ii) Has other rights, powers, or privileges granted by the laws of this state to other cooperatives, except those that are inconsistent with the express provisions of this article; and

(iii) Has the powers given in this section.

(b) A cooperative may buy, sell, or deal in its own products, the products of the cooperative's individual members, patrons or nonmembers, the products of another cooperative association, or of its members or patrons, or the products of another person or entity. A cooperative may negotiate the price at which the products the cooperative is selling may be sold.

(c) A cooperative may enter into or become a party to a contract or agreement for the cooperative or for the cooperative's individual members or patrons or between the cooperative and its members.

(d) A cooperative may purchase and hold, lease, mortgage, encumber, sell, exchange and convey as a legal entity real estate, buildings and personal property as the business of the cooperative may require including the sale or other disposition of assets required by the business of the cooperative as determined by the board.

(e) A cooperative may erect buildings or other structures or facilities on the cooperative's owned or leased property or on a right-of-way legally acquired by the cooperative.

(f) A cooperative may issue bonds or other evidence of indebtedness and may borrow money to finance the business of the cooperative.

(g) A cooperative may make advances to the cooperative's members or patrons on products delivered by the members or patrons to the cooperative.

(h) A cooperative may accept deposits of money from other cooperatives, associations or members from which it is constituted.

(j) A cooperative may loan or borrow money to or from individual members, cooperatives or associations from which it is constituted with security that it considers sufficient in dealing with the members, cooperatives, or associations.

(k) A cooperative may purchase, acquire, hold, or dispose of the ownership interests of another business entity whether organized under the laws of this state or another state and assume all rights, interests, privileges, responsibilities and obligations arising out of the ownership interests.

(m) A cooperative may acquire and hold ownership interests in another business entity organized under the laws of this state or another state of the United States, including a business entity organized:

(i) As a federation of associations;

(ii) For the purpose of forming a district, state, or national marketing, sales or service agency; or

(iii) For the purpose of acquiring marketing facilities at terminal or other markets in this state or other states.

(n) A cooperative may purchase, own, and hold ownership interests, memberships, interests in nonstock capital, evidences of indebtedness of any domestic business entity or foreign business entity when reasonably necessary or incidental to accomplish the purposes stated in the articles.

(o) A cooperative may exercise any and all fiduciary powers in relations with members, cooperatives, associations or business entities from which it is constituted.

(p) A cooperative may take, receive, and hold real and personal property, including the principal and interest of money or other funds and rights in a contract, in trust for any purpose not inconsistent with the purposes of the cooperative in

its articles and may exercise fiduciary powers in relation to taking, receiving, and holding the real and personal property.

**17-10-214. Agricultural product marketing contracts.**

(a) A cooperative and its patron member or patron may make and execute a marketing contract, requiring the patron member or patron to sell a specified portion of his agricultural product or specified commodity produced from a certain area exclusively to or through the cooperative or facility established by the cooperative.

(b) If a sale is contracted to the cooperative, the sale shall transfer title to the product absolutely, except for a recorded lien or security interest, to the cooperative on delivery of the product or at another specified time if expressly provided in the contract. The contract may allow the cooperative to sell or resell the product of its patron member or patron with or without taking title to the product, and pay the resale price to the patron member or patron, after deducting all necessary selling, overhead and other costs and expenses, including other proper reserves and interest.

(c) A single term of a marketing contract shall not exceed ten (10) years, but a marketing contract may be made self-renewing for periods not exceeding five (5) years each, subject to the right of either party to terminate by giving written notice of the termination during a period of the current term as specified in the contract.

(d) The bylaws or the marketing contract, or both, may set a specific sum as liquidated damages to be paid by the patron member or patron to the cooperative for breach of any provision of the marketing contract regarding the sale or delivery or withholding of a product and may provide that the member or patron shall pay the costs, premiums for bonds, expenses and fees if an action is brought on the contract by the cooperative. The remedies for breach of contract are valid and enforceable in the courts of this state. The provisions shall be enforced as liquidated damages and are not to be considered or regarded as a penalty.

(e) If there is a breach or threatened breach of a marketing contract by a patron member or patron, the cooperative is entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance of the contract. Pending the adjudication of the action after filing a



certified complaint showing the breach or threatened breach and filing a sufficient bond, the cooperative is entitled to a temporary restraining order and preliminary injunction against the patron member or patron.

(f) Any person who knowingly induces or attempts to induce any member or patrons of a cooperative organized under this article to breach his marketing contract with the cooperative, or who maliciously and knowingly spreads false reports about the finances or management thereof, shall be guilty of a misdemeanor and subject to a fine of not less than one hundred dollars (\$100.00), and not more than one thousand dollars (\$1,000.00), for each such offense; provided, that this section shall not apply to a bona fide creditor of such cooperative, or the agent or attorney of any such bona fide creditor, endeavoring to make collections of the indebtedness.

(g) In addition to the penalty provided in subsection (f) of this section, the person, corporation or other entity may be liable to the cooperative for civil damages for any violation of the provisions of subsection (f) of this section. Each violation shall constitute a separate offense and is subject to the penalties in this subsection and subsection (f) of this section.

**17-10-215. Board governs cooperative.**

A cooperative shall be governed by its board.

**17-10-216. Number of directors.**

The board shall have not less than three (3) directors.

**17-10-217. Election of directors.**

(a) Directors shall be elected for the term, at the time, and in the manner provided in this section and the bylaws. A majority of the directors shall be members and at least one (1) director shall be elected exclusively by the members holding patron membership interests. The voting authority of the directors may be allocated according to allocation units or equity classifications of the cooperative provided that at least one-half (1/2) of the voting power on general matters of the cooperative shall be allocated to one (1) or more directors elected by members holding patron membership interests or in the alternative the one (1) or more directors elected by the members holding patron membership interests shall have an equal or shall

not have a minority voting power on general matters of the cooperative.

(b) Directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws. Except for directors elected at district meetings, all directors shall be elected at the regular members' meeting.

(c) For a cooperative with districts or other units, members may elect directors on a district or unit basis if provided in the bylaws. The directors may be nominated or elected at district meetings if provided in the bylaws. Directors who are nominated at district meetings shall be elected at the annual regular members' meeting by vote of the entire membership, unless the bylaws provide that directors who are nominated at district meetings are to be elected by vote of the members of the district at the annual regular members' meeting.

(d) The following shall apply to alternative voting:

(i) A member may not vote other than by their presence at a meeting for a director unless alternative voting is authorized for election of directors by the articles or bylaws;

(ii) The ballot shall be in a form prescribed by the board;

(iii) The member shall mark the ballot for the candidate chosen and mail the ballot to the cooperative in a sealed plain envelope inside another envelope bearing the member's name, or shall vote in the alternative manner prescribed by the board;

(iv) If the ballot of the member is received by the cooperative on or before the date of the regular members' meeting, the ballot shall be accepted and counted as the vote of the absent member.

(e) If a member of a cooperative is not a natural person, and the bylaws do not provide otherwise, the member may appoint or elect one (1) or more natural persons to be eligible for election as a director to the board.

**17-10-218. Filling vacancies.**

If a patron member director's position becomes vacant for a director that was elected by patron members, the board shall appoint a patron member of the cooperative to fill the director's position until the next regular or special members' meeting. If the vacating director was not a patron member, the board shall appoint a patron member to fill the vacant position. At the next regular or special members' meeting, the members or patron members shall elect a director to fill the unexpired term of the vacant director's position.

**17-10-219. Removal of directors.**

The members electing a director may remove the director at a members' meeting for cause related to the duties of the position of director and fill the vacancy caused by the removal.

**17-10-220. Limitation of director's liability.**

(a) A director's personal liability to the cooperative or members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles except as provided in subsection (b) of this section.

(b) The articles may not eliminate or limit the liability of a director:

(i) For a breach of the director's duty of loyalty to the cooperative or its members;

(ii) For acts or omissions that are not in good faith or involve intentional misconduct or a knowing violation of law;

(iii) For a transaction from which the director derived an improper personal benefit; or

(iv) For an act or omission occurring before the date when the provision in the articles eliminating or limiting liability becomes effective.

**17-10-221. Officers.**

(a) The board shall elect:

(i) A chair; and

(ii) One (1) or more vice-chairs.

(b) The board shall elect or appoint:

(i) A records officer; and

(ii) A financial officer.

(c) The board may elect additional officers as the articles or bylaws authorize or require.

(d) The offices of records officer and financial officer may be combined.

(e) The chair and first vice-chair shall be directors and members. The financial officer, records officer, and additional officers need not be directors or members.

(f) The board may employ a chief executive officer to manage the day-to-day affairs and business of the cooperative.

(g) Other than the chief executive officer, members may remove an officer at a members' meeting for cause related to the duties of the position of the officer and fill the vacancy caused by the removal.

#### **17-10-222. Membership interests.**

(a) The authorized amount and divisions of patron membership interests and nonpatron membership interests may be increased or decreased or established or altered, in accordance with the restrictions in this article by amending the articles at a regular members' meeting or at a special members' meeting called for the purpose of the amendment.

(b) Authorized membership interests may be issued on terms and conditions prescribed in the articles, bylaws, or as determined by the board. The cooperative shall disclose to any person or entity acquiring membership interests to be issued by the cooperative, the organization, capital structure and business prospects and risks of the cooperative, the nature of the governance and financial rights of the membership interest being acquired and of other classes of membership and membership interests. The cooperative shall notify all members of the membership interests being offered by the cooperative. A membership interest may not be issued until the subscription price of the membership interest has been paid for in cash or a cash equivalent or property with the agreed upon value of the property to be contributed.

(c) The patron membership interests collectively shall have not less than fifteen percent (15%) of the cooperative's financial rights to profit allocations and distributions.

(d) After issuance by the cooperative, membership interests in a cooperative may only be sold or transferred with the approval of the board.

(e) The cooperative may solicit and issue nonpatron membership interests on terms and conditions determined by the board and disclosed in the articles, bylaws or by separate disclosure to the members. Each member acquiring nonpatron membership interests shall sign a member control agreement which shall describe the rights and obligations of the member as it relates to the nonpatron membership interests, the financial and governance rights, the transferability of the nonpatron membership interests, the division and allocations of profits and losses among the membership interests and membership classes, and financial rights upon liquidation. If the bylaws do not otherwise provide for the allocation of the profits and losses between patron membership interests and nonpatron membership interests, then the allocation of profits and losses among nonpatron membership interests individually and patron membership interests collectively shall be allocated on the basis of the value of contributions to capital made according to the patron membership interests collectively and the nonpatron membership interests individually to the extent the contributions have been accepted by the cooperative. Distributions of cash or other assets of the cooperative shall be allocated among the membership interests as provided in the articles and bylaws, subject to the provisions of this article. If not otherwise provided, distributions shall be made on the basis of value of the capital contributions of the patron membership interests collectively and the nonpatron membership interests to the extent the contributions have been accepted by the cooperative.

(f) The bylaws may provide that the cooperative or the patron members, individually or collectively, have the first privilege of purchasing the membership interests of any class of patron member's membership interests offered for sale. The first privilege to purchase patron membership interests may be satisfied by notice to other patron members that the patron membership interests are for sale and a procedure by which patron members may proceed to attempt to purchase and acquire the patron membership interests. A patron membership interest

acquired by the cooperative may be held to be reissued or may be retired and cancelled.

(g) Subject to the provisions in the bylaws, a member may dissent from and obtain payment for the fair value of the member's nonpatron membership interests in the cooperative if the articles or bylaws are amended in a manner that materially and adversely affects the rights and preferences of the nonpatron membership interests of the dissenting member. The dissenting member shall file a notice of intent to demand fair value of the membership interest with the records officer of the cooperative within thirty (30) days after the amendment of the bylaws and notice of the amendment to members, otherwise the right of the dissenting member to demand payment of fair value for the membership interest is deemed to be waived. If a proposed amendment of the articles or bylaws shall be approved by the members, a member who is entitled to dissent and who wishes to exercise dissenter's rights shall file a notice to demand fair value of the membership interest with the records officer of the cooperative before the vote on the proposed action and shall not vote in favor of the proposed action, otherwise the right to demand fair value for the membership interest by the dissenting member is deemed waived. After receipt of the dissenting member's demand notice and approval of the amendment, the cooperative has sixty (60) days to rescind the amendment or otherwise the cooperative shall remit the fair value for the one (1) member's interest to the dissenting member by one hundred eighty (180) days after receipt of the notice. Upon receipt of the fair value for the membership interest, the member has no further member rights in the cooperative.

**17-10-223. Grouping of members.**

(a) A cooperative may group members and patron members in districts, units or another basis if and as authorized in its articles and bylaws which may include authorization for the board to determine the groupings.

(b) The board may do things necessary to implement the use of districts or units including setting the time and place and prescribing the rules of conduct for holding meetings by districts or units to elect delegates to members' meetings.

**17-10-224. Member violations; liability for cooperative debts.**

(a) A member who knowingly, intentionally, or repeatedly violates a provision of the articles, bylaws, member control agreement or marketing contract with the cooperative, may be required by the board to surrender the financial rights of membership interest of any class owned by the member.

(b) The cooperative shall refund to the member for the surrendered financial rights of membership interest the lesser of the book value or market value of the financial right of the membership interest payable in not more than seven (7) years from the date of surrender or the board may transfer all of any patron member's financial rights to a class of financial rights held by members who are not patron members, or to a certificate of interest which carries liquidation rights on par with membership interests and is redeemed within seven (7) years after the transfer as provided in the certificate.

(c) Membership interests required to be surrendered may be reissued or be retired and cancelled by the board.

(d) A member who knowingly, intentionally or repeatedly violates a provision of the articles, bylaws, member control agreement, or a marketing contract, may be required by the board to surrender voting power in the cooperative.

(e) A member is not, merely on the account of that status, personally liable for the acts, debts, liabilities, or obligations of a cooperative. A member is liable for any unpaid subscription for the membership interest, unpaid membership fees, or a debt for which the member has separately contracted with the cooperative.

#### **17-10-225. Regular members' meetings.**

(a) Regular members' meetings shall be held annually at a time determined by the board, unless otherwise provided for in the bylaws.

(b) The regular members' meeting shall be held at the principal place of business of the cooperative or at another conveniently located place as determined by the bylaws or the board.

(c) The officers shall submit reports to the members at the regular members' meeting covering the business of the cooperative for the previous fiscal year that show the condition of the cooperative at the close of the fiscal year.

(d) All directors shall be elected at the regular members' meeting for the terms of office prescribed in the bylaws, except for directors elected at district or unit meetings.

(e) The cooperative shall give notice of regular members' meetings by mailing the regular members' meeting notice to each member at the member's last known post office address or by other notification approved by the board and agreed to by the members. The regular members' meeting notice shall be published or otherwise given by approved method at least two (2) weeks before the date of the meeting or mailed at least fifteen (15) days before the date of the meeting.

**17-10-226. Special members' meetings.**

(a) Special members' meetings of the members may be called by:

(i) A majority vote of the board; or

(ii) The written petition of at least twenty percent (20%) of the patron members, twenty percent (20%) of the nonpatron members or twenty percent (20%) of all members collectively are submitted to the chair.

(b) The cooperative shall give notice of a special members' meeting by mailing the special members' meeting notice to each member personally at the person's last known post office address or an alternative method approved by the board and the member individually or the members generally. For a member that is an entity, notice mailed or delivered by an alternative method shall be to an officer of the entity. The special members' meeting notice shall state the time, place, and purpose of the special members' meeting. The special members' meeting notice shall be issued within ten (10) days from and after the date of the presentation of a members' petition, and the special members' meeting shall be held within thirty (30) days after the date of the presentation of the members' petition.

**17-10-227. Certification of meeting notice.**

(a) After mailing special or regular members' meeting notices or otherwise delivering the notices, the cooperative shall execute a certificate containing the date of mailing or delivery of the notice and a statement that the special or



regular members' meeting notices were mailed or delivered as prescribed by law.

(b) The certificate shall be made a part of the record of the meeting.

**17-10-228. Failure to receive meeting notice.**

Failure of a member to receive a special or regular members' meeting notice does not invalidate an action that is taken by the members at a members' meeting.

**17-10-229. Quorum.**

(a) The quorum for a members' meeting to transact business shall be:

(i) Ten percent (10%) of the total number of members for a cooperative with five hundred (500) or less members; or

(ii) Fifty (50) members for cooperatives with more than five hundred (500) members.

(b) In determining a quorum at a meeting, on a question submitted to a vote by mail or an alternative method, members present in person or represented by mail vote or the alternative voting method shall be counted. The attendance of a sufficient number of members to constitute a quorum shall be established by a registration of the members of the cooperative present at the meeting. The registration shall be verified by the chair or the records officer of the cooperative and shall be reported in the minutes of the meeting.

(c) An action by a cooperative is not valid or legal in the absence of a quorum at the meeting at which the action was taken.

**17-10-230. Member voting rights.**

(a) A patron member of a cooperative is only entitled to one (1) vote on an issue to be voted upon by members holding patron membership interests, except that a patron member of a cooperative described in W.S. 17-10-231 may be entitled to more than one (1) vote as provided in that section. On any matter of the cooperative, the entire patron members voting power shall be voted collectively based upon the vote of the majority of patron members voting on the issue. A nonpatron member has the voting

rights in accordance to his nonpatron membership interests as granted in the bylaws, subject to the provisions of this article.

(b) A member or delegate may exercise voting rights on any matter that is before the members as prescribed in the articles or bylaws at a members' meeting from the time the member or delegate arrives at the members' meeting, unless the articles or bylaws specify an earlier and specific time for closing the right to vote.

(c) A member's vote at a members' meeting shall be in person or by mail if a mail vote is authorized by the board or by alternative method if authorized by the board, and not by proxy except as provided in subsection (d) of this section.

(d) The following shall apply to members represented by delegates:

(i) A cooperative may provide in the articles or bylaws that units or districts of members are entitled to be represented at members' meetings by delegates chosen by the members of the unit or district. The delegates may vote on matters at the members' meeting in the same manner as a member. The delegates may only exercise the voting rights on a basis and with the number of votes as prescribed in the articles or bylaws;

(ii) If the approval of a certain portion of the members is required for adoption of amendments, a dissolution, a merger, a consolidation, or a sale of assets, the votes of delegates shall be counted as votes by the members represented by the delegate;

(iii) Patron members may be represented by the proxy of other patron members;

(iv) Nonpatron members may be represented by proxy if authorized in the bylaws.

(e) The following shall apply to absentee ballots:

(i) A member who is or will be absent from a members' meeting may vote by mail or by an approved alternative method on the ballot prescribed in this subsection on any motion, resolution or amendment that the board submits for vote by mail or alternative method to the members;

(ii) The ballot shall be in the form prescribed by the board and contain:

(A) The exact text of the proposed motion, resolution or amendment to be acted on at the meeting; and

(B) The text of the motion, resolution or amendment for which the member may indicate an affirmative or negative vote.

(iii) The member shall express a choice by marking an appropriate choice on the ballot and mail, deliver or otherwise submit the ballot to the cooperative in a plain, sealed envelope inside another envelope bearing the member's name or by an alternative method approved by the board;

(iv) A properly executed ballot shall be accepted by the board and counted as the vote of the absent member at the meeting.

**17-10-231. Patron member voting in cooperatives constituted entirely or partially of other cooperatives or associations.**

(a) A cooperative that is constituted entirely or partially of other cooperatives or associations may authorize by the articles or the bylaws for affiliated cooperative patron members to have an additional vote for:

(i) A stipulated amount of business transacted between the patron member cooperative and the central cooperative organization;

(ii) A stipulated number of patron members in the member cooperative;

(iii) A certain stipulated amount of equity allocated to or held by the patron member cooperative in the cooperative central organization; or

(iv) A combination of methods in paragraphs (i) through (iii) of this subsection.

(b) A cooperative that is organized into units or districts of patron members, may, by the articles or the bylaws,

authorize the delegates elected by its patron members or, have an additional vote for:

(i) A stipulated amount of business transacted between the patron members in the units or districts and the cooperative;

(ii) A certain stipulated amount of equity allocated to or held by the patron members of the units or districts of the cooperative; or

(iii) A combination of methods in paragraphs (i) and (ii) of this subsection.

**17-10-232. Vote of ownership interests held by cooperative.**

A cooperative that holds ownership interests of another business entity may, by direction of the cooperative's board, elect or appoint a person to represent the cooperative at a meeting of the business entity. The representative has authority to represent the cooperative and may cast the cooperative's vote at the business entity's meeting.

**17-10-233. Allocations and distributions to members.**

(a) The bylaws shall prescribe the allocation of profits and losses between patron membership interests collectively and other membership interests. If the bylaws do not otherwise provide, the profits and losses between patron membership interests collectively and other membership interests shall be allocated on the basis of the value of contributions to capital made by the patron membership interests collectively and other membership interests and accepted by the cooperative. The allocation of profits to the patron membership interests collectively shall not be less than fifteen percent (15%) of the total profits in any fiscal year.

(b) The bylaws shall prescribe the distribution of cash or other assets of the cooperative among the membership interests of the cooperative. If not otherwise provided in the bylaws, distribution shall be made to the patron membership interests collectively and other members on the basis of the value of contributions to capital made and accepted by the cooperative by the patron membership interests collectively and other membership interests. The distributions to patron membership

interests collectively shall not be less than fifteen percent (15%) of the total distributions in any fiscal year.

**17-10-234. Allocations and distributions to patron members.**

(a) A cooperative may set aside a portion of net income allocated to the patron membership interests as the board determines advisable to create or maintain a capital reserve.

(b) In addition to a capital reserve, the board may, for patron membership interests:

(i) Set aside an amount not to exceed five percent (5%) of the annual net income of the cooperative for promoting and encouraging cooperative organization; and

(ii) Establish and accumulate reserves for new buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(c) Net income allocated to patron members in excess of dividends on equity and additions to reserves shall be distributed to patron members on the basis of patronage. A cooperative may establish allocation units, whether the units are functional, divisional, departmental, geographic, or otherwise and pooling arrangements and may account for and distribute net income to patrons on the basis of allocation units and pooling arrangements. A cooperative may offset the net loss of an allocation unit or pooling arrangement against the net income of other allocation units or pooling arrangements.

(d) Distribution of net income shall be made at least annually. The board shall present to the members at their annual meeting a report covering the operations of the cooperative during the preceding fiscal year.

(e) A cooperative may distribute net income to patron members in cash, capital credits, allocated patronage equities, revolving fund certificates, or its own or other securities.

(f) The cooperative may provide in the bylaws that nonmember patrons are allowed to participate in the distribution of net income payable to patron members on equal terms with patron members.

(g) If a nonmember patron with patronage credits is not qualified or eligible for membership, a refund due may be credited to the patron's individual account. The board may issue a certificate of interest to reflect the credited amount. After the patron is issued a certificate of interest, the patron may participate in the distribution of income on the same basis as a patron member.

**17-10-235. Distribution of unclaimed property.**

(a) A cooperative may, in lieu of paying or delivering to the state the unclaimed property specified in its report of unclaimed property, distribute the unclaimed property to a corporation or organization that is exempt from taxation. A cooperative making the election to distribute unclaimed property shall file with the secretary of state:

(i) A verified written explanation of the proof of claim of an owner establishing a right to receive the abandoned property;

(ii) Any error in the presumption of abandonment;

(iii) The name, address, and exemption number of the corporation or organization to which the property was or is to be distributed; and

(iv) The approximate date of distribution.

(b) This subsection does not alter the procedure provided by law for cooperatives to report unclaimed property to the state and the requirement that claims of owners are made to the cooperatives for a period following the publication of lists of abandoned property.

(c) The right of an owner to unclaimed property held by a cooperative is extinguished when the property is disbursed by the cooperative to a tax exempt organization in accordance with this section.

**17-10-236. Merger and consolidation.**

(a) Unless otherwise prohibited, cooperatives organized under the laws of this state may merge or consolidate with each other or other business entities organized under the laws of this state or another state by complying with the provisions of

this section or the law of the state where the surviving or new business entity will exist.

(b) To initiate a merger or consolidation of a cooperative, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board to prepare a plan. The plan shall state:

(i) The names of the constituent cooperatives and other business entities;

(ii) The name of the surviving or new cooperative or other business entity;

(iii) The manner and basis of converting membership or ownership interests of the constituent cooperatives or business entities into membership or ownership interests in the surviving or new cooperative or business entity;

(iv) The terms of the merger or consolidation;

(v) The proposed effect of the consolidation or merger on the members and patron members of the cooperative; and

(vi) For a consolidation, the plan shall contain the articles of the entity or organizational documents to be filed with the state in which the entity is organized.

(c) The following shall apply to notice:

(i) The board shall mail a merger or consolidation or otherwise transmit or deliver notice to each member. The notice shall contain:

(A) The full text of the plan; and

(B) The time and place of the meeting at which the plan will be considered.

(ii) A cooperative with more than two hundred (200) members may provide the merger or consolidation notice in the same manner as a regular members' meeting notice.

(d) The following shall apply to the adoption of a plan or merger or consolidation:

(i) A plan of merger or consolidation is adopted if:

(A) A quorum of the members is registered as being present or represented by mail vote at the meeting; and

(B) The plan is approved by two-thirds (2/3) of the votes cast, or for a cooperative with articles or bylaws requiring more than two-thirds (2/3) of the votes cast or other conditions for approval, the plan is approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(ii) After the plan has been adopted, articles of merger or consolidation stating the plan and that the plan was adopted according to this article shall be signed by the chair, vice-chair, records officer or documents officer of each cooperative merging or consolidating;

(iii) The articles of merger or consolidation shall be filed in the office of the secretary of state;

(iv) For a merger, the articles of the surviving cooperative subject to this article are deemed amended to the extent provided in the articles of merger;

(v) Unless a later date is provided in the plan, the merger or consolidation is effective when the articles of merger or consolidation are filed in the office of the secretary of state;

(vi) The secretary of state shall issue a certificate of organization of the merged or consolidated cooperative.

(e) The following shall apply to the effect of a merger:

(i) After the effective date, the cooperatives or other business entities that are parties to the plan become a single entity. For a merger, the surviving business entity is the business entity designated in the plan. For a consolidation, the new cooperative or other business entity is the business entity provided for in the plan. Except for the surviving or new business entity, the separate existence of all business entities that are parties to the plan cease on the effective date of the merger or consolidation;

(ii) The surviving or new business entity possesses all of the rights and property of each of the merged or



consolidated business entities and is responsible for all their obligations. The title to property of the merged or consolidated business entity is vested in the surviving or new business entity without reversion or impairment of the title caused by the merger or consolidation;

(iii) The right of a creditor may not be impaired by the merger or consolidation without the creditor's consent.

(f) The fee to be paid to the secretary of state for filing articles of merger or consolidation shall conform with the provisions of W.S. 17-16-122.

#### **17-10-237. Liquidation.**

(a) A cooperative shall be liquidated as provided in the articles in a manner consistent with other business entities organized in this state or if not provided, may be liquidated in the same manner as a limited liability company organized in this state or the members may authorize a liquidation by adopting a resolution at a members' meeting. The notice of the members' meeting shall include a statement that the disposition of all of the assets of the cooperative will be considered at the meeting. If a quorum is present in person, by mail ballot, or alternative method approved by the board at the members' meeting, the resolution approving of the liquidation is adopted if:

(i) Approved by two-thirds (2/3) of the votes cast;  
or

(ii) For a cooperative with articles or bylaws requiring more than two-thirds (2/3) for approval or other conditions for approval, the resolution is approved by the proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

(b) The board of directors by resolution may liquidate a cooperative if the board obtains an opinion of an accountant that the cooperative is unlikely to continue as a business based on its current finances.

#### **17-10-238. Methods of dissolution.**

A cooperative may be dissolved by the members or by order of the court.

**17-10-239. Winding up.**

(a) After the notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:

(i) To collect or make provision for the collection of all debts due or owing to the cooperative, including unpaid subscriptions for shares; and

(ii) To pay or make provision for the payment of all debts, obligations and liabilities of the cooperative according to their priorities.

(b) After the notice of intent to dissolve has been filed with the secretary of state, the board may sell, lease, transfer or otherwise dispose of all or substantially all of the property and assets of the dissolving cooperative without a vote of the members.

(c) Tangible and intangible property, including money, remaining after the discharge of the debts, obligations and liabilities of the cooperative may be distributed to the members and former members as provided in the bylaws. If previously authorized by the members, the tangible and intangible property of the cooperative may be liquidated and disposed of at the discretion of the board.

**17-10-240. Revocation of dissolution proceedings.**

(a) Dissolution proceedings may be revoked before the articles of dissolution are filed with the secretary of state.

(b) The chair may call a members' meeting to consider the advisability of revoking the dissolution proceedings. The question of the proposed revocation shall be submitted to the members at the members' meeting called to consider the revocation. The dissolution proceedings are revoked if the proposed revocation is approved at the members' meeting by a majority of the members of the cooperative or for a cooperative with articles or bylaws requiring a greater number of members, the number of members required by the articles or bylaws.

(c) Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of

state. After the notice is filed, the cooperative may resume business.

**17-10-241. Statute of limitations.**

The claim of a creditor or claimant against a dissolving cooperative is barred if the claim has not been enforced by initiating legal, administrative or arbitration proceedings concerning the claim by two (2) years after the date the notice of intent to dissolve is filed with the secretary of state.

**17-10-242. Articles of dissolution.**

(a) Articles of dissolution of a cooperative shall be filed with the secretary of state after payment of the claims of all known creditors and claimants has been made or provided for and the remaining property has been distributed by the board. The articles of dissolution shall state:

(i) That all debts, obligations, and liabilities of the cooperative have been paid or discharged or adequate provisions have been made for them or time periods allowing claims have run and other claims are not outstanding;

(ii) That the remaining property, assets, and claims of the cooperative have been distributed among the members or pursuant to a liquidation authorized by the members; and

(iii) That legal, administrative, or arbitration proceedings by or against the cooperative are not pending or adequate provision has been made for the satisfaction of a judgment, order or decree that may be entered against the cooperative in a pending proceeding.

(b) The cooperative is dissolved when the articles of dissolution have been filed with the secretary of state.

(c) The secretary of state shall issue to the dissolved cooperative or its legal representative a certificate of dissolution that contains:

(i) The name of the dissolved cooperative;

(ii) The date the articles of dissolution were filed with the secretary of state; and

(iii) A statement that the cooperative is dissolved.

**17-10-243. Application for court-supervised voluntary dissolution.**

After a notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the cooperative or, for good cause shown, a member or creditor may apply to a court within the county where the registered address is located to have the dissolution conducted or continued under the supervision of the court as provided in W.S. 17-10-250.

**17-10-244. Court-ordered remedies or dissolution.**

(a) A court may grant equitable relief that it deems just and reasonable in the circumstances or may dissolve a cooperative and liquidate its assets and business in any of the following circumstances:

(i) In a supervised voluntary dissolution that is applied for by the cooperative;

(ii) In an action by a member when it is established that:

(A) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the cooperative's affairs and the members are unable to break the deadlock;

(B) The directors or those in control of the cooperative have acted fraudulently, illegally or in a manner unfairly prejudicial toward one (1) or more members in their capacities as members, directors or officers;

(C) The members of the cooperative are so divided in voting power that, for a period that includes the time when two (2) consecutive regular members' meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(D) The cooperative assets are being misapplied or wasted; or

(E) The period of duration as provided in the articles has expired and has not been extended as provided in this article.

(iii) In an action by a creditor when:

(A) The claim of the creditor against the cooperative has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or

(B) The cooperative has admitted in writing that the claim of the creditor against the cooperative is due and owing and it is established that the cooperative is unable to pay its debts in the ordinary course of business.

(iv) In an action by the attorney general to dissolve the cooperative in accordance with this article when it is established that a decree of dissolution is appropriate.

(b) In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the cooperative but may not refuse to order equitable relief or dissolution solely on the ground that the cooperative has accumulated operating net income or current operating net income.

(c) In deciding whether to order dissolution of the cooperative, the court shall consider whether lesser relief suggested by one (1) or more parties, such as a form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subparagraph (a)(ii)(B) or (C) of this section. Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

(d) If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, the court may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

(e) Proceedings under this section shall be brought in a court within the county where the registered address of the cooperative is located.

(f) It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

**17-10-245. Procedure in involuntary or court-supervised voluntary dissolution.**

(a) In dissolution proceedings before a hearing can be completed the court may:

(i) Issue injunctions;

(ii) Appoint receivers with all powers and duties that the court directs;

(iii) Take actions required to preserve the cooperative's assets wherever located; and

(iv) Carry on the business of the cooperative.

(b) After a hearing is completed, on notice the court directs to be given to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative's assets, including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative either at public or private sale.

(c) The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority:

(i) The costs and expenses of the proceedings, including attorneys' fees and disbursements;

(ii) Debts, taxes and assessments due the United States, this state and other states in that order;

(iii) Claims duly proved and allowed to employees under the provisions of the workers' compensation act except that claims under this clause may not be allowed if the cooperative has carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

(iv) Claims, including the value of all compensation paid in a medium other than money, proved and allowed to employees for services performed within three (3) months preceding the appointment of the receiver, if any; and

(v) Other claims proved and allowed.

(d) After payment of the expenses of receivership and claims of creditors are proved, the remaining assets, if any, may be distributed to the members or distributed pursuant to an approved liquidation plan.

**17-10-246. Receiver qualifications and powers.**

(a) A receiver shall be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. A receiver shall give a bond as directed by the court with the sureties required by the court.

(b) A receiver may sue and defend in all courts as receiver of the cooperative. The court appointing the receiver has exclusive jurisdiction of the cooperative and its property.

**17-10-247. Dissolution action by attorney general; administrative dissolution.**

(a) A cooperative may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general if it is established that:

(i) The articles and certificate of organization were procured through fraud;

(ii) The cooperative was organized for a purpose not permitted by this article or prohibited by state law;

(iii) The cooperative has flagrantly violated a provision of this article, has violated a provision of this article more than once or has violated more than one (1) provision of this article; or

(iv) The cooperative has acted, or failed to act, in a manner that constitutes surrender or abandonment of the cooperative's franchise, privileges, or enterprise.

(b) An action may not be commenced under subsection (a) of this section until thirty (30) days after notice to the cooperative by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the cooperative has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the cooperative thirty (30) additional days to make the correction before filing the action.

(c) The provisions of W.S. 17-16-1420 through 17-16-1423 shall apply to the administrative dissolution of any domestic cooperative and the provisions of W.S. 17-16-1530 through 17-16-1532 shall apply to the administrative dissolution of any foreign cooperative.

**17-10-248. Filing claims in court-supervised dissolution proceedings.**

(a) In proceedings to dissolve a cooperative, the court may require all creditors and claimants of the cooperative to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.

(b) If the court requires the filing of claims, the court shall:

(i) Set a date, by order, at least one hundred twenty (120) days after the date the order is filed, as the last day for the filing of claims; and

(ii) Prescribe the notice of the fixed date that shall be given to creditors and claimants.

(c) Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the cooperative.

**17-10-249. Discontinuance of court-supervised dissolution proceedings.**

The involuntary or supervised voluntary dissolution of a cooperative may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the



proceedings and direct the receiver, if any, to redeliver to the cooperative its remaining property and assets.

**17-10-250. Court-supervised dissolution order.**

(a) In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all debts, obligations and liabilities of the cooperative have been paid or discharged and the remaining property and assets have been distributed to its members or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations and liabilities, when all the property and assets have been applied so far as they will go to their payment according to their priorities, the court shall enter an order dissolving the cooperative.

(b) When the order dissolving the cooperative or association has been entered, the cooperative or association is dissolved.

**17-10-251. Filing court's dissolution order.**

After the court enters an order dissolving a cooperative, the court administrator shall cause a certified copy of the dissolution order to be filed with the secretary of state. The secretary of state may not charge a fee for filing the dissolution order.

**17-10-252. Barring of claims.**

(a) A person who is or becomes a creditor or claimant before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative or arbitration proceeding during the pendency of the dissolution proceeding or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings and all those claiming through or under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

(b) Within one (1) year after articles of dissolution have been filed with the secretary of state pursuant to this article or a dissolution order has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

(i) Against the cooperative to the extent of undistributed assets; or

(ii) If the undistributed assets are not sufficient to satisfy the claim, the claim may be allowed against a member to the extent of the distributions to members in dissolution received by the member.

(c) Debts, obligations, and liabilities incurred during dissolution proceedings shall be paid or provided for by the cooperative before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but is not paid may pursue any remedy against the officers, directors or members of the cooperative before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

#### **17-10-253. Right to sue or defend after dissolution.**

After a cooperative has been dissolved, any of its former officers, directors or members may assert or defend, in the name of the cooperative, a claim by or against the cooperative.

### **CHAPTER 11 INDUSTRIAL CORPORATIONS**

#### **17-11-101. Short title.**

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

#### **17-11-102. Definitions.**

(a) As used in this act, unless a different meaning is required by the context, the following words and phrases have the following meanings:

(i) "Corporation" means a Wyoming industrial development corporation created under this act;

(ii) "Financial institution" means any bank, trust company, savings and loan association, industrial bank, public or private pension or retirement fund, insurance company or related corporation, partnership, foundation, or other institution engaged in lending or investing funds;

(iii) "Member" means any financial institution which undertakes to lend money to or to buy stock in the corporation created under this act;

(iv) "Board of directors" means the board of directors of the corporation created under this act;

(v) "Loan limit" means for any member, the maximum amount permitted to be outstanding at one (1) time on loans made by such member to the corporation, as determined under the provisions of this act;

(vi) "Shareholder" means:

(A) If the corporation is formed for profit, the holder of record of shares in the corporation; or

(B) If the corporation is a nonprofit corporation, a member who has contributed money, property, services or other item of value and whose contribution is recorded on the books of the corporation.

**17-11-103. Incorporation; profit or nonprofit corporation; articles of incorporation generally.**

(a) Fifteen (15) or more persons, a majority of whom shall be residents of this state, may form an industrial development corporation under the provisions of this act, by filing in the office of the secretary of state articles of incorporation.

(b) The corporation may be formed as a nonprofit corporation in which event it shall be subject to and governed by the provisions of W.S. 17-19-101 through 17-19-1807, not in conflict with or inconsistent with the provisions of this act, or the corporation may be formed for profit in which event it shall be subject to and governed by the provisions of the Wyoming Business Corporation Act not in conflict with or inconsistent with the provisions of this act.

(c) The articles of incorporation shall contain:

(i) The name of the corporation which shall include the words "Industrial Development Corporation of Wyoming";

(ii) A statement as to whether the corporation is formed as a nonprofit corporation or for profit;

(iii) The purposes for which the corporation is founded, which shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of Wyoming and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, and improve the standard of living of the citizens of this state; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state. The purposes for which the corporation is formed may also include the rendering of service to industry by providing feasibility, product, production and market analyses, patent advice, technological information, research and development assistance, financial availability counseling, management counseling, and any other information, assistance or facilities required for the creation of new industry, to further the expansion of existing industry, or to induce industry to locate in the state;

(iv) The total number of directors, their terms, and the method of their election;

(v) If the corporation is a nonprofit corporation, a provision that the assets on dissolution, and any distributions of earnings or assets prior to dissolution, shall be made only to a charitable or educational organization or institution;

(vi) The information required by W.S. 17-19-202, if the corporation is formed on a nonprofit basis and the information required by W.S. 17-16-202, if the corporation is formed for profit.

(d) The articles of incorporation shall be subscribed and acknowledged by not less than five (5) persons.

(e) The articles of incorporation shall recite that the corporation is organized under the provisions of this act.

(f) The secretary of state shall not approve the articles of incorporation for a corporation organized under this act

until a total of at least ten (10) national banks, state banks, savings banks, industrial savings banks, federal savings and loan associations, domestic building and loan associations, or insurance companies authorized to do business within this state, or any combination thereof, have agreed in writing to become members of said corporation, which agreement shall be filed with the secretary of state with the articles of incorporation and the filing of same shall be a condition precedent to the approval of the articles of incorporation by the secretary of state. Whenever the articles of incorporation shall have been filed in the office of the secretary of state and approved by him, and all filing fees and taxes have been paid, the subscribers, their successors and assigns shall constitute a corporation, and said corporation shall then be authorized to commence business.

**17-11-104. Powers of corporation generally.**

(a) In furtherance of its purposes the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(i) To elect, appoint, and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation;

(ii) To borrow money from its members, the small business administration or any other similar federal agency, or the state of Wyoming or any agency or department thereof or any other corporation or person, for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidence of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights, and privileges of every kind and nature, or any part thereof or interest therein, without securing stockholder or member approval;

(iii) To make loans to any project, person, firm, corporation, association or trust, to invest in a small business investment company as regulated by the small business administration, and to establish and regulate the terms and conditions with respect to those loans or investments;

(iv) To cooperate with and avail itself of the facilities of the United States department of commerce, the Wyoming business council created by W.S. 9-12-103 and any other similar state or federal governmental agencies; and to cooperate

with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof;

(v) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act.

(b) In addition to the powers herein enumerated, the corporation if organized as a nonprofit corporation shall have all of the powers conferred on such corporations by W.S. 17-19-101 through 17-19-1807, and if organized as a profit corporation shall have all of the powers conferred on corporations under the Wyoming Business Corporation Act.

**17-11-105. Authority to acquire and dispose of bonds, securities and capital stock of corporation.**

(a) Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization or trust indentures:

(i) Any person, domestic or foreign corporation, public utility company, insurance company, financial institution as defined herein, or trust, is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities, or other evidence of indebtedness, or the shares of the capital stock of the corporation, or to make contributions to any corporation organized hereunder, and while a shareholder to exercise all the rights, powers, and privileges granted shareholders, including the right to vote, all without the approval of any regulatory authority of the state except as otherwise provided in this act;

(ii) All financial institutions as defined herein are hereby authorized to become members of the corporation and to make loans to the corporation as provided herein; and

(iii) Each financial institution which becomes a member of the corporation may acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities, or other evidence of indebtedness, or the shares of the capital stock of the corporation, and make contributions to the corporation, and as a shareholder exercise all the rights, powers, and privileges granted stockholders,

including the right to vote, all without the approval of any regulatory authority of the state.

(b) The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

**17-11-106. Membership generally; loans to corporation.**

(a) Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by the board.

(b) Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(i) All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with the provisions of this section;

(ii) Repealed by Laws 1988, ch. 84, § 2.

(iii) The total amount outstanding on loans to the corporation made by any member at any one (1) time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(A) Twenty percent (20%) of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding amounts validly called for loan but not yet loaned;

(B) The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or in the case of an insurance company, its last annual statement to the state insurance commissioner: two and one-half percent (2 1/2%) of the capital and surplus of commercial banks and trust companies; one-half of one percent (1/2%) of the total outstanding loans made by savings and loan associations, and

building and loan associations; two and one-half percent (2 1/2%) of the capital and unassigned surplus of stock insurance companies, except fire insurance companies; two and one-half percent (2 1/2%) of the unassigned surplus of mutual insurance companies, except fire insurance companies; one-tenth of one percent (1/10%) of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions. The board of directors may, on the request of any financial institution applying for membership, and with the approval of two-thirds (2/3%) of the members of the same class as the financial institution making the request, authorize a different loan limit for such financial institution than is set forth above.

(iv) Each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of the member's loan limit, reduced by the balance of outstanding loans made by the member to the corporation, the investment in capital stock of the corporation held by the member and the amount of any contribution made by the member to the corporation, at the time of the call. No member shall be subject to a call as a result of owning stock in the corporation. Calls shall be made only on members who have made member loans to the corporation;

(v) All loans to the corporation by members under this section shall be evidenced by bonds, debentures, notes, or other evidence of indebtedness of the corporation, which shall be freely negotiable at all times, and which shall bear interest at a rate of not less than one-quarter of one percent (1/4%).

#### **17-11-107. Duration of membership; withdrawal.**

Membership in the corporation shall be for the duration of the corporation, provided that upon written notice given to the corporation a minimum of three (3) years and a maximum of fifteen (15) years in advance, as determined by the board of directors, a member may withdraw from membership in the corporation at the expiration date of such notice.

#### **17-11-108. Powers of shareholders and members.**

(a) The shareholders and the members of the corporation shall have the following powers of the corporation:



(i) To determine the number of and elect directors as provided in W.S. 17-11-110;

(ii) To make, amend and repeal bylaws;

(iii) To amend the certificate of incorporation;

(iv) To dissolve the corporation as provided in W.S. 17-11-116;

(v) To do all things necessary or desirable to secure aid, assistance loans and other financing from any financial institutions, and from any agency established under the Small Business Investment Act of 1958, Public Law 85-699, 85th Congress, or other similar federal laws now or hereafter enacted, and from the state of Wyoming or any agency or department thereof;

(vi) To exercise such other of the powers of the corporation consistent with the act as may be conferred on the shareholders and the members by the bylaws.

(b) As to all matters requiring action by the shareholders and the members of the corporation, the shareholders and members shall vote as provided in the bylaws of the corporation.

(c) Unless otherwise provided in the articles of incorporation, each shareholder shall have one (1) vote, in person or by proxy, for each share of stock held by him. Each member shall have one (1) vote, in person or by proxy, for each share of stock held by him except that any member having a loan limit of more than one thousand dollars (\$1,000.00) and having a loan to the corporation as provided under W.S. 17-11-106(b) shall have one (1) additional vote, in person or by proxy, for each additional one thousand dollars (\$1,000.00) which the member has outstanding in loans to the corporation under W.S. 17-11-106(b) at any one (1) time.

#### **17-11-109. Amendments to articles of incorporation.**

(a) The articles of incorporation may be amended by the votes of the shareholders and the members of the corporation as provided in the corporate bylaws.

(b) An amendment to the articles of incorporation shall be filed with the secretary of state, and shall not take effect until the date of such filing.

**17-11-110. Board of directors.**

(a) The business and affairs of the corporation shall be managed and conducted by a board of directors, which shall consist of not less than five (5) nor more than seven (7) members. One (1) member of the board shall be the chief executive officer of the Wyoming business council or other person designated by the council. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the articles of incorporation or the bylaws of the corporation upon the shareholders or members.

(b) The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, or if no annual meeting shall be held in the year of incorporation, then within ninety (90) days after the filing of the articles of incorporation at a special meeting to be called for such purpose. The directors shall hold office until the next annual meeting of the corporation and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the stockholders shall be filled by the directors elected by the stockholders.

(c) Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

**17-11-111. Determination of net earnings and surplus.**

Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

**17-11-112. Depository of funds.**

The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of

any director who is an officer or director of the depository so designated.

**17-11-113. Examination by director; reports.**

The corporation shall be examined at least once annually by the director of the state department of audit or his designee and shall make reports of its condition annually to director, who in turn shall make copies of such reports available to the governor; and the corporation shall also furnish such other information as may from time to time be required by the director or the secretary of state. The director shall exercise the same power and authority over corporations organized under this act as is now exercised over banks and trust companies.

**17-11-114. First meeting.**

(a) The first meeting of the corporation shall be called by a notice signed by three (3) or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least five (5) days before the day appointed for the meeting, or may be held without such notice upon waiver in writing signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(b) At such first meeting, the incorporators shall adopt bylaws, elect directors, and take such other action as the incorporators may see fit. Eight (8) of the incorporators shall constitute a quorum for the transaction of business.

**17-11-115. Perpetual existence.**

The period of existence of the corporation shall be perpetual, subject to the right of the shareholders and the members to dissolve the corporation prior to the expiration of said period as provided in W.S. 17-11-116.

**17-11-116. Dissolution.**

The corporation may upon the affirmative vote of two-thirds (2/3) of the votes to which the shareholders shall be entitled and two-thirds (2/3) of the votes to which the members shall be entitled to dissolve said corporation. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the shareholders until all sums due the members

of the corporation and creditors thereof have been paid in full. If the corporation is a nonprofit corporation the assets remaining after payment in full of all amounts due creditors and the members of the corporation shall be paid only to charitable or educational organizations and institutions, in accordance with the articles of incorporation and bylaws of the corporation.

**17-11-117. Corporations designated "state development companies" for purposes of federal law.**

Any corporation organized under the provisions of this act shall be a state development company, as defined in the Small Business Investment Act of 1958, Public Law 85-699, 85th Congress, or any similar federal legislation, and shall be authorized to operate on a statewide basis.

**17-11-118. Exemption from securities registration.**

Corporations organized under the provisions of this act shall be exempt from registration under, or compliance with, the Wyoming Uniform Securities Act, W.S. 17-4-101 through 17-4-701.

**17-11-119. Tax exemptions, credits or privileges.**

Any tax exemptions, tax credits, or tax privileges granted to banks, savings and loan associations, trust companies, and other financial institutions by any general laws are granted to corporations organized pursuant to this act.

**17-11-120. Filing fees.**

Corporations organized for profit under the provisions of this act shall pay the filing fees required by W.S. 17-16-122 and 17-16-1630, and nonprofit corporations shall pay the filing fees required by W.S. 17-19-122 and 17-19-1630.

CHAPTER 12  
MISCELLANEOUS COMPANIES

**17-12-101. Certificate of ditch company.**

Whenever any three (3) or more persons associate under the provisions of this article, to form a company for the purpose of constructing a ditch or ditches for the purpose of conveying water to any mines, mills or lands to be used for mining, milling or irrigating of lands, they shall in their certificate,

in addition to the matters required in the first section of this article, specify as follows: the stream or streams from which the water is to be taken out; the line of said ditch or ditches, as near as may be, and the use to which said water is intended to be applied.

**17-12-102. Right-of-way of ditch company; interference with prior ditch and water rights.**

Any ditch company formed under the provisions of this article shall have the right-of-way over the lines named in the certificate, and shall also have the right to run the water of the stream or streams named in the certificate through their ditch or ditches; provided, that the lines proposed shall not interfere with any other ditch whose rights are prior to those acquired under this article and by virtue of said certificate. Nor shall the water of any stream be directed from its original channel to the detriment of any miners, mill men or others along the line of said stream, or who may have a priority of right, and there shall be at all times left sufficient water in said stream for the use of miners and agriculturists who may have a prior right to such water along said stream.

**17-12-103. Proper condition of ditches.**

Every ditch company organized under the provisions of this article shall be required to keep the banks of their ditch or ditches in good condition, so that the water shall not be allowed to escape from the same, to the injury of any mining claim, road, ditch or other property located and held prior to the location of such ditch; and whenever it is necessary to convey any ditch over, or across, or above any lode or mining claim, the company shall, if necessary to keep the water of said ditch out from any claim, flume the ditch so far as necessary to protect such claim or property from the water of said ditch; provided, that in all cases where the ditch has priority of right by location, the owners of such claim or property shall be compelled to protect themselves from any damages that might be created by said ditch, and the owner of such claim shall be liable for any damages resulting to said ditch by reason of the works or operations performed on such claim or property.

**17-12-104. Applicability of W.S. 17-12-101 through 17-12-104 to existing companies.**

This act shall apply to all ditch companies already formed and incorporated under the laws of Wyoming.

**17-12-105. Authority of ditch and water companies to issue bonds and mortgage property.**

Every corporation organized under the laws of Wyoming for the purpose of constructing or operating a system of waterworks, within the corporate limits of any city or town, and every ditch and water company organized under the laws of Wyoming shall have power, and is hereby authorized to mortgage or execute deeds of trust in whole or in part, of their real and personal property and franchises, to secure money borrowed by them for the construction or operation of their waterworks, or ditches, and may also issue their corporate bonds, to make all of said bonds payable to bearer, or otherwise, negotiable by delivery and bearing interest at such rates, and may sell the same at such rates and prices as they may deem proper; and said bonds shall be made payable at such times, and the principal and interest thereof may be made payable within or without this state, at such place or places as may be determined upon by said company.

**17-12-106. Certificate of flume company.**

When any company shall organize under the provisions of this article to form a company for the purpose of constructing a flume, their certificate, in addition to the matters required in the first section of this article, shall specify as follows: the place of beginning, the termini and the route so near as may be, and the purpose for which such flume is intended, and when organized according to the provisions of this chapter, said company shall have the right-of-way over the line proposed in such certificate for such flume; provided, it does not conflict with the right of any farmer, fluming, ditching or other company.

**17-12-107. Certificate of telegraph company.**

Whenever any three (3) or more persons associate under the provisions of this article, to form a company for the purpose of constructing a line or lines of magnetic telegraph in this state, their certificate shall specify as follows: the termini of such line or lines, and the counties through which they shall pass; and such corporation is hereby authorized to construct said telegraph line or lines from point to point along and upon any of the public roads, by the erection of the necessary fixtures, including posts, piers and abutments, necessary for the wires; provided, that the same shall not incommode the public in the use of said roads or highways.

CHAPTER 13  
PARTNERSHIPS

ARTICLE 1  
IN GENERAL

- 17-13-101. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-102. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-103. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-104. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-105. Repealed by Laws 1993, ch. 194, § 2.

ARTICLE 2  
NATURE OF PARTNERSHIP

- 17-13-201. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-202. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-203. Repealed by Laws 1993, ch. 194, § 2.

ARTICLE 3  
RELATIONSHIP TO THIRD PERSONS

- 17-13-301. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-302. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-303. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-304. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-305. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-306. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-307. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-308. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-309. Repealed by Laws 1993, ch. 194, § 2.

ARTICLE 4  
RELATIONSHIP OF PARTNERS ONE TO ANOTHER

- 17-13-401. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-402. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-403. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-404. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-405. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-406. Repealed by Laws 1993, ch. 194, § 2.

ARTICLE 5  
PROPERTY RIGHTS OF PARTNERS

- 17-13-501. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-502. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-503. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-504. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-505. Repealed by Laws 1993, ch. 194, § 2.

ARTICLE 6  
DISSOLUTION

- 17-13-601. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-602. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-603. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-604. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-605. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-606. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-607. Repealed by Laws 1993, ch. 194, § 2.
- 17-13-608. Repealed by Laws 1993, ch. 194, § 2.



17-13-609. Repealed by Laws 1993, ch. 194, § 2.  
17-13-610. Repealed by Laws 1993, ch. 194, § 2.  
17-13-611. Repealed by Laws 1993, ch. 194, § 2.  
17-13-612. Repealed by Laws 1993, ch. 194, § 2.  
17-13-613. Repealed by Laws 1993, ch. 194, § 2.  
17-13-614. Repealed by Laws 1993, ch. 194, § 2.  
17-13-615. Repealed by Laws 1993, ch. 194, § 2.

CHAPTER 14  
LIMITED PARTNERSHIPS

ARTICLE 1  
LIMITED PARTNERSHIP ACT OF 1971

17-14-101. Repealed by Laws 1979, ch. 153, § 3.  
17-14-102. Repealed by Laws 1979, ch. 153, § 3.  
17-14-103. Repealed by Laws 1979, ch. 153, § 3.  
17-14-104. Repealed by Laws 1979, ch. 153, § 3.  
17-14-105. Repealed by Laws 1979, ch. 153, § 3.  
17-14-106. Repealed by Laws 1979, ch. 153, § 3.  
17-14-107. Repealed by Laws 1979, ch. 153, § 3.  
17-14-108. Repealed by Laws 1979, ch. 153, § 3.  
17-14-109. Repealed by Laws 1979, ch. 153, § 3.  
17-14-110. Repealed by Laws 1979, ch. 153, § 3.  
17-14-111. Repealed by Laws 1979, ch. 153, § 3.  
17-14-112. Repealed by Laws 1979, ch. 153, § 3.  
17-14-113. Repealed by Laws 1979, ch. 153, § 3.  
17-14-114. Repealed by Laws 1979, ch. 153, § 3.

17-14-115. Repealed by Laws 1979, ch. 153, § 3.  
17-14-116. Repealed by Laws 1979, ch. 153, § 3.  
17-14-117. Repealed by Laws 1979, ch. 153, § 3.  
17-14-118. Repealed by Laws 1979, ch. 153, § 3.  
17-14-119. Repealed by Laws 1979, ch. 153, § 3.  
17-14-120. Repealed by Laws 1979, ch. 153, § 3.  
17-14-121. Repealed by Laws 1979, ch. 153, § 3.  
17-14-122. Repealed by Laws 1979, ch. 153, § 3.  
17-14-123. Repealed by Laws 1979, ch. 153, § 3.  
17-14-124. Repealed by Laws 1979, ch. 153, § 3.  
17-14-125. Repealed by Laws 1979, ch. 153, § 3.  
17-14-126. Repealed by Laws 1979, ch. 153, § 3.  
17-14-127. Repealed by Laws 1979, ch. 153, § 3.  
17-14-128. Repealed by Laws 1979, ch. 153, § 3.  
17-14-129. Repealed by Laws 1979, ch. 153, § 3.  
17-14-130. Repealed by Laws 1979, ch. 153, § 3.  
17-14-131. Repealed by Laws 1979, ch. 153, § 3.

ARTICLE 2  
GENERAL PROVISIONS

17-14-201. **Short title.**

This act may be cited as the "Uniform Limited Partnership Act".

17-14-202. **Definitions.**

(a) As used in this act, unless the context otherwise requires:

(i) "Certificate of limited partnership" means the certificate referred to in W.S. 17-14-301, and the certificate as amended or restated;

(ii) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner;

(iii) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in W.S. 17-14-502;

(iv) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one (1) or more general partners and one (1) or more limited partners;

(v) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner;

(vi) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

(vii) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two (2) or more persons under the laws of this state and having one (1) or more general partners and one (1) or more limited partners;

(viii) "Partner" means a limited or general partner;

(ix) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;

(x) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;

(xi) "Person" means a natural person, partnership, limited partnership (domestic or foreign), limited liability company, trust, estate, association or corporation;

(xii) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(xiii) "Certificate of continuance" means the certificate issued under the provisions of this act to continue a foreign limited partnership in this state;

(xiv) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to W.S. 17-14-503;

(xv) "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership" means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership;

(xvi) "This act" means W.S. 17-14-201 through 17-14-1104.

**17-14-203. Name.**

(a) The name of each limited partnership as set forth in its certificate of limited partnership:

(i) Shall contain without abbreviation the words "limited partnership";

(ii) Shall not contain the name of a limited partner unless:

(A) It is also the name of a general partner or the corporate name of a corporate general partner; or

(B) The business of the limited partnership had been carried on under that name before the admission of that limited partner.

(iii) Repealed by Laws 1995, ch. 45, § 2.

(iv) Shall not be the same as, or deceptively similar to, any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from other business names as provided in W.S. 17-16-401.

**17-14-204. Reservation of name.**

(a) The exclusive right to the use of a name may be reserved by:

(i) Any person intending to organize a limited partnership under this act and to adopt that name;

(ii) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(iii) Any foreign limited partnership intending to register in this state and adopt that name; and

(iv) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(b) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty (120) days. The reservation of a name is not renewable. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

**17-14-205. Specified office and agent.**

(a) Each limited partnership shall continuously maintain in this state:

(i) An office, which may but need not be a place of its business in this state, at which shall be kept the records required by W.S. 17-14-206 to be maintained; and

(ii) A registered agent for service of process on the limited partnership as provided in W.S. 17-28-101 through 17-28-111.

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

**17-14-206. Records to be kept.**

(a) Each limited partnership shall keep at the office referred to in W.S. 17-14-205 the following:

(i) A current list of the full name and last known business address of each partner separately identifying in alphabetical order the general partners and the limited partners;

(ii) A copy of the certificate of limited partnership and all certificates of amendment thereto, and any application for and certificate of continuance, together with executed copies of any powers of attorney pursuant to which any certificate or application has been executed;

(iii) Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the three (3) most recent years;

(iv) Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three (3) most recent years; and

(v) Unless contained in a written partnership agreement, a writing setting out:

(A) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(B) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(C) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(D) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

(b) Records kept under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

**17-14-207. Nature of business.**

A limited partnership may carry on any business that a partnership without limited partners may carry on except banking or acting as an insurer as defined in W.S. 26-1-102(a)(xvi).

**17-14-208. Business transactions of partner with partnership.**

Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

**17-14-209. Fees.**

(a) The secretary of state shall charge and collect the following fees:

(i) For filing a certificate of limited partnership, for an application for a certificate of continuance or for registering a foreign limited partnership, a fee of one hundred dollars (\$100.00);

(ii) For filing a certificate of amendment or cancellation, or for filing a reservation of name, fifty dollars (\$50.00).

(iii) Repealed By Laws 2000, Ch. 35, § 2.

(iv) Repealed By Laws 2000, Ch. 35, § 2.

(b) In addition to the fees provided under subsection (a) of this section, each limited partnership or foreign limited partnership shall comply with and pay the fees provided by W.S. 17-16-1630(a) through (e) and 17-16-120(j) as if it were a corporation.

(c) Any limited partnership or foreign limited partnership failing to comply with subsection (b) of this section or failing to pay any penalty imposed under W.S. 17-28-109 may be dissolved

or its franchise revoked by the secretary of state as if it were a corporation.

(d) Notwithstanding any other provisions of this section, any Wyoming limited partnership dissolved or whose franchise is revoked under subsection (c) of this section may be reinstated as provided in W.S. 17-14-905.

ARTICLE 3  
FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

**17-14-301. Certificate of limited partnership.**

(a) In order to form a limited partnership a certificate of limited partnership shall be executed and filed in the office of the secretary of state. The certificate shall set forth:

(i) The name of the limited partnership;

(ii) Repealed by Laws 1995, ch. 45, § 2.

(iii) The address of the office and the name and address of the agent for service of process required to be maintained by W.S. 17-14-205;

(iv) The name and the business address of each general partner;

(v) The amount of cash and a description and statement of the agreed value of the other property or services contributed or to be contributed in the future;

(vi) Repealed by Laws 1995, ch. 45, § 2.

(vii) Repealed by Laws 1995, ch. 45, § 2.

(viii) Repealed by Laws 1995, ch. 45, § 2.

(ix) Repealed by Laws 1995, ch. 45, § 2.

(x) Repealed by Laws 1995, ch. 45, § 2.

(xi) Repealed by Laws 1995, ch. 45, § 2.

(xii) Repealed by Laws 1995, ch. 45, § 2.



(xiii) The latest date upon which the limited partnership is to dissolve;

(xiv) Whether the limited partnership is a limited liability limited partnership; and

(xv) Any other matters the partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

#### **17-14-302. Amendment of certificate.**

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

(i) The name of the limited partnership;

(ii) The date of filing the certificate; and

(iii) The amendment to the certificate.

(b) Within thirty (30) days after the occurrence of any of the following events and except as provided by subsection (f) of this section, an amendment to a certificate of limited partnership reflecting the occurrence of the event shall be filed:

(i) Repealed by Laws 1995, ch. 45, § 2.

(ii) The admission of a new general partner;

(iii) The withdrawal of a general partner; or

(iv) Repealed By Laws 1999, ch. 145, § 2.

(v) The election of all the partners to become a limited liability limited partnership.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or

that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) A person is not liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section if the amendment is filed within the periods [period] specified in subsection (b) or (f) of this section, whichever applies.

(f) An amendment to a certificate of limited partnership reflecting the occurrence of any event specified by subsection (b) of this section for a partnership comprised of ten (10) partners or less, who are natural persons, may be filed annually instead of within the thirty (30) day period prescribed by subsection (b) of this section. The amendment certificate shall reflect all events specified by subsection (b) of this section which occurred during the calendar year and shall be filed in the office of the secretary of state no later than January 31 of the year following the year for which the amendment certificate applies.

(g) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

#### **17-14-303. Cancellation of certificate.**

(a) A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the secretary of state and set forth:

(i) The name of the limited partnership;

(ii) The date of filing of its certificate of limited partnership;

(iii) The reason for filing the certificate of cancellation;

(iv) The effective date (which shall be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(v) Any other information the general partners filing the certificate determine.

**17-14-304. Execution of certificates.**

(a) Each certificate required by this article to be filed in the office of the secretary of state shall be executed in the following manner:

(i) An original certificate of limited partnership shall be signed by all general partners;

(ii) A certificate of amendment shall be signed by at least one (1) general partner and by each other general partner designated in the certificate as a new general partner; and

(iii) A certificate of cancellation shall be signed by all general partners.

(b) Any person may sign a certificate by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner shall specifically describe the admission.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

**17-14-305. Execution by judicial act.**

If a person required by W.S. 17-14-304 to execute any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal, may petition the district court to direct the execution of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

**17-14-306. Filing in office of secretary of state.**

(a) Two (2) signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation

(or of any judicial decree of amendment or cancellation) shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law he shall:

(i) Endorse on each duplicate original the word "Filed" and the day, month and year of the filing thereof;

(ii) File one (1) duplicate original in his office;  
and

(iii) Return the other duplicate original to the person who filed it or his representative.

(b) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.

**17-14-307. Liability for false statement in certificate.**

(a) If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(i) Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(ii) Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under W.S. 17-14-305.

**17-14-308. Scope of notice.**

The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but it is not notice of any other fact.

**17-14-309. Delivery of certificates to limited partners.**

Upon the return by the secretary of state pursuant to W.S. 17-14-306 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate to each limited partner unless the partnership agreement provides otherwise.

ARTICLE 4  
LIMITED PARTNERS

**17-14-401. Admission of limited partners.**

(a) A person becomes a limited partner:

(i) At the time the limited partnership is formed; or

(ii) At any later time specified in the records of the limited partnership for becoming a limited partner.

(b) Repealed by Laws 1995, ch. 45, § 2.

(c) After the limited partnership is formed, a person may be admitted as an additional limited partner:

(i) In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(ii) In the case of an assignee of a partnership interest of a partner who has the power, as provided in W.S. 17-14-804, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

**17-14-402. Voting.**

Subject to W.S. 17-14-403, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

**17-14-403. Liability to third parties.**

(a) Except as provided in subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business. However, if the limited partner participates in the control of the business, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section solely by doing one (1) or more of the following:

(i) Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director or shareholder of a general partner that is a corporation;

(ii) Consulting with and advising a general partner with respect to the business of the limited partnership;

(iii) Acting as surety for the limited partnership or guaranteeing or assuming one (1) or more specific obligations of the limited partnership;

(iv) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(v) Requesting or attending a meeting of partners;

(vi) Proposing, approving or disapproving, by voting or otherwise, one (1) or more of the following matters:

(A) The dissolution and winding up of the limited partnership;

(B) The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership;

(C) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(D) A change in the nature of the business;

(E) The admission or removal of a general partner;

(F) The admission or removal of a limited partner;

(G) A transaction involving an actual or potential conflict of interest between a general partner and the limited partners;

(H) An amendment to the partnership agreement or certificate of limited partnership; or

(J) Matters related to the business of the limited partnership not otherwise enumerated in this subsection which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners.

(vii) Winding up the limited partnership pursuant to W.S. 17-14-903; or

(viii) Exercising any right or power permitted to limited partners under this act and not specifically enumerated in this subsection.

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by W.S. 17-14-203(a)(ii)(A), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

**17-14-404. Person erroneously believing himself limited partner.**

(a) Except as provided in subsection (b) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

(i) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(ii) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise:

(i) Before the person withdraws and an appropriate certificate is filed to show withdrawal; or

(ii) Before an appropriate certificate is filed to show that he is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

#### **17-14-405. Information.**

(a) Each limited partner has the right to:

(i) Inspect and copy any of the partnership records required to be maintained by W.S. 17-14-206; and

(ii) Obtain from the general partners from time to time upon reasonable demand:

(A) True and full information regarding the state of the business and financial condition of the limited partnership;

(B) Promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year; and



(C) Other information regarding the affairs of the limited partnership as is just and reasonable.

ARTICLE 5  
GENERAL PARTNERS

**17-14-501. Admission of additional general partners.**

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the written consent of all partners.

**17-14-502. Events of withdrawal.**

(a) Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(i) The general partner withdraws from the limited partnership as provided in W.S. 17-14-702;

(ii) The general partner ceases to be a member of the limited partnership as provided in W.S. 17-14-802;

(iii) The general partner is removed as a general partner in accordance with the partnership agreement;

(iv) Unless otherwise provided in writing in the partnership agreement, the general partner:

(A) Makes an assignment for the benefit of creditors;

(B) Files a voluntary petition in bankruptcy;

(C) Is adjudicated as bankrupt or insolvent;

(D) Files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation;

(E) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(F) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties.

(v) Unless otherwise provided in writing in the partnership agreement, one hundred twenty (120) days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without his consent or acquiescence of a trustee, receiver or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any such stay, the appointment is not vacated;

(vi) In the case of a general partner who is a natural person:

(A) His death; or

(B) The entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his estate.

(vii) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(viii) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(ix) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(x) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

**17-14-503. General powers and liabilities.**

(a) Except as provided in this act, in subsections (b) and (c) of this section or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions and liabilities of a partner in a partnership without limited partners.

(b) A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a partner.

(c) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner of a limited liability limited partnership. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the election by all the partners to become a limited liability limited partnership. For purposes of this section, the obligation of a limited partnership under contract is deemed to arise at the time the limited partnership entered into the contract.

**17-14-504. Contributions by, and distributions to, general partner.**

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in the distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his participation in the partnership as a limited partner.

**17-14-505. Voting.**

The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

ARTICLE 6  
FINANCE

**17-14-601. Form of contribution.**

The contribution of a partner may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

**17-14-602. Liability for contribution.**

(a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(b) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value (as stated in the partnership records required to be kept pursuant to W.S. 17-14-206) of the stated contribution that has not been made.

(c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this act may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or otherwise acts in reliance on that obligation after the partner signs a writing which reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

**17-14-603. Sharing of profits and losses.**

The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If

the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value (as stated in the partnership records required to be kept pursuant to W.S. 17-14-206) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

**17-14-604. Sharing of distributions.**

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value (as stated in the partnership records required to be kept pursuant to W.S. 17-14-206) of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

ARTICLE 7  
DISTRIBUTIONS AND WITHDRAWAL

**17-14-701. Interim distributions.**

(a) Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

(i) Amended into (a) by Laws 1995, ch. 45, § 1.

(ii) Repealed by Laws 1995, ch. 45, § 2.

**17-14-702. Withdrawal of general partner.**

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

**17-14-703. Withdrawal of limited partner.**

(a) A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. If the agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six (6) months prior written notice to each general partner at his address on the books of the limited partnership at its office in this state. The provisions of this subsection shall apply to limited partnerships formed under this act prior to July 1, 1999, unless the limited partnership properly adopts the provisions of subsection (b) of this section.

(b) A limited partner may only withdraw from a limited partnership at the time or upon the happening of events specified in writing in the partnership agreement. This subsection applies to limited partnerships formed under this act on or after July 1, 1999. A limited partnership formed under this act prior to July 1, 1999, may adopt the provisions of this subsection by filing a certificate of amendment with the secretary of state after July 1, 1999 that expressly refers to and adopts this subsection.

#### **17-14-704. Distribution upon withdrawal.**

Except as provided in this article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he is entitled under the partnership agreement and, if not otherwise provided in the agreement, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal based upon his right to share in distributions from the limited partnership.

#### **17-14-705. Distribution in kind.**

Except as provided in writing in the partnership agreement, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

**17-14-706. Right to distribution.**

At the time a partner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution.

**17-14-707. Limitations on distribution.**

A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

**17-14-708. Liability upon return of contribution.**

(a) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this act, he is liable to the limited partnership for a period of one (1) year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this act, he is liable to the limited partnership for a period of six (6) years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value (as set forth in the partnership records required to be kept pursuant to W.S. 17-14-206) of his contribution which has not been distributed to him.

ARTICLE 8  
ASSIGNMENT OF PARTNERSHIP INTERESTS

**17-14-801. Nature of partnership interest.**

A partnership interest is personal property.

**17-14-802. Assignment of partnership interest.**

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

**17-14-803. Rights of creditor.**

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This act does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

**17-14-804. Right of assignee to become limited partner.**

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(i) The assignor gives the assignee that right in accordance with authority described in the partnership agreement; or

(ii) All other partners consent.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this act. An assignee who becomes a limited partner also is liable for the obligations of his assignor to make and return contributions as provided in articles 6 and 7. However, the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner.



(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his liability to the limited partnership under W.S. 17-14-307 and 17-14-602.

**17-14-805. Deceased or incompetent partner; dissolved or terminated partner.**

If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator or other legal representative may exercise all the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

ARTICLE 9  
DISSOLUTION

**17-14-901. Nonjudicial dissolution.**

(a) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(i) At the time specified in the certificate of limited partnership;

(ii) Upon the happening of events specified in writing in the partnership agreement;

(iii) Written consent of all partners;

(iv) Repealed By Laws 1999, ch. 145, § 2.

(v) Entry of a decree of judicial dissolution under W.S. 17-14-902;

(vi) A vote to dissolve by all of the limited partners, or a number or percentage of limited partners specified in the partnership agreement, within ninety (90) days after an event of withdrawal of the last remaining general partner; or

(vii) The failure of the limited partners to admit or appoint another general partner within ninety (90) days after an event of withdrawal of the last remaining general partner.

**17-14-902. Judicial dissolution.**

On application by or for a partner the district court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

**17-14-903. Winding up.**

Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners, may wind up the limited partnership's affairs; but the district court may wind up the limited partnership's affairs upon application of any partner, his legal representative, or assignee.

**17-14-904. Distribution of assets.**

(a) Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(i) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under W.S. 17-14-701 or 17-14-704;

(ii) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under W.S. 17-14-701 or 17-14-704; and

(iii) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

**17-14-905. Reinstatement following administrative dissolution.**

(a) A Wyoming limited partnership administratively dissolved for failure to pay fees as provided in W.S. 17-14-209(c) may apply to the secretary of state for reinstatement within two (2) years after the effective date of

dissolution. The application shall recite the name of the domestic limited partnership and the effective date of its administrative dissolution.

(b) A domestic limited partnership applying for reinstatement pursuant to subsection (a) of this section shall include payment of fees and taxes then delinquent and a reinstatement certificate fee prescribed by the secretary of state by rule.

(c) If the secretary of state determines that the application contains the information required by subsection (a) of this section, that the information is correct and the application contains the fees and taxes required by subsection (b) of this section, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate and return a copy to the domestic limited partnership.

(d) When the reinstatement is effective, it relates back and takes effect as of the effective date of the administrative dissolution pursuant to W.S. 17-14-209(c) and the limited partnership resumes carrying on its business as if the administrative dissolution had never occurred.

(e) The domestic limited partnership shall retain its registered name during the two (2) year reinstatement period.

#### ARTICLE 10 FOREIGN LIMITED PARTNERSHIPS

##### **17-14-1001. Law governing.**

(a) Subject to the constitution of this state:

(i) The laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, unless the partnership has been issued a certificate of continuance pursuant to this article; and

(ii) A foreign limited partnership shall not be denied registration by reason of any difference between the laws of the state under which it was organized and the laws of this state.

**17-14-1002. Registration.**

(a) Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, in duplicate, an application for registration as a foreign limited partnership, signed by a general partner and setting forth:

(i) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(ii) The state and date of its formation;

(iii) Repealed by Laws 1995, ch. 45, § 2.

(iv) The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent shall be an individual resident of this state, a domestic corporation or a foreign corporation having a place of business in, and authorized to do business in, this state;

(v) Repealed By Laws 2012, Ch. 10, § 2.

(vi) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;

(vii) Repealed by Laws 1995, ch. 45, § 2.

(viii) The name and business address of each general partner;

(ix) Whether the foreign limited partnership is a foreign limited liability limited partnership; and

(x) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is cancelled or withdrawn.

(b) The foreign limited partnership shall deliver with the completed application a certificate of existence, duly authenticated by the secretary of state or other official having custody of limited partnership records in the state or country under whose laws it is formed, which verifies the active existence of the foreign limited partnership.

**17-14-1003. Issuance of registration.**

(a) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(i) Endorse on the application the word "Filed", and the month, day and year of the filing thereof;

(ii) File in his office a duplicate original of the application; and

(iii) Issue a certificate of registration to transact business in this state.

(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.

**17-14-1004. Name.**

A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

**17-14-1005. Changes and amendments.**

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting such statement.

**17-14-1006. Cancellation of registration.**

(a) A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this state.

(b) The registration to transact business of a foreign limited liability partnership is subject to the same revocation and reinstatement provisions as applicable to foreign corporations authorized to transact business in this state pursuant to W.S. 17-16-1530 through 17-16-1536.

**17-14-1007. Transaction of business without registration.**

(a) A foreign limited partnership transacting business in this state may not maintain any action, suit or proceeding in any court of this state until it has registered in this state.

(b) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit or proceeding in any court of this state.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

(d) A foreign limited partnership, by transacting business in this state without registration, appoints the secretary of state as its agent for service of process with respect to causes of actions arising out of the transaction of business in this state.

(e) Any foreign limited partnership transacting business in this state without registering is subject to the penalties provided by W.S. 17-16-1502(d).

**17-14-1008. Action by secretary of state.**

The secretary of state may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this article.

**17-14-1009. Applicability of other provisions.**

(a) In any case not provided for in this act, the provisions of the Uniform Partnership Act apply.

(b) In cases concerning service of process on the secretary of state as agent for a foreign limited partnership, provisions of the Wyoming Business Corporations Act concerning service of process, the manner of service and fees charged apply.

**17-14-1010. Continuance of a foreign limited partnership.**

Any foreign limited partnership, except partnerships acting as an insurer as defined in W.S. 26-1-102(a)(xvi) or acting as a financial institution as defined in W.S. 13-1-101(a)(ix), may apply to the secretary of state for a certificate of continuance to permit the foreign limited partnership to continue in Wyoming as if the partnership had been formed under the laws of this state.

**17-14-1011. Application for certificate of continuance; requirements.**

(a) To continue in this state, a foreign limited partnership shall submit to the secretary of state, in duplicate, an application for a certificate of continuance setting forth:

(i) Written confirmation from the state in which the partnership was formed that the partnership's domicile in that state is terminated or will be terminated upon continuance in this state;

(ii) A certified copy of the limited partnership's original certificate of limited partnership, or equivalent authorization, including any amendments;

(iii) The name of the limited partnership;

(iv) The duration of the limited partnership from date of formation to present;

(v) The address of the office and the name and address of the agent for service of process required to be maintained by W.S. 17-14-205;

(vi) The name and business address of each general partner;

(vii) A statement that the limited partnership will abide by the constitution and laws of this state;

(viii) The latest date upon which the limited partnership is to dissolve;

(ix) Any other matters the partners determine to include in the application;

(x) Any additional information necessary to enable the secretary of state to determine whether the foreign limited partnership is entitled to a certificate of continuance.

(b) The application may vary from the original certificate that formed the foreign limited partnership provided that the change would be permissible as an amendment for a limited partnership organized in this state.

**17-14-1012. Execution of application.**

(a) The application for a certificate of continuance filed in the office of the secretary of state shall be signed by all general partners.

(b) Any person may sign an application by an attorney-in-fact, but a power of attorney to sign a certificate relating to the admission of a general partner shall specifically describe the admission.

(c) The execution of an application by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

**17-14-1013. Issuance of certificate of continuance.**

(a) If the secretary of state finds that an application for continuance substantially conforms to law and all requisite fees have been paid, he shall:

(i) Endorse on each duplicate original application the word "filed," and the month, day and year of the filing;

(ii) File one (1) duplicate original in his office;



(iii) Issue a certificate of continuance to continue in this state;

(iv) Notify the secretary of state or appropriate official in the state of terminated domicile that a certificate of continuance has been issued in this state.

(b) The certificate of continuance, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative.

(c) The certificate of continuance may incorporate by reference the original certificate of limited partnership. The original certificate is deemed amended to the extent necessary to conform to the laws of Wyoming and the provisions of the certificate of continuance.

#### **17-14-1014. Effect of certification.**

(a) Upon issuance of a certificate of continuance by the secretary of state, the certificate of continuance shall be deemed to be a certificate of limited partnership and the limited partnership shall be subject to the provisions of this act as though formed under the laws of this state.

(b) Except for the purpose of W.S. 16-6-101 through 16-6-121, the existence of any limited partnership issued a certificate of continuance shall be deemed to have commenced on the date the limited partnership was originally formed under the laws of another state.

(c) The laws of Wyoming shall apply to a limited partnership continuing under this act from the date a certificate of continuance is issued by the secretary of state.

(d) The continuance shall not affect the ownership of partnership property, liability for any existing obligation, cause of action, claim, pending or threatened prosecution, civil or administrative action, conviction, ruling, order or judgment. The continuance does not deprive a partner of any right or privilege, nor relieve a partner of any liability.

#### **ARTICLE 11 DERIVATIVE ACTIONS**

#### **17-14-1101. Right of action.**

A limited partner may bring an action in the right of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

**17-14-1102. Proper plaintiff.**

(a) In a derivative action, the plaintiff shall be a partner at the time of bringing the action and:

(i) At the time of the transaction of which he complains; or

(ii) His status as a partner had devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

**17-14-1103. Pleading.**

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

**17-14-1104. Expenses.**

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited partnership the remainder of those proceeds received by him.

CHAPTER 15  
LIMITED LIABILITY COMPANIES

**17-15-101. Repealed By Laws 2010, Ch. 94, § 3.**

**17-15-102. Repealed By Laws 2010, Ch. 94, § 3.**

**17-15-103. Repealed By Laws 2010, Ch. 94, § 3.**

**17-15-104. Repealed By Laws 2010, Ch. 94, § 3.**

**17-15-105. Repealed By Laws 2010, Ch. 94, § 3.**

17-15-106. Repealed By Laws 2010, Ch. 94, § 3.

17-15-107. Repealed By Laws 2010, Ch. 94, § 3.

17-15-108. Repealed By Laws 2010, Ch. 94, § 3.

17-15-109. Repealed By Laws 2010, Ch. 94, § 3.

17-15-110. Repealed By Laws 2010, Ch. 94, § 3.

17-15-111. Repealed By Laws 2010, Ch. 94, § 3.

17-15-112. Repealed By Laws 2010, Ch. 94, § 3.

17-15-113. Repealed By Laws 2010, Ch. 94, § 3.

17-15-114. Repealed By Laws 2010, Ch. 94, § 3.

17-15-115. Repealed By Laws 2010, Ch. 94, § 3.

17-15-116. Repealed By Laws 2010, Ch. 94, § 3.

17-15-117. Repealed By Laws 2010, Ch. 94, § 3.

17-15-118. Repealed By Laws 2010, Ch. 94, § 3.

17-15-119. Repealed By Laws 2010, Ch. 94, § 3.

17-15-120. Repealed By Laws 2010, Ch. 94, § 3.

17-15-121. Repealed By Laws 2010, Ch. 94, § 3.

17-15-122. Repealed By Laws 2010, Ch. 94, § 3.

17-15-123. Repealed By Laws 2010, Ch. 94, § 3.

17-15-124. Repealed By Laws 2010, Ch. 94, § 3.

17-15-125. Repealed By Laws 2010, Ch. 94, § 3.

17-15-126. Repealed By Laws 2010, Ch. 94, § 3.

17-15-127. Repealed By Laws 2010, Ch. 94, § 3.

17-15-128. Repealed By Laws 2010, Ch. 94, § 3.

17-15-129. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-130. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-131. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-132. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-133. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-134. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-135. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-136. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-137. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-138. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-139. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-140. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-141. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-142. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-143. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-144. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-145. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-146. Repealed By Laws 2010, Ch. 94, § 3.  
17-15-147. Repealed By Laws 2010, Ch. 94, § 3.

CHAPTER 16  
WYOMING BUSINESS CORPORATION ACT

ARTICLE 1  
GENERAL PROVISIONS

17-16-101. Short title.

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

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

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

(b) The Financial Technology Sandbox Act shall apply to this act.

**17-16-120. Requirements for documents.**

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

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

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

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

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

(f) The document shall be executed:

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

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

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

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

(i) The corporate seal;

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

(iii) An acknowledgment, verification or proof.

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

(i) The document shall be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one (1) exact copy to be delivered with the document, except as provided in W.S. 17-28-103.

(j) When any document is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, penalty or past due fees, taxes or penalties required to be paid by this act or other law shall be paid or provision for payment made in a manner provided by the secretary of state.

(k) Reserved.

#### **17-16-121. Forms.**

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

(i) An application for a certificate of existence;

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

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

(iv) The annual report;

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

(vi) An application for a certificate of transfer;

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

(viii) A consent of registered agent to appointment.

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

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

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

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

(a) Except as provided in subsection (b) of this section and W.S. 17-16-124(c), a document accepted for filing pursuant to W.S. 17-16-120 is effective:

(i) As of the time received for filing, as evidenced by such means as the secretary of state may use for the purpose of recording the date and time of filing; or

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

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

may not be later than the ninetieth (90th) day after the date it is filed.

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

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

- (i) Contains an inaccuracy;
- (ii) Was defectively executed, attested, sealed, verified, or acknowledged; or
- (iii) The electronic transmission was defective.

(b) A document is corrected:

- (i) By preparing articles of correction that:
  - (A) Describe the document, including its filing date, or attach a copy of the document to the articles of correction;
  - (B) Specify the inaccuracy or defect to be corrected; and
  - (C) Correct the inaccuracy or defect.
- (ii) By delivering the articles of correction to the secretary of state for filing.

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

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

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

(b) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with his official title and the date and time of filing, on both the original and the document copy and on the receipt for the filing fee. The



secretary of state may prescribe rules for filing of electronic transmissions. After filing a document, except as provided in W.S. 17-28-103, the secretary of state shall deliver the document copy, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative. The secretary of state, in his discretion, may issue a certificate evidencing the filing of a document upon the payment of the requisite fee.

(c) If the secretary of state refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within fifteen (15) days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

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

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

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

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

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

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

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

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

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

A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

**17-16-128. Certificate of existence.**

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

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

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

(ii) That:

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

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

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

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

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

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

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

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

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

**17-16-129. Repealed by Laws 2008, Ch. 91, § 3.**

**17-16-130. Powers.**

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

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

(a) In this act:

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

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

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

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

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

(vi) "Distribution" means a direct or indirect transfer of money or other property, except the corporation's own shares, or 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;

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

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

(ix) "Electronic transmission" or "transmitted electronically" means any process of communication that does not directly involve the physical transfer of paper, including a process of communication that uses one (1) or more distributed or other electronic networks or databases, and that is suitable for the retention, retrieval and reproduction of information by the recipient;

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

(xi) "Eligible interests" means interests;

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

(xiii) "Entity" includes domestic corporation and foreign corporation, domestic nonprofit corporation and foreign nonprofit corporation, domestic and foreign profit and not-for-profit unincorporated association, business trust, statutory

trust, estate, partnership, trust, or two (2) or more persons having a joint or common economic interest, and state, United States or foreign government;

(xiv) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter, including but not limited to attorney and expert witness fees;

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

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

(xvii) "Includes" denotes a partial definition;

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

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

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

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

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

(xxi) "Means" denotes an exhaustive definition;

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

(xxiii) "Notice" is defined in W.S. 17-16-141;

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

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

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

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

(B) By the articles of incorporation, bylaws or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws or an organic document to make one (1) or more specified shareholders or interest holders liable in their capacity as shareholders or interest holders for all or specified debts, obligations or liabilities of the entity.

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

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

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

(xxx) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;

(xxxi) "Public corporation" means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national securities association;

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

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

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

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

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

(xxxvii) "Shareholder" means the person in whose name shares are registered in the records of a corporation, the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation or the owner of a private key that is uniquely associated with a data address that facilitates or records the sending and receiving of shares;

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

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

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

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

(xlii) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic

or foreign business or nonprofit corporation, an estate, a trust, a state, the United States or a foreign government. The term includes, but is not limited to, a general partnership, limited liability company, limited partnership, limited liability limited partnership, registered limited liability partnership, business trust, statutory trust, cooperative, joint stock association, joint venture and unincorporated nonprofit association;

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

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

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

(xlvi) "Identity" means the name of a shareholder or the data address for which the shareholder has knowledge or possession of the private key uniquely associated with the data address;

(xlvii) "Data address" means the string of alphanumeric characters on one (1) or more distributed or other electronic networks or databases that may only be accessed by knowledge or possession of a private key in order to facilitate or record transactions on the distributed or other electronic network or database;

(xlviii) "Network signature" means a string of alphanumeric characters that, when broadcast by a person to the data address's corresponding distributed or other electronic network or database, provides reasonable assurances to a recipient that the broadcasting person has knowledge or possession of the private key uniquely associated with the data address;

(xlix) "Record of shareholders" means one (1) or more records administered by or on behalf of a corporation that records the identity of all the corporation's shareholders and



the number and class of shares held by each shareholder in accordance with W.S. 17-16-1601. "Record of shareholders" includes a record of all issuances and transfers of shares of a corporation at the discretion of the corporation;

(1) "This act" means W.S. 17-16-101 through 17-16-1810.

#### **17-16-141. Notice.**

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

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

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

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

(ii) When an electronic transmission has been made to a data address provided by the shareholder; or

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

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

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

(i) When received;

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

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

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

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

**17-16-142. Number of shareholders.**

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

(i) Three (3) or fewer coowners;

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

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

(iv) One (1) data address.

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

**17-16-143. Qualified director.**

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

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

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

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

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

(A) Is not a party to the proceeding;

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

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

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

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

(b) For purposes of this section:

(i) "Material interest" means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken;

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

(c) The presence of one (1) or more of the following circumstances shall not automatically prevent a director from being a qualified director:

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

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

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

**17-16-144. Reserved.**

ARTICLE 2  
INCORPORATION

**17-16-201. Incorporators.**

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

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

(a) The articles of incorporation shall set forth:

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

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

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

(iv) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

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

(ii) Provisions not inconsistent with law including:

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

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

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

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

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

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

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

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

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

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

(D) An intentional violation of criminal law;  
and

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

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

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

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

(D) An intentional violation of criminal law.

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

(d) Reserved.

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

#### **17-16-203. Incorporation.**

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

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

#### **17-16-204. Liability for preincorporation transactions.**

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

#### **17-16-205. Organization of corporation.**

(a) After incorporation:

(i) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by

appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

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

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

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

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

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

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

#### **17-16-206. Bylaws.**

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

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

(c) If bylaws are not adopted:

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

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

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

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

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

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

(ii) Quorum requirements for the meeting; and

(iii) Designation of additional or substitute directors.

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

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

(i) Binds the corporation; and

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

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

ARTICLE 3  
PURPOSES AND POWERS

**17-16-301. Purposes.**

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

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may



incorporate under this act only if permitted by, and subject to all limitations of, the other statute.

**17-16-302. General powers.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xiv) Transact any lawful business; and

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

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

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

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

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

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

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

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

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

(i) Binds the corporation; and

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

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

**17-16-304. Ultra vires.**

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

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

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

(ii) The corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

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

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

ARTICLE 4  
NAME

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

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

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

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

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

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

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

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

(i) Has merged with the other corporation; or

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

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

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

(v) Where the other corporation is affiliated with the proposed user corporation and has consented in writing to the use of the name by the proposed user corporation, and the written consent also sets forth a description of a proposed merger, consolidation, dissolution, amendment to articles of incorporation or other intended corporate action which establishes to the reasonable satisfaction of the secretary of state that the coexistence of two (2) corporations using the same name will not continue for more than one hundred twenty (120) days.

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

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

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

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

(iii) Differences in punctuation and special characters;

(iv) Differences in capitalization; or

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

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

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

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

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

**17-16-403. Reserved.**

ARTICLE 5  
OFFICE AND AGENT

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

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

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

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

(A) Repealed by Laws 2008, Ch. 90, § 3.

(B) Repealed by Laws 2008, Ch. 90, § 3.

(C) Repealed by Laws 2008, Ch. 90, § 3.

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

**17-16-502. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-503. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-504. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-505. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-506. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-507. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-508. Repealed by Laws 2008, Ch. 90, § 3.**

**17-16-509. Repealed by Laws 2008, Ch. 90, § 3.**

ARTICLE 6  
SHARES AND DISTRIBUTIONS

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

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

(b) The articles of incorporation shall authorize:

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

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

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

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

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

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

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

(C) At prices and in amounts specified or determined in accordance with a formula.

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

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

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

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

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

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

(a) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:



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

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

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

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

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

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

(c) Before issuing any shares of a class or series created under this section, the corporation shall deliver to the secretary of state for filing articles of amendment effecting the provisions of this section in accordance with article 10 of this act and setting forth the terms determined under subsection (a) of this section.

#### **17-16-603. Issued and outstanding shares.**

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

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

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

#### **17-16-604. Fractional shares.**

(a) A corporation may:

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

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

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

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

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

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

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

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

**17-16-605. Construction of terms relating to stock and certificate tokens.**

(a) As used in this title, any reference to:

(i) Share certificate, share, stock, share of stock or words of similar import shall be construed to include a certificate token;

(ii) A requirement to print information on a share certificate or words of similar import shall be construed to be satisfied if the information satisfies the requirements set forth in W.S. 17-16-625(g);

(iii) Certificated shares or words of similar import shall be construed to include shares represented by certificate tokens, and any reference to the delivery or deposit of these shares to the corporation shall be construed to refer to any method of granting control of the tokens to the corporation;

(iv) A certificate being duly endorsed or words of similar import shall be construed to mean that the transaction authorizing transfer of control of the certificate token was signed by the lawful holder of the token with the network signature corresponding to the lawful holder's data address to which the certificate token was issued or last lawfully transferred.

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

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

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

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

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

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

**17-16-621. Issuance of shares.**

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

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

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

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

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

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

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

(B) The voting power of shares that are issued and issuable as a result of the transaction or series of

integrated transactions will comprise more than twenty percent (20%) of the voting power of the shares of the corporation that were outstanding immediately before the transaction.

(ii) In this subsection:

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

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

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

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

#### **17-16-622. Liability of shareholders.**

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

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

#### **17-16-623. Share dividends.**

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

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

(i) The articles of incorporation so authorize;

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

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

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

#### **17-16-624. Share options.**

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

(b) The terms and conditions of such rights, options or warrants, including those outstanding on July 1, 2009, may include, without limitation, restrictions or conditions that:

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

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

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

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

are identical whether or not their shares are represented by certificates.

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

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

(ii) The name of the person to whom, or in the case of a certificate token, the data address to which the token was issued; and

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

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

(d) Except as otherwise provided by subsection (g) of this section, each share certificate:

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

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

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

(f) In no case shall a corporation issue share certificates in bearer form. For purposes of this subsection "bearer form" means a form in which the certificate is payable to the bearer of the certificate according to its terms but not by reason of an endorsement. If a corporation formed under this act or qualified to do business under this act has bearer shares

outstanding, the entity shall conform those shares to comply with this section on or before October 1, 2007. Failure to do so shall be prima facie evidence of an ultra vires act pursuant to W.S. 17-16-304.

(g) The articles of incorporation or bylaws of a corporation may specify that all or a portion of the shares of the corporation may be represented by share certificates in the form of certificate tokens. The electronic message, command or transaction that transmits the certificate tokens to the data address to which a certificate token was issued shall be authorized at the time of issuance by one (1) or more messages, commands or transactions signed with the network signatures of two (2) officers designated in the bylaws or by the board of directors of the corporation.

(h) As used in this section:

(i) "Blockchain" means a digital ledger or database which is chronological, consensus based, decentralized and mathematically verified in nature;

(ii) "Certificate token" means a representation of shares that is stored in an electronic format which contains the information specified under subsections (b) and (c) of this section, and this information is:

(A) Entered into a blockchain or other secure, auditable database;

(B) Linked to or associated with the certificate token; and

(C) Able to be transmitted electronically to the issuing corporation, the person to whom the certificate token was issued and any transferee.

**17-16-626. Shares without certificates.**

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



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

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

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

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

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

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

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

(iii) For any other reasonable purpose.

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

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

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

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

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

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

**17-16-628. Expense of issue.**

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

**17-16-630. Shareholders' preemptive rights.**

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

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

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

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

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

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

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

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

(D) Shares sold otherwise than for money.

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

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

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

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

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

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

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

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

#### **17-16-640. Distributions to shareholders.**

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

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

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

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

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

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

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

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

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

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

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

(iii) In all other cases, as of:

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

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

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

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

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

#### ARTICLE 7 SHAREHOLDERS

**17-16-701. Annual meeting.**

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

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

(i) Participate in a meeting of stockholders; and

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

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

**17-16-702. Special meeting.**

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

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

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

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

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

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

**17-16-703. Court-ordered meeting.**

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

(i) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six (6)

months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

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

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

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

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

#### **17-16-704. Action without meeting.**

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

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



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

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

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

(f) If action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give

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

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

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

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

#### **17-16-705. Notice of meeting.**

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

(b) Unless this act or the articles of incorporation require otherwise, notice of an annual meeting need not include

a description of the purpose or purposes for which the meeting is called.

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

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

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

#### **17-16-706. Waiver of notice.**

(a) A shareholder may waive any notice required by this act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed or shall be sent by electronic transmission by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

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

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

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

**17-16-707. Record date.**

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

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

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

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

**17-16-708. Conduct of the meeting.**

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

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

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

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

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

(a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical or numerical list of the identities of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by voting group, and within each voting group by class or series of shares, and show the number of shares held by each shareholder. The list shall also show each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name, and each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.

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

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

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

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

**17-16-721. Voting entitlement of shares.**

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

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

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

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

**17-16-722. Proxies.**

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

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

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

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

(i) A pledgee;

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

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

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

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

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

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

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

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

**17-16-723. Shares held by nominees.**

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

(b) The procedure may set forth:

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

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

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

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

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

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

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

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

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

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

(ii) The name or network signature signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has



been presented with respect to the vote, consent, waiver, or proxy appointment;

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

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

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

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

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

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

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

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

the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

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

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

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

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

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

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

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

#### **17-16-727. Changing quorum or voting requirements.**

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

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

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

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

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

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

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

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

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

**17-16-729. Inspectors of election.**

(a) A public corporation shall, and any other corporation may, appoint one (1) or more inspectors to act at a meeting of shareholders and make a written report of the inspectors'

determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

(b) The inspectors shall:

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

(ii) Determine the shares represented at a meeting;

(iii) Determine the validity of proxies and ballots;

(iv) Count all votes; and

(v) Determine the result.

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

#### **17-16-730. Voting trusts.**

(a) One (1) or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the identities of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust. The list shall also show each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name, and each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address. Copies of the list and agreement shall be delivered to the corporation's principal office.

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

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

#### **17-16-731. Voting agreements.**

(a) Two (2) or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of W.S. 17-16-730.

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

#### **17-16-732. Shareholder agreements.**

(a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one (1) or more other provisions of this act in that it:

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

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

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

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

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

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

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

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

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

(i) Set forth:

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

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

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

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

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by W.S. 17-16-626(b). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken

pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

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

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

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

#### **17-16-740. Subarticle definitions.**

(a) As used in this subarticle:

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

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

**17-16-741. Standing.**

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

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

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

**17-16-742. Demand.**

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

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

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

**17-16-743. Stay of proceedings.**

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

**17-16-744. Dismissal.**

(a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one (1) of the groups



specified in subsection (b) or (e) of this section has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (e) of this section, the determination in subsection (a) of this section shall be made by:

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

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

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

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

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

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

(e) Upon motion by the corporation or any interested party, the court may appoint a panel of one (1) or more individuals to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (a) of this section have not been met.

**17-16-745. Discontinuance or settlement.**

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

**17-16-746. Payment of expenses.**

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

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

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

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

**17-16-747. Applicability to foreign corporations.**

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

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

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

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

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

(b) The court:

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

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

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

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

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

(i) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(ii) A receiver:

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

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

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

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

## ARTICLE 8 DIRECTORS AND OFFICERS

### **17-16-801. Requirement for and functions of board of directors.**

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

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

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

(i) Business performance and plans;

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

(iii) The performance and compensation of the chief executive officer;

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

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

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

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

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

#### **17-16-802. Qualifications of directors.**

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

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

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

(b) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

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

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

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

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

**17-16-805. Terms of directors generally.**

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

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

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

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

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

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

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

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

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half (1/2) or one-third (1/3) of the total, as near as may be practicable. In that event, the terms of directors in the

first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) years or three (3) years, as the case may be, to succeed those whose terms expire.

**17-16-807. Resignation of directors.**

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

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

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

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

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

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

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

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

(a) The district court of the county where a corporation's principal office, or if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that:

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

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

(b) A shareholder proceeding on behalf of the corporation under subsection (a) of this section shall comply with all of the requirements of W.S. 17-16-740 through 17-16-747 excluding W.S. 17-16-741(a)(i).

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

(d) Nothing in this section limits the equitable powers of the court to order other relief including, but not limited to, an award of expenses.

**17-16-810. Vacancy on board.**

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

(i) The shareholders may fill the vacancy;

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

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

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



is filled by the shareholders, and only the directors elected by that voting group are entitled to fill the vacancy if it is filled by the directors.

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

#### **17-16-811. Compensation of directors.**

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

#### **17-16-820. Meetings.**

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

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

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

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

(b) Action taken under this section is the act of the board of directors when one (1) or more consents signed by the requisite number of directors are delivered to the corporation. The consent may specify the time at which the action taken

thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by the requisite number of directors. If action is taken by less than unanimous written consent of the directors, the corporation shall give the nonconsenting or nonvoting directors written notice of the action not more than ten (10) days after written consents sufficient to take the action have been delivered to the corporation. The notice shall reasonably describe the action taken. The requirement to give the notice shall not delay the effectiveness of actions taken by the written consent, and a failure to comply with the notice requirements shall not invalidate actions taken by written consent, provided that this subsection shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a director adversely affected by a failure to give the notice within the required time period.

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

#### **17-16-822. Notice of meeting.**

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

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

#### **17-16-823. Waiver of notice.**

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

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

**17-16-824. Quorum and voting.**

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

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

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

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

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

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

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

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

(iii) The director delivers written notice of his dissent or abstention to the presiding officer of the meeting

before its adjournment or to the corporation immediately after adjournment of the meeting.

**17-16-825. Committees.**

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

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

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

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

(c) W.S. 17-16-820 through 17-16-824 apply to committees and their members as well.

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

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

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

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

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

(iv) Adopt, amend or repeal bylaws.

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

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

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

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

(i) In good faith; and

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

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

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

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

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

(f) A director is entitled to rely in accordance with subsections (d) and (e) of this section on:

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

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

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

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

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

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

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

(ii) The economy of the state and nation;

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

(iv) The long-term interests of the corporation and its shareholders, including the possibility that those interests

may be best served by the continued independence of the corporation; and

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

**17-16-831. Standards of liability for directors.**

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

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

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

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

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

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

(A) Action not in good faith; or

(B) A decision:

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

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

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

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

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

(D) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefore; or

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

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

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

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

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

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

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



(c) Nothing contained in this section shall:

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

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

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

**17-16-832. Reserved.**

**17-16-833. Director's liability for unlawful distributions.**

(a) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to W.S. 17-16-640 or 17-16-1409(a) is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating W.S. 17-16-640 or 17-16-1409(a) if the party asserting liability establishes that when taking the action the director did not comply with W.S. 17-16-830.

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

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

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

(c) A proceeding to enforce:

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

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

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

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

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

#### **17-16-840. Required officers.**

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

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

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

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

#### **17-16-841. Functions of officers.**

Each officer has the authority and shall perform the functions set forth in the bylaws or, to the extent consistent with the bylaws, the functions prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the functions of other officers.

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

(a) An officer when performing in such capacity, has the duty to act:

(i) In good faith;

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

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

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

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

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

(c) In discharging his duties an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

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

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

as to matters involving skills or expertise the officer reasonably believes are matters:

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

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

(d) An officer shall not be liable to the corporation or its shareholders for any decisions to take or not to take action as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section. Whether an officer who does not comply with this section shall have liability shall depend in such instance on applicable law, including those principles of W.S. 17-16-831 that have relevance.

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

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

(ii) The economy of the state and nation;

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

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

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

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

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board

or appointing officer accepts the future effective time, the board or appointing officer may fill the pending vacancy before the effective time if the board or appointing officer provides that the successor does not take office until the effective time.

(b) An officer may be removed at any time with or without cause by:

(i) The board of directors;

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

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

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

#### **17-16-844. Contract rights of officers.**

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

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

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

(a) In this subarticle:

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

(ii) "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, manager, partner, trustee, employee or agent of another entity or employee benefit plan. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the

individual to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer;

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

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

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

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

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

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

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

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

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

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

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

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

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

**17-16-852. Mandatory indemnification.**

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

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

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

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

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

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

(b) The undertaking required by paragraph (a)(ii) of this section shall be an unlimited general obligation of the director

but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(i) By the board of directors:

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

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

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

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

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

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

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

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

(A) To indemnify the director; or



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

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

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

(a) A corporation may not indemnify a director under W.S. 17-16-851 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the standard of conduct set forth in W.S. 17-16-851.

(b) The determination shall be made:

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

(ii) By special legal counsel:

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

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

(iii) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the determination.

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

**17-16-856. Indemnification of officers.**

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

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

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

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

(B) Liability arising out of conduct that constitutes:

(I) Receipt by the officer of a financial benefit to which he is not entitled;

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

(III) An intentional violation of criminal law.

(iii) A corporation may also indemnify and advance expenses to a current or former officer, employee or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors or contract.

(b) The provisions of paragraph (a)(ii) of this section shall apply to an officer who is also a director if the basis on which he is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under W.S. 17-16-852, and may apply to a court under W.S. 17-16-854 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

#### **17-16-857. Insurance.**

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the individual in that capacity or arising from his status as a director or officer whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this subarticle.

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

(a) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with W.S. 17-16-851 or advance funds to pay for or reimburse expenses in accordance with W.S. 17-16-853. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in W.S. 17-16-853(c) and 17-16-855(c). Any provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with W.S. 17-16-853 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) of this section shall not obligate the corporation to indemnify or

advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by W.S. 17-16-1107(a)(iv).

(c) A corporation may, by provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this subarticle.

(d) This subarticle does not limit a corporation's power to pay or reimburse expenses incurred by a director or officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(e) This subarticle does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

#### **17-16-859. Exclusivity of subarticle.**

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this subarticle.

#### **17-16-860. Subarticle definitions.**

(a) In this subarticle:

(i) "Control", including the term "controlled by", means:

(A) Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract or otherwise; or

(B) Being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(ii) "Director's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation:

(A) To which, at the relevant time, the director is a party; or

(B) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(C) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(iii) "Fair to the corporation" means, for purposes of W.S. 17-16-861(b)(iii), that the transaction as a whole was beneficial to or at least not harmful to the corporation, taking into appropriate account whether it was:

(A) Fair in terms of the director's dealings with the corporation; and

(B) Comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(iv) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction;

(v) "Related person" means:

(A) The director's spouse;

(B) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half sibling, aunt, uncle, niece or nephew, or spouse of any thereof, of the director or of the director's spouse;

(C) An individual living in the same home as the director;

(D) An entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified above in this paragraph;

(E) A domestic or foreign:

(I) Business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director;

(II) Unincorporated entity of which the director is a general partner or a member of the governing body; or

(III) Individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or

(F) A person that is, or an entity that is controlled by, an employer of the director.

(vi) "Relevant time" means:

(A) The time at which directors' action respecting the transaction is taken in compliance with W.S. 17-16-862; or

(B) If the transaction is not brought before the board of directors of the corporation or its committee for action under W.S. 17-16-862, at the time the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

(vii) "Required disclosure" means disclosure of:

(A) The existence and nature of the director's conflicting interest; and

(B) All facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

#### **17-16-861. Judicial action.**

(a) A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, may not be the subject of equitable relief, or give rise to an award of damages or other relief against a director of the corporation, in a proceeding by a shareholder or by or in the

right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

(b) A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other relief against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if:

(i) Directors' action respecting the transaction was taken in compliance with W.S. 17-16-862 at any time; or

(ii) Shareholders' action respecting the transaction was taken in compliance with W.S. 17-16-863 at any time; or

(iii) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

**17-16-862. Directors' action.**

(a) Directors' action respecting a director's conflicting interest transaction is effective for purposes of W.S. 17-16-861(b) (i) if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two (2), of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b) of this section, provided that:

(i) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(ii) Where the action has been taken by a committee, all members of the committee were qualified directors, and either:

(A) The committee was composed of all the qualified directors on the board of directors; or

(B) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) Notwithstanding subsection (a) of this section, when a transaction is a director's conflicting interest transaction only because a related person described in W.S.

17-16-860(a)(v)(E) or (F) is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction:

(i) All information required to be disclosed that is not so violative;

(ii) The existence and nature of the director's conflicting interest; and

(iii) The nature of the conflicted director's duty not to disclose the confidential information.

(c) A majority, but no fewer than two (2), of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(d) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements shall be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

### **17-16-863. Shareholders' action.**

(a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of W.S. 17-16-861(b)(ii) if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after:

(i) Notice to shareholders describing the action to be taken respecting the transaction;



(ii) Provision to the corporation of the information referred to in subsection (b) of this section; and

(iii) Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, or modified disclosure as described in W.S. 17-16-862(b) if the director's conflicting interest transaction is of the type described in that subsection, to the extent the information is not known by them.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (c) of this section and the identity of the holders of those shares.

(c) For purposes of this section:

(i) "Holder" means and "held by" refers to shares held by both a record shareholder, as defined in W.S. 17-16-1301(a)(vi), and a beneficial shareholder as defined in W.S. 17-16-1301(a)(i);

(ii) "Qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) of this section is notified, are held by:

(A) A director who has a conflicting interest respecting the transaction; or

(B) A related person of the director, excluding a person described in W.S. 17-16-860(a)(v)(F).

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to the provisions of subsection (e) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) of this section solely because of a director's

failure to comply with subsection (b) of this section, and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may give the effect, if any, to the shareholders' vote, as the court considers appropriate in the circumstances.

(f) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

#### **17-16-870. Business opportunities.**

(a) A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other relief against the director, in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and:

(i) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in W.S. 17-16-862, as if the decision being made concerned a director's conflicting interest transaction; or

(ii) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in W.S. 17-16-863, as if the decision being made concerned a director's conflicting interest transaction, except that, rather than making required disclosure as defined in W.S. 17-16-860, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection (a) of this section before taking advantage of the opportunity shall not create an inference that the opportunity should have been first

presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

ARTICLE 9  
RESERVED

ARTICLE 10  
AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

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

(a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement or purpose, or duration of the corporation.

**17-16-1002. Amendment before issuance of shares.**

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

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

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

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

(ii) Except as provided in W.S. 17-16-1005, 17-16-1007 and 17-16-1008, after adopting the proposed amendment the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of

directors makes a determination that because of conflict of interest or other special circumstances it should not make such a recommendation in which case the board of directors shall transmit the basis for that determination to the shareholders;

(iii) The board of directors may condition its submission of the amendment to the shareholders on any basis;

(iv) If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the shareholders' meeting at which the amendment is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the amendment and shall contain or be accompanied by a copy of the amendment;

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

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

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

(i) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(ii) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(iii) Change the rights, preferences, or limitations of all or part of the shares of the class;

(iv) Change the shares of all or part of the class into a different number of shares of the same class;

(v) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

(vi) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

(vii) Limit or deny any existing preemptive right of all or part of the shares of the class; or

(viii) Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

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

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

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

**17-16-1005. Amendment by board of directors.**

(a) Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

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

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

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

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

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

(B) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.

(v) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name;

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

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

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

#### **17-16-1006. Articles of amendment.**

(a) After an amendment to the articles of incorporation has been adopted and approved in the manner required by this act

and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment setting forth:

(i) The name of the corporation;

(ii) The text of each amendment adopted;

(iii) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself which may be made dependent upon facts objectively ascertainable outside the articles of amendment;

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

(v) If an amendment:

(A) Was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors as the case may be and that shareholder approval was not required; or

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

(C) Reserved.

(vi) Repealed By Laws 2010, Ch. 82, § 2.

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

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

(b) If the restated articles include one (1) or more new amendments requiring shareholder approval, the amendments shall be adopted and approved as provided in W.S. 17-16-1003.

(c) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the

text of the restated articles of incorporation together with a certificate which states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, which also includes the statements required under W.S. 17-16-1006.

(d) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(e) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (c) of this section.

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

(a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(b) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(i) The name of the corporation;

(ii) The text of each amendment approved by the court;

(iii) The date of the court's order or decree approving the articles of amendment;

(iv) The title of the reorganization proceeding in which the order or decree was entered; and

(v) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.



**17-16-1009. Effect of amendment.**

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

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

(a) A corporation's shareholders may amend or repeal the corporation's bylaws.

(b) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(i) The articles of incorporation, W.S. 17-16-1021 or if applicable W.S. 17-16-1022 reserve this power exclusively to the shareholders in whole or part; or

(ii) The shareholders in amending, repealing or adopting a bylaw provide expressly that the board of directors may not amend, repeal or reinstate that bylaw.

**17-16-1021. Bylaw increasing quorum or voting requirement for directors.**

(a) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

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

(ii) If adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a) of this section to amend or repeal a bylaw that changes the

quorum or voting requirement for the board of directors shall meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

**17-16-1022. Bylaw provisions relating to the election of directors.**

(a) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in W.S. 17-16-728(a) or provide for cumulative voting, a public corporation may elect in its bylaws to be governed in the election of directors as follows:

(i) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes;

(ii) To be elected, a nominee shall have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that shall terminate on the date that is the earlier of ninety (90) days from the date on which the voting results are determined pursuant to W.S. 17-16-729(b)(v) or is the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which W.S. 17-16-810 applies. Subject to paragraph (iii) of this subsection, a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety (90) day period referenced above; and

(iii) The board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

(b) Subsection (a) of this section does not apply to an election of directors by a voting group if at the expiration of the time fixed under a provision requiring advance notification of director candidates, or absent such a provision, at a time fixed by the board of directors which is not more than fourteen (14) days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one

(1) or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection if the board of directors determines before the notice of meeting is given that such individual's candidacy does not create a bona fide election contest.

(c) A bylaw electing to be governed by this section may be repealed:

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

(ii) If adopted by the board of directors, by the board of directors or the shareholders.

#### ARTICLE 11

#### MERGER, SHARE EXCHANGE, CONSOLIDATION AND CONVERSION

**17-16-1101. Reserved.**

**17-16-1102. Merger.**

(a) One (1) or more domestic business corporations may merge with one (1) or more domestic or foreign business corporations or eligible entities pursuant to a plan of merger, or two (2) or more foreign business corporations or domestic or foreign eligible entities may merge into a new domestic business corporation to be created in the merger in the manner provided in this chapter.

(b) A foreign business corporation, or a foreign eligible entity, may be a party to a merger with a domestic business corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the foreign business corporation or eligible entity. If Wyoming law does not otherwise provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in this article and article 13 of this chapter. For the purposes of applying this article and article 13 of this chapter:

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

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

(c) The plan of merger shall include:

(i) The name of each domestic or foreign business corporation or eligible entity that will merge and the name of the domestic or foreign business corporation or eligible entity that will be the survivor of the merger;

(ii) The terms and conditions of the merger;

(iii) The manner and basis of the disposition, if any, of the shares of each domestic or foreign business corporation and eligible interests of each domestic or foreign eligible entity;

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

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

(d) The terms of the plan of merger may be made dependent on facts objectively ascertainable outside the plan.

(e) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by the shareholders the plan may not be amended to change:

(i) The disposition of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash, or other property, if

any, to be received under the plan by the shareholders of or owners of eligible interests in any party to the merger;

(ii) The articles of incorporation of any corporation, or the organic documents of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by W.S. 17-16-1005 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

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

(f) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted or devised, unless and until the eligible entity obtains an order of the district court specifying the disposition of the property to the extent required by and pursuant to the laws of this state.

#### **17-16-1103. Share exchange.**

(a) Through a share exchange:

(i) A domestic corporation may acquire all of the shares of one (1) or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one (1) or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange; or

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

(b) A foreign corporation or eligible entity, may be a party to a share exchange only if the share exchange is permitted by the organic law under which the corporation or other entity is organized or by which it is governed. If

Wyoming law does not otherwise provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved, and the share exchange effectuated, in accordance with the procedures, if any, for a merger. If Wyoming law does not otherwise provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated, and appraisal rights exercised, in accordance with the procedures in this article and article 13 of this chapter. For the purposes of applying this article and article 13 of this chapter:

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

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

- (c) The plan of exchange shall include:

- (i) The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;

- (ii) The terms and conditions of the share exchange;

- (iii) The manner and basis of exchanging the shares of a corporation or interests in any other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property or any combination of the foregoing; and

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

- (d) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan.

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

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

(ii) Any of the other terms or conditions of the plan if the change would adversely affect the shareholders of the domestic corporation in any material respect.

(f) This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

**17-16-1104. Action on plan of merger or share exchange.**

(a) In the case of a domestic corporation that is a party to a merger or share exchange, the plan of merger or share exchange shall be adopted by the board of directors. After adopting a plan of merger or share exchange, the board of directors except as provided in subsection (g) of this section and W.S. 17-16-1105, shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(b) Reserved.

(c) The board of directors may condition its submission of the proposed merger or share exchange to the shareholders on any basis.

(d) If the plan of merger or share exchange is required to be approved by the shareholders and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the shareholders' meeting at which the plan is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity.

(e) Unless the articles of incorporation or the board of directors acting pursuant to subsection (c) of this section require a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange requires the approval of the shareholders at a meeting at which a quorum exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group is present.

(f) Separate voting by voting groups is required:

(i) On a plan of merger by each class or series of shares that:

(A) Are to be converted under the plan of merger into other securities, interests, obligations, rights to acquire shares, other securities or interests, cash, other property, or any combination of the foregoing; or

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

(ii) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and



(iii) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(g) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

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

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

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

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

(h) If as a result of a merger or share exchange one (1) or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of merger or share exchange shall require the execution, by each shareholder of the domestic corporation, of a separate written consent to become subject to owner liability.

(j) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

**17-16-1105. Merger between parent and subsidiary or between subsidiaries.**

(a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least

eighty percent (80%) of the voting power of each class and series of the outstanding shares of a subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without approval of the board of directors or shareholders of the subsidiary, unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

(b) If under subsection (a) of this section approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within ten (10) days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(c) Except as provided in subsections (a) and (b) of this section, a merger between a parent and a subsidiary shall be governed by the provisions of this article applicable to mergers generally.

#### **17-16-1106. Articles of merger or share exchange.**

(a) After a plan of merger or share exchange has been adopted and approved as required by this act, articles of merger or share exchange shall be executed on behalf of the surviving or acquiring corporation by any officer or other duly authorized representative. The articles shall set forth:

(i) The names of the parties to the merger or share exchange;

(ii) If the articles of incorporation of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

(iii) If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this act and the articles of incorporation;

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

(v) As to each foreign corporation or eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

(b) Articles of merger or share exchange shall be delivered to the secretary of state for filing by the survivor of the merger or the acquiring corporation in a share exchange, and shall take effect upon the effective time provided in W.S. 17-16-123. Articles of merger or share exchange filed under this section may be combined with any filing required under any other provision of Wyoming law if the combined filing satisfies the requirements of both this section and any other provision of Wyoming law.

**17-16-1107. Effect of merger or share exchange.**

(a) When a merger becomes effective:

(i) The corporation or eligible entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be and the separate existence of every corporation or eligible entity that is merged into the survivor ceases;

(ii) Reserved;

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

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

(v) The name of the survivor may, but need not be, substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

(vi) The articles of incorporation or organic documents of the survivor are amended to the extent provided in the plan of merger;

(vii) The shares of each corporation that is a party to the merger, and the interests in an eligible entity that is a party to a merger, that are to be converted under the plan of merger into shares, eligible interests, obligations, rights to acquire securities, other securities, or eligible interests, cash, other property, or any combination of the foregoing, are converted, and the former holders of the shares or eligible interests are entitled only to the rights provided in the plan of merger or to any rights they may have under article 13 of this chapter or the organic law of the eligible entity; and

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

(b) When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under article 13 of this chapter.

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

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

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

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

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

(i) The merger or share exchange does not discharge any owner liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent any owner liability arose before the effective time of the articles of merger or share exchange;

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

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

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

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

(a) Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation or a domestic or foreign eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this chapter, and at any time before the merger or share exchange has become effective, it may be abandoned by a domestic business corporation that is a party thereto without action by its shareholders in accordance with any procedures set forth in the plan of merger or share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors, subject to any contractual rights of other parties to the merger or share exchange.

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

**17-16-1110. Consolidation.**

(a) Any two (2) or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this act.

(b) The board of directors of each corporation shall, by a resolution adopted by each board, approve a plan of consolidation setting forth:

(i) The names of the corporations proposing to consolidate, and the name of the new corporation into which they proposed to consolidate, which is hereinafter designated as the new corporation;

(ii) The terms and conditions of the proposed consolidation;

(iii) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or of any other corporation or, in whole or in part, into cash or other property;

(iv) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this act; and

(v) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

**17-16-1111. Approval by shareholders; abandonment of plan.**

(a) The board of directors of each corporation, upon approving the plan of consolidation, shall, by resolution,

direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record whether or not entitled to vote at the meeting, not less than twenty (20) days before the meeting, in the manner provided in this act for the giving of notice of meetings of shareholders, and shall state that the purpose or one (1) of the purposes of the meeting is to consider the proposed plan of consolidation, whether the meeting be an annual or a special meeting. A copy of a summary of the plan of consolidation shall be included in or enclosed with the notice.

(b) At the shareholder's meeting for each corporation, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of at least a majority of the shares entitled to vote. However, if any class of shares of each corporation is entitled to vote as a class, the plan shall be approved upon receiving the affirmative vote of the holders of at least a majority of the shares of each class of shares entitled to vote as a class. Any class of shares of each corporation shall be entitled to vote as a class if the plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle the class of shares to vote as a class.

(c) After approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of consolidation, the consolidation may be abandoned pursuant to provisions of the articles of consolidation, if any, set forth in the plan.

#### **17-16-1112. Articles of consolidation.**

(a) Upon approval, articles of consolidation shall be delivered to the secretary of state for filing. The articles of consolidation shall set forth:

(i) The plan of consolidation;

(ii) As to each corporation the shareholders of which were required to vote on the plan, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each class;

(iii) As to each corporation the shareholders of which were required to vote on the plan, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the plan respectively.

**17-16-1113. Effect of consolidation.**

(a) A consolidation becomes effective upon filing by the secretary of state, or on a later date, not more than thirty (30) days subsequent to filing the plan with the secretary of state, as shall be provided in the plan.

(b) When a consolidation takes effect:

(i) The several corporations party to the plan of consolidation are a single corporation, which is the new corporation provided for in the plan of consolidation;

(ii) The separate existence of all corporations party to the plan of consolidation except the new corporation ceases;

(iii) The new corporation has all the rights, privileges, immunities and powers and is subject to all the duties and liabilities of a corporation organized under this act;

(iv) The new corporation has all the rights, privileges, immunities and franchises, public or private, of each corporation party to the plan of consolidation. The title to all real estate and other property owned by each corporation party to the plan of consolidation is vested in the new corporation without reversion or impairment;

(v) The new corporation has all the liabilities and obligations of each corporation party to the plan of consolidation. Any claim existing or proceeding pending by or against any corporation party to the plan of consolidation may be continued as if the consolidation did not occur or the new corporation may be substituted for the corporation whose existence ceased. Neither the rights of creditors nor any liens upon the property of any corporation party to the plan of consolidation shall be impaired by the consolidation;

(vi) The statements set forth in the articles of consolidation and which are required or permitted to be set



forth in the articles of incorporation of corporations organized under this act shall be deemed to be the original articles of incorporation of the new corporation;

(vii) The shares of each corporation party to the plan of consolidation that are to be converted into shares, obligations or other securities of the new corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the plan of consolidation or to their rights under article 13 of this act.

**17-16-1114. Consolidation of domestic and foreign corporations.**

(a) One (1) or more foreign corporations and one (1) or more domestic corporations may be consolidated in the following manner, if the consolidation is permitted by the laws of the state under which each foreign corporation is organized:

(i) Each domestic corporation shall comply with the provisions of this act with respect to the consolidation of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized;

(ii) If the new corporation in a consolidation is to be governed by the laws of any state other than Wyoming, it shall comply with the provisions of this act with respect to foreign corporations if it is to transact business in Wyoming, and in every case it shall file with the secretary of state of Wyoming:

(A) An agreement that it may be served with process in Wyoming in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the new corporation;

(B) An irrevocable appointment of the secretary of state of Wyoming as its agent to accept service of process in any such proceeding; and

(C) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the

provisions of this act with respect to the rights of dissenting shareholders.

**17-16-1115. Conversion of corporation to limited liability company.**

(a) A domestic corporation may be converted to a domestic limited liability company pursuant to chapter 26 of this title.

(b) A foreign corporation may be converted to a domestic limited liability company pursuant to chapter 26 of this title.

(c) Repealed By Laws 2009, Ch. 115, § 3.

(d) After the conversion is approved by the shareholders, the limited liability company shall file articles of organization which satisfy the requirements of W.S. 17-29-201 and include:

(i) A statement that the corporation was converted to a limited liability company;

(ii) Its former name;

(iii) The state of formation and the date of organization; and

(iv) A statement of the number of votes cast by the shareholders for and against conversion and if the vote is less than unanimous, the number or percentage required to approve the conversion under the articles of incorporation or bylaws.

(e) The conversion takes effect when the articles of organization are filed or at any later date specified in the articles.

**17-16-1116. Effect of conversion.**

(a) Upon conversion:

(i) All property owned by the corporation remains in the limited liability company;

(ii) All obligations of the converting corporation continue as obligations of the resulting limited liability company; and

(iii) An action or proceeding pending against the converting corporation may be continued as if the conversion had not occurred.

## ARTICLE 12 SALE OF ASSETS

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

(a) No approval of the shareholders of a corporation is required unless the articles of incorporation otherwise provide:

(i) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

(ii) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets whether or not in the usual and regular course of business; or

(iii) To transfer any or all of the corporation's assets to one (1) or more corporations or other entities all of the shares or interests of which are owned by the corporation; or

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

(b) Repealed by Laws 2009, Ch. 115, § 3.

### **17-16-1202. Shareholder approval of certain dispositions.**

(a) A sale, lease, exchange, or other disposition of assets, other than a disposition described in W.S. 17-16-1201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a significant business activity of the corporation prior to any such disposition of assets was the active or passive holding, maintenance or management of investments, then such holding, maintenance or management of investments shall be considered a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from

continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

(b) A disposition that requires approval of the shareholders under subsection (a) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(c) The board of directors may condition its submission of a disposition to the shareholders under subsection (b) of this section on any basis.

(d) If a disposition is required to be approved by the shareholders under subsection (a) of this section and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(e) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (c) of this section, require a greater vote or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum exists.

(f) After a disposition has been approved by the shareholders under subsection (b) of this section and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(g) A disposition of assets in the course of dissolution under article 14 is not governed by this section.

(h) For purposes of this section, the ownership interests of a parent corporation in its subsidiaries, whether owned directly by the parent corporation or indirectly through other subsidiaries shall be valued at the net asset values of such subsidiaries, without application of any discount to the valuation of such ownership interests because of a lack of marketability or otherwise.

### ARTICLE 13 APPRAISAL RIGHTS

#### **17-16-1301. Definitions.**

(a) As used in this article:

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

(ii) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in W.S. 17-16-1322 through 17-16-1331, includes the surviving entity in a merger;

(iii) Repealed By Laws 2009, Ch. 115, § 3.

(iv) "Fair value" means the value of the corporation's shares determined:

(A) Immediately before the effectuation of the corporate action to which the shareholder objects;

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

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

(v) "Interest" means interest from the effective date of the corporate action until the date of payment, at the

average rate currently paid by the corporation on its principal bank loans, or, if none, at a rate that is fair and equitable under all the circumstances;

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

(vii) "Shareholder" means the record shareholder or the beneficial shareholder.

(viii) "Affiliate" means a person that directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof;

(ix) "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two (2) or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group;

(x) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

#### **17-16-1302. Right to appraisal.**

(a) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of his shares in the event of, any of the following corporate actions:

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

(A) Shareholder approval is required for the merger or the consolidation by W.S. 17-16-1104 or 17-16-1111 and the shareholder is entitled to vote on the merger or consolidation, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

(B) The corporation is a subsidiary that is merged with its parent under W.S. 17-16-1105.

(ii) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(iii) Consummation of a disposition of assets pursuant to W.S. 17-16-1202 if the shareholder is entitled to vote on the disposition;

(iv) An amendment of the articles of incorporation with respect to a class or series of shares that:

(A) Alters or abolishes a preferential right of the shares;

(B) Creates, alters or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;

(C) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(D) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(E) Reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created.

(v) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets if specifically provided in the articles of incorporation, bylaws or a resolution of the board of directors;

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

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

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

(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under paragraphs (a)(i), (ii), (iii), (iv), (vi) and (viii) of this section shall be limited in accordance with the following provisions:

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

(A) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, as amended; or

(B) Traded in an organized market and has at least two thousand (2,000) shareholders and a market value of at least twenty million dollars (\$20,000,000.00), exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares; or

(C) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

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



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

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

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

(iv) Reserved.

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

(a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

(i) Submits to the corporation the record shareholder's written consent to the assertion of those rights not later than the date provided in W.S. 17-16-1322(b)(ii)(B); and

(ii) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

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

(a) If proposed corporate action described in W.S. 17-16-1302 is to be submitted to a vote at a shareholders' meeting, the meeting notice shall state that corporation has concluded that shareholders are, are not or may be entitled to assert appraisal rights under this article. If the corporation concludes that appraisal rights are or may be available, a copy of this article shall accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(b) In a merger pursuant to W.S. 17-16-1105, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. The notice shall be sent within ten (10) days after the corporate action became effective and include the materials described in W.S. 17-16-1322.

(c) Where any corporate action specified in W.S. 17-16-1302(a) is to be approved by written consent of the shareholders pursuant to W.S. 17-16-704:

(i) Written notice that appraisal rights are, are not or may be available shall be given to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this article; and

(ii) Written notice that appraisal rights are, are not or may be available shall be delivered together with the notice to nonconsenting and nonvoting shareholders required by W.S. 17-16-704(e) and (f), may include the materials described in W.S. 17-16-1322 and, if the corporation has concluded that appraisal rights are or may be available, shall be accompanied by a copy of this article.

(d) Where corporate action described in W.S. 17-16-1302(a) is proposed, or a merger pursuant to W.S. 17-16-1105 is effected, the notice referred to in subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section shall be accompanied by:

(i) The annual financial statements specified in W.S. 17-16-1620(a) of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen (16) months before the date of the notice and shall comply with W.S. 17-16-1620(b); provided that, if the annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

(ii) The latest available quarterly financial statements of such corporation, if any.

(e) The right to receive the information described in subsection (d) of this section may be waived in writing by a shareholder before or after the corporate action.

**17-16-1321. Notice of intent to demand payment and consequences of voting or consenting.**

(a) If proposed corporate action requiring appraisal under W.S. 17-16-1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(i) Shall deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

(ii) Shall not vote or cause or permit to be voted any shares of the class or series in favor of the proposed action.

(b) If a corporate action specified in W.S. 17-16-1302(a) is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares shall not execute a consent in favor of the proposed action with respect to that class or series of shares.

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

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

(a) If corporate action requiring appraisal under W.S. 17-16-1302(a) becomes effective, the corporation shall deliver a

written appraisal notice to all shareholders who satisfied the requirements of W.S. 17-16-1321(a) or (b). In the case of a merger under W.S. 17-16-1105, the parent shall deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(b) The appraisal notice shall be sent no later than ten (10) days after the corporate action specified in W.S. 17-16-1302(a) became effective, and shall:

(i) Supply a form that:

(A) Specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action; and

(B) If such announcement was made, requires that the shareholder asserting appraisal rights certify whether beneficial ownership of the shares for which appraisal rights are asserted was acquired before that date; and

(C) Requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to the transaction.

(ii) State:

(A) Where the form shall be sent and where certificates for certificated shares shall be deposited and the date by which those certificates shall be deposited, which date may not be earlier than the date for receiving the required form under subparagraph (B) of this paragraph;

(B) Date by which the corporation shall receive the form, which date may not be fewer than forty (40) nor more than sixty (60) days after the date the appraisal notice and form are sent pursuant to subsection (a) of this section, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;

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

(D) That, if requested in writing, the corporation will provide, to the shareholder so requesting,

within ten (10) days after the date specified in subparagraph (B) of this paragraph the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and

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

(iii) Be accompanied by a copy of this article.

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

(a) A shareholder who receives notice pursuant to W.S. 17-16-1322 and who wishes to exercise appraisal rights shall sign and return the form sent by the corporation and, in the case of certificated shares, deposit his certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to W.S. 17-16-1322(b)(ii)(B). In addition, if applicable, the shareholder shall certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to W.S. 17-16-1322(b)(i). If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after acquired shares under W.S. 17-16-1324. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (b) of this section.

(b) The shareholder who has complied with subsection (a) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to W.S. 17-16-1322(b)(ii)(E). A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(c) A shareholder who does not sign and return the form and, in the case of certificated shares, deposit his share certificates where required, each by the date set forth in the notice described in W.S. 17-16-1322(b), is not entitled to payment under this article.

**17-16-1324. Payment.**

(a) Except as provided in W.S. 17-16-1325, within one hundred twenty (120) days after the form required by W.S. 17-16-1322(b)(ii)(B) is due, the corporation shall pay in cash or other agreed upon consideration to those shareholders who complied with W.S. 17-16-1323 the amount the corporation estimates to be the fair value of his shares, plus interest.

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

(i) The annual financial statements specified in W.S. 17-16-1620(a) of the corporation that issued the shares to be appraised, which shall be of a date ending not more than sixteen (16) months before the date of payment and shall comply with W.S. 17-16-1620(b), provided that if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information. The corporation shall also provide the latest available quarterly financial statements, if any;

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

(iii) A statement that shareholders described in subsection (a) of this section have the right to demand further payment under W.S. 17-16-1326 and that if any shareholder does not do so within the time period specified therein, the shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this article.

**17-16-1325. After-acquired shares.**

(a) A corporation may elect to withhold payment required by W.S. 17-16-1324 from any shareholder who was required to, but did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to W.S. 17-16-1322(b)(i).

(b) If the corporation elected to withhold payment under subsection (a) of this section, it shall, within thirty (30)

days after the form required by W.S. 17-16-1322(b)(ii)(B) is due, notify all shareholders described in subsection (a) of this section:

(i) Of the information required by W.S. 17-16-1324(b)(i);

(ii) Of the corporation's estimate of fair value pursuant to W.S. 17-16-1324(b)(ii);

(iii) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under W.S. 17-16-1326;

(iv) That those shareholders who wish to accept the offer shall so notify the corporation of their acceptance of the corporation's offer within thirty (30) days after receiving the offer; and

(v) That those shareholders who do not satisfy the requirements for demanding appraisal under W.S. 17-16-1326 shall be deemed to have accepted the corporation's offer.

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

(d) Within one hundred thirty (130) days after sending the notice described in subsection (b) of this section, the corporation shall pay in cash the amount it offered to pay under paragraph (b)(ii) of this section to each shareholder described in paragraph (b)(v) of this section.

**17-16-1326. Procedure if shareholder dissatisfied with payment or offer.**

(a) A shareholder paid pursuant to W.S. 17-16-1324 who is dissatisfied with the amount of the payment may notify the corporation in writing of that shareholder's estimate of the fair value of his shares and demand payment of his estimate plus interest, less any payment under W.S. 17-16-1324. A shareholder offered payment under W.S. 17-16-1325 who is dissatisfied with that offer shall reject the offer and demand payment of the

shareholder's stated estimate of the fair value of the shares plus interest.

(b) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (a) of this section within thirty (30) days after receiving the corporation's payment or offer of payment under W.S. 17-16-1324 or 17-16-1325, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

#### **17-16-1330. Court action.**

(a) If a shareholder makes a demand for payment under W.S. 17-16-1326 which remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty (60) day period, it shall pay each shareholder demanding appraisal rights whose demand remains unsettled the amount demanded pursuant to W.S. 17-16-1326 plus interest.

(b) The corporation shall commence the proceeding in the district court of the county where a corporation's principal office, or if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the principal office or registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located at the time of the transaction.

(c) The corporation shall make all shareholders, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties shall be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) of this section is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers



described in the order appointing them, or in the amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings.

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

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

(ii) The fair value, plus accrued interest, of his after-acquired shares for which the corporation elected to withhold payment under W.S. 17-16-1325.

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

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

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

(i) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of W.S. 17-16-1320 through 17-16-1326; or

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

(c) If the court in an appraisal proceeding finds that the services of counsel and any other expenses incurred for any shareholder demanding appraisal were of substantial benefit to other shareholders similarly situated, and that the fees for

those services and other expenses should not be assessed against the corporation, the court may direct that those fees and expenses be paid out of the amounts awarded the shareholders who were benefited.

(d) To the extent the corporation fails to make a required payment pursuant to W.S. 17-16-1324, 17-16-1325 or 17-16-1326, the shareholder may sue directly for the amount owed, and to the extent successful, shall be entitled to recover from the corporation all expenses of the suit.

**17-16-1340. Other remedies limited.**

(a) The legality of a proposed or completed corporate action described in W.S. 17-16-1302(a) may not be contested, nor may the corporate action be enjoined, set aside or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

(b) Subsection (a) of this section does not apply to a corporate action that:

(i) Was not authorized and approved in accordance with the applicable provisions of:

(A) Article 9, 10, 11 or 12 of this act;

(B) The articles of incorporation or bylaws; or

(C) The resolution of the board of directors authorizing the corporate action.

(ii) Was procured as a result of fraud, a material misrepresentation or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

(iii) Reserved;

(iv) Is approved by less than unanimous consent of the voting shareholders pursuant to W.S. 17-16-704 if:

(A) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least ten (10) days before the corporate action was effected; and

(B) The proceeding challenging the corporate action is commenced within ten (10) days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

ARTICLE 14  
DISSOLUTION

**17-16-1401. Dissolution by incorporators or initial directors.**

(a) A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(i) The name of the corporation;

(ii) The date of its incorporation;

(iii) Either:

(A) That none of the corporation's shares has been issued; or

(B) That the corporation has not commenced business.

(iv) That no debt of the corporation remains unpaid;

(v) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(vi) That a majority of the incorporators or initial directors authorized the dissolution.

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

(a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(i) The board of directors shall recommend dissolution to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(ii) The shareholders entitled to vote shall approve the proposal to dissolve as provided in subsection (e) of this section.

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

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

(e) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (c) of this section, require a greater vote or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

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

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

(i) The name of the corporation;

(ii) The date dissolution was authorized;

(iii) If dissolution was approved by the shareholders a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this act and by the articles of incorporation.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

(c) For purposes of this article, "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining

assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

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

(a) A corporation may revoke its dissolution within one hundred twenty (120) days of the effective date of the dissolution.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

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

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

(ii) The effective date of the dissolution that was revoked;

(iii) The date that the revocation of dissolution was authorized;

(iv) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(v) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

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

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

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

#### **17-16-1405. Effect of dissolution.**

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(i) Collecting its assets;

(ii) Disposing of its properties that will not be distributed in kind to its shareholders;

(iii) Discharging or making provision for discharging its liabilities;

(iv) Distributing its remaining property among its shareholders according to their interests; and

(v) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(i) Transfer title to the corporation's property;

(ii) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(iii) Subject its directors or officers to standards of conduct different from those prescribed in article 8;

(iv) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(v) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(vi) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(vii) Terminate the authority of the registered agent of the corporation.

**17-16-1406. Known claims against dissolved corporation.**

(a) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(b) The written notice shall:

(i) Describe information that shall be included in a claim;

(ii) Provide a mailing address where a claim may be sent;

(iii) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(iv) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(i) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(ii) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

(e) A claim that is not barred by this section may be enforced in accordance with W.S. 17-16-1407(d).

**17-16-1407. Other claims against dissolved corporation.**

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

(b) The notice shall:

(i) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(ii) Describe the information that shall be included in a claim and provide a mailing address where the claim may be sent; and

(iii) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within three (3) years or the applicable statute of limitations, whichever is less, after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within three (3) years after the publication date of the newspaper notice:

(i) A claimant who did not receive written notice under W.S. 17-16-1406;

(ii) A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

(iii) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim that is not barred by W.S. 17-16-1406(c) or subsection (c) of this section may be enforced:

(i) Against the dissolved corporation, to the extent of its undistributed assets; or

(ii) Except as provided in W.S. 17-16-1408(d), if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of his



pro rata share of the claim or the corporate assets distributed to him in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

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

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

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

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

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

**17-16-1409. Directors' duties.**

(a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims

and make distributions of assets to shareholders after payment or provision for claims.

(b) Directors of a dissolved corporation which has disposed of claims under W.S. 17-16-1406, 17-16-1407 or 17-16-1408 shall not be liable for breach of this section with respect to claims against the dissolved corporation.

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

(a) The secretary of state may commence a proceeding under W.S. 17-16-1421 to administratively dissolve a corporation if any of the following has occurred:

(i) The corporation does not deliver its annual reports or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630;

(ii) Reserved;

(iii) The corporation is without a registered agent or registered office in this state;

(iv) The corporation does not notify the secretary of state within thirty (30) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(v) The corporation's period of duration stated in its articles of incorporation expires;

(vi) It is in the public interest and the corporation:

(A) Failed to provide records to the registered agent as required in W.S. 17-28-107;

(B) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing under this act with the secretary of state; or

(C) Cannot be served by either the secretary of state or the registered agent at its address provided pursuant to W.S. 17-28-107.

(vii) An incorporator, director, officer or agent of the corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing;

(viii) The corporation has failed to respond to a valid and enforceable subpoena;

(ix) The corporation is in violation of W.S. 17-16-401(d) (v) or 17-16-1506(d) (v);

(x) The corporation has failed to pay any penalties imposed under W.S. 17-28-109.

(b) Prior to commencing a proceeding under W.S. 17-16-1421 the secretary of state may classify a corporation as delinquent awaiting administrative dissolution if the corporation meets any of the criteria in subsection (a) of this section.

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

(a) If the secretary of state determines that one (1) or more grounds exist under W.S. 17-16-1420 for dissolving a corporation, he shall serve the corporation with written notice of his determination under W.S. 17-28-104, except for W.S. 17-16-1420(a) (v) in which case dissolution is by choice and therefore automatic.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under W.S. 17-28-104, the secretary of state shall administratively dissolve the corporation by signing, either manually or in facsimile, a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under W.S. 17-28-104.

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

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

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

(a) An officer or other person with proper authority at the time a corporation was administratively dissolved under W.S. 17-16-1421 may apply to the secretary of state for reinstatement within two (2) years after the effective date of dissolution. Reinstatement may be denied by the secretary of state if the corporation has been the subject of secretary of state and law enforcement investigation pertaining to fraud or any other violation of state or federal law, or if there is other reason to believe the corporation was engaged in illegal operations. The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) Reserved;

(iv) If the corporation was administratively dissolved for failing to deliver its annual report or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630, include payment of fees and taxes then delinquent and a reinstatement certificate fee prescribed pursuant to W.S. 17-16-122; and

(v) If the corporation was administratively dissolved for failure to maintain a registered agent, include payment of a two hundred fifty dollar (\$250.00) reinstatement fee and payment of any fees and taxes then delinquent.

(b) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the information is correct, he shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under W.S. 17-28-104.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(d) The corporation shall retain its registered corporate name during the two (2) year reinstatement period.

(e) A person who files any document under this section without proper corporate authority to do so is in violation of W.S. 6-5-308.

**17-16-1423. Appeal from denial of reinstatement.**

(a) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, he shall serve the corporation under W.S. 17-28-104 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

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

**17-16-1430. Grounds for judicial dissolution.**

(a) The district court may dissolve a corporation:

(i) In a proceeding by the attorney general if it is established that:

(A) The corporation obtained its articles of incorporation through fraud; or

(B) The corporation has continued to exceed or abuse the authority conferred upon it by law.

(ii) In a proceeding by a shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted.

(iii) In a proceeding by a creditor if it is established that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(iv) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision;

(v) In a proceeding by a shareholder, if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(b) Reserved.

(c) Reserved.

**17-16-1431. Procedure for judicial dissolution.**

(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in Laramie county district court. Venue for a proceeding brought by any other party named in W.S. 17-16-1430 lies in the county where a corporation's principal office, or, if none in this state, its registered office, is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten (10) days of the commencement of a proceeding under W.S. 17-16-1430(a)(ii) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under W.S. 17-16-1434 and accompanied by a copy of W.S. 17-16-1434.

**17-16-1432. Receivership or custodianship.**

(a) A court in a judicial proceeding brought to dissolve a corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this

state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

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

(i) The receiver may:

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

(B) Sue and defend in his own name as receiver of the corporation in all Wyoming courts.

(ii) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

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

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

#### **17-16-1433. Decree of dissolution.**

(a) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in W.S. 17-16-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with W.S. 17-16-1405 and the



notification of claimants in accordance with W.S. 17-16-1406 and 17-16-1407.

**17-16-1434. Election to purchase in lieu of dissolution.**

(a) In a proceeding under W.S. 17-16-1430(a)(ii) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one (1) or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety (90) days after the filing of the petition under W.S. 17-16-1430(a)(ii) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one (1) or more shareholders, the corporation shall, within ten (10) days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty (30) days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one (1) or more shareholders, the proceeding under W.S. 17-16-1430(a)(ii) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale or other disposition.

(c) If, within sixty (60) days of the filing of the first election, the parties reach agreement as to the fair value in terms of purchase of the petitioner's shares, the court shall

enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the court, upon application of any party, shall stay the W.S. 17-16-1430(a)(ii) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under W.S. 17-16-1430(a)(ii) was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees and expenses as may have been awarded, and, if the shares are to be purchased by the shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that the holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under W.S. 17-16-1430(a)(ii)(B) or (D), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by him.

(f) Upon entry of an order under subsection (c) or (e) of this section, the court shall dismiss the petition to dissolve the corporation under W.S. 17-16-1430, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) The purchase order pursuant to subsection (e) of this section shall be made within ten (10) days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to W.S. 17-16-1402 and 17-16-1403, which

articles must then be adopted and filed within fifty (50) days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with provisions of W.S. 17-16-1405 through 17-16-1407, and the order entered pursuant to subsection (e) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (e) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of fees and expenses pursuant to subsection (e) of this section, is subject to the provisions of W.S. 17-16-640.

**17-16-1440. Deposit with state treasurer.**

Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state treasurer for safekeeping. When the creditor, claimant or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer shall pay him or his representative that amount.

ARTICLE 15  
FOREIGN CORPORATIONS

**17-16-1501. Authority to transact business required.**

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

(i) Maintaining, defending or settling any proceeding;

(ii) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(iii) Maintaining bank accounts;

(iv) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(v) Selling through independent contractors;

(vi) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(vii) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(viii) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

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

(x) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; or

(xi) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) of this section is not exhaustive.

(d) A foreign corporation, foreign limited partnership or foreign limited liability company which is either an organizer, a manager or member of a company is not required to obtain a certificate of authority to undertake its duties in these capacities.

**17-16-1502. Consequences of transacting business without authority.**

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and license taxes, plus interest of eighteen percent (18%), which would have been imposed by law upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this act and thereafter filed all reports required by law, and in addition shall be liable for a penalty in the amount of five thousand dollars (\$5,000.00), reasonable audit expenses and reasonable attorney fees. The secretary of state may refuse to issue a certificate of authority until all taxes, fees, interest, expenses and penalties due under this section have been paid to him. The attorney general may collect all penalties and other sums due under this subsection.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

**17-16-1503. Application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application shall set forth:

(i) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of W.S. 17-16-1506;

(ii) The name of the state or country under whose law it is incorporated;

(iii) Its date of incorporation and period of duration;

(iv) The street address of its principal office;

(v) The address of its registered office in this state and the name of its registered agent at that office;

(vi) The names and usual business addresses of its current directors and officers; and

(vii) Repealed By Laws 2009, Ch. 115, § 3.

(viii) A statement that the corporation accepts the constitution of the state of Wyoming in compliance with the requirement of article 10, section 5 of the Wyoming constitution.

(ix) Repealed By Laws 2009, Ch. 115, § 3.

(b) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, dated not more than sixty (60) days prior to filing in Wyoming, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

(c) The application for certificate of authority shall be accompanied by a written consent to appointment executed by the registered agent.

**17-16-1504. Amended certificate of authority.**

(a) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(i) Its corporate name;

(ii) The period of its duration; or

(iii) The state or country of its incorporation.

(b) The requirements of W.S. 17-16-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**17-16-1505. Effect on certificate of authority.**

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this act.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this act is subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character.

(c) This act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

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

(a) If the corporate name of a foreign corporation does not satisfy the requirements of W.S. 17-16-401, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

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

(c) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to do business in this state, that is not distinguishable in accordance with the provisions of W.S. 17-16-401(c).

- (i) Reserved;
- (ii) Reserved.

(d) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has:

- (i) Merged with the other corporation; or
- (ii) Been formed by reorganization of the other corporation; or
- (iii) Acquired all or substantially all of the assets, including the corporate name, of the other corporation; or
- (iv) Repealed By Laws 1996, ch. 80, § 3.
- (v) Has received the written consent of the other corporation, which written consent also sets forth a description of a proposed merger, consolidation, dissolution, amendment to articles of incorporation or other intended corporate action which establishes to the reasonable satisfaction of the secretary of state that the coexistence of two (2) corporations using the same name will not continue for more than one hundred twenty (120) days.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of W.S. 17-16-401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of W.S. 17-16-401 and obtains an amended certificate of authority under W.S. 17-16-1504.

**17-16-1507. Registered office and registered agent of foreign corporation.**

(a) Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

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



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

(A) Reserved;

(B) Reserved;

(C) Reserved.

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

**17-16-1508. Reserved.**

**17-16-1509. Reserved.**

**17-16-1510. Reserved.**

**17-16-1511. Merger of foreign corporation authorized to transact business in this state.**

(a) Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country of incorporation, it shall, within thirty (30) days after a merger becomes effective, file with the secretary of state a current certificate of evidence issued by the proper officer of the state or country of incorporation which sets forth:

(i) The date of filing;

(ii) The names of each corporation involved and the states of incorporation; and

(iii) The name of the surviving corporation.

(b) It shall not be necessary for the corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of the corporation is changed by merger or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

**17-16-1520. Withdrawal of foreign corporation.**

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application shall set forth:

(i) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(ii) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(iii) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(iv) A mailing address to which the secretary of state may mail a copy of any process served on him under paragraph (iii) of this subsection; and

(v) A commitment to notify the secretary of state in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b) of this section.

**17-16-1521. Reserved.**

**17-16-1522. Reserved.**

**17-16-1523. Reserved.**

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

(a) The secretary of state may commence a proceeding under W.S. 17-16-1531 to revoke the certificate of authority of a

foreign corporation authorized to transact business in this state if:

(i) The corporation does not deliver its annual reports or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630;

(ii) Reserved;

(iii) The foreign corporation is without a registered agent or registered office in this state;

(iv) The foreign corporation does not inform the secretary of state under W.S. 17-28-102 or 17-28-103 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within thirty (30) days of the change, resignation or discontinuance;

(v) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing;

(vi) Reserved;

(vii) The corporation has failed to respond to a valid and enforceable subpoena; or

(A) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing under this act with the secretary of state; or

(B) Cannot be served by either the registered agent or by mail by the secretary of state acting as the agent for process.

(viii) It is in the public interest and the corporation:

(A) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing under this act with the secretary of state; or

(B) Cannot be served by either the registered agent or by mail by the secretary of state acting as the agent for process.

(ix) The foreign corporation has failed to pay any penalties imposed under W.S. 17-28-109.

(b) Prior to commencing a proceeding under W.S. 17-16-1531 the secretary of state may classify a foreign corporation as delinquent awaiting administrative revocation if the foreign corporation meets any of the criteria in subsection (a) of this section.

**17-16-1531. Procedure for and effect of revocation.**

(a) If the secretary of state determines that one (1) or more grounds exist under W.S. 17-16-1530 for revocation of a certificate of authority, he shall serve the foreign corporation with written notice of his determination under W.S. 17-28-104.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty (60) days after service of the notice is perfected under W.S. 17-28-104, the secretary of state may revoke the foreign corporation's certificate of authority by signing, either manually or in facsimile, a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under W.S. 17-28-104.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report

or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

**17-16-1532. Appeal from revocation.**

(a) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority pursuant to W.S. 16-3-114, within thirty (30) days after service of the certificate of revocation is perfected under W.S. 17-28-104. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(b) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

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

**17-16-1533. Applicability of chapter to foreign limited liability companies.**

To the extent not inconsistent with the Wyoming Limited Liability Company Act, W.S. 17-29-101 through 17-29-1105 and the provisions of this chapter, a limited liability company organized in another jurisdiction shall do business in Wyoming by complying with the applicable provisions of this article. The certificate of authority of a limited liability company organized in another jurisdiction shall be revoked and reinstated as provided in this act.

**17-16-1534. Applicability of chapter 23 to foreign statutory trust companies.**

To the extent not inconsistent with the Wyoming Statutory Trust Act, W.S. 17-23-101 through 17-23-302, a statutory trust as defined in W.S. 17-23-102(a)(v), which is organized in another jurisdiction may do business in Wyoming by complying with W.S.

17-16-1501 through 17-16-1507, 17-16-1520 and 17-16-1530 through 17-16-1532.

**17-16-1535. Reinstatement following revocation of certificate of authority.**

(a) An officer or other person with proper authority at the time a foreign corporation had its certificate of authority revoked under W.S. 17-16-1531 may apply to the secretary of state for reinstatement of its certificate of authority within two (2) years after the effective date of revocation. Reinstatement may be denied by the secretary of state if the corporation has been the subject of a secretary of state and law enforcement investigation pertaining to fraud or any other violation of state or federal law, or if there is other reason to believe the corporation was engaged in illegal operations. The application shall:

(i) Recite the name of the corporation and the effective date of the revocation of its certificate of authority;

(ii) State that the ground or grounds for revocation either did not exist or have been eliminated;

(iii) Reserved;

(iv) If the foreign corporation's certificate of authority was revoked for failing to deliver its annual report or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-16-1630, include payment of fees and taxes then delinquent and a reinstatement certificate fee prescribed pursuant to W.S. 17-16-122;

(v) If the foreign corporation's certificate of authority was revoked for failure to maintain a registered agent, include payment of a two hundred fifty dollar (\$250.00) reinstatement fee and payment of any fees and taxes then delinquent; and

(vi) Include proof that the foreign corporation is currently in good standing in the state of formation.

(b) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the information is correct, he shall cancel the certificate of revocation and prepare a certificate

of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under W.S. 17-28-104.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation of the certificate of authority and the foreign corporation resumes carrying on its business as if the revocation had never occurred.

(d) The foreign corporation shall retain its registered corporate name during the two (2) year reinstatement period.

(e) If more than two (2) years has elapsed since the revocation of a foreign corporation's certificate of authority, the foreign corporation may reapply for a certificate of authority to transact business pursuant to W.S. 17-16-1503. If the foreign corporation continues transacting business in Wyoming after the two (2) year period elapsed, the foreign corporation shall be subject to the penalty for transacting business without authority as set forth in W.S. 17-16-1502(d).

(f) A person who files any document under this section without proper corporate authority to do so is in violation of W.S. 6-5-308.

#### **17-16-1536. Appeal from denial of reinstatement.**

(a) If the secretary of state denies a foreign corporation's application for reinstatement following administrative revocation, he shall serve the corporation under W.S. 17-28-104 with a written notice that explains the reason or reasons for denial.

(b) The foreign corporation may appeal the denial of reinstatement to the district court within thirty (30) days after service of the notice of denial is perfected. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the secretary of state's certificate of revocation, the foreign corporation's application for reinstatement and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the foreign corporation's certificate of authority or may take other action the court considers appropriate.

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

ARTICLE 16  
RECORDS AND REPORTS

**17-16-1601. Corporate records.**

(a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(b) A corporation shall maintain appropriate accounting records.

(c) A record of shareholders administered by or on behalf of a corporation shall be kept in a form that permits preparation of a list of the identities of all shareholders, in alphabetical or numerical order by class of shares showing the number and class of shares held by each. The list shall also show each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name, and each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address. A record of shareholders may show both the shareholder's name and data address.

(d) Records administered by or on behalf of, or maintained by, a corporation may be kept on, or by means of, or be in the form of any information storage device or method or any one (1) or more distributed or other electronic networks or databases provided that the records are kept in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(i) Its articles or restated articles of incorporation and all amendments to them currently in effect;



(ii) Its bylaws or restated bylaws and all amendments to them currently in effect;

(iii) Resolutions adopted by its board of directors creating one (1) or more classes or series of shares, and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

(iv) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;

(v) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under W.S. 17-16-1620;

(vi) A list of the names and business addresses of its current directors and officers; and

(vii) Its most recent annual report delivered to the secretary of state under W.S. 17-16-1630.

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

(a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in W.S. 17-16-1601(e) if the shareholder gives the corporation written notice of the shareholder's demand at least five (5) business days before the date on which the shareholder wishes to inspect and copy.

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

(i) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board

of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under W.S. 17-16-1602(a);

(ii) Accounting records of the corporation; and

(iii) The record of shareholders.

(c) A shareholder may inspect and copy the records described in subsection (b) of this section only if:

(i) The shareholder's demand is made in good faith and for a proper purpose;

(ii) The shareholder describes with reasonable particularity his purpose and the records he desires to inspect; and

(iii) The records are directly connected with the shareholder's purpose.

(d) The right of inspection granted by this section may not be abolished or limited, but may be expanded, by a corporation's articles of incorporation or bylaws.

(e) This section does not affect:

(i) The right of a shareholder to inspect records under W.S. 17-16-720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(ii) The power of a court, independently of this act, to compel the production of corporate records for examination.

(f) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

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

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

(b) The right to copy records under W.S. 17-16-1602 includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(c) The corporation may comply with a shareholder's demand to inspect the record of shareholders under W.S. 17-16-1602(b)(iii) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

(d) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

#### **17-16-1604. Court ordered inspection.**

(a) If a corporation does not allow a shareholder who complies with W.S. 17-16-1602(a) to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(b) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with W.S. 17-16-1602(b) and (c) may apply to the district court in the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's expenses, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

**17-16-1605. Inspection of records by directors.**

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(b) The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused inspection rights, unless the corporation establishes that the director is not entitled to those inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses, including reasonable counsel fees, incurred in connection with the application unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the director to inspect the records demanded.

**17-16-1606. Exception to notice requirement.**

(a) Whenever notice is required to be given under any provision of this act to any shareholder, the notice shall not be required to be given if:

(i) Notice of two (2) consecutive annual meetings, and all notices of meetings during the period between the two (2) consecutive annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable; or

(ii) All, but not less than two (2), payments of dividends on securities during a twelve (12) month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

(b) If any shareholder shall deliver to the corporation a written notice setting forth the shareholder's then current address, the requirement that notice be given to the shareholder shall be reinstated.

**17-16-1620. Financial statements for shareholders.**

(a) A corporation shall furnish, upon request, to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis. If detailed financial statements are not prepared for the corporation on an annual basis, then a copy of its federal income tax return will satisfy the requirements of this section.

(b) If the annual financial statements are reported upon by a public accountant, his report shall accompany them. If not, the statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(i) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(ii) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(c) A corporation shall mail, upon request, the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year.

Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail the shareholder the latest financial statements.

**17-16-1621. Reserved.**

**17-16-1622. Other reports to shareholders.**

(a) If a corporation indemnifies or advances expenses to a director under W.S. 17-16-851 through 17-16-854 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

(b) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

**17-16-1630. Filing of reports and payment of tax required; amount of tax; exemptions; records.**

(a) Every corporation organized under the laws of this state and every foreign corporation which obtains the right to transact and carry on business within this state (except banks, insurance companies and savings and loan associations) shall file with the secretary of state on or before the first day of the month of registration of every year a certification, under the penalty of perjury, by its treasurer or other fiscal agent setting forth its capital, property and assets located and employed in the state of Wyoming. The statement shall give the names and addresses of its officers and directors and the address of its principal office. On or before the first day of the month of registration of every year the corporation shall pay to the secretary of state in addition to all other statutory taxes and fees a license tax based upon the sum of its capital, property and assets reported, of fifty dollars (\$50.00) or two-tenths of one mill on the dollar (\$.0002), whichever is greater.

(i) Repealed By Laws 2000, Ch. 35, § 2.

(ii) Repealed By Laws 2000, Ch. 35, § 2.

(iii) Repealed By Laws 2000, Ch. 35, § 2.

(iv) Repealed By Laws 2000, Ch. 35, § 2.

(v) Repealed By Laws 2000, Ch. 35, § 2.

(b) The provisions of W.S. 17-16-1630(a) shall be modified as follows:

(i) Repealed By Laws 2000, Ch. 35, § 2.

(ii) Any corporation engaged in the public calling of carrying goods, passengers or information interstate is not required to comply with the provisions of W.S. 17-16-1630(a) except to the extent of capital, property and assets used in intrastate business in this state;

(iii) The value of all mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, mineral oil or other valuable deposit, is or shall be produced is deemed equivalent to the assessed value of the gross product thereof, for the previous year;

(iv) The assessed value of any property shall be its actual value.

(c) Financial information in the annual report shall be current as of the end of the corporation's fiscal year immediately preceding the date the annual report is executed on behalf of the corporation. All other information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.

(d) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction.

(e) Every corporation registered or authorized to do business in the state of Wyoming shall preserve for three (3) years at its principal place of business, suitable records and books as may be necessary to determine the amount of tax for which it is liable for under this act. All records and books shall be available for examination by the secretary of state or his designee during regular business hours except as arranged by mutual consent.

(f) In addition to other fees provided under this section, each corporation shall pay one hundred dollars (\$100.00) to the secretary of state for initial incorporation or qualification to do business in Wyoming.

**17-16-1631. Repealed By Laws 1997, ch. 192, § 3.**

**17-16-1632. Repealed By Laws 1997, ch. 192, § 3.**

**17-16-1633. Repealed By Laws 1997, ch. 192, § 3.**

#### ARTICLE 17 TRANSITION PROVISIONS

**17-16-1701. Application to existing domestic corporations.**

(a) Except as provided in subsection (b) of this section, this act applies to domestic corporations in existence on its effective date that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

(b) For corporations incorporated in Wyoming prior to the effective date of this act, the cumulative voting and shareholder preemptive rights provisions contained in former W.S. 17-1-123 and 17-1-130 are continued for a period of four (4) years from the effective date of this act unless the corporation amends its articles of incorporation to provide otherwise.

**17-16-1702. Applications to qualified foreign corporations.**

A foreign corporation authorized to transact business in this state on the effective date of this act is subject to this act but is not required to obtain a new certificate of authority to transact business under this act.

**17-16-1703. Saving provisions.**

(a) Except as provided in subsection (b) of this section, the repeal of a statute by this act does not affect:

(i) The operation of the statute or any action taken under it before its repeal;



(ii) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(iii) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or

(iv) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

**17-16-1704. Reserved.**

**17-16-1705. Reserved.**

**17-16-1706. Reserved.**

**17-16-1720. Transfer of a Wyoming corporation to another jurisdiction.**

(a) A corporation incorporated, domesticated or continued under this act may, if authorized by resolution duly adopted as set forth in subsection (g) of this section, and by the laws of any other jurisdiction, within or without the United States, apply to the proper officer of the other jurisdiction for a certificate of registration, and to the secretary of state of this state for a certificate of transfer. The application for certificate of transfer shall set forth the following:

(i) The name of the corporation immediately prior to the transfer, and if that name is unavailable for use in the foreign jurisdiction or the corporation desires to change its name in connection with the transfer, the name by which the corporation will be known in the foreign jurisdiction;

(ii) A statement of the jurisdiction to which the corporation is to be transferred;

(iii) A statement that the corporation shall surrender its certificate of incorporation under this act upon the effectiveness of the transfer;

(iv) A statement that the transfer was duly approved by the directors and the shareholders in the manner required under subsection (g) of this section; and

(v) Any other terms and conditions of the transfer, including any desired amendments to the articles of incorporation of the corporation following its transfer.

(b) The secretary of state shall require that the corporation maintain within the state an agent for service of process for at least one (1) year after the transfer is effected and shall impose any conditions he considers appropriate for the protection of creditors and stockholders, including the provision of notice to the public of the application described in subsection (a) of this section, the provision of a bond or a deposit of funds in an appropriate depository located in Wyoming and subject to the jurisdiction of the courts of Wyoming, and if such conditions are not met, the secretary of state may refuse to issue a certificate of transfer.

(c) The secretary of state, upon compliance by the applicant and the secretary with subsections (a) and (b) of this section and receipt of payment of the special toll charge prescribed by subsection (e) of this section shall immediately transmit a notice of issuance of a certificate of transfer to the proper officer of the jurisdiction to which the corporation is transferred.

(d) Upon issuance of a certificate of transfer, the corporation shall be continued as if it had been incorporated under the laws of the other jurisdiction and becomes a corporation under the laws of the other jurisdiction upon issuance by such jurisdiction of a certificate of registration.

(e) Every corporation organized, domesticated or continued under the laws of this state in order to receive a certificate of transfer pursuant to subsection (c) of this section shall pay to the secretary of state, in addition to all other statutory taxes and fees, a special toll charge of fifty dollars (\$50.00).

(i) Repealed By Laws 2009, Ch. 115, § 3.

(ii) Repealed By Laws 2009, Ch. 115, § 3.

- (iii) Repealed By Laws 2009, Ch. 115, § 3.
- (iv) Repealed By Laws 2009, Ch. 115, § 3.
- (v) Repealed By Laws 2009, Ch. 115, § 3.
- (vi) Repealed By Laws 2009, Ch. 115, § 3.
- (vii) Repealed By Laws 2009, Ch. 115, § 3.
- (viii) Repealed By Laws 2009, Ch. 115, § 3.
- (ix) Repealed By Laws 2009, Ch. 115, § 3.
- (x) Repealed By Laws 2009, Ch. 115, § 3.

(f) Repealed By Laws 2009, Ch. 115, § 3.

(g) A resolution to transfer the corporation to another jurisdiction shall be adopted by the board of directors, and shall thereafter be submitted to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the resolution, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination. The board of directors may condition its submission of the resolution to the shareholders on any basis. If the approval of the shareholders is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the resolution for transfer is to be submitted for approval. The notice shall contain or be accompanied by a copy or summary of the resolution and of the articles of incorporation of the corporation as they will be in effect in the new jurisdiction immediately after the transfer. Unless the articles of incorporation or the board of directors requires a greater vote or a greater number of votes to be present, approval of the resolution requires the affirmative vote of a majority of the shareholders at a meeting at which a quorum, consisting of a majority of the votes entitled to be cast, is present, and, if any class or series of shares is entitled to vote as a separate group on the resolution, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a

majority of the votes entitled to be cast on the resolution by that voting group exists. Separate voting by voting groups is required to the extent the same would be required for a proposed amendment to the articles of incorporation.

(h) The corporation may represent to the proper officer of the jurisdiction to which the corporation is transferred that the laws of the state of Wyoming permit such transfer, and may describe the permission extended by this section as authorizing the domestication, continuance or other transfer of domicile as may be required by the laws of the foreign jurisdiction in order for the corporation to be accepted in that jurisdiction, provided that the corporation may not misrepresent the requirements or effects of the provisions of this section.

## ARTICLE 18

### DOMESTICATION AND CONTINUANCE OF FOREIGN CORPORATIONS; TRANSFER OF DOMESTIC CORPORATIONS

#### **17-16-1801. Domestication of foreign corporations.**

Any corporation incorporated under the laws of any of the several states of the United States for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution as described by W.S. 13-1-101(a)(ix) may become a domestic corporation of this state by delivering or causing to be delivered to the secretary of state articles of domestication. Upon filing the articles of domestication, the secretary of state shall issue to the foreign corporation a certificate of domestication which shall continue the corporation as if it had been incorporated under this act. The articles of domestication, upon being filed by the secretary of state, constitute the articles of the domesticated foreign corporation and it shall thereafter have all the powers and privileges and be subjected to all the duties and limitations granted and imposed upon domestic corporations under the provisions of the Wyoming Business Corporation Act. A corporation does not become a resident for the purpose of W.S. 16-6-101 through 16-6-118 solely because it becomes a domestic corporation under this section.

#### **17-16-1802. Application for certificate of domestication; articles of domestication.**

(a) A foreign corporation, in order to procure a certificate of domestication shall file articles of

domestication with the secretary of state, which articles shall include and set forth:

(i) A certified copy of its original articles of incorporation and all amendments thereto or its equivalent basic corporate charter or other authorization, and a certificate of good standing not more than thirty (30) days old;

(ii) The name of the corporation and the jurisdiction under the laws of which it is incorporated;

(iii) The date of incorporation and the period of duration of the corporation;

(iv) The address of the principal office of the corporation and the jurisdiction under the laws of which it is incorporated;

(v) The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at that address;

(vi) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(vii) The names and addresses of the directors and officers of the corporation;

(viii) A statement of the aggregate number of shares or other ownership units which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(ix) A statement of the aggregate number of issued shares or other ownership units itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(x) A statement that the corporation accepts the constitution of this state in compliance with the requirement of article 10, section 5 of the Wyoming constitution;

(xi) Any additional information as may be necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of domestication evidencing its authority to transact business in

this state, and to determine and assess the fees and license taxes under the laws of this state.

**17-16-1810. Continuance of foreign corporations.**

(a) Subject to subsection (b) of this section, any corporation incorporated for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution as described by W.S. 13-1-101(a)(ix) under the laws of any jurisdiction other than this state may, if the jurisdiction will acknowledge the corporation's termination of domicile in the foreign jurisdiction, apply to the secretary of state for registration under this act, thus continuing the foreign corporation in Wyoming as if it had been incorporated in this state. The secretary of state may issue a certificate of registration upon receipt of an application supported by articles of continuance as provided by this act together with the statements, information and documents set out in subsection (c) of this section. The certificate of registration may then be issued subject to any limitations and conditions and may contain any provisions as may appear proper to the secretary of state.

(b) The secretary of state shall cause notice of issuance of a certificate of registration to be given forthwith to the proper officer of the jurisdiction in which the corporation was previously incorporated.

(c) The articles of continuance filed by a foreign corporation with the secretary of state shall contain:

(i) A certified copy of its original articles of incorporation and all amendments thereto or its equivalent basic corporate charter or other authorization;

(ii) The name of the corporation and the jurisdiction under the laws of which it is incorporated;

(iii) The date of incorporation and the period of duration of the corporation;

(iv) The address of the principal office of the corporation;

(v) The address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at the address;

(vi) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(vii) The names and respective business addresses of the directors and officers of the corporation;

(viii) A statement of the aggregate number of shares or other ownership units which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(ix) A statement of the aggregate number of issued shares or other ownership units itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(x) Such additional information concerning capital structure or financial status as the secretary of state deems necessary to establish fees;

(xi) A statement that the corporation accepts the constitution of this state in compliance with the requirements of article 10, section 5 of the Wyoming constitution;

(xii) Any additional information necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of registration evidencing its authority to transact business in the state and to determine and to assess any fees and taxes under the laws of this state;

(xiii) Any additional information permitted in articles of incorporation under W.S. 17-16-202.

(d) The application shall be executed by the corporation by its president or other officer, director, trustee, manager or person performing functions equivalent to those of a president and who is authorized to execute the application on behalf of the corporation and shall be verified by the officer signing the application.

(e) The provisions of the articles of continuance may, without expressly so stating, vary from the provisions of the corporation's articles of incorporation or equivalent basic corporate charter or other authorization, if the variation is one which a corporation incorporated under the Wyoming Business

Corporation Act could effect by way of amendment to its articles of incorporation. Upon issuance of a certificate of continuance by the secretary of state, the articles of continuance shall be deemed to be the articles of incorporation of the continued corporation. The corporation may elect to incorporate by reference in the articles of continuance its basic corporate charter or other authorization which had been adopted by the corporation in the foreign jurisdiction, in order to permit the same to continue to act as the articles of incorporation of the corporation, provided, however, that such basic corporate charter or other authorization shall be deemed amended to the extent necessary to make the same conform to the laws of Wyoming and to the provisions of the articles of continuance.

(f) Except for the purpose of W.S. 16-6-101 through 16-6-118, the existence of any corporation heretofore or hereafter issued a certificate of continuation under this act shall be deemed to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated or otherwise came into being. The laws of Wyoming shall apply to a corporation continuing under this act to the same extent as if the corporation had been incorporated under the laws of Wyoming from and after the issuance of a certificate of continuation under this act by the secretary of state to the corporation. When a foreign corporation is continued as a corporation under this act, such continuance shall not affect the corporation's ownership of its property or liability for any existing obligations, causes of action, claims, pending or threatened prosecutions or civil or administrative actions, convictions, rulings, orders, judgments, or any other characteristics or aspects of the corporation and its existence.

(g) A share of stock of a foreign corporation issued before the corporation's continuance in Wyoming is deemed to have been issued in compliance with the Wyoming Business Corporation Act and the provisions of the articles of continuance, irrespective of whether the share is fully paid and nonassessable, and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share, and irrespective of whether the certificate is in registered or bearer form. Continuance under this act does not deprive a stockholder of any right or privilege that he claims under, or relieve the stockholder of any liability in respect of, an issued share.



(h) As used in this section, the term "corporation" shall include any incorporated organization, foundation, trust, association, or similar entity which appears to the secretary of state to possess characteristics sufficiently similar to those of a corporation organized under the Wyoming Business Corporation Act.

(j) This act applies to all corporations continued in Wyoming on the effective date of this act. The repeal of any statute or part thereof by this act shall have such effect as is provided in W.S. 17-16-1703.

## CHAPTER 17 CLOSE CORPORATION SUPPLEMENT

### ARTICLE 1 PROVISIONS

#### **17-17-101. Short title.**

This chapter shall be known and may be cited as the "Wyoming Statutory Close Corporation Supplement."

#### **17-17-102. Application of Wyoming Business Corporation Act and the provisions of W.S. 17-3-101 through 17-3-104.**

(a) The Wyoming Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this chapter.

(b) This chapter applies to a professional corporation organized under W.S. 17-3-101 through 17-3-104 whose articles of incorporation contain the statement required by W.S. 17-17-103(a), except insofar as W.S. 17-3-101 through 17-3-104 contain inconsistent provisions.

(c) This chapter does not repeal or modify any statute or rule of law that is or would apply to a corporation that is organized under the Wyoming Business Corporation Act and the provisions of W.S. 17-3-101 through 17-3-104 and that does not elect to become a statutory close corporation under W.S. 17-17-103.

#### **17-17-103. Definition and election of statutory close corporation status.**

(a) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(b) A corporation having thirty-five (35) or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (a) of this section. For corporations formed prior to January 1, 1990, the amendment shall be approved by all of the holders of the votes of each class or series of shares of the corporation, whether or not otherwise entitled to vote on amendments. For corporations formed on or after January 1, 1990, the amendment must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under W.S. 17-16-1301 through 17-16-1331.

**17-17-110. Notice of statutory close corporations status on issued shares.**

(a) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(b) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (a) of this section.

(c) The notice required by this section satisfies all requirements of this chapter and of W.S. 17-16-627 that notice of share transfer restrictions be given.

(d) A person claiming an interest in shares of a statutory close corporation which has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory

close corporation which has not complied with the notice requirement of this section is bound by any documents of which he, or a person through whom he claims, has knowledge or notice.

(e) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

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

(a) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under W.S. 17-17-112 or pursuant to a buy-sell agreement entered into by all the shareholders.

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

(i) To the corporation or to any other holder of the same class or series of shares;

(ii) To members of the shareholder's immediate family, or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of his spouse, parents, lineal descendants, including adopted children and stepchildren, and the spouse of any lineal descendant, and brothers and sisters;

(iii) That has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(iv) To a personal representative upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution or similar proceeding brought by or against a shareholder;

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

(vi) By a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; or

(vii) Made after termination of the corporation's status as a statutory close corporation.

**17-17-112. Share transfer after first refusal by corporation.**

(a) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of W.S. 17-17-111 must first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (b) of this section. The offer by the third person must be in writing and state the offeror's name and address, the number and class, or series, of shares offered, the offering price per share, and the other terms of the offer.

(b) A third person is eligible to purchase the shares if:

(i) He is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and he agrees in writing not to terminate his qualification without the approval of the remaining shareholders; and

(ii) His purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(c) The person desiring to transfer shares shall deliver the offer to the corporation, and by doing so offers to sell the shares to the corporation on the terms of the offer. Within twenty (20) days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than forty (40) days after the call, to decide whether the corporation should purchase all, but not less than all, of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(d) The corporation must deliver to the offering shareholder written notice of acceptance within seventy-five (75) days after receiving the offer or the offer is rejected.

If the corporation makes a counteroffer, the shareholder must deliver to the corporation written notice of acceptance within fifteen (15) days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within twenty (20) days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(e) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one (1) or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. If the corporation has more than one (1) class or series of shares, however, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(f) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of one hundred twenty (120) days after the corporation received his offer, is entitled to transfer to the third person offeror all, but not less than all, of the offered shares in accordance with the terms of his offer to the corporation.

**17-17-113. Attempted share transfer in breach of prohibition.**

(a) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(b) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by W.S. 17-17-110 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within thirty (30) days after they are presented

for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

**17-17-114. Compulsory purchase of shares after death of shareholder.**

(a) This section, and W.S. 17-17-115 through 17-17-117, apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the personal representative of the estate or the surviving joint tenant of a deceased shareholder may require the corporation to purchase or cause to be purchased all, but not less than all, of the decedent's shares or jointly owned shares or to be dissolved.

(b) The provisions of W.S. 17-17-115 through 17-17-117 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(c) An amendment to the articles of incorporation to provide for application of W.S. 17-17-115 through 17-17-117, or to modify or delete the provisions of these sections, must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds (2/3) of the subscribers for shares, if any, or, if none, by all of the incorporators.

(d) A shareholder who votes against an amendment to modify or delete the provisions of W.S. 17-17-115 through 17-17-117 is entitled to dissenters' rights under W.S. 17-16-1301 through 17-16-1331 if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(e) A shareholder may waive his and his estate's rights under W.S. 17-17-115 through 17-17-117 by a signed writing.

(f) W.S. 17-17-115 through 17-17-117 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independent of these sections.

**17-17-115. Exercise of compulsory purchase right.**

(a) A person entitled and desiring to exercise the compulsory purchase right described in W.S. 17-17-114 must deliver a written notice to the corporation, within one hundred twenty (120) days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and requesting that the corporation offer to purchase the shares.

(b) Within twenty (20) days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than forty (40) days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(c) The corporation must deliver a purchase offer to the person requesting it within seventy-five (75) days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any. The person must accept the purchase offer in writing within fifteen (15) days after receiving it or the offer is rejected.

(d) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one (1) or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve the allocation. If the corporation has more than one (1) class or series of shares, however, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(e) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, bylaws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is

entitled to commence a proceeding for dissolution under W.S. 17-17-116.

**17-17-116. Court action to compel purchase.**

(a) If an offer to purchase shares made under W.S. 17-17-115 is rejected, or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located. The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(b) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in W.S. 17-17-142 together with terms for the purchase. Upon making these determinations the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(c) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(d) If the corporation or other purchaser does not make a payment required by the court's order within thirty (30) days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(e) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

**17-17-117. Court costs and other expenses.**

(a) The court in a proceeding commenced under W.S. 17-17-116 shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by



the parties. Except as provided in subsection (b) of this section, the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(b) The court may assess all or a portion of the total costs of the proceeding:

(i) Against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, or otherwise not in good faith; or

(ii) Against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before commencement of the proceeding and that the offer was arbitrary, or otherwise not made in good faith.

#### **17-17-120. Shareholder agreements.**

(a) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of the corporation.

(b) An agreement authorized by this section is effective although:

(i) It eliminates a board of directors;

(ii) It restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;

(iii) Its effect is to treat the corporation as a partnership; or

(iv) It creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(c) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed

by law, and imposes that liability on each person in whom the board's discretion or power is vested, to the extent that the discretion or powers of the board of directors are governed by the agreement.

(d) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by W.S. 17-17-121.

(e) A provision entitling one (1) or more shareholders to dissolve the corporation under W.S. 17-17-133 is effective only if a statement of this right is contained in the articles of incorporation.

(f) To amend an agreement authorized by this section, all the shareholders must approve the amendment in writing unless the agreement provides otherwise.

(g) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(h) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

**17-17-121. Elimination of board of directors.**

(a) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(b) An amendment to articles of incorporation eliminating a board of directors must be approved by all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if none, by all the incorporators.

(c) While a corporation is operating without a board of directors as authorized by subsection (a) of this section:

(i) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the shareholders;

(ii) Unless the articles of incorporation provide otherwise:

(A) Action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(B) Action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action.

(iii) A shareholder is not liable for his act or omission, although a director would be, unless the shareholder was entitled to vote on the action;

(iv) A requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(v) The shareholders by resolution may appoint one (1) or more shareholders to sign documents as "designated directors."

(d) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names and addresses of the corporation's directors or describe who will perform the duties of a board under W.S. 17-16-801.

#### **17-17-122. Bylaws.**

(a) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by W.S. 17-17-120.

(b) If a corporation does not have bylaws when its statutory close corporation status terminates under W.S. 17-17-131, the corporation shall immediately adopt bylaws under W.S. 17-16-206.

**17-17-123. Annual meeting.**

(a) The annual meeting date for a statutory close corporation is the last business day of the third month following the close of the business year unless its articles of incorporation, bylaws, or a shareholder agreement authorized by W.S. 17-17-120 fixes a different date.

(b) A statutory close corporation need not hold an annual meeting unless one (1) or more shareholders deliver written notice to the corporation requesting a meeting at least thirty (30) days before the meeting date determined under subsection (a) of this section.

**17-17-124. Execution of documents in more than one capacity.**

Notwithstanding any law to the contrary, an individual who holds more than one (1) office in a statutory close corporation may execute, acknowledge or verify in more than one (1) capacity any document required to be executed, acknowledged or verified by the holders of two (2) or more offices.

**17-17-125. Limited liability.**

The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

**17-17-130. Merger, consolidation, share exchange and sale of assets.**

(a) A plan of merger, consolidation or share exchange that:

(i) If effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan;

(ii) If effected would create the surviving or new corporation as a statutory close corporation must be approved by

the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(b) A sale, lease, exchange, mortgage, encumbrance or other disposition of all or substantially all of the property, with or without the good will, of a statutory close corporation, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

**17-17-131. Termination of statutory close corporation status.**

(a) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under W.S. 17-17-121, the amendment must either comply with W.S. 17-16-801 or delete the statement dispensing with the board of directors from its articles of incorporation.

(b) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds (2/3) of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(c) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under W.S. 17-16-1301 through 17-16-1331.

**17-17-132. Effect of termination of statutory close corporation status.**

(a) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the Wyoming Business Corporation Act and, if incorporated under W.S. 17-3-101 through 17-3-104, to all provisions of those statutes.

(b) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this chapter, the Wyoming Business Corporation Act, or another law of this state invalidates the right.

**17-17-133. Shareholder option to dissolve corporation.**

(a) The articles of incorporation of a statutory close corporation may authorize one (1) or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority must give written notice of the intent to dissolve to all the other shareholders. Sixty (60) days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under W.S. 17-16-1403 through 17-16-1407.

(b) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change or delete the authority to dissolve described in subsection (a) of this section must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if none, by all the incorporators.

**17-17-140. Court action to protect shareholders.**

(a) Subject to satisfying the conditions of subsections (c) and (d) of this section, a shareholder of a statutory close corporation may petition the district court for any of the relief described in W.S. 17-17-141 through 17-17-143 if:

(i) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director or officer of the corporation;

(ii) The directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the

corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(iii) There exists one (1) or more grounds for judicial dissolution of the corporation under W.S. 17-16-1430.

(b) A shareholder must commence a proceeding under subsection (a) of this section in the district court of the county where the corporation's principal office, or, if none in this state, its registered office, is located. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(c) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(d) If a shareholder has dissenters' rights under this chapter or W.S. 17-16-1301 through 17-16-1331 with respect to proposed corporate action, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under W.S. 17-16-1321 or to demand payment under W.S. 17-16-1323 or the proceeding is barred.

(e) Except as provided in subsections (c) and (d) of this section, a shareholder's right to commence a proceeding under this section and the remedies available under W.S. 17-17-141 through 17-17-143 are in addition to any other right or remedy he may have.

#### **17-17-141. Ordinary relief.**

(a) If the court finds that one (1) or more of the grounds for relief described in W.S. 17-17-140(a) exist, it may order such relief as it deems appropriate including one (1) or more of the following types of relief:

(i) The performance, prohibition, alteration or setting aside of any action of the corporation or of its shareholders, directors, or officers or of any other party to the proceeding;

(ii) The cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(iii) The removal from office of any director or officer;

(iv) The appointment of any individual as a director or officer;

(v) An accounting with respect to any matter in dispute;

(vi) The appointment of a custodian to manage the business and affairs of the corporation;

(vii) The appointment of a provisional director who has all the rights, powers and duties of a duly elected director to serve for the term and under the conditions prescribed by the court;

(viii) The payment of dividends; or

(ix) The award of damages to any aggrieved party.

(b) If the court finds that a party to the proceeding acted arbitrarily, or otherwise not in good faith, it may award one (1) or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

**17-17-142. Extraordinary relief; share purchase.**

(a) If the court finds that the ordinary relief described in W.S. 17-17-141(a) is or would be inadequate or inappropriate, it may order the corporation dissolved under W.S. 17-17-143 unless the corporation or one (1) or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (b) of this section.

(b) If the court orders a share purchase, it shall:

(i) Determine the fair value of the shares, considering among other relevant evidence the going concern value of the corporation, any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose, the recommendations of appraisers, if any, appointed by the court, and any legal constraints on the corporation's ability to purchase the shares;



(ii) Specify the terms of the purchase, including if appropriate terms for installment payments, subordination of the purchase obligation to the rights of the corporation's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on the seller;

(iii) Require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(iv) Provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and

(v) Provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under W.S. 17-17-143.

(c) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(d) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

**17-17-143. Extraordinary relief; dissolution.**

(a) The court may dissolve the corporation if it finds:

(i) There are one (1) or more grounds for judicial dissolution under W.S. 17-16-1430; or

(ii) All other relief ordered by the court under W.S. 17-17-141 or 17-17-142 has failed to resolve the matters in dispute.

(b) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to

dissolve solely because the corporation has accumulated earnings or current operating profits.

**17-17-150. Application to existing corporations.**

This chapter applies to all corporations electing statutory close corporation status under W.S. 17-17-103 after its effective date.

**17-17-151. Reservation of power to amend or repeal.**

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

CHAPTER 18  
WYOMING MANAGEMENT STABILITY ACT

ARTICLE 1  
GENERAL PROVISIONS

**17-18-101. Short title.**

This act shall be known and may be cited as the "Wyoming Management Stability Act".

**17-18-102. Definitions.**

(a) The definitions used in the Wyoming Business Corporations Act (W.S. 17-16-101 through 17-16-1810) shall apply to this act unless inconsistent with the definitions in this section.

(b) As used in this act:

(i) "Affiliate" means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, another person;

(ii) "Associate," when used to indicate a relationship with any person, means:

(A) Any entity of which the person is a director, officer or partner or is, directly or indirectly, the owner of ten percent (10%) or more of any class of voting stock or similar securities of the entity;

(B) Any trust or other estate in which the person has at least a ten percent (10%) beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; or

(C) Any relative or spouse of the person, or any relative of the spouse, who has the same residence as the person or who is a director or officer of the person or any of its affiliates.

(iii) "Beneficial owner of a security" means any person who, directly or indirectly, has the power to vote or direct the voting of all or part of the voting rights of the security, or has the power to dispose of or direct the disposition of the security;

(iv) "Business combination," when used in reference to any corporation and any interested stockholder of that corporation, means:

(A) Any merger, consolidation or share exchange of the corporation or any subsidiary with:

(I) The interested stockholder;

(II) A foreign or domestic corporation that is, or after the merger, consolidation or share exchange would be, an affiliate or associate of the interested stockholder; or

(III) Another corporation, if the merger, consolidation or share exchange is caused by an interested stockholder, and as a result of the merger, consolidation or share exchange any section of this act does not apply to the surviving corporation.

(B) Any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one (1) transaction or a series of transactions, except proportionately as a stockholder of the corporation, to or with the interested stockholder or any affiliate or associate of the interested stockholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any subsidiary which assets:

(I) Have an aggregate market value equal to ten percent (10%) or more of either the aggregate market value of all the assets of the corporation determined on a

consolidated basis or the aggregate market value of all the outstanding stock of the corporation;

(II) Have an aggregate book value equal to ten percent (10%) or more of either the aggregate book value of all the assets of the corporation determined on a consolidated basis or of the aggregate stockholders equity of the corporation; or

(III) Represent ten percent (10%) or more of the earning power or net income, determined on a consolidated basis, of the corporation.

(C) Any transaction or series of transactions which results in the issuance or transfer by the corporation, or by any subsidiary, of any stock of the corporation or of the subsidiary to the interested stockholder except:

(I) Any transaction pursuant to the exercise, exchange or conversion of securities into stock of the corporation or any subsidiary, which securities before the stockholder became an interested stockholder were outstanding and exercisable for or convertible into the stock; or

(II) Any of the following transactions provided there is no increase in the interested stockholder's proportionate share of the corporation's stock of any class or series or of the corporation's voting stock:

(1) Pursuant to a distribution made, or the exercise, exchange or conversion of securities into stock of the corporation or any subsidiary of securities distributed, pro rata to all holders of a class or series of stock of the corporation, after the stockholder became an interested stockholder;

(2) Pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of the stock; or

(3) Any issuance or transfer of stock by the corporation.

(D) Any transaction involving the corporation or any subsidiary which has the effect, directly or indirectly, of increasing the proportionate share of the corporation's or a subsidiary's stock of any class or series, or securities

convertible into the stock of any class or series, owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder;

(E) Any receipt by the interested stockholder of the benefit, directly or indirectly, except proportionately as a stockholder of the corporation, of any loans, advances, guarantees, pledges or other financial assistance, or a tax credit or other tax advantage, other than those expressly permitted in subparagraphs (A) through (D) of this paragraph, provided by or through the corporation or any subsidiary; or

(F) The adoption of a plan or a proposal for the liquidation and dissolution of the corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an interested stockholder or an affiliate or associate of the interested stockholder.

(v) "Control," including the term "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise. A person who is the owner of ten percent (10%) or more of an entity's outstanding voting stock or similar interests shall be presumed to have control of the entity, in the absence of proof by a preponderance of the evidence to the contrary. A presumption of control shall not apply where the person holds voting stock or similar interests, in good faith and not for the purpose of circumventing this act, as an agent, bank, broker, nominee, custodian or trustee for one (1) or more owners who do not individually or as a group have control of the other person;

(vi) "Equity security" means:

(A) Any share or similar security carrying, at the time of the takeover offer, the right to vote on any matter by virtue of the articles of incorporation, bylaws, or governing instrument of the target company or the right to vote for directors or persons performing substantially similar functions by operation of law;

(B) Any security convertible into a security described in subparagraph (A) of this paragraph or any warrant or right to purchase that security; or

(C) Any other security which, for the protection of investors, is an equity security pursuant to regulation of the secretary of state.

(vii) "Interested stockholder":

(A) Means any person and the affiliates and associates of the person, other than the corporation and any subsidiary, that:

(I) Is the owner of fifteen percent (15%) or more of the outstanding voting stock of the corporation; or

(II) Is an affiliate or associate of the corporation and was the owner of fifteen percent (15%) or more of the outstanding voting stock of the corporation at any time within the three (3) year period immediately before it is to be determined whether the person is an interested stockholder.

(B) But does not mean:

(I) Any person who:

(1) Owned shares in excess of the fifteen percent (15%) limitation as of January 1, 1990, acquired shares pursuant to a tender offer commenced prior to January 1, 1989, or owned shares pursuant to an exchange offer announced prior to January 1, 1989 and commenced within ninety (90) days; and

(2) Continued to own shares in excess of the fifteen percent (15%) limitation or would have but for action by the corporation.

(II) Any person who acquired the shares from a person described in subdivision (B)(I) of this paragraph by gift, inheritance or in a transaction in which no consideration was exchanged; or

(III) Any person whose ownership of shares in excess of the fifteen percent (15%) limitation is the result of action taken solely by the corporation provided that the person shall be an interested stockholder if, after the

corporate action, he acquires additional voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by that person.

(viii) "Large publicly traded corporation" means a corporation which had assets at the end of its most recent fiscal year of at least ten million dollars (\$10,000,000.00) according to generally accepted accounting principles and which:

(A) Has a class of voting stock listed on a national securities exchange;

(B) Has a class of voting stock authorized for quotation on an inter dealer quotation system of a registered national securities association; or

(C) Has a class of voting stock held of record by more than one thousand (1,000) stockholders.

(ix) "Offeree" means a record or beneficial owner of equity securities of the class which an offeror acquires or offers to acquire in connection with a takeover offer;

(x) "Offeror" means a person who makes or in any way participates in making a takeover offer. The term includes all affiliates of that person and all persons who act jointly or in concert with that person for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to, the equity securities of a target company. It also includes the target company with respect to acquisitions of its own equity securities and with respect to periods of time when it is controlled by or under common control with the offeror. It does not include a financial institution or broker-dealer loaning funds or extending credit to any offeror in the ordinary course of its business, or any accountant, attorney, financial institution, broker-dealer, newspaper or magazine of general circulation, consultant, or other person furnishing information, services, or advice to or performing ministerial or administrative duties for an offeror and not otherwise participating in the takeover offer;

(xi) "Owner" including the terms "own" and "owned" when used with respect to any stock means a person that individually or with or through any of its affiliates or associates:

(A) Beneficially owns the stock, directly or indirectly;

(B) Has the right to acquire the stock, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by that person or any of that person's affiliates or associates until the tendered stock is accepted for purchase or exchange;

(C) Has the right to vote the stock pursuant to any agreement, arrangement or understanding. A person shall not be deemed the owner of any stock because of the person's right to vote the stock if the agreement, arrangement or understanding to vote the stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or

(D) Has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in subparagraph (C) of this paragraph, or disposing of that stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, that stock.

(xii) "Qualified corporation" means any large publicly traded corporation, incorporated in Wyoming, and which has substantial business operations within Wyoming;

(xiii) "Stockholder" means "shareholder" as defined by W.S. 17-16-140(a) (xxxix);

(xiv) "Subsidiary" means a corporation or other person of which a majority of the outstanding voting stock or similar securities are owned, directly or indirectly, by the corporation;

(xv) "Substantial business operations within the state of Wyoming" means:

(A) At least ten percent (10%) of the corporation's full-time permanent employees are employed within the state;



(B) At least one hundred (100) full-time permanent employees are employed within the state;

(C) At least ten million dollars (\$10,000,000.00) in fair market value of the corporation's assets are deposited within Wyoming financial institutions;

(D) The principal operating headquarters and the primary offices of the chief executive officer are within Wyoming; or

(E) The corporation has a combination of assets deposited within Wyoming financial institutions, assets assessed for ad valorem taxation within Wyoming, and assets within Wyoming not subject to ad valorem taxation which are sufficient to cause the corporation to pay the tax required by W.S. 17-16-1630(a). The payment of the tax required by W.S. 17-16-1630(a) shall be deemed conclusive evidence of substantial business operations within Wyoming.

(xvi) "Substantially equivalent terms" means terms under which the fair market value of the consideration offered any offeree of a class of equity securities of the target company, determined on a per share or a per unit basis, are equal to the highest consideration offered in connection with a takeover offer to any other offeree of that class, determined on a per share or per unit basis;

(xvii) "Takeover offer" means an offer to acquire or an acquisition of any equity security of a target company pursuant to a tender offer or request or invitation for tenders, if, after the acquisition, the offeror is or will be directly or indirectly a record or beneficial owner of more than ten percent (10%) of any class of the outstanding equity securities of the target company;

(xviii) "Target company" means a qualified corporation other than:

(A) A financial institution subject to regulation by the state banking commissioner, if the takeover offer is subject to approval by the state banking commissioner;

(B) A corporation subject to regulation by the public service commission, if the takeover offer is subject to approval of the public service commission; or

(C) A public utility, public utility holding company, bank holding company, or savings and loan association subject to regulation by a federal agency if the takeover offer is subject to the approval by that federal agency.

(xix) "Voting stock" means:

(A) For purposes other than determining whether a person is an interested stockholder, stock of any class or series entitled to vote generally in the election of directors;

(B) For purposes of determining whether a person is an interested stockholder, stock deemed to be owned by the person but shall not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(xx) "This act" means W.S. 17-18-101 through 17-18-403.

(c) For the purpose of determining whether a person is an interested stockholder as defined in paragraph (b) (vii) of this section, the number of voting stock of the corporation considered outstanding includes stock considered owned by that person, but does not include other unissued voting stock of the qualified corporation that may be issuable pursuant to an agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

#### **17-18-103. Requirements to choose options.**

(a) Any qualified corporation may elect to exercise or not to exercise any of the options set forth in articles 1 and 2 of this act. No elections for an option shall be made if the corporation does not meet the criteria of a qualified corporation at the time of the election. Any elections made under articles 1 and 2 of this act may be terminated in the same manner as the elections are made subject to the restrictions of this act.

(b) If a corporation ceases to have substantial business operations within Wyoming, any election made under articles 1 and 2 of this act shall be null and void until the substantial business operations are restored and maintained for at least ninety (90) days. If the corporation terminates substantial

business operations in Wyoming for the purpose of terminating an election under articles 1 and 2 of this act, the election shall remain in effect. If a corporation terminates substantial business operations within Wyoming for the purpose of voiding the restrictions on business combinations with interested stockholders provided by W.S. 17-18-104, the restrictions shall remain in effect.

(c) If a corporation ceases to be a qualified corporation because it is no longer a large publicly traded corporation due to insufficient assets required by the definition provided in W.S. 17-18-102(b)(viii), at the end of a fiscal year any election made under articles 1 and 2 of this act and the requirements of W.S. 17-18-104 and article 3 of this act shall be null and void sixty (60) days after the end of the following fiscal year unless sufficient assets are again present at the end of that fiscal year.

(d) If a corporation ceases to be a qualified corporation because it is no longer a large publicly traded corporation due to failure to meet the class of voting stock requirements required by the definition provided in W.S. 17-18-102(b)(viii), the corporation shall continue to be subject to W.S. 17-18-104 and article 3 of this act for five (5) years and any election made under articles 1 and 2 of this act prior to the failure to meet the criteria shall be null and void five (5) years from the date of the failure to meet the criteria. If the criteria are again met the election shall become effective and the corporation shall continue to be subject to W.S. 17-18-104.

#### **17-18-104. Option; restrictions on business combinations.**

(a) Every qualified corporation is subject to the restrictions on business combinations with interested stockholders provided in this section unless the corporation elects not to be subject to the restrictions. A corporation which is not a qualified corporation may elect not to be subject to the restrictions on business combinations in the event it becomes a qualified corporation. The election shall be made either:

(i) Through a specific provision in the articles of incorporation;

(ii) Through a statement in the bylaws that the corporation elects not to be subject to the restrictions in W.S. 17-18-104(b). This election shall be effective immediately upon

adoption of the bylaws, unless the articles of incorporation provide otherwise; or

(iii) By filing a statement making the election with the secretary of state. This election shall be authorized by the corporation's board of directors and shall be effective from the date of filing with the secretary of state.

(b) A qualified corporation shall not, directly or indirectly, enter into or engage in any business combination with any interested stockholder or any affiliate or associate of the interested stockholder for a period of three (3) years after the date the stockholder became an interested stockholder, unless:

(i) Prior to the time the stockholder became an interested stockholder, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder; or

(ii) Repealed by Laws 1990, ch. 62, §§ 2, 3.

(iii) On or after the time the stockholder became an interested stockholder, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two-thirds (2/3) of the outstanding voting stock which is not owned by the interested stockholder.

(c) The restrictions contained in this section shall not apply if:

(i) A stockholder becomes an interested stockholder inadvertently and as soon as practical divests sufficient stocks so that he ceases to be an interested stockholder, and would not, at any time within the three (3) year period immediately before a business combination between the corporation and the stockholder, have been an interested stockholder but for the inadvertent acquisition;

(ii) Repealed by Laws 1990, ch. 62, §§ 2, 3.

(d) The election not to be subject to the restrictions on business combinations may be revoked in the same manner as the elections are made. With respect to any interested stockholder the election not to be subject to the restrictions shall not be

effective for a period of three (3) years after the date that the stockholder became an interested stockholder.

**17-18-105. Option; shareholder takeover protection provisions.**

(a) Any qualified corporation is subject to the shareholder takeover protection provisions listed in W.S. 17-18-105 through 17-18-111 unless the corporation elects not to be subject to the restrictions. A corporation which is not a qualified corporation may elect not to be subject to the shareholder takeover provisions in the event it becomes a qualified corporation. The election shall be made either:

(i) Through a specific provision in the articles of incorporation;

(ii) Through a statement in the bylaws that the corporation elects not to be subject to the restrictions in W.S. 17-18-105 through 17-18-111. This election shall be effective immediately upon adoption of the bylaws, unless the articles of incorporation provide otherwise; or

(iii) By filing a statement making the election with the secretary of state. This election shall be authorized by the corporation's board of directors and shall be effective from the date of filing with the secretary of state.

(b) If a takeover offer is outstanding and in progress at the time the election becomes effective, all further acquisition of stock by the offeror shall cease until the offer is in compliance with the stockholder takeover protection provision of W.S. 17-18-105 through 17-18-111. The offeror may take any steps necessary to comply with these provisions before the election becomes effective.

(c) The election not to be subject to the shareholder takeover provisions of W.S. 17-18-105 through 17-18-111 may be revoked by the same method employed under subsection (a) of this section for making the election.

**17-18-106. Statement; consent to service of process; filing fee; copy to target company.**

(a) The offeror, before making a takeover offer, shall file with the secretary of state a statement in compliance with subsection (b) of this section and a consent to service of

process. The offeror shall pay a filing fee of seven hundred fifty dollars (\$750.00) and shall, not later than the filing date of the statement, deliver a copy of the statement to the target company at its principal office and, if different, to its Wyoming registered agent for service of process.

(b) If a takeover offer is subject to any federal law, the statement shall be one (1) copy of each document required to be filed with the securities and exchange commission and any other federal agency. If the takeover offer is not subject to any requirement of federal law, the statement shall be filed on forms prescribed by the secretary of state and shall contain the following information:

(i) The identity of and material information concerning the offeror, including:

(A) If the offeror is a corporation, information concerning its organization, including the year and jurisdiction of its organization, a description of each class of its capital stock and long-term debt, a description of the business done by the offeror and its affiliates and any material changes of its business during the past three (3) years, a description of the location and character of the principal properties of the offeror and its affiliates, a description of any material pending legal or administrative proceedings in which the offeror or any of its affiliates is a party, the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past three (3) years, and audited financial statements of the offeror and its affiliates for its three (3) most recent annual accounting periods and interim financial statements for any current period;

(B) If the offeror is not a corporation, information concerning the person's background, including his material business activities and affiliations during the past three (3) years, and a description of any material pending legal or administrative proceeding in which he is a party.

(ii) The source and amount of funds or other consideration used or to be used in acquiring any equity security, including a statement describing any securities which are being offered in exchange for the equity securities of the target company, and, if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the transaction and the names of all the parties;

(iii) If the purpose of the acquisition is to gain control of the target company, a statement of any plans or proposals or negotiations with respect to the acquisition which the offeror has upon gaining control to liquidate the target company, sell its assets, effect its merger or consolidation, or make any other major change in its business, corporate structure, management or personnel;

(iv) The number of shares or units of any equity security of the target company of which each offeror is the record or beneficial owner or which the offeror has a right to acquire, directly or indirectly;

(v) Information as to any contracts, arrangements, understandings or negotiations with any person concerning any equity security of the target company, including transfers of any equity security, joint ventures, loan or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom those contracts, arrangements or understandings have been entered;

(vi) Information as to any contracts, arrangements, understandings or negotiations, with any person who is an officer, director, administrator, manager, executive employee, or record or beneficial owner of equity securities of the target company with respect to the tender of any equity securities of the target company, the purchase by the offeror of any equity securities owned by that person otherwise than pursuant to the takeover offer, the retention of any person in his present position or in any other management position or with respect to that person giving or withholding a favorable recommendation to the takeover offer;

(vii) A description of the provisions made or to be made for providing all material information concerning the takeover offer to the offerees, including a description of the proposed takeover offer in the form proposed to be published or sent to the offerees initially disclosing the takeover offer; and

(viii) Any other information which the secretary of state prescribes by regulation.

**17-18-107. Takeover offers; substantially equivalent terms to all offerees of same class.**

No takeover offer shall be made which is not made to all offerees holding the same class of equity securities of the target company on substantially equivalent terms. A takeover offer to purchase less than all equity securities of the same class of the outstanding equity securities of the target company is not considered as having been made to all offerees of that class on substantially equivalent terms if the pro rata portion of equity securities of that class tendered by any offeree which will be accepted by the offeror is not equal to the highest pro rata portion of equity securities of that class tendered by any other offeree which will be accepted by the offeror. A takeover offer permitting offerees to elect to receive one (1) or more differing kinds of consideration is not considered as having been made to all offerees holding the same class of equity securities of the target company on substantially equivalent terms if proration occurs and the pro rata share of any one (1) or more differing kinds of consideration which is allocable to any offeree is not equal to the highest pro rata share allocable to any other offeree.

**17-18-108. Waiting period after offer; no purchase or payment in violation of order.**

No stock shall be contracted for, purchased or paid for pursuant to a takeover offer within the first twenty (20) business days after the offer is made. No shares shall be purchased or paid for in violation of any order of the secretary of state.

**17-18-109. Waiting period after takeover; no acquisitions of equity securities of target company.**

No offeror may acquire in any manner any equity security of any class of a target company at any time within two (2) years following the conclusion of a takeover offer with respect to that class, including but not limited to acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, and any other recapitalization or reorganization, unless the holder of that equity security is also afforded, at the time of that acquisition, a reasonable opportunity to dispose of that security to the offeror upon substantially equivalent terms. If a takeover offer is made or concluded while the election to be subject to the shareholder takeover protection provisions is in effect, the requirement of this section shall remain in effect for two (2) years following the conclusion of the takeover offer even if the election is subsequently terminated.



**17-18-110. Takeover offer; untrue statements or omission of material facts unlawful.**

In connection with any takeover offer, or any solicitation of offerees in opposition to or in favor of any takeover offer, it is unlawful for any person to make any untrue statement of a material fact or to omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive or manipulative acts or practices.

**17-18-111. Exemptions to takeover requirements; burden of establishing entitlement.**

(a) Even if a corporation has elected to be subject to the provisions of W.S. 17-18-106 through 17-18-110 do not apply to the following:

(i) An acquisition by an offeror, if the instant transaction and all acquisitions of equity securities of the same class during the preceding twelve (12) months by the offeror or any of its affiliates do not exceed two percent (2%) of that class; or

(ii) An acquisition determined by order of the secretary of state to be a takeover offer that is not made for the purpose of, and not having the effect of, changing or influencing the control of a target company.

(b) An order may only be adopted under paragraph (a)(ii) of this section after a hearing pursuant to W.S. 17-18-113.

(c) The burden of establishing entitlement to any exemption is on the offeror.

**17-18-112. Administration; regulations; rulemaking authority; individual liability of state officers or employees prohibited.**

(a) This act shall be administered by the secretary of state of Wyoming.

(b) The secretary of state may promulgate reasonable rules and regulations necessary to carry out the purposes of this act.

(c) Neither the secretary of state, nor any of his employees, shall be liable in their individual capacity, except to the state of Wyoming, for any act done or omitted in connection with the performance of their respective duties under the provisions of this act.

**17-18-113. Hearing; order of secretary of state prohibiting or conditioning purchase.**

(a) Whenever it appears to the secretary of state that any person has acted or is about to act in a manner constituting a violation of any provision of this act or any rule or regulation adopted pursuant to this act, the secretary of state shall call a hearing to investigate the matter. Any interested person may petition the secretary of state for a hearing if that person reasonably believes a violation of W.S. 17-18-105 through 17-18-111 has or is about to occur, or for purposes of W.S. 17-18-111(b).

(b) At least five (5) days notice that a hearing will be held under this section shall be given to the target company, the offeror, and other persons as the secretary of state may designate.

(c) The expenses, including the cost of transcripts and all expenses of the state, of all hearings held under this section shall be borne by the offeror. As security for the payment of these expenses, the offeror shall file with the secretary of state an acceptable bond or other deposit in an amount to be determined by the secretary of state.

(d) The target company, the offeror, any offeree, and any other person whose interests may be affected have the right to appear at any hearing held pursuant to this section, and to become a party to the proceeding. Any person appearing at or party to the hearing has the rights granted in the Wyoming Administrative Procedure Act.

(e) If the secretary of state finds by a preponderance of the evidence that the takeover statement fails to provide full and fair disclosure to the offerees of all material information concerning the takeover offer or that the takeover offer is not made to all offerees of the same class of equity securities of the target company on substantially equivalent terms, he shall by order prohibit the purchase of shares tendered in response to the takeover offer or condition purchase upon changes or modifications.

(f) In the case of a takeover offer subject to the approval of the insurance commissioner, the offeror within five (5) days after the statement is filed shall mail a notice to all offerees of the target company advising them of the general terms and conditions of the takeover offer and the date of the hearing at which they may appear. No shares shall be contracted for, purchased or paid for until after approval by both the secretary of state and the insurance commissioner. All expenses of notifying the offerees shall be paid by the offeror.

**17-18-114. Remedies of secretary of state, offerors, target companies and equity security owners for violations of law.**

(a) Whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or regulation or order adopted under this act, the secretary of state may investigate and issue orders and notices, including temporary ex parte cease and desist orders without notice. In addition to all other remedies, he may bring an action in any district court in the name and on behalf of the state of Wyoming against any person or persons participating in or about to participate in a violation of this act to enjoin those persons from continuing or doing any act in violation of this act or to enforce compliance with this act. In any court proceedings the Wyoming Rules of Civil Procedure shall apply.

(b) Whenever it is reasonably believed that any person has engaged or is about to engage in any act or practice constituting a violation of this act or any regulation or order adopted under this act, the offeror, target company or any record or beneficial owner of an equity security of the target company may bring an action in the district court of the county where the target company has its principal office or Natrona county to enjoin that person from continuing or doing any act in violation of this act or to enforce compliance with this act.

(c) Upon a proper showing, the court may grant a permanent or preliminary injunction or temporary restraining order or may order rescission of any sales, tenders for sale, purchases or tenders for purchase of equity securities determined to be unlawful under this act or any rule or regulation or order of the secretary of state. The court shall not require the secretary of state to post a bond.

#### **17-18-115. Judicial review.**

An appeal may be taken by any offeror, target company, or other party to any proceeding before the secretary of state from any final order of the secretary of state by filing a petition for review within thirty (30) days after entry of the final order complained of pursuant to the provisions of the Wyoming Administrative Procedure Act (W.S. 16-3-101 through 16-3-115).

#### **17-18-116. Proxies.**

(a) Any qualified corporation may in its articles of incorporation restrict or prohibit the use of proxies to vote shares. The restriction or prohibition may be effective for:

(i) All meetings;

(ii) All meetings and issues with any specific exceptions the board of directors authorizes; or

(iii) Any meetings or any issues or both that the board of directors specifies.

(b) The restriction or prohibitions on the use of proxies apply only to meetings including adjournments of meetings held within the state of Wyoming.

(c) Notwithstanding any prohibition or restriction on the use of proxies, the beneficial owner of any shares entitled to vote shall always be entitled to vote the shares in person. If the beneficial owner of the shares is a minor or is incompetent, the shares may be voted in person by a trustee, a guardian, or a parent acting as trustee under the Wyoming Uniform Transfers to Minors Act or a similar act. If the beneficial owner of the shares is an entity other than a natural person, the shares may be voted by any duly authorized officer of that entity.

(d) Any restrictions imposed on persons who may be appointed to act as proxies shall not discriminate on their face in favor of management and against any shareholders opposed to management.

(e) The board may restrict appointment as proxies to specific individuals designated by the corporation provided:

(i) Shareholders are given the opportunity to give binding instructions as to how the shares are to be voted on any

issues or in any elections that management is aware of at least thirty (30) days before it mails materials seeking proxies;

(ii) The corporation serves notice in writing on any shareholder who has requested in writing the notice within the past year of the deadline for submission of material on any issue that may arise at the meeting. The notice shall be given at least ten (10) days before the deadline;

(iii) The individuals designated for appointment as proxies agree to vote all valid proxies according to the shareholder instructions given; and

(iv) A meeting may not be adjourned sine die to prevent a vote on an issue if a quorum is present and the required majority either by proxy or in person has had an opportunity to indicate and has indicated an intention to vote against the recommendation of the board or management of the corporation on that issue.

(f) If the articles of incorporation permit the board to impose restrictions on the use of proxies and a court orders a shareholder's meeting, the board may still impose the restrictions provided if it does so within ten (10) days of the meeting or within half the total number of days between the date of the court order and the date of the meeting, whichever is less. The time periods for notice of issues and mailing deadlines set forth in subsection (e) of this section shall not apply to court ordered meetings.

#### **17-18-117. Voting indirectly owned shares.**

Effective January 1, 1990, notwithstanding W.S. 17-16-721(b) a qualified corporation may elect to allow the voting of shares which are owned directly or indirectly by a second corporation, a majority of whose shares entitled to vote for directors of the second corporation are owned by the first corporation. The election shall be made in the articles of incorporation as amended. The number of such shares that may be voted is limited to forty percent (40%) of the total shares of that class outstanding.

#### **17-18-118. Shareholder lists.**

(a) Notwithstanding W.S. 17-16-720 a qualified corporation in its bylaws may restrict access to the shareholder's list to a period beginning two (2) days after the notice of the meeting

for which the list was prepared or ten (10) days before the date of the meeting whichever is less.

(b) A qualified corporation in its bylaws may deny shareholders the right to copy the list of shareholders prior to the meeting provided that:

(i) Arrangements are made for an independent firm to provide to shareholders any information any stockholder wants to send them relative to the matters to be considered at the meeting provided the stockholder pays for the mailing and provides the material in a timely fashion; and

(ii) The list is made available at the shareholder's expense to any shareholder at or after the meeting who is bringing a legal challenge to the right of any other shareholder to vote at the meeting; and

(iii) The list is available for inspection but not copying as provided by subsection (a) of this section and at the meeting. The making of handwritten copies by the shareholder or his attorney of the names and addresses of individual shareholders shall not be construed as copying within the meaning of this subsection.

(c) A qualified corporation may take any other steps it deems reasonable or necessary to prevent the use of its shareholder lists for purposes not related to issues under consideration at a shareholder meeting.

**17-18-119. Special meeting request exceptions.**

(a) Notwithstanding W.S. 17-16-702 and 17-16-703 a qualified corporation may in its bylaws:

(i) Set a higher percentage of shares not to exceed fifty percent (50%) that must petition in order to call a special meeting than is provided by W.S. 17-16-702;

(ii) Provide a longer period between the receipt of the request for a special meeting and the date that notice of the meeting is given than is allowed by W.S. 17-16-703(a)(ii)(A);

(iii) Give the board discretion to require that the issues for which a special meeting is requested be considered instead at the next annual meeting if the request for the

special meeting is made within a number of days of the annual meeting specified in the bylaws.

**17-18-120. Annual meeting purposes.**

In addition to the limitations on the matters that may be considered at annual meetings otherwise allowed by statute a qualified corporation may in its bylaws authorize the board to further limit the matters which an annual meeting may consider. The limitations shall not include elimination of the election of directors whose terms expire at the annual meeting. The limitations may take the form of excluding specified matters from consideration, allowing consideration of only certain specified matters, or requiring advance notice of the consideration of certain matters.

**17-18-121. Action by less than a quorum.**

(a) Stockholders present or represented by proxy at an annual or special meeting of a qualified corporation at which a quorum is not present may take only the following actions:

(i) Ratify or reject the independent auditors selected by the board if the corporation's bylaws or articles of incorporation require approval of the auditors by a stockholder's meeting;

(ii) With the consent of the officer presiding at the meeting, receive or hear any reports on the affairs of the corporation that may be presented;

(iii) Within the constraints of the time allowed on the agenda, ask questions concerning the affairs of the corporation of any officer or board member present;

(iv) Adjourn or recess the meeting to allow time to assemble a quorum, but they may not adjourn or recess to a different city and the total of all the adjournments and recesses may not exceed two (2) business days without the consent of the board of directors;

(v) If a quorum is not present, may adjourn the meeting sine die, provided the motion to adjourn sine die shall not be in order until at least two (2) hours have passed since the time specified for the start of the meeting and the time at which the meeting was called to order.

(b) If an annual meeting of a qualified corporation is adjourned sine die without achieving a quorum, the requirement of W.S. 17-16-701 to hold an annual meeting is satisfied. The board of directors may call a second annual meeting to take the place of the one adjourned without a quorum, but the board is not obligated to do so unless required to do so by the bylaws or articles of incorporation.

(c) If a special meeting of a qualified corporation is adjourned sine die without achieving a quorum or without achieving the quorum necessary to do all or part of the business for which the meeting was required, the board of directors may call another special meeting, but is not obligated to do so unless required by the bylaws or articles of incorporation. The remedy of a stockholder aggrieved by a failure of the board to call another special meeting shall be to follow the procedures necessary for calling a new special meeting.

(d) If different quorums are required for different matters, the absence of a quorum on one (1) issue shall not affect the ability of the meeting to act on other issues where a quorum is present.

## ARTICLE 2 BONDHOLDER PROTECTION PROVISIONS

### **17-18-201. Protection provisions; applicability; defined.**

(a) A qualified corporation may, if its articles of incorporation authorize it to utilize the bondholder protection provisions of this act, utilize any of the provisions set forth in subsection (b) of this section. These protections shall apply only to bonds, debentures or other debt instruments whose original aggregate value at maturity is equal to or greater than five million dollars (\$5,000,000.00) and whose original term is two (2) years or greater. Any number of bondholder protection provisions may be in effect at any time.

(b) A qualified corporation may provide bondholder protection by requiring any or all of the following:

(i) Bondholder approval of the replacement of more than twenty-four percent (24%) of the directors in any twelve (12) month period. The filling of vacancies created by the death or resignation of directors shall not be counted against the twenty-four percent (24%) limit provided that those vacancies are filled by nominees of the board of directors. If



more than twenty-four percent (24%) of the directors are to be replaced, the approval of holders of a majority of the bonds shall be obtained in writing at the meeting where the directors are to be replaced or no more than thirty (30) days prior to the meeting. The consent of the bondholders shall be obtained to exceeding the twenty-four percent (24%) limit rather than to the individual directors to be replaced. If consent is denied, which directors are to be replaced shall be determined by the relative number of votes for each director by shares entitled to vote;

(ii) Bondholder consent to any merger or acquisition which the corporation may be subject to or which the corporation may make, subject to the following:

(A) The notice of bondholder protection shall specify the size of merger or acquisition at or above which the bondholder consent is required. The size may vary depending on whether the company is the acquiring party or is being acquired. In a merger the relative memberships on the board of directors of the surviving corporation may be used to determine whether or not bondholder consent is required;

(B) The term acquisition shall be deemed to include the purchase of more than a specified percentage of the shares entitled to vote for directors by a person or combination of persons under common ownership or control or acting in concert. If a person or combination of persons acquires more than the specified percentage of shares, they shall be entitled to vote only the specified percentage until bondholder consent is acquired. The specified percentage shall be set in the notice of bondholder protection and shall not be less than ten percent (10%);

(C) The bondholder consent shall be to a specific merger or acquisition rather than the general concept of mergers and acquisitions.

(iii) Bondholder consent to the sale or disposal of certain assets, or assets exceeding a certain percentage of the corporation's total assets, or assets exceeding a set total value or any combination of these factors. The specifics of what requires bondholder consent shall be set forth in the notice of bondholder protection. Disposal of assets shall be construed to include the disposition of the assets to the shareholders either directly or through distribution of shares in a new or subsidiary corporation;

(iv) Bondholder consent to the acquisition of debt above a specified percentage of total assets, a specified percentage of the net worth of the corporation, a specific amount, or any combination of these factors. The consent may be required generally or may be required only if the debt is to be used to pay for a merger or acquisition or a distribution to shareholders. The notice of bondholder protection shall specify the conditions under which bondholder consent is required.

**17-18-202. Bondholder protection provision; adoption requirements; revocation.**

(a) The corporation utilizes a bondholder protection provision by adopting and filing with the secretary of state a notice of bondholder protection as provided in this section.

(b) The notice of bondholder protection shall specify the percentage of bondholders whose consent is required for any action on that protection. The percentage may be different for different purposes. The percentage shall be not less than fifty percent (50%) nor greater than ninety percent (90%). The percentage shall be a percentage of the value at maturity of the bonds or other debt instruments issued and outstanding.

(c) Notices of bondholder protection shall be approved by the corporation in the same manner as changes in corporate bylaws except that the articles of incorporation may specify a different manner of approval. The notices shall be filed with the trustee or transfer agent, if any, for the bonds and with the secretary of state. The notice filed with the secretary of state shall be accompanied by the administrative fee specified by regulation to recover the administrative costs of the state of Wyoming. The notice shall be effective as of the date of filing with the secretary of state. The corporation shall send to each known bondholder by first class mail either the full notice of bondholder protection or a summary of the notice and information as to how the full notice may be obtained from the company. This notice to the bondholders shall be given no later than the due date of the first interest payment due more than thirty (30) days after the bondholder protection notice is filed with the secretary of state and may be included with the mailing of the interest payment.

(d) Bondholder protections may be revoked by the corporation in the same manner that notices of bondholder protection are issued and filed except that the revocation is

effective as of a date specified in the notice filed with the secretary of state. The effective date shall be at least two (2) years and not more than six (6) years after filing the notice of revocation with the secretary of state.

**17-18-203. Bondholder protection provision; amendments.**

(a) At any time any amendment may be made to the bondholder protection provisions with the consent of the percentage of bondholders required for action as stated in the notice of bondholder protection. Such an amendment shall be effective upon filing the bondholder's consent and notice of amendment with the secretary of state. However, the effective date shall be specified in the notice and shall be at least two (2) years and not more than six (6) years after filing the bondholder's consent and notice of the amendment with the secretary of state for amendments which:

(i) Change the time period for revocations to be effective;

(ii) Decrease the percentage of bondholders required for approval of an action;

(iii) Eliminate the requirement of bondholder approval for a specific action; or

(iv) Otherwise decrease the protection available to bondholders.

(b) The bondholder's consent shall be in writing signed by the bondholder or his lawful agent or trustee. Unless otherwise specified in W.S. 17-18-201 through 17-18-206 the consent is valid until revoked by the bondholder. The sale of the bond or debt instrument by the bondholder revokes the consent effective upon notification of the corporation or transfer agent of the sale.

**17-18-204. Limitations of the bondholder protection provisions.**

(a) Nothing in the bondholder protection provisions shall be construed or applied to abridge or prohibit any contract, covenant or restriction made between any corporation and its bondholders, or any holder of any other debt instrument provided the contract, covenant or restriction would be lawful in the absence of W.S. 17-18-201 through 17-18-206. Unless

specifically prohibited by prior contract any eligible corporation may extend to the holders of any bond or debt instrument described in W.S. 17-18-201(a) the opportunity to receive any bondholder protection provisions. If a corporation represents to potential purchasers of bonds in any prospectus or other written advice to potential purchasers that it has extended or intends to extend any bondholder protection provisions, it shall also state in the same document that the protections may be revoked as provided by W.S. 17-18-201 through 17-18-206.

(b) Protections under W.S. 17-18-201 through 17-18-206 shall be extended uniformly to all holders of the same class of bond or debt instrument but need not be extended uniformly to all classes of bonds or debt instruments.

**17-18-205. Bondholder definition.**

The term bondholder shall include the owners of any debt instrument to which bondholder protections are extended.

**17-18-206. Additional bondholder protection provisions allowed.**

Any other bondholder protection provisions may be provided in the notice of bondholder protection, and shall be valid unless inconsistent with the provisions of W.S. 17-18-201 through 17-18-206 or other law.

ARTICLE 3  
CONTROL SHARE ACQUISITIONS

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

(a) As used in this article:

(i) "Acquiring person" means a person who makes or proposes to make a control share acquisition. If two (2) or more persons act as a partnership, limited partnership, syndicate or other group pursuant to any agreement, arrangement, relationship, understanding or otherwise, whether or not in writing, for the purposes of acquiring, owning or voting shares of an issuing public corporation, all members of the partnership, syndicate or other group constitute a person;

(ii) "Control shares" means shares that, except for this article, would have voting power with respect to shares of

an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or with respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares directly or indirectly, alone or as a part of a group, to exercise or direct the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of voting power:

(A) One-fifth (1/5) or more but less than one-third (1/3) of all voting power;

(B) One-third (1/3) or more but less than a majority of all voting power; or

(C) A majority or more of all voting power.

(iii) "Control share acquisition" means the acquisition directly or indirectly by any person of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares. Shares acquired within ninety (90) days or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition. Control share acquisition does not include the acquisition of shares:

(A) In the ordinary course of business for the benefit of others if:

(I) They are acquired in good faith and not for the purpose of circumventing this article; and

(II) The person who acquires the shares is not able to exercise or direct the exercise of votes without further instruction from others.

(B) Of an issuing public corporation consummated:

(I) Before July 1, 1990;

(II) Pursuant to a contract existing before July 1, 1990;

(III) Pursuant to a transfer by gift, will or the laws of descent and distribution;

(IV) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this article;

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

(VI) Pursuant to a transfer of shares by the issuing public corporation to its shareholders in the form of a dividend on a class or series of the issuing public corporation's outstanding shares;

(VII) Pursuant to an order or decree of a court of competent jurisdiction;

(VIII) Pursuant to a transfer to a plan or trust for the benefit of employees of the issuing public corporation;

(IX) Pursuant to a direct issue by or transfer from the issuing public corporation of its own shares, other than shares issued or transferred upon the conversion of a convertible security or on the exercise of an option, warrant or other right to purchase shares unless the convertible security, option, warrant or other right was acquired directly from the corporation by the acquiring person; or

(X) In good faith and not for the purpose of circumventing this article, by a person whose voting rights over control shares have been authorized under W.S. 17-18-306, if the person's voting power after the acquisition would be within the same range of voting power previously authorized under W.S. 17-18-306 for the person.

(iv) "Interested shares" means the shares of an issuing public corporation of which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors:

(A) An acquiring person;

(B) Any officer of the issuing public corporation or of the acquiring person; or

(C) Any employee of the issuing public corporation or of the acquiring person who is also a director of the corporation or of the acquiring person, except shares over which a plan or trust for the benefit of employees of the corporation or of the acquiring person has voting power are not interested shares except to the extent the voting of the shares is directed by the employee.

(v) "Issuing public corporation" means a qualified corporation as defined by W.S. 17-18-102(b)(xii);

(vi) "Range of voting power" means a range of voting power provided by paragraph (ii) of this subsection;

(vii) "Voting power" means the sole or shared power to vote or direct the voting of shares, directly or indirectly, other than under an immediately revocable proxy that authorizes the person named proxy to vote at a meeting of shareholders that was called before the proxy is delivered or at an adjournment of the meeting.

#### **17-18-302. Control share voting rights.**

(a) Control shares of an issuing public corporation acquired in a control share acquisition do not have voting rights unless conferred by a vote of shareholders pursuant to W.S. 17-18-306.

(b) Control shares for which voting rights have not been conferred under W.S. 17-18-306 are not considered outstanding shares for the purposes of determining whether a quorum is present or whether an action requiring the affirmative vote of the holders of a specified percentage of the corporation's outstanding shares has received the requisite affirmative vote.

#### **17-18-303. Notice of control share acquisition; acquiring person statement.**

(a) Any person who proposes to make a control share acquisition may, and any person who has made a control share acquisition shall, deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement shall contain the following:

(i) The identity of the acquiring person, including the identity of each member of any partnership, limited partnership, syndicate or other group which constitutes a part of the acquiring person for purposes of W.S. 17-18-301(a)(i);

(ii) A statement that the acquiring person statement is delivered pursuant to this article;

(iii) A statement of the number of shares of the issuing public corporation owned directly or indirectly by the acquiring person or with respect to which the acquiring person may exercise or direct the exercise of voting power;

(iv) The range of voting power for which the acquiring person seeks voting rights; and

(v) Any undertaking to pay expenses made pursuant to W.S. 17-18-304(a) or any requests made pursuant to W.S. 17-18-304(d).

(b) If the control share acquisition has not taken place the acquiring person statement shall, in addition to the requirements stated in subsection (a) of this section, contain:

(i) A description in reasonable detail of the terms and conditions of the proposed control share acquisition, including without limitation the amount and class or classes of shares to be acquired, the price or prices to be offered for the shares and the form of the consideration to be offered; and

(ii) Representations by the acquiring person, together with a statement in reasonable detail of the facts upon which they are based and other supporting evidence reasonably sufficient to establish the representations, that:

(A) The proposed control share acquisition will not be contrary to law;

(B) The acquiring person has the financial capacity to make, and will make, the proposed control share acquisition forthwith after the shareholder vote if voting rights are accorded.

(iii) An affidavit of the acquiring person that:

(A) States that the acquiring person statement contains all of the information required by this section;



(B) States that the information contained in the acquiring person statement is true, correct and complete; and

(C) Is signed by the acquiring person if the acquiring person is an individual or by the chief executive officer or similar representative of the acquiring person if the acquiring person is not an individual.

**17-18-304. Shareholder special meeting.**

(a) If the acquiring person requests a special meeting at the time of delivery of an acquiring person statement pursuant to W.S. 17-18-303 and agrees to pay the corporation's expenses of a special meeting, the directors of the issuing public corporation shall call a special meeting of shareholders of the issuing public corporation within ten (10) days after the date of the corporation's receipt of the request for the purpose of considering whether the shares acquired or to be acquired in the control share acquisition will be accorded voting rights.

(b) Unless the acquiring person agrees in writing to another date, a special meeting of shareholders shall be held within fifty (50) days after receipt by the issuing public corporation of the request.

(c) If no request is made for a special meeting, the issue of whether the shares acquired in the control share acquisition will be accorded voting rights shall be presented at the next special or annual meeting of shareholders.

(d) If requested in writing by the acquiring person when the acquiring person statement is delivered pursuant to W.S. 17-18-303, the special meeting shall not be held sooner than thirty (30) days after receipt by the issuing public corporation of the acquiring person statement.

**17-18-305. Notice of shareholder meeting.**

(a) The issuing public corporation shall give notice of a special meeting of shareholders requested pursuant to W.S. 17-18-304 as promptly as practicable to each shareholder of record as of the record date set for the meeting, whether or not the shareholder is entitled to vote at the meeting.

(b) Notice of the special or annual shareholder meeting at which the voting rights are to be considered shall include or be accompanied by:

(i) A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this article; and

(ii) A statement by the board of directors of the issuing public corporation which:

(A) Is authorized by its directors; and

(B) Contains the position or recommendation of the board of directors or states that the board of directors takes no position or makes no recommendation concerning the proposed control share acquisition; and

(C) Contains a statement of any dissenters' rights accorded to shareholders of the issuing public corporation under W.S. 17-18-308.

**17-18-306. Voting rights; resolution.**

(a) Control shares acquired in a control share acquisition have the same voting rights accorded the shares before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.

(b) The resolution required by subsection (a) of this section shall be approved both by a majority of:

(i) All outstanding voting shares, including interested shares; and

(ii) All outstanding shares, excluding interested shares.

(c) In addition to the vote required by subsection (b) of this section, in the event the holders of the outstanding shares of a class are entitled to vote as a separate voting group and the proposed control share acquisition would, if fully carried out, result in any of the changes described in W.S. 17-16-1004(a), the resolution required by subsection (a) of this section shall be approved both by:

(i) Each voting group entitled to vote separately on a proposal by a majority of all votes entitled to be cast by that voting group, including all interested shares; and

(ii) Each voting group entitled to vote separately on a proposal by a majority vote of all the votes entitled to be cast by that voting group excluding all interested shares.

**17-18-307. Redemption.**

(a) Control shares acquired in a control share acquisition may be redeemed by the corporation at fair value pursuant to the procedures adopted by the corporation at any time during the period ending sixty (60) days after the last acquisition of control shares by the acquiring person if the control shares are not accorded voting rights by the shareholders pursuant to W.S. 17-18-306.

(b) For purposes of this section, the procedures to be adopted by the corporation for determining the fair value to be paid for a share upon redemption are not required to take into account and may expressly disregard any increase or proposal for any increase in the price of the shares following the announcement or commencement of the control share acquisition or any proposal. The provisions of W.S. 17-18-308(b) do not apply to this section.

(c) The provisions of this section shall not apply to a control share acquisition to which the provisions of this article otherwise apply if, at the time the issuing public corporation receives an acquiring person statement with respect to the control share acquisition, the articles of incorporation or bylaws of the issuing public corporation contain a provision expressly electing not to be governed by this section.

**17-18-308. Rights of dissenters; "fair value" defined.**

(a) A shareholder of the issuing public corporation, other than the acquiring person, who does not vote in favor of the control share acquisition may dissent from any proposal to accord voting rights to the control shares over which voting power was or is to be acquired in the control share acquisition. Each shareholder dissenting from the proposal is entitled to receive the fair value of the shareholder's shares under W.S. 17-16-1301 through 17-16-1331 if the control shares acquired or to be acquired in the control share acquisition are accorded

voting rights under W.S. 17-18-306 and the acquiring person has or is authorized to have a majority of all voting power.

(b) For purposes of this section, the fair value to be paid for a share of a dissenting shareholder may not be less than the highest price paid for a share by the acquiring person in the control share acquisition.

(c) The provisions of this section shall not apply to a control share acquisition to which the provisions of this article otherwise apply if, at the time the issuing public corporation receives an acquiring person statement with respect to the control share acquisition, the articles of incorporation or bylaws of the issuing public corporation contain a provision expressly electing not to be governed by this section.

#### **17-18-309. Application.**

(a) The provisions of this article shall not apply to a control share acquisition if, at the time the issuing public corporation receives an acquiring person statement with respect to the control share acquisition, the articles of incorporation or bylaws of the issuing public corporation contain a provision expressly electing not to be governed by this article.

(b) A corporation which is not an issuing public corporation may provide in its articles of incorporation or bylaws that this article does not apply to control share acquisitions of shares of the corporation in the event it becomes an issuing public corporation.

### **ARTICLE 4 MISCELLANEOUS PROVISIONS**

#### **17-18-401. No effect on other actions; no liability.**

This act does not effect, directly or indirectly, the validity of another action by the board of directors of a corporation, nor does it preclude the board of directors from taking other action in accordance with law. The board of directors incurs no liability for elections made or not made under this act.

#### **17-18-402. Conflict of laws.**

If a provision of this act conflicts with another provision of the Wyoming Business Corporation Act, the provision of this act controls.

**17-18-403. Prohibition against waivers.**

A condition, stipulation or other provision in an agreement or transaction between any shareholders of a corporation that purports to waive compliance with or the rights afforded stockholders under this act is void.

CHAPTER 19  
WYOMING NONPROFIT CORPORATION ACT

ARTICLE 1  
GENERAL PROVISIONS

**17-19-101. Short title.**

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

**17-19-102. Reservation of power to amend or repeal.**

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

**17-19-120. Filing requirements.**

(a) A document shall 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 shall require or permit filing the document in the office of the secretary of state.

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

(d) The document shall be typewritten or printed.

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

(f) The document shall be executed:

(i) By the chairman of the board of directors of a domestic or foreign corporation, by its president or by another of its officers;

(ii) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(iii) If the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary, by that fiduciary.

(g) The person executing a document shall sign it manually and shall state beneath or opposite the signature his name and the capacity in which he signs. The document may, but need not, contain:

(i) The corporate seal;

(ii) An attestation by the secretary or an assistant secretary; or

(iii) An acknowledgment, verification or proof.

(h) If the secretary of state has prescribed a mandatory form for a document under W.S. 17-19-121, the document shall be in or on the prescribed form.

(j) The document shall be delivered to the office of the secretary of state for filing and shall be accompanied by:

(i) One (1) exact or conformed copy (except as provided in W.S. 17-28-103);

(ii) The correct filing fee; and

(iii) Any past due or currently due franchise tax, license fee, other fee or penalty required by this act or other law.

#### **17-19-121. Forms.**

(a) If the secretary of state so requires, use of forms provided by the secretary of state pursuant to this subsection

is mandatory. The secretary of state may prescribe and furnish on request forms for:

- (i) An application for a certificate of existence;
- (ii) A foreign corporation's application for a certificate of authority to transact business in this state;
- (iii) A foreign corporation's application for a certificate of withdrawal;
- (iv) The annual report;
- (v) A foreign corporation's application for a certificate of continuance; and
- (vi) A foreign corporation's application for certificate of domestication.

(b) The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this act but their use is not mandatory.

**17-19-122. Filing, service and copying fees.**

(a) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

Document	Fee
(i) Articles of Incorporation.....	\$25.00
(ii) Repealed By Laws 2014, Ch. 65, § 2.	
(iii) Repealed By Laws 2014, Ch. 65, § 2.	
(iv) Amendment of articles of incorporation.....	\$ 3.00
(v) Application for certificate of authority .....	\$25.00
(vi) Application for certificate of existence or authorization.....	\$ 3.00
(vii) Application for conversion.....	\$75.00

(b) The secretary of state shall collect a fee of five dollars (\$5.00) upon being served with process under this act.

(c) The secretary of state shall set and collect comparable filing, service and copying fees for those documents not listed in subsection (a) of this section.

**17-19-123. Effective date of document.**

(a) Except as provided in subsection (b) of this section, a document is effective:

(i) At the time of filing on the date it is filed, as evidenced by the secretary of state's endorsement on the original document; or

(ii) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the 90th day after the date filed.

**17-19-124. Correcting filed document.**

(a) A domestic or foreign corporation may correct a document filed by the secretary of state if the document:

(i) Contains an incorrect statement; or

(ii) Was defectively executed, attested, sealed, verified or acknowledged.

(b) A document is corrected:

(i) By preparing articles of correction that:

(A) Describe the document, including its filing date, or attach a copy of the document to the articles of correction;



(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) Correct the incorrect statement or defective execution.

(ii) By delivering the articles of correction to the secretary of state for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

**17-19-125. Filing duty of secretary of state.**

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of W.S. 17-19-120, 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 the time of filing, on both the original and copy of the document and on the receipt for the filing fee. After filing a document, except as provided in W.S. 17-28-103, the secretary of state shall deliver the document copy, with the filing fee receipt (or acknowledgment of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative. The secretary of state, in his discretion, may issue a certificate evidencing the filing of a document upon the payment of the requisite fee.

(c) If the secretary of state refuses to file a document he shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason or reasons for his refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

(i) Affect the validity or invalidity of the document in whole or in part;

(ii) Relate to the correctness or incorrectness of information contained in the document; or

(iii) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**17-19-126. Appeal from secretary of state's refusal to file document.**

(a) If the secretary of state refuses to file a document delivered to his office for filing, the domestic or foreign corporation may, within thirty (30) days after the return of the document, appeal the refusal to the district court of the county where the corporation's principal office is located in the state or, if the corporation does not have a principal office in the state, the district court of the county where its registered office is or will be located, or the district court of the county of residence of an incorporator for a domestic corporation, or in the district court of Laramie county. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of his refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**17-19-127. Evidentiary effect of copy of filed document.**

A certificate attached to a copy of a 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.

**17-19-128. Certificate of existence.**

(a) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic or foreign corporation.

(b) The certificate of existence sets forth:

(i) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;

(ii) That:

(A) The domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or

(B) The foreign corporation is authorized to transact business in this state.

(iii) That all fees, taxes and penalties owed to this state have been paid, if:

(A) Payment is reflected in the records of the secretary of state; and

(B) Nonpayment affects the good standing of the domestic or foreign corporation.

(iv) That its most recent annual report required by W.S. 17-19-1630 has been delivered to the secretary of state;

(v) That articles of dissolution have not been filed; and

(vi) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence 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.

(d) The term "certificate of existence" is synonymous with the term "certificate of good standing."

**17-19-129. Repealed By Laws 2014, Ch. 65, § 2.**

**17-19-130. Powers.**

The secretary of state has the power reasonably necessary to perform the duties required of him by this act. The secretary

of state shall promulgate reasonable forms, rules and regulations necessary to carry out the purposes of this act.

**17-19-140. General definitions.**

(a) As used in this act:

(i) "Approved by (or approval by) the members" means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by a written ballot or written consent in conformity with this act or by the affirmative vote, written ballot or written consent of such greater proportion, including the votes of all the members of any class, unit or grouping as may be provided in the articles, bylaws or this act for any specified member action;

(ii) "Articles of incorporation" or "articles" include amended and restated articles of incorporation and articles of merger;

(iii) "Board" or "board of directors" means the board of directors except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to W.S. 17-19-801, and includes any person or group under whose authority corporate powers are exercised and under whose direction the affairs of the corporation are managed, regardless of the name of the person or group whether it be trustees, regents, overseers or some other name;

(iv) "Bylaws" means the code or codes of rules (other than the articles) adopted pursuant to this act for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;

(v) "Certificate of existence" means a certificate issued pursuant to W.S. 17-19-128;

(vi) "Class" refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly;

(vii) "Corporation" means public benefit, mutual benefit and religious corporation;

(viii) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters;

(ix) "Deliver" includes mail;

(x) "Directors" means individuals, designated in the articles or bylaws or elected by the incorporators, and their successors and individuals elected or appointed by any other name or title to act as members of the board;

(xi) "Distribution" means the payment of a dividend or any part of the income or profit of a corporation to its members, directors or officers;

(xii) "Domestic corporation" means a corporation;

(xiii) "Effective date of notice" is defined in W.S. 17-19-141;

(xiv) "Employee" does not include an officer or director who is not otherwise employed by the corporation;

(xv) "Entity" includes corporation and foreign corporation, business corporation and foreign business corporation, profit and nonprofit unincorporated association, corporation sole, business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest, and state, United States and foreign government;

(xvi) "File," "filed," or "filing" means filed in the office of the secretary of state;

(xvii) "Foreign corporation" means the corporation organized under a law other than the law of this state which would be a nonprofit corporation if formed under the laws of this state;

(xviii) "Governmental subdivision" includes authority, county, district, municipality and any other political subdivision;

(xix) "Includes" denotes a partial definition;

(xx) "Individual" includes the estate of an incompetent individual;

(xxi) "Means" denotes a complete definition;

(xxii) "Member" means (without regard to what a person is called in the articles or bylaws) any person or persons who on more than one (1) occasion, pursuant to a provision of a corporation's articles or bylaws, have the right to vote for the election of a director or directors, subject to the following:

(A) A person is not a member by virtue of any of the following:

(I) Any rights the person has as a delegate;

(II) Any rights the person has to designate a director or directors; or

(III) Any rights the person has as a director.

(B) All members or all members of a class of members shall have the same number of votes unless the articles of incorporation specify otherwise.

(xxiii) "Membership" refers to the rights and obligations a member or members have pursuant to a corporation's articles, bylaws and this act;

(xxiv) "Mutual benefit corporation" means a domestic corporation which is formed as a mutual benefit corporation pursuant to article 2 of this act or is required to be a mutual benefit corporation pursuant to W.S. 17-19-1804;

(xxv) "Notice" is defined in W.S. 17-19-141;

(xxvi) "Person" includes any individual or entity;

(xxvii) "Principal office" means the office (within or outside this state) so designated in the annual report;

(xxviii) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;

(xxix) "Public benefit corporation" means a domestic corporation which is formed as a public benefit corporation pursuant to article 2 of this act or is required to be a public benefit corporation pursuant to W.S. 17-19-1804;

(xxx) "Record date" means the date established under article 6 or 7 of this act on which a corporation determines the identity of its members for the purposes of this act;

(xxxi) "Religious corporation" means a domestic corporation which is formed as a religious corporation pursuant to article 2 of this act or is required to be a religious corporation pursuant to W.S. 17-19-1804;

(xxxii) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under W.S. 17-19-840(b) for custody of the minutes of the directors' and members' meetings and for authenticating the records of the corporation;

(xxxiii) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory, and insular possession (and their agencies and governmental subdivisions) of the United States;

(xxxiv) "United States" includes district, authority, bureau, commission, department and any other agency of the United States;

(xxxv) "Vote" includes authorization by written ballot and written consent;

(xxxvi) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors;

(xxxvii) "Registered agent" means as provided in W.S. 17-28-101 through 17-28-111;

(xxxviii) "This act" means W.S. 17-19-101 through 17-19-1807.

**17-19-141. Notice.**

(a) Notice under this act shall be in writing unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, telegraph, teletype or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television or other form of public broadcast communication.

(c) Oral notice is effective when communicated if communicated in a comprehensible manner.

(d) Written notice, if in a comprehensible form, is effective at the earliest of the following:

(i) When received;

(ii) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with first class postage affixed;

(iii) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;

(iv) Thirty (30) days after its deposit in the United States mail, as evidenced by the postmark, if mailed correctly addressed and with other than first class, registered or certified postage affixed.

(e) Written notice is correctly addressed to a member of a domestic or foreign corporation if addressed to the member's address shown in the corporation's current list of members.

(f) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in



the corporation's current list of members, if addressed or delivered to one (1) of such members, at the address appearing on the current list of members.

(g) Written notice is correctly addressed to a domestic or foreign corporation (authorized to transact business in this state), other than in its capacity as a member, if addressed to its registered agent or to its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(h) If W.S. 17-19-705(b) or any other provision of this act prescribes notice requirements for particular circumstances, those requirements govern. If articles or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this act, those requirements govern.

#### **17-19-150. Private foundations.**

(a) Except where otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code of 1986:

(i) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the code;

(ii) Shall not engage in any act of self-dealing as defined in section 4941(d) of the code;

(iii) Shall not retain any excess business holdings as defined in section 4943(c) of the code;

(iv) Shall not make any taxable expenditures as defined in section 4944 of the code;

(v) Shall not make any taxable expenditures as defined in section 4945(d) of the code.

(b) All references in this section to sections of the code shall be to such sections of the Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

#### **17-19-160. Judicial relief.**

(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws or this act, then upon petition of a director, officer, delegate, member or the attorney general, the district court of the county where the corporation's principal office is located in the state or, if the corporation does not have a principal office in this state, of the county where its registered office is located, may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and this act, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws or this act.

(d) Whenever practical any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, however, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, consolidation or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and

effect as if it complied with every requirement imposed by the articles, bylaws and this act.

**17-19-170. Attorney general.**

(a) The secretary of state shall be given notice of the commencement of any proceeding that this act authorizes the attorney general to bring but that has been commenced by another person.

(b) Whenever any provision of this act requires that notice be given to the secretary of state before or after commencing a proceeding or permits the attorney general to commence a proceeding:

(i) If no proceeding has been commenced, the attorney general may take appropriate action including, but not limited to, seeking injunctive relief;

(ii) If a proceeding has been commenced by a person other than the attorney general, the attorney general, as of right, may intervene in such proceeding.

**17-19-180. Constitutional protections.**

If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this act on the same subject, the religious doctrine shall control to the extent required by the constitution of the United States or the constitution of this state or both.

ARTICLE 2  
ORGANIZATION

**17-19-201. Incorporators.**

One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

**17-19-202. Articles of incorporation.**

(a) The articles of incorporation shall set forth:

(i) A corporate name for the corporation that satisfies the requirements of W.S. 17-19-401;

(ii) One (1) of the following statements:

(A) This corporation is a public benefit corporation;

(B) This corporation is a mutual benefit corporation;

(C) This corporation is a religious corporation.

(iii) The street address of the corporation's initial registered office and the name of its initial registered agent at that office;

(iv) The name and address of each incorporator;

(v) Whether or not the corporation will have members;  
and

(vi) Provisions not inconsistent with law regarding the distribution of assets on dissolution. These provisions may be consistent with the requirements of the Internal Revenue Code, as amended, for tax exempt status.

(b) The articles of incorporation may set forth:

(i) Any provision required by the Internal Revenue Code, as amended, for tax exempt or other tax status;

(ii) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

(iii) The names and addresses of the individuals who are to serve as the initial directors;

(iv) Provisions not inconsistent with law regarding:

(A) Managing and regulating the affairs of the corporation;

(B) Defining, limiting and regulating the powers of the corporation, its board of directors and members (or any class of members); and

(C) The characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members.

(v) Any provision that under this act is required or permitted to be set forth in the bylaws;

(vi) Any provision giving members different numbers of votes on all questions or particular classes of questions, unequal assessments, or in the case of mutual benefit corporations, unequal rights to assets upon dissolution. These provisions may include the basis upon which these inequalities are to be determined. For mutual benefit corporations, the provisions may include rights of dissent if these rights or inequalities are changed.

(c) Each incorporator and director named in the articles shall sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in this act.

(e) The articles of incorporation shall be accompanied by a written consent to appointment manually signed by the registered agent.

#### **17-19-203. Incorporation.**

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

#### **17-19-204. Liability for preincorporation transactions.**

All persons purporting to act as or on behalf of a corporation formed under this act, knowing there was no incorporation under this act, are jointly and severally liable for all liabilities created while so acting.

#### **17-19-205. Organization of corporation.**

(a) After incorporation:

(i) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting;

(ii) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(A) To elect directors and complete the organization of the corporation; or

(B) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed either manually or in facsimile by each incorporator.

(c) An organizational meeting may be held in or out of this state.

**17-19-206. Bylaws.**

(a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

(c) If bylaws are not adopted:

(i) An annual meeting shall be held within three (3) months after the close of the corporation's fiscal year;

(ii) The required officers shall be the president, the secretary and the treasurer; and

(iii) Bylaws may be adopted at any director or member meeting.

**17-19-207. Emergency bylaws and powers.**

(a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may make all provisions necessary for managing the corporation during the emergency, including:

(i) Procedures for calling a meeting of the board of directors;

(ii) Quorum requirements for the meeting; and

(iii) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(i) Binds the corporation; and

(ii) Shall not be used to impose liability on a corporate director, officer, employee or agent unless the action violates standards otherwise set forth in this act.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some extraordinary event.

ARTICLE 3  
PURPOSES AND POWERS

**17-19-301. Purposes.**

(a) Every corporation incorporated under this act has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under this act only if permitted by, and subject to all limitations of, the other statute.

**17-19-302. General powers.**

(a) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, power:

(i) To sue and be sued, complain and defend in its corporate name;

(ii) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;

(iii) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;

(iv) To purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located;

(v) To sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;

(vi) To purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any entity;

(vii) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

(viii) To lend money, invest and reinvest its funds and receive and hold real and personal property as security for repayment, except as limited by W.S. 17-19-832;



(ix) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(x) To conduct its activities, locate offices and exercise the powers granted by this act within or without this state;

(xi) To elect or appoint directors, officers, employees and agents of the corporation, define their duties and fix their compensation;

(xii) To pay pensions and establish pension plans, pension trusts and other benefit and incentive plans for any or all of its current or former directors, officers, employees and agents;

(xiii) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific or educational purposes and for other purposes that further the corporate interest;

(xiv) To impose dues, assessments, admission and transfer fees upon its members;

(xv) To establish conditions for admission of members, admit members and issue memberships;

(xvi) To carry on a business;

(xvii) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

### **17-19-303. Emergency powers.**

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

(i) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and

(ii) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

(i) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(ii) One (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

(i) Binds the corporation; and

(ii) May not be used to impose liability on a corporate director, officer, employee or agent unless the action violates standards otherwise set forth in this act.

(d) An emergency exists for the purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some extraordinary event.

#### **17-19-304. Ultra vires.**

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the attorney general, a director or by a member or members in a derivative proceeding.

(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee or agent of the corporation. The proceeding may be brought by a director, the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative, or in the case of a public benefit corporation, by the attorney general.

ARTICLE 4  
NAMES

**17-19-401. Corporate name.**

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by W.S. 17-19-301 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as, or deceptively similar to the name of any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from other business names as required by W.S. 17-16-401.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in accordance with the provisions of W.S. 17-16-401(c).

(i) Repealed By Laws 1996, ch. 80, § 3.

(ii) Repealed By Laws 1996, ch. 80, § 3.

(d) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(i) Has merged with the other corporation; or

(ii) Has been formed by reorganization of the other corporation; or

(iii) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(iv) Repealed By Laws 1996, ch. 80, § 3.

(e) This act does not control the use of fictitious names.

**17-19-402. Reserved name.**

(a) A person may apply to reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, he shall file the application pursuant to W.S. 17-19-125 and reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty (120) day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a manually signed notice of the transfer that states the name and address of the transferee.

## ARTICLE 5 OFFICE AND AGENT

### **17-19-501. Registered office and registered agent.**

(a) Each corporation shall continuously maintain in this state:

(i) A registered office as provided in W.S. 17-28-101 through 17-28-111; and

(ii) A registered agent as provided in W.S. 17-28-101 through 17-28-111.

(A) Repealed by Laws 2008, Ch. 90, § 3.

(B) Repealed by Laws 2008, Ch. 90, § 3.

(C) Repealed by Laws 2008, Ch. 90, § 3.

(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all nonprofit corporations.

**17-19-502. Repealed by Laws 2008, Ch. 90, § 3.**

**17-19-503. Repealed by Laws 2008, Ch. 90, § 3.**

**17-19-504. Repealed by Laws 2008, Ch. 90, § 3.**

## ARTICLE 6 MEMBERS AND MEMBERSHIPS

**17-19-601. Admission.**

(a) The articles or bylaws may establish criteria or procedures for admission of members.

(b) No person shall be admitted as a member without his consent.

**17-19-602. Consideration.**

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for any consideration as is determined by the board.

**17-19-603. No requirement of members.**

A corporation is not required to have members.

**17-19-610. Differences in rights and obligations of members.**

All members shall have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

**17-19-611. Transfers.**

(a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.

(b) No member of a public benefit or religious corporation may transfer a membership or any right arising therefrom.

(c) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

**17-19-612. Member's liability to third parties.**

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities or obligations of the corporation.

**17-19-613. Member's liability for dues, assessments and fees.**

A member may become liable to the corporation for dues, assessments or fees as a condition for remaining a member. An article, bylaw or corporate resolution authorizing dues, assessments or fees is not, by itself, sufficient to impose liability without the consent or acquiescence of the member.

**17-19-614. Creditor's action against member.**

(a) No proceeding may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) of this section to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

**17-19-620. Resignation.**

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

**17-19-621. Termination, expulsion and suspension.**

(a) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(i) The articles or bylaws set forth a procedure that provides:

(A) Not less than fifteen (15) days prior written notice of the expulsion, suspension or termination and the reasons therefor; and

(B) An opportunity for the member to be heard, orally or in writing, not less than five (5) days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place; or

(ii) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail shall be given by first class, return receipt requested, sent to the last address of the member shown on the corporation's records.

(d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, shall be commenced within one (1) year after the effective date of the expulsion, suspension or termination.

(e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

#### **17-19-622. Purchase of memberships.**

(a) A public benefit or religious corporation may not purchase any of its memberships or any right arising therefrom.

(b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws. No payment shall be made in violation of article 13 of this act.

#### **17-19-630. Derivative suits.**

(a) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by:

(i) Any member or members having five percent (5%) or more of the voting power or by fifty (50) members, whichever is less; or

(ii) Any director.

(b) In any proceeding under this section, each complainant shall be a member or director at the time of bringing the proceeding.

(c) A complaint in a proceeding brought in the right of a corporation shall be verified and allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the court may stay the suit until the investigation is completed.

(d) On termination of the proceeding the court may require the complainants to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.

(e) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise was successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise or settlement of an action or claim, the court may award the complainants reasonable expenses, including counsel fees.

(f) The complainants shall notify the secretary of state within ten (10) days after commencing any proceeding under this section if the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation. The secretary of state shall then notify the attorney general.

#### **17-19-640. Delegates.**

(a) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.

(b) The articles or bylaws may set forth provisions relating to:



(i) The characteristics, qualifications, rights, limitations and obligations of delegates including their selection and removal;

(ii) Calling, noticing, holding and conducting meetings of delegates; and

(iii) Carrying on corporate activities during and between meetings of delegates.

ARTICLE 7  
MEMBERS' MEETINGS AND VOTING

**17-19-701. Annual and regular meetings.**

(a) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office.

(d) At the annual meeting:

(i) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(ii) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of W.S. 17-19-705 and 17-19-723(b).

(e) At regular meetings the members shall consider and act upon such matters as may be raised consistent with the notice requirements of W.S. 17-19-705 and 17-19-723(b).

(f) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

**17-19-702. Special meeting.**

(a) A corporation with members shall hold a special meeting of members:

(i) On call of its board or the person or persons authorized to do so by the articles or bylaws; or

(ii) Except as provided in the articles or bylaws of a religious corporation if the holders of at least five percent (5%) of the voting power of any corporation sign, date, and deliver to any corporate officer one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) The close of business on the 30th day before delivery of the demand or demands for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent (5%) requirement of subsection (a) of this section has been met.

(c) If a notice for a special meeting demanded under paragraph (a)(ii) of this section is not given pursuant to W.S. 17-19-705 within thirty (30) days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to W.S. 17-19-705.

(d) Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by W.S. 17-19-705 shall be conducted at a special meeting of members.

**17-19-703. Court-ordered meeting.**

(a) The district court of the county where a corporation's principal office or, if none in this state, its registered office is located may summarily order a meeting to be held:

(i) On application of any member or other person entitled to participate in an annual or regular meeting, and in the case of a public benefit corporation, the attorney general, if an annual meeting was not held within fifteen (15) months after its last annual meeting;

(ii) On application of any member or other person entitled to participate in a regular meeting, and in the case of a public benefit corporation, the attorney general, if a regular meeting is not held within forty (40) days after the date it was required to be held; or

(iii) On application of a member who signed a demand for a special meeting valid under W.S. 17-19-702, a person or persons entitled to call a special meeting and, in the case of a public benefit corporation, the attorney general, if:

(A) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to a corporate officer; or

(B) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) If the court orders a meeting, it may also order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order.

#### **17-19-704. Action by written consent.**

(a) Unless limited or prohibited by the articles or bylaws, action required or permitted by this act to be taken at a members' meeting may be taken without a meeting if notice of the proposed action is given to all voting members and the action is approved by ninety percent (90%) of the members entitled to vote on the action. The action shall be evidenced by one (1) or more written consents describing the action approved, signed either manually or in facsimile, by the requisite number

of members entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise determined under W.S. 17-19-703 or 17-19-707, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the secretary of state.

**17-19-705. Notice of meeting.**

(a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice that conforms to the requirements of subsection (c) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered; provided, however, that notice of matters referred to in paragraph (c)(ii) of this section shall be given as provided in subsection (c) of this section.

(c) Notice is fair and reasonable if:

(i) The corporation notifies its members of the place, date and time of each annual, regular and special meeting of members no fewer than ten (10) nor more than sixty (60) days before the meeting date;

(ii) Notice of an annual or regular meeting includes a description of any matter or matters that shall be approved by the members under W.S. 17-19-831, 17-19-856, 17-19-1003, 17-19-1021, 17-19-1104, 17-19-1202, 17-19-1401 or 17-19-1402; and

(iii) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual, regular or special meeting of members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If a new record

date for the adjourned meeting is or shall be fixed under W.S. 17-19-707, however, notice of the adjourned meeting shall be given under this section to the members of record as of the new record date.

(e) When giving notice of an annual, regular or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(i) Requested in writing to do so by a person entitled to call a special meeting; and

(ii) The request is received by the secretary or president of the corporation at least ten (10) days before the corporation gives notice of the meeting.

**17-19-706. Waiver of notice.**

(a) A member may waive any notice required by this act, the articles, or bylaws before or after the date and time stated in the notice. The waiver shall be in writing, be signed manually or in facsimile by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(i) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(ii) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

**17-19-707. Record date; determining members entitled to notice and vote.**

(a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If no record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is

waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing a record date, the board may fix a future date as the record date. If no record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing a record date, the board may fix in advance a record date. If no record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the 60th day prior to the date of such other action, whichever is later, are entitled to exercise rights.

(d) A record date fixed under this section shall not be more than seventy (70) days before the meeting or action requiring a determination of members occurs.

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it shall do if the meeting is adjourned to a date more than seventy (70) days after the record date for determining members entitled to notice of the original meeting.

(f) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

#### **17-19-708. Action by written ballot.**

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if the

corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall:

(i) Set forth each proposed action; and

(ii) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written ballot shall:

(i) Indicate the number of responses needed to meet the quorum requirements;

(ii) State the percentage of approvals necessary to approve each matter other than election of directors; and

(iii) Specify the time by which a ballot shall be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written ballot shall not be revoked.

**17-19-720. Members' list for meeting.**

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list shall show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members shall be available for inspection by any member for the purpose of communication with other

members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent or attorney is entitled on written demand to inspect and, subject to the limitations of W.S. 17-19-1602(c) and 17-19-1605, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, a member's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member, a member's agent or attorney to inspect the list of members before or at the meeting, or copy the list as permitted by subsection (b) of this section, the district court of the county where a corporation's principal office, or if none in this state, its registered office is located, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) of this section prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(f) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

#### **17-19-721. Voting entitlement generally.**

(a) Unless the articles or bylaws provide otherwise, each member is entitled to one (1) vote on each matter voted on by the members.

(b) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two (2) or more



persons, their acts with respect to voting shall have the following effect:

(i) If only one (1) votes, such act binds all; and

(ii) If more than one (1) votes, the vote shall be divided on a pro rata basis.

**17-19-722. Quorum requirements.**

(a) Unless this act, the articles or bylaws provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter shall be represented at a meeting of members to constitute a quorum on that matter.

(b) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(c) A bylaw amendment to increase the quorum required for any member action shall be approved by the members.

(d) Unless one-third (1/3) or more of the voting power is present in person or by proxy, the only matters that can be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

**17-19-723. Voting requirements.**

(a) Unless this act, the articles or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative votes also constitute a majority of the required quorum) is the act of the members.

(b) A bylaw amendment to increase or decrease the vote required for any member action shall be approved by the members.

**17-19-724. Proxies.**

(a) As used in this act and in this section:

(i) "Appointment" means the grant of authority to vote;

(ii) "Appointment form" means the document appointing the proxy;

(iii) "Proxy" means the person to whom the authority to vote is granted.

(b) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless a different period is expressly provided in the appointment form; provided however that no proxy shall be valid for more than three (3) years from its date of execution.

(d) An appointment of a proxy is revocable by the member.

(e) The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(f) Appointment of a proxy is revoked by the person appointing the proxy:

(i) Attending any meeting and voting in person; or

(ii) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.

(g) Subject to W.S. 17-19-727 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

#### **17-19-725. Cumulative voting for directors.**

(a) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the

product for a single candidate or distribute the product among two (2) or more candidates.

(b) Cumulative voting is not authorized at a particular meeting unless:

(i) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or

(ii) A member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one (1) member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.

(c) A director elected by cumulative voting may be removed by the members without cause if the requirements of W.S. 17-19-808 are met unless the votes cast against removal, or not consenting in writing to removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(d) Members shall not cumulatively vote if the directors and members are identical.

**17-19-726. Other methods of electing directors.**

(a) A corporation may provide in its articles or bylaws for election of directors by members or delegates:

(i) On the basis of chapter or other organizational unit;

(ii) By region or other geographic unit;

(iii) By preferential voting; or

(iv) By any other reasonable method.

**17-19-727. Corporation's acceptance of votes.**

(a) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a member, the corporation if acting in good faith is entitled to accept the vote, consent,

waiver or proxy appointment and give it effect as the act of the member.

(b) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the member if:

(i) The member is an entity and the name signed purports to be that of an officer or agent of the entity;

(ii) The name signed purports to be that of an attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver or proxy appointment;

(iii) Two (2) or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coholders and the person signing appears to be acting on behalf of all the coholders; and

(iv) In the case of a mutual benefit corporation:

(A) The name signed purports to be that of an administrator, executor, guardian or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

(B) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment.

(c) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section are

not liable in damages to the member for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(f) In the case where a member is an entity or where approval is required by a third party which is an entity, the corporation is entitled to accept the vote provided the individual who casts the vote for the entity presents the corporation with a written resolution or other written authorization to vote for the entity.

#### **17-19-730. Voting agreements.**

(a) Two (2) or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Agreements under this section may be valid for a period of up to ten (10) years. For public benefit corporations such agreements shall have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

(b) A voting agreement created under this section is specifically enforceable.

### **ARTICLE 8 DIRECTORS AND OFFICERS**

#### **17-19-801. Requirement for and duties of board.**

(a) Each corporation shall have a board of directors.

(b) Except as provided in this act or subsection (c) of this section, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

(c) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

#### **17-19-802. Qualifications of directors.**

All directors shall be individuals. The articles or bylaws may prescribe additional qualifications for directors.

**17-19-803. Number of directors.**

(a) A board of directors shall consist of three (3) or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(b) The number of directors may be increased or decreased, but to no fewer than three (3), from time to time by amendment to or in the manner prescribed in the articles or bylaws.

**17-19-804. Election, designation and appointment of directors.**

(a) If the corporation has members, all the directors, except the initial directors, shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated.

(b) If the corporation does not have members, all the directors, except the initial directors, shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors, other than the initial directors, shall be elected by the board.

**17-19-805. Terms of directors generally.**

(a) The articles or bylaws shall specify the terms of directors. Except for designated or appointed directors, the terms of directors shall not exceed five (5) years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one (1) year. Directors may be elected for successive terms.

(b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the articles or bylaws:

(i) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(ii) The term of a director filling any other vacancy expires at the end of the unexpired term that the director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed and qualifies, or until there is a decrease in the number of directors.

#### **17-19-806. Staggered terms for directors.**

The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

#### **17-19-807. Resignation of directors.**

(a) A director may resign at any time by delivering written notice, signed either manually or in facsimile, to the board of directors, its presiding officer or to the president or secretary.

(b) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

#### **17-19-808. Removal of directors elected by members or directors.**

(a) The members may remove one (1) or more directors elected by them without cause.

(b) If a director is elected by a class, chapter or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit or grouping.

(c) Except as provided in subsection (j) of this section, a director may be removed under subsection (a) or (b) of this section only if the number of votes cast to remove the director

would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b) through (d) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) through (e) of this section.

(h) A director elected by the board may be removed without cause by the vote of two-thirds (2/3) of the directors then in office or any greater number as is set forth in the articles or bylaws; provided, however, that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not by the board.

(j) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(k) The articles or bylaws of a religious corporation may:

(i) Limit the application of this section; and



(ii) Set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

**17-19-809. Removal of designated or appointed directors.**

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b) Appointed directors:

(i) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;

(ii) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary; and

(iii) A removal is effective when the notice is effective unless the notice specifies a future effective date.

**17-19-810. Removal of directors by judicial proceeding.**

(a) The district court of the county where a corporation's principal office is located, or if none in the county where registered office is located, may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent (10%) of the voting power of any class, or the attorney general in the case of a public benefit corporation, if the court finds that:

(i) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or a final judgment has been entered finding that the director has violated a duty set forth in W.S. 17-19-830 through 17-19-832; and

(ii) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(c) If members or the attorney general commence a proceeding under subsection (a) of this section, the corporation shall be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a) of this section, they shall give the secretary of state written notice of the proceeding.

(e) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

**17-19-811. Vacancy on board.**

(a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c) of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(i) The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(ii) The board of directors may fill the vacancy; or

(iii) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy shall not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under W.S. 17-19-807(b) or otherwise) may be filled before the vacancy occurs but the new director cannot take office until the vacancy occurs.

**17-19-812. Compensation of directors.**

Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors.

**17-19-820. Regular and special meetings.**

(a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this state.

(c) Unless the articles or bylaws provide otherwise, a board may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously communicate with each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**17-19-821. Action without meeting.**

(a) Unless the articles or bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one (1) or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

**17-19-822. Call and notice of meetings.**

(a) Unless the articles, bylaws or subsection (c) of this section provide otherwise, regular meetings of the board may be held without notice.

(b) Unless the articles, bylaws or subsection (c) of this section provide otherwise, special meetings of the board shall be preceded by at least two (2) days notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members, shall not be valid unless each director is given at least seven (7) days written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to W.S. 17-19-823.

(d) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president or twenty percent (20%) of the directors then in office may call and give notice of a meeting of the board.

#### **17-19-823. Waiver of notice.**

(a) A director may at any time waive any notice required by this act, the articles or bylaws. Except as provided in subsection (b) of this section, the waiver shall be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with this act the articles or bylaws objects to lack of notice and does not thereafter vote for or assent to the objected to action.

#### **17-19-824. Quorum and voting.**

(a) Except as otherwise provided in this act, the articles or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third (1/3) of the number of directors in office or two (2) directors.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless this act, the articles or bylaws require the vote of a greater number of directors.

**17-19-825. Committees of the board; other informal committees.**

(a) Unless prohibited or limited by the articles or bylaws, a board of directors may create one (1) or more committees of the board and shall only appoint members of the board to serve on them. Each committee shall have two (2) or more directors, who serve at the pleasure of the board.

(b) The creation of a committee and appointment of members to it shall be approved by the greater of:

(i) A majority of all the directors in office when the action is taken; or

(ii) The number of directors required by the articles or bylaws to take action under W.S. 17-19-824.

(c) W.S. 17-19-820 through 17-19-824, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under W.S. 17-19-801.

(e) A committee of the board shall not, however:

(i) Authorize distributions;

(ii) Approve or recommend to members dissolution, merger, consolidation or the sale, pledge or transfer of all or substantially all of the corporation's assets;

(iii) Elect, appoint or remove directors or fill vacancies on the board or on any of its committees; or

(iv) Adopt, amend or repeal the articles or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in W.S. 17-19-830.

(g) Nothing in this section prohibits a board from appointing informal or advisory committees comprised of persons

who may or may not be members of the board to undertake tasks assigned to them by the board.

**17-19-830. Directors' standards and liabilities.**

(a) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

(b) Members of a board of any nonprofit corporation organized under this act are not individually liable for any actions, inactions or omissions by the nonprofit corporation. This subsection does not affect individual liability for intentional torts or illegal acts. This subsection also does not prevent removal of a board member by court order pursuant to W.S. 17-19-810.

**17-19-831. Director conflict of interest.**

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable if the transaction was fair at the time it was entered into or is approved as provided in subsection (b) or (c) of this section.

(b) A transaction in which a director of a public benefit or religious corporation has a conflict of interest may be approved:

(i) In advance by the vote of the board of directors or a committee of the board if:

(A) The material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(B) The directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(ii) Before or after it is consummated by obtaining approval of the:

(A) Attorney general; or

(B) District court in an action in which the attorney general is joined as a party.

(c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(i) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved or ratified the transaction; or

(ii) The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved or ratified the transaction.

(d) For purposes of this section, a director of the corporation has an indirect interest in a transaction if:

(i) Another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or

(ii) Another entity of which the director is a director, officer or trustee is a party to the transaction.

(e) For purposes of subsections (b) and (c) of this section a conflict of interest transaction is authorized, approved or ratified, if it receives the affirmative vote of a majority of the directors on the board or on the committee, who have no direct or indirect interest in the transaction, but a transaction shall not be authorized, approved or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under paragraph (b)(i) or (c)(i) of this section if the transaction is otherwise approved as provided in subsection (b) or (c) of this section.

(f) For purposes of paragraph (c)(ii) of this section, a conflict of interest transaction is authorized, approved or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or

voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in paragraph (d)(i) of this section, shall not be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under paragraph (c)(ii) of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this act. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(g) The articles, bylaws or a resolution of the board may impose additional requirements on conflict of interest transactions.

**17-19-832. Loans to or guaranties for directors and officers.**

(a) A corporation shall not lend money to nor guarantee the obligation of a director or officer of the corporation except as provided in W.S. 17-19-853.

(b) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

**17-19-840. Required officers.**

(a) Unless otherwise provided in the articles or bylaws, a corporation shall have a president, a secretary, a treasurer and any other officers as are appointed by the board.

(b) The bylaws or the board shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(c) The same individual may simultaneously hold more than one (1) office in a corporation.

**17-19-841. Duties and authority of officers.**

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of



the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

**17-19-842. Standards of conduct for officers.**

(a) An officer who is an employee of the corporation with discretionary authority shall discharge his duties under that authority:

(i) In good faith;

(ii) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(iii) In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(b) In discharging his duties an officer who is an employee of the corporation is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

(i) One (1) or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented;

(ii) Legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(iii) In the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and whom the officer believes to be reliable and competent in the matters presented.

(c) An officer who is an employee of the corporation is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) An officer who is an employee of the corporation is not liable to the corporation, any member or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

(e) An officer of a corporation organized under this act, who is not an employee of the corporation is not individually liable for any actions, inactions or omissions by the corporation. This subsection does not affect individual liability for intentional torts or illegal acts.

(f) Whether or not he is an employee of the corporation, an officer shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

**17-19-843. Resignation and removal of officers.**

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor cannot take office until the effective date.

(b) A board may remove any officer at any time with or without cause.

**17-19-844. Contract rights of officers.**

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

**17-19-845. Officers' authority to execute documents.**

(a) Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two (2) officers in Category 1 below or by one (1)

officer in Category 1 below and one (1) individual in Category 2 below:

(i) Category 1-The presiding officer of the board and the president;

(ii) Category 2-A vice president, the secretary, treasurer and executive director.

**17-19-850. Subarticle definitions.**

(a) As used in this subarticle:

(i) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger, consolidation or other transaction in which the predecessor's existence ceased upon consummation of the transaction;

(ii) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director;

(iii) "Expenses" include counsel fees;

(iv) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding;

(v) "Official capacity" means: (1) when used with respect to a director, the office of director in a corporation; and (2) when used with respect to an individual other than a director, as contemplated in W.S. 17-19-856, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service

for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise;

(vi) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding;

(vii) "Proceeding" means any threatened, pending or completed action, suit or proceeding whether civil, criminal, administrative or investigative and whether formal or informal.

**17-19-851. Reserved.**

**17-19-852. Mandatory indemnification.**

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

**17-19-853. Advance for expenses.**

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(i) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if the director is not wholly successful; and

(ii) A determination is made that the facts then known to those making the determination would not preclude indemnification under this subarticle.

(b) The undertaking required by paragraph (a)(i) of this section shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

**17-19-854. Court-ordered indemnification.**

Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding

or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification in the amount it considers proper if it determines the director is entitled to mandatory indemnification under W.S. 17-19-852, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

**17-19-855. Reserved.**

**17-19-856. Indemnification of officers, employees and agents.**

(a) Unless limited by a corporation's articles of incorporation:

(i) An officer, employee or agent of the corporation who is not a director is entitled to mandatory indemnification under W.S. 17-19-852, and is entitled to apply for court-ordered indemnification under W.S. 17-19-854 in each case, to the same extent as a director;

(ii) The corporation may indemnify and advance expenses under this subarticle to an officer, employee or agent of the corporation who is not a director to the same extent as to a director; and

(iii) A corporation may also indemnify and advance expenses to an officer, employee or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

**17-19-857. Insurance.**

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee or agent of the corporation, or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee or agent, whether or not the corporation would have power to

indemnify the person against the same liability under W.S. 17-19-852 or 17-19-856.

**17-19-858. Application of subarticle.**

(a) The indemnification and advancement of expenses authorized by this subarticle shall not be exclusive of any other rights to which any director, officer, employee or agent may be entitled under any bylaw, agreement, vote of members or disinterested directors or otherwise, both as to any action in his official capacity and as to action in another capacity while holding the office, and continues as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of that person.

(b) If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(c) This subarticle does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

ARTICLE 9  
RESERVED

ARTICLE 10  
AMENDMENT OF ARTICLES OF  
INCORPORATION AND BYLAWS

**17-19-1001. Authority to amend.**

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

**17-19-1002. Amendment by directors.**

(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's articles without member approval:

(i) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(ii) To delete the names and addresses of the initial directors;

(iii) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(iv) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name; or

(v) To make any other change expressly permitted by this act to be made by director action.

(b) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's articles subject to any approval required pursuant to W.S. 17-19-1030. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with W.S. 17-19-822(c). The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment shall be approved by a majority of the directors in office at the time the amendment is adopted.

#### **17-19-1003. Amendment by directors and members.**

(a) For corporations with directors and members, unless this act, the articles, bylaws, the members, (acting pursuant to subsection (b) of this section), or the board of directors, (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's articles to be adopted shall be approved:

(i) By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board,

the term of office of directors, or the method or way in which directors are elected or selected;

(ii) Except as provided in W.S. 17-19-1002(a), by the members by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by W.S. 17-19-1030.

(b) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the articles or board approval is required by subsection (a) of this section to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with W.S. 17-19-705. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

**17-19-1004. Class voting by members on amendments.**

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different than the amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:



(i) Affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than the amendment would affect another class;

(ii) Change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(iii) Increase or decrease the number of memberships authorized for that class;

(iv) Increase the number of memberships authorized for another class;

(v) Effect an exchange, reclassification or termination of the memberships of that class; or

(vi) Authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two (2) or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment shall be approved by the members of each class that would be created by the amendment.

(e) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment shall be approved by the members of the class by two-thirds (2/3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members of a public benefit or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class cannot vote on the proposed amendment.

**17-19-1005. Articles of amendment.**

(a) A corporation amending its articles shall deliver to the secretary of state articles of amendment setting forth:

(i) The name of the corporation;

(ii) The text of each amendment adopted;

(iii) The date of each amendment's adoption;

(iv) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;

(v) If approval by members was required:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and

(B) Either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class.

(vi) If approval of the amendment by some person or persons other than the members, the board or the incorporators is required pursuant to W.S. 17-19-1030, a statement that the approval was obtained.

#### **17-19-1006. Restated articles of incorporation.**

(a) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.

(b) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it shall be adopted as provided in W.S. 17-19-1003.

(c) If the restatement includes an amendment requiring approval by members, the board shall submit the restatement to the members for their approval.

(d) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with W.S. 17-19-705. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(e) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(f) A restatement requiring approval by the members shall be approved by the same vote as an amendment to articles under W.S. 17-19-1003.

(g) If the restatement includes an amendment requiring approval pursuant to W.S. 17-19-1030, the board shall submit the restatement for approval.

(h) A corporation restating its articles shall deliver to the secretary of state articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(i) Whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or

(ii) If the restatement contains an amendment to the articles requiring approval by the members, the information required by W.S. 17-19-1005; and

(iii) If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to W.S. 17-19-1030, a statement that the approval was obtained.

(j) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(k) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (h) of this section.

**17-19-1007. Amendment pursuant to judicial reorganization.**

(a) A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to W.S. 17-19-1030 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by W.S. 17-19-202.

(b) The individual or individuals designated by the court shall deliver to the secretary of state articles of amendment setting forth:

(i) The name of the corporation;

(ii) The text of each amendment approved by the court;

(iii) The date of the court's order or decree approving the articles of amendment;

(iv) The title of the reorganization proceeding in which the order or decree was entered; and

(v) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

**17-19-1008. Effect of amendment.**

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation or any property held by it by virtue of any trust upon which the property is held by the corporation or the existing rights of

persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

**17-19-1020. Amendment by directors.**

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's bylaws subject to any approval required pursuant to W.S. 17-19-1030. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice shall be in accordance with W.S. 17-19-822(c). The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment shall be approved by a majority of the directors in office at the time the amendment is adopted.

**17-19-1021. Amendment by directors and members.**

(a) For corporations with directors and members, unless this act, the articles, bylaws, the members, (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's bylaws to be adopted shall be approved:

(i) By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;

(ii) By the members by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by W.S. 17-19-1030.

(b) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the bylaws or board approval is required by subsection (a) of this section to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with W.S. 17-19-705. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

**17-19-1022. Class voting by members on amendments.**

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different than the amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

(i) Affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than the amendment would affect another class;

(ii) Change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(iii) Increase or decrease the number of memberships authorized for that class;

(iv) Increase the number of memberships authorized for another class;

(v) Effect an exchange, reclassification or termination of all or part of the memberships of that class; or

(vi) Authorize a new class of memberships.

(c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.

(d) If a class is to be divided into two (2) or more classes as a result of an amendment to the bylaws, the amendment shall be approved by the members of each class that would be created by the amendment.

(e) If a class vote is required to approve an amendment to the bylaws, the amendment shall be approved by the members of the class by two-thirds (2/3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(f) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

**17-19-1030. Approval by third persons.**

The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of the specified person or persons.

**17-19-1031. Amendment terminating members or redeeming or canceling memberships.**

(a) Any amendment to the articles or bylaws of a public benefit or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships shall meet the requirements of the act and this section.

(b) Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(c) After adopting a resolution proposing such an amendment, the notice to members proposing the amendment shall

include one (1) statement of up to five hundred (500) words opposing the proposed amendment if such statement is submitted by any five (5) members or members having three percent (3%) or more of the voting power, whichever is less, not later than twenty (20) days after the board has voted to submit the amendment to the members for their approval. In public benefit corporations the production and mailing costs shall be paid by the requesting members. In mutual benefit corporations the production and mailing costs shall be paid by the corporation.

(d) Any such amendment shall be approved by the members by two-thirds (2/3) of the votes cast by each class.

(e) The provisions of W.S. 17-19-621 shall not apply to any amendment meeting the requirements of the act and this section.

## ARTICLE 11 MERGER AND CONSOLIDATION

### **17-19-1101. Approval of plan of merger.**

(a) Subject to the limitations set forth in W.S. 17-19-1102, one (1) or more nonprofit corporations may merge into a business or nonprofit corporation, if the plan of merger is approved as provided in W.S. 17-19-1103.

(b) The plan of merger shall set forth:

(i) The name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(ii) The terms and conditions of the planned merger;

(iii) The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and

(iv) If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations or securities of the surviving or any other corporation or into cash or other property in whole or part.

(c) The plan of merger may set forth:



(i) Any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(ii) Other provisions relating to the planned merger.

**17-19-1102. Limitations on mergers by public benefit or religious corporations.**

(a) Without the prior approval of a district court in a proceeding which the secretary of state has been given written notice, a public benefit or religious corporation may merge only with:

(i) A public benefit or religious corporation;

(ii) A foreign corporation that would qualify under this act as a public benefit or religious corporation;

(iii) A wholly-owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger;

(iv) A governmental subdivision; or

(v) A business or mutual benefit corporation, provided that:

(A) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one (1) or more persons who would have received its assets under W.S. 17-19-1406(a) (v) and (vi) had it dissolved;

(B) It shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with the condition; and

(C) The merger is approved by a majority of directors of the public benefit or religious corporation who are

not and will not become members or shareholders in or officers, employees, agents or consultants of the surviving corporation.

(b) At least twenty (20) days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to paragraph (a)(v) of this section, notice including a copy of the proposed plan of merger, shall be delivered to the secretary of state. The secretary of state shall notify the attorney general of the proposed plan.

(c) Without the prior written consent of the attorney general or of the district court in a proceeding in which the attorney general has been given notice, no member of a public benefit or religious corporation may receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. The court shall approve the transaction if it is in the public interest.

**17-19-1103. Action on plan by board, members and third persons.**

(a) Unless this act, the articles, bylaws or the board of directors or members, acting pursuant to subsection (c) of this section, require a greater vote or voting by class, a plan of merger to be adopted shall be approved:

(i) By the board;

(ii) By the members, if any, by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by W.S. 17-19-1030 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger shall be approved by a majority of the directors in office at the time the merger is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with W.S. 17-19-822(c). The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the

merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with W.S. 17-19-705. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under W.S. 17-19-1004 or 17-19-1022. The plan is approved by a class of members by two-thirds (2/3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

**17-19-1104. Articles of merger.**

(a) After a plan of merger is approved by the board of directors, and if required by W.S. 17-19-1103, by the members and any other persons, the surviving or acquiring corporation shall deliver to the secretary of state articles of merger setting forth:

(i) The plan of merger;

(ii) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(iii) If approval by members was required:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class.

(iv) If approval of the plan by some person or persons other than the members or the board is required pursuant to W.S. 17-19-1103(a)(iii), a statement that the approval was obtained.

**17-19-1105. Effect of merger.**

(a) When a merger takes effect:

(i) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(ii) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;

(iii) The surviving corporation has all liabilities and obligations of each corporation party to the merger;

(iv) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(v) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

**17-19-1106. Merger with foreign corporation.**

(a) Except as provided in W.S. 17-19-1102, one (1) or more foreign business or nonprofit corporations may merge with one (1) or more domestic nonprofit corporations if:

(i) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(ii) The foreign corporation complies with W.S. 17-19-1104 if it is the surviving corporation of the merger; and

(iii) Each domestic nonprofit corporation complies with the applicable provisions of W.S. 17-19-1101 through 17-19-1103 and, if it is the surviving corporation of the merger, with W.S. 17-19-1104.

(b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it.

**17-19-1107. Bequests, devises and gifts.**

Any bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

**17-19-1108. Merger with a governmental subdivision.**

Except for W.S. 17-19-1102, this article does not apply if a public benefit, mutual benefit or religious corporation merges with a governmental subdivision. The corporation shall file with the secretary of state notice of the consummated merger.

**17-19-1110. Approval of plan of consolidation.**

(a) Subject to the limitations set forth in W.S. 17-19-1111, one (1) or more nonprofit corporations may consolidate into a new business or nonprofit corporation, if the plan of consolidation is approved as provided in W.S. 17-19-1112.

(b) The plan of consolidation shall set forth:

(i) The name of each corporation planning to consolidate and the name of the new corporation into which each plans to consolidate which is hereinafter designated as the new corporation;

(ii) The terms and conditions of the planned consolidation;

(iii) The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the new corporation;

(iv) If the consolidation involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each consolidating corporation into memberships, obligations or securities of the new corporation or into cash or other property in whole or part; and

(v) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this act.

(c) The plan of consolidation may set forth other provisions relating to the planned consolidation.

**17-19-1111. Limitations on consolidations by public benefit or religious corporations.**

(a) Without the prior approval of the district court in a proceeding which the secretary of state has been given written notice, a public benefit or religious corporation may consolidate only with:

(i) A public benefit or religious corporation;

(ii) A foreign corporation that would qualify under this act as a public benefit or religious corporation;

(iii) A wholly-owned foreign or domestic business or mutual benefit corporation, provided the new corporation is and will continue to be a public benefit or religious corporation;

(iv) A governmental subdivision; or

(v) A business or mutual benefit corporation, provided that:

(A) On or prior to the effective date of the consolidation, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one (1) or more persons who would have received its assets under W.S. 17-19-1406(a) (v) and (vi) had it dissolved;

(B) It shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the consolidation, in accordance with the condition; and

(C) The consolidation is approved by a majority of directors of each public benefit or religious corporation who are not and will not become members or shareholders in or officers, employees, agents or consultants of the new corporation.

(b) At least twenty (20) days before consummation of any consolidation of a public benefit corporation or a religious corporation pursuant to paragraph (a) (v) of this section, notice including a copy of the proposed plan of consolidation, shall be delivered to the secretary of state. The secretary of state shall give notice of the proposed plan to the attorney general.

(c) Without the prior written consent of the attorney general or of the district court in a proceeding in which the attorney general has been given notice, no member of a public benefit or religious corporation may receive or keep anything as a result of a consolidation other than a membership or

membership in the new public benefit or religious corporation. The court shall approve the transaction if it is in the public interest.

**17-19-1112. Action on plan by board, members and third persons.**

(a) Unless this act, the articles, bylaws or the board of directors or members, acting pursuant to subsection (c) of this section, require a greater vote or voting by class, a plan of consolidation to be adopted shall be approved:

(i) By the board;

(ii) By the members, if any, by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by W.S. 17-19-1030 for an amendment to the articles or bylaws.

(b) If a corporation party to a consolidation does not have members, the consolidation shall be approved by a majority of the directors in office at the time the consolidation is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with W.S. 17-19-822(c). The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed consolidation.

(c) Each board may condition its submission of the proposed consolidation, and the members may condition their approval of the consolidation, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If each board seeks to have the plan approved by the members at a membership meeting, each corporation shall give notice to its members of the proposed membership meeting in accordance with W.S. 17-19-705. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of consolidation and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the corporations involved shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary



of the plan for members of the disappearing corporation or corporations shall include a copy or summary of the articles and bylaws that will be in effect immediately after the consolidation takes effect.

(e) If each board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the new corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation or corporations shall include a copy or summary of the articles and bylaws that will be in effect immediately after the consolidation takes effect.

(f) Voting by a class of members is required on a plan of consolidation if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under W.S. 17-19-1004 or 17-19-1022. The plan is approved by a class of members by two-thirds (2/3) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a consolidation is adopted, and at any time before articles of consolidation are filed, the planned consolidation may be abandoned, subject to any contractual rights, without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of consolidation or, if none is set forth, in the manner determined by the board of directors.

#### **17-19-1113. Articles of consolidation.**

(a) After a plan of consolidation is approved by the board of directors, and if required by W.S. 17-19-1112, by the members and any other persons, the new corporation shall deliver to the secretary of state articles of consolidation setting forth:

(i) The plan of consolidation;

(ii) If approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(iii) If approval by members was required:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class.

(iv) If approval of the plan by some person or persons other than the members or the board is required pursuant to W.S. 17-19-1112(a)(iii), a statement that the approval was obtained.

**17-19-1114. Effect of consolidation.**

(a) When a consolidation takes effect:

(i) Every other corporation party to the consolidation consolidates into the new corporation and the separate existence of every corporation except the new corporation ceases;

(ii) The title to all real estate and other property owned by each corporation party to the consolidation is vested in the new corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the consolidation;

(iii) The new corporation has all liabilities and obligations of each corporation party to the consolidation;

(iv) A proceeding pending against any corporation party to the consolidation may be continued as if the consolidation did not occur or the new corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(v) The articles of incorporation and bylaws of the new corporation are amended to the extent provided in the plan of consolidation.

**17-19-1115. Consolidation with foreign corporation.**

(a) Except as provided in W.S. 17-19-1111, one (1) or more foreign business or nonprofit corporations may consolidate with one (1) or more domestic nonprofit corporations if:

(i) The consolidation is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the consolidation;

(ii) The foreign corporation complies with W.S. 17-19-1113 if it is the new corporation of the consolidation; and

(iii) Each domestic nonprofit corporation complies with the applicable provisions of W.S. 17-19-1110 through 17-19-1112 and, if it is the new corporation of the consolidation, with W.S. 17-19-1113.

(b) Upon the consolidation taking effect, the new foreign business or nonprofit corporation is deemed to have irrevocably appointed the secretary of state as its agent for service of process in any proceeding brought against it.

#### **17-19-1116. Bequests, devises and gifts.**

Any bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the consolidation, inures to the new corporation unless the will or other instrument otherwise specifically provides.

#### **17-19-1117. Consolidation with a governmental subdivision.**

Except for W.S. 17-19-1111, this article does not apply if a public benefit, mutual benefit or religious corporation consolidates with a governmental subdivision. The corporation shall file notice with the secretary of state of the consummated consolidation.

### **ARTICLE 12 SALE OF ASSETS**

**17-19-1201. Sale of assets in regular course of activities and mortgage of assets.**

(a) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(i) Sell, lease, exchange or otherwise dispose of all, or substantially all, of its property in the usual and regular course of its activities; or

(ii) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(b) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (a) of this section is not required.

**17-19-1202. Sale of assets other than in regular course of activities.**

(a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the goodwill, other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (b) of this section.

(b) Unless this act, the articles, bylaws or the board of directors or members, acting pursuant to subsection (d) of this section, require a greater vote or voting by class, the proposed transaction to be authorized shall be approved:

(i) By the board;

(ii) By the members by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by W.S. 17-19-1030 for an amendment to the articles or bylaws.

(c) If the corporation does not have members the transaction shall be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition the corporation shall provide notice of any directors' meeting at which the approval is to be obtained in accordance with W.S. 17-19-822(c). The notice shall also state that the

purpose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction, and the members may condition their approval of the transaction, on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with W.S. 17-19-705. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) A public benefit or religious corporation shall give written notice to the secretary of state (who shall then give notice to the attorney general) twenty (20) days before it sells, leases, exchanges or otherwise disposes of all, or substantially all, of its property if the transaction is not in the usual and regular course of its activities unless the attorney general has given the corporation a written waiver of this subsection.

(h) After a sale, lease, exchange or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

#### ARTICLE 13 DISTRIBUTIONS

#### **17-19-1301. Prohibited distributions.**

Except as authorized by W.S. 17-19-1302, a corporation shall not make any distributions.

**17-19-1302. Purchase of memberships; authorized distributions.**

(a) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

(i) The corporation would be able to pay its debts as they become due in the usual course of its activities; and

(ii) The corporation's total assets would at least equal the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with article 14 of this act.

ARTICLE 14  
DISSOLUTION

**17-19-1401. Dissolution by incorporators or directors.**

(a) A majority of the incorporators or directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the secretary of state articles of dissolution.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with W.S. 17-19-822(c). The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolution of the corporation.

(c) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

**17-19-1402. Dissolution by directors, members and third persons.**

(a) Unless this act, the articles, bylaws or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, dissolution is authorized if it is approved:

(i) By the board;

(ii) By the members, if any, by two-thirds (2/3) of the votes cast or a majority of the voting power, whichever is less; and

(iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by W.S. 17-19-1030 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, dissolution shall be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with W.S. 17-19-822(c). The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with W.S. 17-19-705. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(e) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(f) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

**17-19-1403. Notices to the secretary of state.**

(a) A public benefit or religious corporation shall give the secretary of state written notice that it intends to

dissolve at or before the time it delivers articles of dissolution to him. The notice shall include a copy or summary of the plan of dissolution. The secretary of state shall then give notice of the plan to the attorney general.

(b) No assets shall be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty (20) days after it has given the written notice required by subsection (a) of this section to the secretary of state or until the attorney general has consented in writing to the dissolution, or indicated in writing that he will take no action in respect to, the transfer or conveyance, whichever is earlier.

(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the secretary of state (who shall then provide notice to the attorney general) a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person, other than creditors, who received assets and indicate what assets each received.

#### **17-19-1404. Articles of dissolution.**

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state articles of dissolution setting forth:

(i) The name of the corporation;

(ii) The date dissolution was authorized;

(iii) A statement that dissolution was approved by a sufficient vote of the board;

(iv) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(v) If approval by members was required:

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and



(B) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class.

(vi) If approval of dissolution by some person or persons other than the members, the board or the incorporators is required pursuant to W.S. 17-19-1402(a)(iii), a statement that the approval was obtained; and

(vii) If the corporation is a public benefit or religious corporation, that the notice to the secretary of state required by W.S. 17-19-1403(a) has been given.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

#### **17-19-1405. Revocation of dissolution.**

(a) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

(b) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(i) The name of the corporation;

(ii) The effective date of the dissolution that was revoked;

(iii) The date that the revocation of dissolution was authorized;

(iv) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(v) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(vi) If member or third person action was required to revoke the dissolution, the information required by W.S. 17-19-1404(a)(v) and (vi).

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

#### **17-19-1406. Effect of dissolution.**

(a) A dissolved corporation continues its corporate existence but shall not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

(i) Preserving and protecting its assets and minimizing its liabilities;

(ii) Discharging or making provision for discharging its liabilities and obligations;

(iii) Disposing of its properties that will not be distributed in kind;

(iv) Returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;

(v) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;

(vi) If the corporation is a public benefit or religious corporation, and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets:

(A) To one (1) or more persons described in section 501(c)(iii) of the Internal Revenue Code; or

(B) If the dissolved corporation is not described in section 501(c)(iii) of the Internal Revenue Code, to one (1) or more public benefit or religious corporations.

(vii) If the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons whom the corporation holds itself out as benefitting or serving; and

(viii) Doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

(i) Transfer title to the corporation's property;

(ii) Subject its directors or officers to standards of conduct different from those prescribed in article 8 of this act;

(iii) Change quorum or voting requirements for its board or members; change provisions for selection, resignation or removal of its directors or officers or both; or change provisions for amending its bylaws;

(iv) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(v) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(vi) Terminate the authority of the registered agent.

**17-19-1407. Known claims against dissolved corporation.**

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing by mail or private carrier or by personal delivery of the dissolution at any time after its effective date. The written notice shall:

(i) Describe information that shall be included in a claim;

(ii) Provide a mailing address where a claim may be sent;

(iii) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation shall receive the claim; and

(iv) State that the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(i) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(ii) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(d) For purposes of this section "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**17-19-1408. Unknown claims against dissolved corporation.**

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice shall:

(i) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office, or, if none in this state, its registered office, is or was last located;

(ii) Describe the information that shall be included in a claim and provide a mailing address where the claim may be sent; and

(iii) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five (5) years or the number of years set forth in the applicable statute of limitation, whichever is less, after publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five (5) years or the number of years set forth in the applicable statute of limitations, whichever is less, after the publication date of the newspaper notice:

(i) A claimant who did not receive written notice under W.S. 17-19-1407;

(ii) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(iii) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(i) Against the dissolved corporation, to the extent of its undistributed assets; or

(ii) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

**17-19-1420. Grounds for administrative dissolution.**

(a) The secretary of state may commence a proceeding under W.S. 17-19-1421 to administratively dissolve a corporation if any of the following has occurred:

(i) The corporation is without a registered agent or registered office in this state for thirty (30) days or more;

(ii) The corporation does not notify the secretary of state within thirty (30) days that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued;

(iii) The corporation's period of duration, if any, stated in its articles of incorporation expires;

(iv) The corporation does not deliver its annual reports or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-19-1630;

(v) It is in the public interest and the corporation:

(A) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing under this act with the secretary of state; or

(B) Cannot be served by either the secretary of state or the registered agent at its address provided pursuant to W.S. 17-28-107.

(vi) An incorporator, director, officer or agent of the corporation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing;

(vii) The corporation has failed to respond to a valid and enforceable subpoena;

(viii) The corporation has failed to pay any penalties imposed under W.S. 17-28-109.

(b) Prior to commencing a proceeding under W.S. 17-19-1421 the secretary of state may classify a corporation as delinquent

awaiting administrative dissolution if the corporation meets any of the criteria in subsection (a) of this section.

**17-19-1421. Procedure for and effect of administrative dissolution.**

(a) Upon determining that one (1) or more grounds exist under W.S. 17-19-1420 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of that determination under W.S. 17-28-104. In the case of a public benefit corporation the secretary of state shall also notify the attorney general in writing.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within at least sixty (60) days after service of the notice is perfected under W.S. 17-28-104, the secretary of state may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under W.S. 17-28-104, and in the case of a public benefit corporation shall notify the attorney general in writing.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under W.S. 17-19-1406 and notify its claimants under W.S. 17-19-1407 and 17-19-1408.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) Repealed by Laws 2008, Ch. 91, § 3.

**17-19-1422. Reinstatement following administrative dissolution.**

(a) A corporation administratively dissolved under W.S. 17-19-1421 may apply to the secretary of state for reinstatement within two (2) years after the effective date of dissolution. Reinstatement may be denied by the secretary of state if the corporation has been the subject of secretary of state and law enforcement investigation pertaining to fraud or any other violation of state or federal law, or if there is other reason

to believe the corporation was engaged in illegal operations.  
The application shall:

(i) Recite the name of the corporation and the effective date of its administrative dissolution;

(ii) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(iii) Repealed By Laws 1999, ch. 196, § 2.

(iv) If the corporation was administratively dissolved for failing to deliver its annual report or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-19-1630, include payment of fees and taxes then delinquent and the reinstatement certificate fee prescribed by W.S. 17-19-122; and

(v) If the corporation was administratively dissolved for failure to maintain a registered agent, include payment of a one hundred fifty dollar (\$150.00) reinstatement fee and payment of any fees and taxes then delinquent.

(b) If the secretary of state determines that the application contains the information required by subsection (a) of this section and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under W.S. 17-28-104.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

(d) The corporation shall retain its registered corporate name during the two (2) year reinstatement period.

**17-19-1423. Appeal from denial of reinstatement.**

(a) The secretary of state, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under W.S. 17-28-104



with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court within thirty (30) days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

#### **17-19-1430. Grounds for judicial dissolution.**

(a) The district court may dissolve a corporation:

(i) In a proceeding by the attorney general if it is established that:

(A) The corporation obtained its articles of incorporation through fraud;

(B) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(C) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or

(D) The corporation is a public benefit corporation and is no longer able to carry out its purposes.

(ii) Except as provided in the articles or bylaws of a religious corporation, in a proceeding by fifty (50) members or members holding five percent (5%) of the voting power, whichever is less, or by a director or any person specified in the articles, if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to break the deadlock;

(B) The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;

(C) The members are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates, to elect successors to directors whose terms have, or would otherwise have, expired;

(D) The corporate assets are being misapplied or wasted; or

(E) The corporation is a public benefit or religious corporation and is no longer able to carry out its purposes.

(iii) In a proceeding by a creditor if it is established that:

(A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent; or

(B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(iv) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) Prior to dissolving a corporation, the court shall consider whether:

(i) There are reasonable alternatives to dissolution;

(ii) Dissolution is in the public interest, if the corporation is a public benefit corporation; and

(iii) Dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

#### **17-19-1431. Procedure for judicial dissolution.**

(a) Venue for a proceeding by the attorney general to dissolve a corporation lies in Laramie county district court.

Venue for a proceeding brought by any other party named in W.S. 17-19-1430 lies in the county where a corporation's principal office or, if none in this state, its registered office, is or was last located.

(b) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall forthwith give written notice of the proceeding to the secretary of state who shall then notify the attorney general. The attorney general may intervene.

#### **17-19-1432. Receivership or custodianship.**

(a) A court in a judicial proceeding brought to dissolve a public benefit or mutual benefit corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual, or a domestic or foreign business or nonprofit corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(i) The receiver:

(A) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; provided, however, that the receiver's power to dispose of the assets of the corporation is subject to any trust and other restrictions that would be applicable to the corporation; and

(B) May sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all Wyoming district courts.

(ii) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

#### **17-19-1433. Decree of dissolution.**

(a) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in W.S. 17-19-1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's affairs in accordance with W.S. 17-19-1406 and the notification of its claimants in accordance with W.S. 17-19-1407 and 17-19-1408.

#### **17-19-1440. Deposit with state treasurer.**

Assets of a dissolved corporation that should be transferred to a creditor, claimant or member of the corporation who cannot be found or who is not competent to receive them, shall be reduced to cash subject to known trust restrictions and deposited with the state treasurer for safekeeping; provided, however, that in the state treasurer's discretion property may be received and held in kind. When the creditor, claimant or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the state treasurer shall deliver to the creditor, member or other person or his representative that amount or property.

ARTICLE 15  
FOREIGN CORPORATIONS

**17-19-1501. Authority to transact business required.**

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

(i) Maintaining, defending or settling any proceeding;

(ii) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(iii) Maintaining bank accounts;

(iv) Maintaining offices or agencies for the transfer, exchange and registration of memberships or securities or maintaining trustees or depositaries with respect to those securities;

(v) Selling through independent contractors;

(vi) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(vii) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(viii) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(ix) Owning, without more, real or personal property;

(x) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature;

(xi) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) of this section is not exhaustive.

**17-19-1502. Consequences of transacting business without authority.**

(a) A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) Repealed By Laws 2000, Ch. 35, § 2.

(e) Notwithstanding any other provision of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

**17-19-1503. Application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state. The application shall set forth:

(i) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of W.S. 17-19-1506;

(ii) The name of the state or country under whose law it is incorporated;

(iii) The date of incorporation and period of duration;

(iv) The street address of its principal office;

(v) The address of its registered office in this state and the name of its registered agent at that office;

(vi) The names and usual business or home addresses of its current directors and officers;

(vii) Whether the foreign corporation has members;

(viii) Whether the corporation, if it had been incorporated in this state, would be a public benefit, mutual benefit or religious corporation;

(ix) A statement that the corporation accepts the constitution of the state of Wyoming in compliance with the requirement of article 10 section 5 of the Wyoming constitution; and

(x) Any additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether the corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees and license taxes under the laws of this state.

(b) The foreign corporation shall deliver with the completed application a certificate of existence dated not more than sixty (60) days prior to filing in Wyoming, or a document of similar import, duly authenticated by the secretary of state

or other official having custody of corporate records in the state or country under whose law it is incorporated.

(c) The application for certificate of authority shall be accompanied by a written consent to appointment by the registered agent.

**17-19-1504. Amended certificate of authority.**

(a) A foreign corporation authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

- (i) Its corporate name;
- (ii) The period of its duration; or
- (iii) The state or country of its incorporation.

(b) The requirements of W.S. 17-19-1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**17-19-1505. Effect of certificate of authority.**

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this act.

(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as and, except as otherwise provided by this act, is subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character.

(c) This act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

**17-19-1506. Corporate name of foreign corporation.**

(a) If the corporate name of a foreign corporation does not satisfy the requirements of W.S. 17-19-401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable



and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name, including a fictitious name, of a foreign corporation shall not be the same as, nor deceptively similar to any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from other business names as required by W.S. 17-16-401.

(c) A foreign corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in accordance with the provisions of W.S. 17-16-401(c).

(i) Repealed By Laws 1996, ch. 80, § 3.

(ii) Repealed By Laws 1996, ch. 80, § 3.

(d) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has:

(i) Merged with the other corporation; or

(ii) Been formed by reorganization of the other corporation; or

(iii) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(iv) Repealed By Laws 1996, ch. 80, § 3.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of W.S. 17-19-401, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of W.S. 17-19-401 and obtains an amended certificate of authority under W.S. 17-19-1504.

**17-19-1507. Registered office and registered agent of foreign corporation.**

(a) Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(i) A registered office as provided in W.S. 17-28-101 through 17-28-111; and

(ii) A registered agent as provided in W.S. 17-28-101 through 17-28-111.

(A) Repealed by Laws 2008, Ch. 90, § 3.

(B) Repealed by Laws 2008, Ch. 90, § 3.

(C) Repealed by Laws 2008, Ch. 90, § 3.

(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all foreign corporations.

**17-19-1508. Repealed by Laws 2008, Ch. 90, § 3.**

**17-19-1509. Repealed by Laws 2008, Ch. 90, § 3.**

**17-19-1510. Repealed by Laws 2008, Ch. 90, § 3.**

**17-19-1520. Withdrawal of foreign corporation.**

(a) A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application shall set forth:

(i) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(ii) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(iii) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding

based on a cause of action arising during the time it was authorized to do business in this state;

(iv) A mailing address to which the secretary of state may mail a copy of any process served on him under paragraph (iii) of this subsection; and

(v) A commitment to notify the secretary of state in the future of any change in the mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the post office address set forth in its application for withdrawal.

#### **17-19-1530. Grounds for revocation.**

(a) The secretary of state may commence a proceeding under W.S. 17-19-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if any of the following has occurred:

(i) The foreign corporation is without a registered agent or registered office in this state for thirty (30) days or more;

(ii) The foreign corporation does not inform the secretary of state under W.S. 17-28-102 or 17-28-103 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within thirty (30) days of the change, resignation or discontinuance;

(iii) An incorporator, director, officer or agent of the foreign corporation signed a document the person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing;

(iv) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger;

(v) The corporation does not deliver its annual reports or pay the annual license taxes to the secretary of state when due pursuant to W.S. 17-19-1630;

(vi) The corporation has failed to respond to a valid and enforceable subpoena;

(vii) It is in the public interest and the corporation:

(A) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing with the secretary of state under this act; or

(B) Cannot be served by either the registered agent or by mail by the secretary of state acting as the agent for process.

(viii) The foreign corporation has failed to pay any penalties imposed under W.S. 17-28-109.

(b) The attorney general may commence a proceeding under W.S. 17-19-1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(i) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(ii) The corporation would have been a public benefit corporation had it been incorporated in this state and that its corporate assets in this state are being misapplied or wasted; or

(iii) The corporation would have been a public benefit corporation had it been incorporated in this state and it is no longer able to carry out its purposes.

(c) Prior to commencing a proceeding under W.S. 17-19-1531 the secretary of state may classify a foreign corporation as delinquent awaiting administrative revocation if the foreign corporation meets any of the criteria in subsection (a) of this section.

**17-19-1531. Procedure and effect of revocation.**

(a) The secretary of state upon determining that one (1) or more grounds exist under W.S. 17-19-1530 for revocation of a certificate of authority shall serve the foreign corporation with written notice of that determination under W.S. 17-28-104.

(b) The attorney general upon determining that one (1) or more grounds exist under W.S. 17-19-1530(b) for revocation of a certificate of authority shall request the secretary of state to serve, and the secretary of state shall serve the foreign corporation with written notice of that determination under W.S. 17-28-104.

(c) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within sixty (60) days after service of the notice is perfected under W.S. 17-28-104, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under W.S. 17-28-104.

(d) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(e) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communications received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(f) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

(g) Repealed by Laws 2008, Ch. 91, § 3.

**17-19-1532. Appeal from revocation.**

(a) A foreign corporation may appeal the secretary of state's revocation of its certificate of authority pursuant to W.S. 16-3-114 within thirty (30) days after the service of the certificate of revocation is perfected under W.S. 17-28-104. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(b) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

ARTICLE 16  
RECORDS AND REPORTS

**17-19-1601. Corporate records.**

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by W.S. 17-19-825(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(i) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(ii) Its bylaws or restated bylaws and all amendments to them currently in effect;

(iii) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;

(iv) The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(v) All written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years under W.S. 17-19-1620;

(vi) A list of the names and addresses of its current directors and officers; and

(vii) Its most recent annual report delivered to the secretary of state under W.S. 17-19-1630.

**17-19-1602. Inspection of records by members.**

(a) Subject to subsection (e) of this section and W.S. 17-19-1603(c), a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in W.S. 17-19-1601(e) if the member gives the corporation written notice or a written demand at least five (5) business days before the date on which the member wishes to inspect and copy.

(b) Subject to subsection (e) of this section, a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and gives the corporation written notice at least five (5) business days before the date on which the member wishes to inspect and copy:

(i) Excerpts from any records required to be maintained under W.S. 17-19-1601(a), to the extent not subject to inspection under W.S. 17-19-1602(a);

- (ii) Accounting records of the corporation; and
- (iii) Subject to W.S. 17-19-1605, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) of this section only if:

- (i) The member's demand is made in good faith and for a proper purpose;

- (ii) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

- (iii) The records are directly connected with this purpose.

(d) This section does not affect:

- (i) The right of a member to inspect records under W.S. 17-19-720 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

- (ii) The power of a court, independently of this act, to compel the production of corporate records for examination.

(e) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

(f) Nothing in this act pertaining to access to corporate records shall operate to violate the confidentiality of records, including patient files, personnel matters, disciplinary files, individual member files, client files, medical files or other files which are generally considered by law to be confidential or privileged.

### **17-19-1603. Scope of inspection rights.**

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.



(b) The right to copy records under W.S. 17-19-1602 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a member's demand to inspect the record of members under W.S. 17-19-1602(b)(iii) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

#### **17-19-1604. Court-ordered inspection.**

(a) If a corporation does not allow a member who complies with W.S. 17-19-1602(a) to inspect and copy any records required by that subsection to be available for inspection, the district court in the county where the corporations' principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with W.S. 17-19-1602(b) and (c) may apply to the district court in the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

#### **17-19-1605. Limitations on use of membership list.**

(a) Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(i) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(ii) Used for any commercial purpose; or

(iii) Sold to or purchased by any person.

**17-19-1620. Financial statements for members.**

(a) Except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report shall accompany them. If not, the statements shall be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

(i) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(ii) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

**17-19-1621. Report of indemnification to members.**

If a corporation indemnifies or advances expenses to a director under W.S. 17-19-852, 17-19-853 or 17-19-854 in connection with

a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

**17-19-1630. Filing of reports.**

(a) Every Wyoming nonprofit corporation organized under the laws of this state and every foreign nonprofit corporation which obtains the right to transact and carry on its affairs within this state shall file an annual report setting forth the names and addresses of its officers and directors, the address of its principal office, and any compensation, profit or pecuniary advantage paid directly or indirectly to any officer or director.

(b) The annual report required in subsection (a) of this section shall be filed with the secretary of state on or before the first day of the month of registration of every year.

(c) A director or officer of the corporation shall execute the annual report under penalty of perjury.

(d) A fee of twenty-five dollars (\$25.00) shall be collected by the secretary of state upon initial incorporation or qualification and an annual franchise fee of twenty-five dollars (\$25.00) shall accompany the annual report.

(e) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction.

(f) The information in the annual report shall be current on the date the annual report is executed on behalf of the corporation.

(g) Any foreign nonprofit corporation transacting business in Wyoming without qualifying is subject to the penalties provided by W.S. 17-16-1502(d).

**17-19-1631. Repealed By Laws 1997, ch. 192, § 3.**

**17-19-1632. Repealed By Laws 1997, ch. 192, § 3.**

**17-19-1633. Repealed By Laws 1997, ch. 192, § 3.**

ARTICLE 17  
DOMESTICATION AND CONTINUANCE OF  
FOREIGN CORPORATION

**17-19-1701. Domestication of foreign corporations.**

Any nonprofit corporation incorporated under the laws of any of the several states of the United States for any purpose, and so long as the corporation complies with W.S. 17-19-301(b), may become a domestic corporation of this state by delivering or causing to be delivered to the secretary of state articles of domestication. Upon filing the articles of domestication, the secretary of state shall issue to the foreign corporation a certificate of domestication which shall continue the corporation as if it had been incorporated under this act. The articles of domestication, upon being filed by the secretary of state, constitute the articles of the domesticated foreign corporation and it shall thereafter have all the powers and privileges and be subjected to all the duties and limitations granted and imposed upon domestic nonprofit corporations under the provisions of this act. A corporation does not become a resident for the purpose of W.S. 16-6-101 through 16-6-118 solely because it becomes a domestic nonprofit corporation under this section.

**17-19-1702. Application for certificate of domestication; articles of domestication.**

(a) A foreign corporation, in order to procure a certificate of domestication shall file articles of domestication with the secretary of state, which articles shall include and set forth:

(i) A certified copy of its original articles of incorporation and all amendments thereto or its equivalent basic corporate charter or other authorization, and a certificate of good standing not more than thirty (30) days old;

(ii) The name of the corporation and the jurisdiction under the laws of which it is incorporated;

(iii) The date of incorporation and the period of duration of the corporation;

(iv) The address of the principal office of the corporation and the jurisdiction under the laws of which it is incorporated;

(v) The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at that address;

(vi) The purpose or purposes of the corporation which it proposes to pursue in the transaction of affairs in this state;

(vii) The names and addresses of the directors and officers of the corporation;

(viii) A statement of whether it is a public benefit corporation, a mutual benefit corporation or a religious corporation;

(ix) A statement whether the corporation has members;

(x) A statement that the corporation accepts the constitution of this state in compliance with the requirement of article 10, section 5 of the Wyoming constitution; and

(xi) Any additional information as may be necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of domestication evidencing its authority to transact its affairs and business in this state.

#### **17-19-1710. Continuance of foreign corporations.**

(a) Subject to subsection (b) of this section, any nonprofit corporation incorporated for any purpose under the laws of any jurisdiction other than this state, and so long as the corporation complies with W.S. 17-19-301(b), may, if the jurisdiction will acknowledge the corporation's termination of domicile in the foreign jurisdiction, apply to the secretary of state for registration under this act, thus continuing the foreign corporation in Wyoming as if it had been incorporated in this state. The secretary of state may issue a certificate of registration upon receipt of an application supported by articles of continuance as provided by this act together with the statements, information and documents set out in subsection (c) of this section. The certificate of registration may then be issued subject to any limitations and conditions and may contain any provisions as may appear proper to the secretary of state.

(b) The secretary of state shall cause notice of issuance of a certificate of registration to be given forthwith to the proper officer of the jurisdiction in which the corporation was previously incorporated.

(c) The articles of continuance filed by a foreign corporation with the secretary of state shall contain:

(i) A certified copy of its original articles of incorporation and all amendments thereto or its equivalent basic corporate charter or other authorization;

(ii) The name of the corporation and the jurisdiction under the laws of which it is incorporated;

(iii) The date of incorporation and the period of duration of the corporation;

(iv) The address of the principal office of the corporation;

(v) The address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at the address;

(vi) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(vii) The names and respective addresses of the directors and officers of the corporation;

(viii) A statement of whether it is a public benefit corporation, a mutual benefit corporation or a religious corporation;

(ix) A statement whether the corporation has members;

(x) A statement that the corporation accepts the constitution of this state in compliance with the requirements of article 10, section 5 of the Wyoming constitution;

(xi) Any additional information necessary or appropriate to enable the secretary of state to determine whether the corporation is entitled to a certificate of registration evidencing its authority to transact its affairs and business in the state; and

(xii) Any additional information permitted in articles of incorporation under W.S. 17-19-202.

(d) The application shall be executed by the corporation by its president or other officer, director, trustee, manager or person performing functions equivalent to those of a president and who is authorized to execute the application on behalf of the corporation and shall be verified by the officer signing the application.

(e) The provisions of the articles of continuance may, without expressly so stating, vary from the provisions of the corporation's articles of incorporation or equivalent basic corporate charter or other authorization, if the variation is one which a corporation incorporated under this act could effect by way of amendment to its articles of incorporation. Upon issuance of a certificate of continuance by the secretary of state, the articles of continuance shall be deemed to be the articles of incorporation of the continued corporation. The corporation may elect to incorporate by reference in the articles of continuance its basic corporate charter or other authorization which had been adopted by the corporation in the foreign jurisdiction, in order to permit the same to continue to act as the articles of incorporation of the corporation, provided, however, that such basic corporate charter or other authorization shall be deemed amended to the extent necessary to make the same conform to the laws of Wyoming and to the provisions of the articles of continuance.

(f) Except for the purpose of W.S. 16-6-101 through 16-6-118, the existence of any corporation heretofore or hereafter issued a certificate of continuance under this act shall be deemed to have commenced on the date the corporation commenced its existence in the jurisdiction in which the corporation was first formed, incorporated or otherwise came into being. The laws of Wyoming shall apply to a corporation continuing under this act to the same extent as if the corporation had been incorporated under the laws of Wyoming from and after the issuance of a certificate of continuance under this act by the secretary of state to the corporation. When a foreign corporation is continued as a corporation under this act, such continuance shall not affect the corporation's ownership of its property or liability for any existing obligations, causes of action, claims, pending or threatened prosecutions or civil or administrative actions, convictions,

rulings, orders, judgments or any other characteristics or aspects of the corporation and its existence.

(g) A membership issued before the corporation's continuance in Wyoming is deemed to have been issued in compliance with this act and the provisions of the articles of continuance. Continuance under this act does not deprive a member of any right or privilege that he claims under, or relieve the member of any liability in respect of, an issued membership.

(h) As used in this section, the term "corporation" shall include any incorporated organization, foundation, trust, association or similar entity which appears to the secretary of state to possess characteristics sufficiently similar to those of a corporation organized under this act.

#### ARTICLE 18 TRANSITION PROVISIONS

##### **17-19-1801. Application to existing domestic corporations.**

This act applies to all domestic corporations in existence on its effective date that were incorporated under the following statutes of this state: W.S. 17-6-101 through 17-6-117, 17-7-101 through 17-7-116 and 17-9-101 through 17-9-106.

##### **17-19-1802. Application to qualified foreign corporations.**

A foreign corporation authorized to transact business in this state on the effective date of this act is subject to this act but is not required to obtain a new certificate of authority to transact business under this act.

##### **17-19-1803. Saving provisions.**

(a) Except as provided in subsection (b) of this section, the repeal of a statute by this act does not affect:

(i) The operation of the statute or any action taken under it before its repeal;

(ii) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;



(iii) Any violation of the statute or any penalty, forfeiture or punishment incurred because of the violation, before its repeal;

(iv) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed; or

(v) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.

(b) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

**17-19-1804. Public benefit, mutual benefit and religious corporations.**

(a) On January 1, 1993 each domestic corporation existing on the effective date of this act that is or becomes subject to this act shall be designated as a public benefit, mutual benefit or religious corporation as follows:

(i) Any corporation designated by statute as a public benefit corporation, a mutual benefit corporation or a religious corporation is the type of corporation designated by statute;

(ii) Any corporation that does not come within paragraph (i) of this subsection but is organized primarily or exclusively for religious purposes is a religious corporation;

(iii) Any corporation that does not come within paragraph (i) or (ii) of this subsection but that is recognized as exempt under section 501(c)(iii) of the Internal Revenue Code, or any successor section, is a public benefit corporation;

(iv) Any corporation that does not come within paragraph (i), (ii) or (iii) of this subsection, but that is organized for a public or charitable purpose and that upon dissolution shall distribute its assets to a public benefit corporation, the United States, a state or a person that is recognized as exempt under section 501(c)(iii) of the Internal

Revenue Code, or any successor section, is a public benefit corporation; and

(v) Any corporation that does not come within paragraph (i), (ii), (iii) or (iv) of this subsection is a mutual benefit corporation.

**17-19-1805. Issuance of additional capital stock prohibited.**

As of January 1, 1993, no additional capital stock may be issued by any nonprofit corporation organized prior to January 1, 1993. As of January 1, 1993, persons who were issued capital stock of a nonprofit corporation pursuant to W.S. 17-6-102(a)(viii) shall be considered members, and not stockholders, and shall have the rights, privileges and obligations of members, including rights upon dissolution, as set forth in this act or the corporation's articles of incorporation or bylaws.

**17-19-1806. Transition of for profit corporations to nonprofit status.**

(a) Any corporation as defined by W.S. 17-16-140 and incorporated under the Wyoming Business Corporation Act may become a corporation pursuant to this act by filing amended articles of incorporation complying with this act if:

(i) The corporation is or determines to become upon filing the amended articles of incorporation, a public benefit, mutual benefit or religious corporation;

(ii) All shareholders are entitled to the same notice and rights of dissent provided under W.S. 17-16-1320 through 17-16-1331 and notice of any known tax consequences under the Internal Revenue Code;

(iii) All shareholders in a business corporation which is or becomes a mutual benefit corporation shall become members entitled to a number of votes, rights to benefits and unequal obligations for assessments and rights upon dissolution in proportion to their number of shares at the time of filing the amended articles of incorporation, unless the amended articles of incorporation provide otherwise;

(iv) The transition to nonprofit status shall not impair any obligations or liabilities to others existing at the time of the transition.

**17-19-1807. Transition of mutual benefit corporations to for profit status.**

(a) Any corporation organized under this chapter which is a mutual benefit corporation may become a corporation organized under the Wyoming Business Corporation Act by filing amended articles of incorporation complying with the Wyoming Business Corporation Act, providing that the corporation shall become a for profit corporation upon filing the amended articles or on a specific date set in the articles if:

(i) The members are entitled to reasonable notice of the impending change;

(ii) Any members dissenting from the change are entitled to the benefits dissenting shareholders would be entitled to under W.S. 17-16-1320 through 17-16-1331 in proportion to the members' rights to assets in the event of dissolution of the corporation;

(iii) The transition to for profit status shall not impair the obligation or liability of the corporation to others existing at the time of the transition of the corporation; and

(iv) The corporation is not a cooperative utility pursuant to the Wyoming Cooperative Utilities Act.

CHAPTER 20  
WYOMING COOPERATIVE UTILITIES ACT

ARTICLE 1  
GENERAL PROVISIONS

**17-20-101. Short title.**

This act shall be known and may be cited as the "Wyoming Cooperative Utilities Act".

**17-20-102. Applicability.**

This act shall apply to cooperative utilities.

**17-20-103. Application of the Wyoming Nonprofit Corporation Act.**

Each cooperative utility shall be governed by the provisions of the Wyoming Nonprofit Corporation Act, W.S. 17-19-101 through 17-19-1807, except insofar as they may be inconsistent with the provisions of this act.

**17-20-104. Securities Act exemption.**

The provisions of chapter 4 of title 17 of the Wyoming statutes shall not apply to any note, bond or other evidence of indebtedness issued by any cooperative utility to the United States or any agency or any instrumentality thereof, to any mortgage or deed of trust executed to secure the same, or to the issuance of membership certificates or proxies by a cooperative utility.

**17-20-140. General definitions.**

(a) As used in this act:

(i) "Cooperative utility" means a corporation organized under any law of this state or under the law of any other jurisdiction, for a purpose other than the conduct of business for profit and includes, but is not limited to, corporations organized to own, operate and maintain electric, telephone and television distribution systems primarily to its members;

(ii) "Patronage capital contributions" means all funds received and receivable from members from the furnishing of cooperative utility services in excess of operating costs and expenses properly chargeable against the furnishing of cooperative utility services;

(iii) "This act" means W.S. 17-20-101 through 17-20-1801.

ARTICLE 2  
ORGANIZATION

**17-20-201. Reserved.**

**17-20-202. Articles of incorporation.**

(a) In addition to the requirements set forth in W.S. 17-19-202, each corporation organized under this act shall state, in its articles, that it is a cooperative utility.

(b) Each corporation incorporating under this act shall be considered a mutual benefit corporation and shall be subject to provisions governing mutual benefit corporations found in the Wyoming Nonprofit Corporation Act, except as provided in this act.

ARTICLES 3  
RESERVED

ARTICLES 4  
RESERVED

ARTICLES 5  
RESERVED

ARTICLE 6  
MEMBERS AND MEMBERSHIPS

**17-20-601. Admission.**

(a) No person who is not an incorporator shall become a member of a cooperative utility unless the person agrees to use the services furnished by the cooperative utility on a continuing basis when such services shall be available through its facilities. The bylaws may provide that any person, including an incorporator, shall cease to be [a] member of the cooperative utility if the member fails or refuses to use the services made available by the cooperative utility, or if services are not made available to the member by the cooperative utility within the specified time after the person has become a member.

(b) The bylaws may prescribe additional qualifications and limitations in respect to membership.

**17-20-602. Reserved.**

**17-20-603. Requirement of members.**

A cooperative utility is required to have members.

ARTICLE 7  
MEMBERS' MEETINGS AND VOTING

**17-20-720. Reserved.**

**17-20-721. Reserved.**

**17-20-722. Quorum requirements.**

Except for member votes on mergers, consolidations, sale or disposition of assets, and dissolutions, ten percent (10%) of all members of the cooperative utility present in person or by proxy or one hundred (100) members present in person, whichever is fewer, shall constitute a quorum for the transaction of business at all meetings of the members. If less than a quorum is present at any meeting, a majority of those present in person shall adjourn the meeting, but may reschedule the meeting with further notice.

**17-20-723. Reserved.**

**17-20-724. Reserved.**

**17-20-725. Reserved.**

**17-20-726. Reserved.**

**17-20-727. Reserved.**

**17-20-728. Election of directors.**

The bylaws may provide that the territory in which a cooperative utility supplies service to its members shall be divided into two (2) or more director districts, and in respect to each such director district shall describe the boundaries thereof and designate the number of directors that shall be elected by the members residing therein.

**17-20-729. Amendment of bylaws.**

(a) Notwithstanding W.S. 17-19-1021(a)(i) and (ii), a cooperative utility may amend its bylaws not inconsistent with its articles of incorporation by a two-thirds (2/3) vote of the board of directors after notice as required by this section.

(b) A cooperative utility shall provide notice of any meeting of the board of directors at which an amendment proposed under subsection (a) of this section is to be voted upon at least thirty (30) days before the meeting. The notice shall:

(i) State that a purpose of the meeting is to consider a proposed amendment to the bylaws;

(ii) Contain or be accompanied by a copy or summary of the amendment;

(iii) Be fair and reasonable. Fair and reasonable notice includes, but is not limited to, advertisement in a newspaper of general circulation within the cooperative utility's service area and direct mailings to members such as in a bill or other communication.

ARTICLES 8  
RESERVED

ARTICLES 9  
RESERVED

ARTICLES 10  
RESERVED

ARTICLE 11  
MERGER AND CONSOLIDATION

**17-20-1101. Reserved.**

**17-20-1102. Reserved.**

**17-20-1103. Merger of 2 or more cooperative utilities.**

Unless this act, the articles, bylaws or the board of directors or members, acting pursuant to W.S. 17-19-1103(c) require a greater vote, a plan of merger involving two (2) or more cooperative utilities to be adopted shall be approved as provided by W.S. 17-19-1103(a) (i) and (iii) and by the affirmative vote of not less than a majority of all of the members of each of the merging cooperative utilities.

**17-20-1104. Reserved.**

**17-20-1105. Reserved.**

**17-20-1106. Merger with entity other than a cooperative utility.**

(a) A cooperative utility may merge with any entity if:

(i) The merger is permitted by the law of the state or country under whose law the entity is organized and existing and each entity complies with that law in effecting the merger;

(ii) The entity complies with W.S. 17-19-1104 if it is the surviving corporation or entity;

(iii) The merger is approved by the affirmative vote of not less than two-thirds (2/3) of all of the members of the cooperative utility; and

(iv) The provisions in W.S. 17-20-1201 are met.

**17-20-1110. Reserved.**

**17-20-1111. Reserved.**

**17-20-1112. Consolidation of 2 or more cooperative utilities.**

Unless this act, the articles, bylaws or the board of directors or members, acting pursuant to W.S. 17-19-1112(c) require a greater vote, a plan of consolidation involving two (2) or more cooperative utilities to be adopted shall be approved as provided by W.S. 17-19-1112(a) (i) and (iii) and by the affirmative vote of not less than a majority of all of the members of each of the consolidating cooperative utilities.

**17-20-1113. Reserved.**

**17-20-1114. Reserved.**

**17-20-1115. Consolidation with entity other than a cooperative utility.**

(a) A cooperative utility may consolidate with any entity if:

(i) The consolidation is permitted by the law of the state or country under whose law the entity is organized and existing and each entity complies with that law in effecting the consolidation;

(ii) The entity complies with 17-19-1113 if it is the new corporation or entity;

(iii) The consolidation is approved by the affirmative vote of not less than two-thirds (2/3) of all of the members of the cooperative utilities; and



(iv) The provisions in W.S. 17-20-1201 are met.

ARTICLE 12  
SALE OR ENCUMBRANCE OF ASSETS

**17-20-1201. Sale or disposition of assets of a cooperative utility.**

(a) A cooperative utility shall not sell, lease or otherwise dispose of all or any substantial portion of its property, when the action is not in the regular course of activities, except as provided in this section.

(b) Before a meeting is held to vote on approval of disposition of all or a substantial portion of cooperative utility property, the board of directors shall:

(i) Have the proposed disposition analyzed with respect to the effect on rates for utility services and the equity position of members. The analyses shall be performed by at least two (2) independent analysts with experience in utility rate setting and valuation of utility property;

(ii) Notify all cooperative utility members, at least ninety (90) days in advance, of a meeting to vote on disposition of cooperative utility property, enclosing a summary of the proposals for disposition of the property with the notice, and make available to any member the full proposal for inspection and copying at the principal office of the cooperative utility; and

(iii) The cooperative utility shall mail to all members of the cooperative utility a summary of any alternate purchase proposals that have been submitted within thirty (30) days of the meeting date, and make available to any member the full proposal for inspection and copying at the principal office of the cooperative utility.

(c) A two-thirds (2/3) affirmative vote of all the members of the cooperative utility is required for any sale or disposition under this article.

(d) This section is subject to the contractual obligations of the cooperative utility with power suppliers and other third parties.

**17-20-1202. Mortgage or encumbrance of assets of a cooperative utility.**

(a) The board of directors, without authorization by the members, shall have full power and authority:

(i) To borrow monies from any source and in such amounts as the board may from time to time determine; and

(ii) To mortgage or otherwise pledge or encumber any or all of the cooperative utility's properties or assets as security therefor.

ARTICLE 13  
DISTRIBUTIONS TO MEMBERS

**17-20-1301. Patronage capital contributions, allocations and refunds.**

(a) Cooperative utilities organized under this act may make distributions to members in the form of patronage capital contributions, allocations and refunds. The bylaws shall provide for patronage capital contributions, allocations and refunds. Refunds may be made only at the discretion of the board of directors.

(b) Any patronage capital that has been retired, returned, refunded or tendered to a member of a cooperative that has remained unclaimed by the person appearing on the records of the cooperative entitled thereto for more than two (2) years, shall be determined to be unclaimed. Notwithstanding any other provision of law, including provisions pertaining to unclaimed property, unclaimed patronage capital shall be used by the cooperative for the benefit of the general membership of the cooperative.

ARTICLE 14  
DISSOLUTION

**17-20-1401. Reserved.**

**17-20-1402. Dissolution by directors, members and third persons.**

Unless this act, the articles, bylaws or the board of directors or members, acting pursuant to W.S. 17-19-1402(c) require a greater vote, dissolution is authorized if it is approved as

provided by W.S. 17-19-1402(a)(i) and (iii) and by the affirmative vote of not less than two-thirds (2/3) of all of the members of the cooperative utility.

ARTICLES 15  
RESERVED

ARTICLES 16  
RESERVED

ARTICLES 17  
RESERVED

ARTICLE 18  
TRANSITION PROVISIONS

**17-20-1801. Application.**

This act applies to all cooperative utilities, including rural electric associations, whether formed before the effective date of this act or not.

CHAPTER 21  
UNIFORM PARTNERSHIP ACT

ARTICLE 1  
GENERAL PROVISIONS

**17-21-101. Definitions.**

(a) In this chapter:

(i) "Business" includes every trade, occupation and profession;

(ii) "Chief executive office" means the principal operating headquarters and the primary offices of the chief executive officer;

(iii) "Debtor in bankruptcy" means a person who is the subject of:

(A) An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or

(B) A comparable order under federal or state law governing insolvency.

(iv) "Distribution" means a transfer of cash or other property from a partnership to a partner in the partner's capacity as a partner, or to the partner's transferee;

(v) "Foreign registered limited liability partnership" means a partnership or association formed under, or pursuant to an agreement governed by, the laws of any state or jurisdiction other than this state that is registered as a limited liability partnership under the laws of the other jurisdiction;

(vi) "Partnership" means an association of two (2) or more persons to carry on as coowners a business for profit formed under W.S. 17-21-202, predecessor law, or comparable law of another jurisdiction, and includes for all purposes of the laws of this state, a registered limited liability partnership;

(vii) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership;

(viii) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking;

(ix) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity;

(x) "Property" means all property, real, personal or mixed, tangible or intangible, or any interest therein;

(xi) "Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by the laws of this state, registered under W.S. 17-21-1101 and complying with W.S. 17-21-1103;

(xii) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States;

(xiii) "Statement" means a statement of partnership authority under W.S. 17-21-303, a statement of denial under W.S. 17-21-304, a statement of dissociation under W.S. 17-21-704, a statement of dissolution under W.S. 17-21-806, a statement of merger under W.S. 17-21-906, a statement of registration as a registered limited liability partnership, or a renewal thereof, under W.S. 17-21-1101, a statement of continuance under W.S. 17-21-1106, a statement of registration as a foreign registered limited liability partnership, or a renewal thereof, under W.S. 17-21-1104 or an amendment, cancellation or withdrawal of any of the foregoing;

(xiv) "Transfer" includes an assignment, conveyance, lease, mortgage, deed and encumbrance;

(xv) "Registered agent" means as provided in W.S. 17-28-101 through 17-28-111.

**17-21-102. Knowledge and notice.**

(a) A person knows a fact if the person has knowledge of it.

(b) A person has notice of a fact if the person:

(i) Knows of it;

(ii) Has received a notice of it; or

(iii) Has reason to know it exists from all of the facts known to that person at the time in question.

(c) A person notifies or gives a notice to another by taking steps reasonably required to inform the other person in the ordinary course of business, whether or not the other person learns of it.

(d) A person is notified or receives a notice of a fact when:

(i) The existence of the fact comes to the person's attention; or

(ii) The notice is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as provided in subsection (f) of this section, notice received by a person who is not an individual, including a partnership, is effective for a particular transaction when the notice is brought to the attention of the individual conducting the transaction, or in any event when the notice would have been brought to that individual's attention if the person had exercised due diligence. Such a person exercises due diligence if he maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) Receipt of notice by a partner of a matter relating to the partnership is effective immediately as notice to the partnership, but is not effective in the case of fraud on the partnership committed by or with the consent of the partner who received the notice.

**17-21-103. Effect of partnership agreement; nonwaivable provisions.**

(a) Except as provided in subsection (b) of this section, a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) A partnership agreement may not:

(i) Vary the rights and duties under W.S. 17-21-105 except to eliminate the duty to provide copies of statements to all the partners;

(ii) Unreasonably restrict a partner's right of access to books and records under W.S. 17-21-403(b);

(iii) Eliminate the duty of loyalty under W.S. 17-21-404(b);

(iv) Unreasonably reduce the duty of care under W.S. 17-21-404(d);

(v) Eliminate the obligation of good faith and fair dealing under W.S. 17-21-404(e);

(vi) Vary the power to withdraw as a partner under W.S. 17-21-601(a)(i), except to require the notice to be in writing;

(vii) Vary the right to expulsion of a partner by a court in the events specified in W.S. 17-21-601(a)(v);

(viii) Vary the requirement to wind up the partnership business in cases specified in W.S. 17-21-801(a)(iv), (v) or (vi); or

(ix) Restrict rights of third parties under this chapter.

#### **17-21-104. Supplemental principles of law.**

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in W.S. 1-16-102.

#### **17-21-105. Execution, filing, and recording of statements.**

(a) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state. If a statement of partnership authority is filed with the secretary of state under W.S. 17-21-303, all statements provided for under this chapter subsequent to the filing of this statement shall be filed with the secretary of state in accordance with this chapter.

(b) A certified copy of a statement that has been filed in the office of the secretary of state that is recorded in the office for recording transfers of real property shall have the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement

filed in the office of the secretary of state shall not have the effect provided for recorded statements in this chapter.

(c) A statement filed by a partnership must be executed by at least two (2) partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement must personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The secretary of state shall collect a fee of ten dollars (\$10.00) for filing or providing a certified copy of a statement. The appropriate county clerk shall collect a fee of ten dollars (\$10.00) for recording a statement.

#### **17-21-106. Law governing internal affairs.**

Except as provided in W.S. 17-21-1104, the laws of the state or other jurisdiction in which a partnership has its chief executive office govern the partnership's internal affairs.

#### **17-21-107. Partnership subject to amendment or repeal of chapter.**

A partnership governed by this chapter is subject to any amendment or repeal of this chapter.

### ARTICLE 2 NATURE OF PARTNERSHIP

#### **17-21-201. Partnership as entity.**

A partnership is an entity.



## **17-21-202. Creation of partnership.**

(a) Except as provided in subsection (b) of this section, the association of two (2) or more persons to carry on as co-owners of a business for profit creates a partnership, whether or not the persons intend to create a partnership.

(b) An association created under a statute other than this chapter, any predecessor law or comparable law of another jurisdiction is not a partnership.

(c) In determining whether a partnership is created, the following rules apply:

(i) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property;

(ii) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived;

(iii) The receipt by a person of a share of the profits of a business is prima facie evidence that the person is a partner in the business, but that inference may not be drawn if the profits were received in payment:

(A) Of a debt by installments or otherwise;

(B) For services as an independent contractor or of wages or other compensation to an employee;

(C) Of rent;

(D) Of an annuity or other retirement or health benefit to a beneficiary, representative or designee of a deceased or retired partner;

(E) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral or rights to income, proceeds or increase in value derived from the collateral; or

(F) Of consideration for the sale of the goodwill of a business or other property by installments or otherwise.

(d) Except as provided by W.S. 17-21-308, persons who are not partners as to each other are not partners as to other persons.

(e) A partnership created under this chapter is a general partnership and the partners are general partners of the partnership.

#### **17-21-203. Partnership property.**

Property transferred to or otherwise acquired by a partnership is property of the partnership and not of the partners individually.

#### **17-21-204. When property is partnership property.**

(a) Property is partnership property if acquired:

(i) In the name of the partnership; or

(ii) In the name of one (1) or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership, but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(i) The partnership in its name; or

(ii) One (1) or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one (1) or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one (1) or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property even if used for partnership purposes.

ARTICLE 3  
RELATIONS OF PARTNERS TO PERSONS  
DEALING WITH PARTNERSHIP

**17-21-301. Partner agent of partnership.**

(a) Subject to the effect of a statement of partnership authority pursuant to W.S. 17-21-303:

(i) Each partner is an agent of the partnership for the purpose of its business. Any act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the usual way the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner has no authority to act for the partnership in the particular matter and the person with whom the partner is dealing knows or has received a notice that the partner lacks authority;

(ii) An act of a partner which is not apparently for carrying on in the usual way the partnership business or business of the kind carried on by the partnership does not bind the partnership unless authorized by the other partners.

**17-21-302. Transfer of partnership property.**

(a) Subject to the effect of a statement of partnership authority pursuant to W.S. 17-21-303:

(i) Partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by any partner in the partnership name;

(ii) Partnership property held in the name of one (1) or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held;

(iii) A partnership may recover property transferred under this subsection if it proves that execution of the instrument of transfer did not bind the partnership under W.S. 17-21-301, unless the property was transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gave value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(b) Partnership property held in the name of one (1) or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred free of any claims of the partnership or the partners by the persons in whose name the property is held to a transferee who gives value without having notice that it is partnership property.

(c) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. That person may execute documents in the name of the partnership to evidence vesting of the property in that person and may file or record those documents.

#### **17-21-303. Statement of partnership authority.**

(a) A partnership may file a statement of partnership authority, which:

(i) Shall include:

(A) The name of the partnership;

(B) The street address of its chief executive office and of an office in this state, if any;

(C) The names and mailing addresses of all the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (b) of this section; and

(D) A statement specifying the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership.

(ii) May include a statement of the authority, or of limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to W.S. 17-21-105(c) and states the name of the partnership but does not contain all of the other information required by subsection (a) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (d) and (e) of this section.

(d) Except as provided in subsection (g) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(i) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive, in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority;

(ii) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive, in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then recorded in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is

recorded in the office for recording transfers of that real property.

(f) Except as provided in subsections (d) and (e) of this section and W.S. 17-21-704 and 17-21-806, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(g) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five (5) years after the date on which the statement or the most recent amendment was filed with the secretary of state.

#### **17-21-304. Statement of denial.**

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to W.S. 17-21-303(b) may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority to the extent provided in W.S. 17-21-303(d) and (e).

#### **17-21-305. Partnership liable for partner's actionable conduct.**

(a) A partnership is liable for loss or injury caused to a person or for a penalty incurred as a result of a wrongful act or omission or other actionable conduct of a partner acting in the ordinary course of business of the partnership or with the authority of the partnership.

(b) If in the course of its business, a partnership receives money or property of a person not a partner which is misapplied by a partner while it is in the custody of the partnership, the partnership is liable for the loss.

#### **17-21-306. Partner's liability.**

(a) Except as provided in subsection (b) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) Except as provided by subsections (c) and (d) of this section, a partner of a registered limited liability partnership is not liable, directly or indirectly (including by way of indemnification, contribution, assessment or otherwise), for any debts, obligations or liabilities of, or chargeable to, the registered limited liability partnership or another partner or partners, whether arising in tort, contract or otherwise, solely by reason of being such a partner or acting (or omitting to act) in such capacity or otherwise participating (as an employee, consultant, contractor or otherwise) in the conduct of the other business or activities of the registered limited liability partnership, while the partnership is a registered limited liability partnership.

(c) Subsection (b) of this section shall not affect the liability of a partner in a registered limited liability partnership for the partner's own negligent or wrongful act or misconduct, or that of any person under the partner's direct supervision and control.

(d) Notwithstanding the provisions of subsection (b) of this section, all or specified partners of a registered limited liability partnership may be liable in their capacity as partners for all or specified debts, obligations or liabilities of a registered limited liability partnership to the extent at least a majority of the partners shall have agreed unless otherwise provided in any agreement between the partners. Any such agreement may be modified or revoked to the extent at least a majority of the partners shall have agreed, unless otherwise provided in any agreement between the partners, provided, however, that:

(i) Any such modification or revocation shall not affect the liability of a partner for any debts, obligations or liabilities of a registered limited liability partnership incurred, created or assumed by the registered limited liability partnership prior to the modification or revocation; and

(ii) A partner shall be liable for debts, obligations and liabilities of the registered limited liability partnership incurred, created or assumed after such modification or revocation only in accordance with this article and, if the agreement is further modified, the agreement as so further modified but only to the extent not inconsistent with subsection (c) of this section.

(e) Nothing in this section shall in any way affect or impair the ability of a partner to act as a guarantor or surety for, provide collateral for, or otherwise be liable for, the debts, obligations or liabilities of a registered limited liability partnership.

(f) Subsection (b) of this section shall not affect the liability of a registered limited liability partnership out of partnership assets for partnership debts, obligations and liabilities.

(g) A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover any debts, obligations, or liabilities of, or chargeable to, the partnership, unless the partner is personally liable under subsection (c) or (d) of this section.

**17-21-307. Actions by and against partnership and partners.**

(a) A partnership may sue and be sued in the name of the partnership.

(b) An action may be brought against the partnership and any or all of the partners who are personally liable for obligations of the partnership under W.S. 17-21-306 in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of a partner to satisfy a judgment based on a claim against the partnership unless:

(i) The partner is personally liable for the liability of the partnership under W.S. 17-21-306; and

(ii) One (1) of the following conditions is satisfied:

(A) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;



(B) An involuntary case under title 11 of the United States Code has been commenced against the partnership and has not been dismissed within sixty (60) days after commencement or the partnership has commenced a voluntary case under title 11 of the United States Code and the case has not been dismissed;

(C) The partner has agreed that the creditor need not exhaust partnership assets;

(D) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(E) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under W.S. 17-21-308(a) or (b).

#### **17-21-308. Purported partner.**

(a) If a person, by words or conduct, purports to be a partner or consents to being represented by another as a partner, in a partnership or with one (1) or more persons not partners, the purported partner is liable to a person to whom the representation is made:

(i) If that person, relying on the representation, enters into a transaction with the actual or purported partnership; and

(ii) If the purported partner would have been personally liable for obligations of the partnership under W.S. 17-21-306 if he actually had been a partner.

(b) Subject to subsection (a) of this section if the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is

not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable as if the purported partner were a partner. If no partnership liability results, the purported partner is liable jointly and severally with any other person consenting to the representation.

(c) If a person is thus represented to be a partner in an existing partnership or with one (1) or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable as provided in W.S. 17-21-306 as if the person actually had been a partner.

(d) A person is not a partner in a partnership solely because the person is named by another in a statement of partnership authority.

(e) A person does not continue to be a partner solely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

#### **17-21-309. Liability of incoming partner.**

A person admitted as a partner into a partnership is liable for all obligations of the partnership arising before the person's admission as if the person had been a partner when the obligations were incurred, but this liability may be satisfied only out of partnership property.

### ARTICLE 4 RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

#### **17-21-401. Partner's rights and duties.**

(a) A partnership shall establish an account for each partner which shall be credited with an amount equal to the cash plus the value of any other property, net of the amount of any

liabilities, the partner contributes to the partnership and the partner's share of the partnership profits. Each partner's account shall be charged with an amount equal to the cash plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses provided that the partner shall be personally liable on account of such charges only as provided in W.S. 17-21-807 and 17-21-808.

(b) A partnership shall credit each partner's account with an equal share of the partnership profits and shall charge each partner with a share of the partnership losses, whether capital or operating, as provided in W.S. 17-21-808, in proportion to the partner's share of the profits.

(c) A partnership shall indemnify each partner for payments reasonably made and liabilities reasonably incurred by the partner in the ordinary and proper conduct of the business of the partnership or for the preservation of its business or property, provided, however, that no other partner shall be required to make any payment to the partnership or any other partner, except as provided to the partnership or any other partner, except as provided in W.S. 17-21-807 and 17-21-808, including any payments attributable all or in part to partnership liabilities for indemnification.

(d) A partnership shall repay a partner who, in aid of the partnership, makes a payment or advance beyond the amount of capital the partner agreed to contribute.

(e) A payment made by a partner which gives rise to a partnership obligation under subsection (c) or (d) of this section constitutes a loan to the partnership. Interest accrues from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(j) A person may become a partner only with the consent of all the partners.

(k) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all the partners.

(m) This section does not affect the obligations of a partnership to other persons under W.S. 17-21-301.

#### **17-21-402. Distributions in kind.**

A partner has no right to receive and may not be required to accept a distribution in kind.

#### **17-21-403. Partner's right to information.**

(a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership, on demand, shall furnish to a partner and the legal representative of a deceased partner or partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership.

#### **17-21-404. General standards of partner's conduct.**

(a) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section.

(b) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(i) To account to the partnership and hold as trustee for it any property, profit or benefit derived by the partner, without the consent of the other partners, in the conduct and winding up of the partnership business or from a use or appropriation by the partner of partnership property or opportunity;

(ii) To refrain from dealing with the partnership in the conduct or winding up of the partnership business, as or on behalf of a party having an interest adverse to the partnership without the consent of the other partners; and

(iii) To refrain from competing with the partnership in the conduct of the partnership business without the consent of the other partners before the dissolution of the partnership.

(c) A partner's duty of loyalty may not be eliminated by agreement, but the partners may by agreement identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(d) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

(e) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement, and exercise any rights, consistent with the obligation of good faith and fair dealing. The obligation of good faith and fair dealing may not be eliminated by agreement but the partners may by agreement determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

(f) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest. A partner may lend money to and transact other business with the partnership. The rights and obligations of a partner who lends money to or transacts business with the partnership are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

**17-21-405. Partner's liability to partnership.**

A partner is liable to the partnership for a breach of the partnership agreement or for the violation of any duty to the partnership causing harm to the partnership.

**17-21-406. Remedies of partnership and partners.**

(a) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of any duty to the partnership causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to:

(i) Enforce a right under the partnership agreement;

(ii) Enforce a right under this chapter, including:

(A) The partner's rights under W.S. 17-21-401, 17-21-403 and 17-21-404;

(B) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to W.S. 17-21-701 or enforce any other right under article 6 or 7 of this chapter; or

(C) The partner's right to compel a dissolution and winding up of the partnership business under W.S. 17-21-801 or enforce any other right under article 8 of this chapter.

(iii) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

**17-21-407. Continuation of partnership beyond definite term or particular undertaking.**

(a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) A continuation of the business by the partners or those of them who habitually acted in the business during the term or undertaking, without any settlement or liquidation of the partnership business, is prima facie evidence of an agreement that the business will not be wound up.

#### ARTICLE 5 TRANSFEREES AND CREDITORS OF PARTNER

##### **17-21-501. Partner's interest in partnership property not transferable.**

A partner is not a co-owner of partnership property and has no interest that can be transferred, either voluntarily or involuntarily, in partnership property.

##### **17-21-502. Partner's transferable interest in partnership.**

(a) The only transferable interest of a partner in the partnership is the partner's interest in distributions. The interest is personal property.

(b) A transferee of a partner's transferable interest in the partnership has the right to cause a winding up of the partnership business as provided in W.S. 17-21-801(a)(vi).

##### **17-21-503. Transfer of partner's transferable interest.**

(a) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(i) Is permissible;

(ii) Does not by itself cause a winding up of the partnership business; and

(iii) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of

the partnership business, to require access to information concerning or an account of partnership transactions or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership is entitled to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled. Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(c) If an event causes a dissolution and winding up of the partnership business under W.S. 17-21-801, a transferee is entitled to receive, in accordance with the transfer, the net amount otherwise distributable to the transferor. In a dissolution and winding up, a transferee may require an accounting only from the date of the last account agreed to by all of the partners.

(d) Until receipt of notice of a transfer, a partnership has no duty to give effect to the transferee's rights under this section.

**17-21-504. Partner's transferable interest subject to charging order.**

(a) On application by a judgment creditor of a partner or partner's transferee, a court having jurisdiction may charge the transferable interest of the debtor partner or transferee to satisfy the judgment. The court may appoint a receiver of the debtor's share of the distributions due or to become due to the debtor in respect of the partnership and make all other orders, directions, accounts and inquiries the debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(i) By the judgment debtor;



(ii) With property other than partnership property by one (1) or more of the other partners; or

(iii) With partnership property by one (1) or more of the other partners with the consent of all the partners whose interests are not so charged.

(d) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

## ARTICLE 6 PARTNER'S DISSOCIATION

### **17-21-601. Events causing partner's dissociation.**

(a) A partner is dissociated from a partnership upon:

(i) Receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(ii) An event agreed to in the partnership agreement as causing the partner's dissociation;

(iii) The partner's expulsion pursuant to the partnership agreement;

(iv) The partner's expulsion by the unanimous vote of the other partners if:

(A) It is unlawful to carry on the partnership business with that partner;

(B) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest which has not been foreclosed;

(C) Within ninety (90) days after the partnership notifies a corporate partner that it will be

expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(D) A partnership that is a partner has been dissolved and its business is being wound up.

(v) On application by the partnership or another partner, the partner's expulsion by judicial decree because:

(A) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(B) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under W.S. 17-21-404; or

(C) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner.

(vi) The partner's:

(A) Becoming a debtor in bankruptcy;

(B) Executing an assignment for the benefit of creditors;

(C) Seeking, consenting to or acquiescing in the appointment of a trustee, receiver or liquidator of that partner or of all or substantially all of that partner's property; or

(D) Failing within ninety (90) days after the appointment, to have vacated or stayed the appointment of a trustee, receiver or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety (90) days after the expiration of a stay to have the appointment vacated.

(vii) In the case of a partner who is an individual:

(A) The partner's death;

(B) The appointment of a guardian or general conservator for the partner; or

(C) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement.

(viii) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely the substitution of a successor trustee;

(ix) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely the substitution of a successor personal representative; or

(x) Termination of a partner who is not an individual, partnership, corporation, trust or estate.

**17-21-602. Partner's wrongful dissociation.**

(a) A partner's dissociation is wrongful only if:

(i) It is in breach of an express provision of the partnership agreement; or

(ii) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(A) The partner withdraws by express will, unless the withdrawal follows the dissociation of another partner and results in a right to dissolve the partnership under W.S. 17-21-801(a)(ii)(A);

(B) The partner is expelled by judicial decree under W.S. 17-21-601; or

(C) In case of a partner who is not an individual, trust other than a business trust or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(b) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. That liability is in addition to any other liability of the partner to the partnership or to the other partners.

**17-21-603. Effect of partner's dissociation.**

(a) A dissociated partner's interest in the partnership shall be purchased pursuant to article 7 of this chapter unless the partner's dissociation results in a dissolution and winding up of the partnership business under article 8 of this chapter.

(b) Upon a partner's dissociation, that partner's right to participate in the management and conduct of the partnership business is terminated, except as provided in W.S. 17-21-804, and that partner's duties under:

(i) W.S. 17-21-404(b)(i) and (ii) and (d) continue only with regard to matters or events that occurred before the dissociation; and

(ii) W.S. 17-21-404(b)(iii) terminate.

ARTICLE 7

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

**17-21-701. Purchase of dissociated partner's interest.**

(a) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under W.S. 17-21-801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (b) of this section.

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under W.S. 17-21-808(b) if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. In either case, the sale price of the partnership assets shall be determined on the basis of the amount that would be paid by a willing buyer to a willing seller, neither being under

any compulsion to buy or sell, and with knowledge of all relevant facts. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under W.S. 17-21-602(b) and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner against all partnership liabilities incurred before the dissociation, except liabilities then unknown to the partnership, and against all partnership liabilities incurred after the dissociation, except liabilities incurred by an act of the dissociated partner under W.S. 17-21-702. For purposes of this subsection, a liability not known to a partner other than the dissociated partner is not known to the partnership.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty (120) days after a written demand for payment, the partnership shall pay or cause to be paid in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (c) of this section.

(f) If a deferred payment is authorized under subsection (h) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (c) of this section, stating the time of payment, the amount and type of security for payment and the other terms and conditions of the obligation.

(g) The payment or tender required by subsection (e) or (f) of this section shall be accompanied by the following:

(i) A statement of partnership assets and liabilities as of the date of dissociation;

(ii) The latest available partnership balance sheet and income statement, if any;

(iii) An explanation of how the estimated amount of the payment was calculated; and

(iv) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty (120) days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (c) of this section or other terms of the purchase obligation.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment shall be adequately secured and bear interest.

(j) A dissociated partner may maintain an action against the partnership pursuant to W.S. 17-21-406(b)(ii)(B), to determine the buyout price of that partner's interest, any offsets under subsection (c) of this section or other terms of the purchase obligation. The action shall be commenced within one hundred twenty (120) days after the partnership has tendered payment or an offer to pay or within one (1) year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (c) of this section and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (h) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against any other party, if the court finds that the other party acted arbitrarily, vexatiously or not in good faith, including the partnership's failure to tender payment or an offer to pay or to comply with the requirements of subsection (g) of this section.

**17-21-702. Dissociated partner's power to bind and liability to partnership.**

(a) For two (2) years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under article 9 of this chapter, is bound by an act of the

dissociated partner that would have bound the partnership under W.S. 17-21-301 before dissociation only if the other party to the transaction:

(i) Reasonably believes when entering the transaction that the dissociated partner is a partner at that time;

(ii) Does not have notice of the partner's dissociation; and

(iii) Is not deemed to have notice under W.S. 17-21-303(e) or 17-21-704.

(b) A dissociated partner is liable to the partnership for any loss caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation, for which the partnership is liable under subsection (a) of this section.

**17-21-703. Dissociated partner's liability to other persons.**

(a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (b) of this section.

(b) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is personally liable as a partner to the other party on account of a partnership obligation incurred in connection with a transaction entered into by the partnership or a surviving partnership under article 9 of this chapter, within two (2) years after the partner's dissociation, only if:

(i) The other party to the transaction:

(A) Reasonably believes when entering the transaction that the dissociated partner is a partner at that time;

(B) Does not have notice of the partner's dissociation; and

(C) Is not deemed to have notice under W.S. 17-21-303(e) or 17-21-704; and

(ii) The obligation is one on account of which the partner would be personally liable under W.S. 17-21-306 if the partner had not dissociated.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

#### **17-21-704. Statement of dissociation.**

(a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership. A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of W.S. 17-21-303(d) and (e).

(b) For purposes of W.S. 17-21-702 and 17-21-703(b), a person not a partner is deemed to have notice of the dissociation ninety (90) days after the statement of dissociation is filed.

#### **17-21-705. Continued use of partnership name.**

Continued use of a partnership name, or a dissociated partner's name as part thereof, by the partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

### **ARTICLE 8 WINDING UP PARTNERSHIP BUSINESS**

#### **17-21-801. Events causing dissolution and winding up of partnership business.**

(a) A partnership is dissolved and its business shall be wound up only upon:



(i) Except as provided in W.S. 17-21-802, receipt by a partnership at will of notice from a partner, other than a partner who is dissociated under W.S. 17-21-601(a)(ii) through (x), of that partner's express will to withdraw as a partner or upon any later date specified in the notice;

(ii) In a partnership for a definite term or particular undertaking:

(A) Except as provided in W.S. 17-21-802, within ninety (90) days after a partner's wrongful dissociation under W.S. 17-21-602 or a partner's dissociation by death or otherwise under W.S. 17-21-601(a)(vi) through (x), receipt by the partnership of notice from another partner of that partner's express will to withdraw as a partner;

(B) The express will of all the partners; or

(C) The expiration of the term or the completion of the undertaking unless all the partners agree to continue the business, in which case the partnership agreement is deemed amended retroactively to provide that the expiration or completion does not result in the dissolution and winding up of the partnership business.

(iii) An event agreed to in the partnership agreement resulting in the winding up of the partnership business, unless all the partners agree to continue the business, in which case the partnership agreement is deemed amended retroactively to provide that the event does not result in the dissolution and winding up of the partnership business;

(iv) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but any cure of illegality within ninety (90) days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(v) On application by a partner, a judicial decree that:

(A) The economic purpose of the partnership is likely to be unreasonably frustrated;

(B) Another partner has engaged in conduct relating to the partnership business that makes it not

reasonably practicable to carry on the business in partnership with that partner; or

(C) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(vi) On application by a transferee of a partner's transferable interest, a judicial decree that it is equitable to wind up the partnership business:

(A) If the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, after the expiration of the term or completion of the undertaking; or

(B) If the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

**17-21-802. Dissolution deferred ninety days.**

(a) Except as provided in subsection (b) of this section, a partnership of more than two (2) persons is not dissolved until ninety (90) days after receipt by the partnership of notice from a partner under W.S. 17-21-801(a)(i) or (ii)(A) and its business may be continued until that date as if no notice were received. Before that date, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(b) A partnership may be dissolved at any time during the ninety (90) day period and its business wound up by the express will of at least one-half (1/2) of the other partners.

(c) After receipt by the partnership of notice from a partner under W.S. 17-21-801(a)(i) or (ii)(A), the partner who gave the notice:

(i) Has no rights in the management and conduct of the partnership business if it is continued under subsection (a) of this section, but may participate in winding up the business under W.S. 17-21-804 if the partnership is dissolved on or before the expiration of the ninety (90) day period pursuant to subsection (a) or (b) of this section;

(ii) Is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under W.S. 17-21-702(b) or 17-21-703(b), but is not liable for contributions for and shall be indemnified by the other partners against any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(iii) With respect to profits or losses incurred during the period, shall be credited with a share of any profits but shall be charged with a share of any losses only to the extent of profits credited for the period.

**17-21-803. Partnership continues after dissolution.**

A partnership continues after dissolution until the winding up of its business is completed, at which time the partnership is terminated.

**17-21-804. Right to wind up partnership business.**

(a) After dissolution, a partner who has not wrongfully dissociated has a right to participate in winding up the partnership's business, but on application of any partner, partner's legal representative or transferee, the court, for good cause, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to W.S. 17-21-808 and perform other necessary acts, including settlement of disputes by mediation or arbitration.

**17-21-805. Partner's power to bind partnership after dissolution.**

(a) Subject to W.S. 17-21-806, a partnership is bound by a partner's act after dissolution that:

(i) Is appropriate for winding up the partnership business; or

(ii) Would have bound the partnership under W.S. 17-21-301 before dissolution, if the other party to the transaction does not have notice of the dissolution.

**17-21-806. Statement of dissolution.**

(a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of W.S. 17-21-303(d) and is a limitation on authority for the purposes of W.S. 17-21-303(e).

(c) For purposes of W.S. 17-21-301 and 17-21-805, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety (90) days after it is filed.

(d) After filing and where appropriate, recording a statement of dissolution, the dissolved partnership may file and where appropriate, record a statement of partnership authority which shall operate with respect to a person not a partner as provided in W.S. 17-21-303(d) and (e) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

**17-21-807. Partner's liability to other partners after dissolution.**

(a) Except as provided in subsection (b) of this section and W.S. 17-21-802(c)(ii), after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under W.S. 17-21-805 for which the partner is personally liable under W.S. 17-21-306.

(b) A partner who, with knowledge of the winding up, incurs a partnership liability under W.S. 17-21-805(a)(ii) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any loss caused to the partnership arising from that liability.

**17-21-808. Settlement of accounts among partners.**

(a) In winding up the partnership business, the assets of the partnership shall be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions pursuant to subsection (b) of this section.

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance only to the extent that negative balance is attributable to an obligation for which that partner is personally liable under W.S. 17-21-306.

(c) To the extent not taken into account in settling the accounts among partners pursuant to subsection (b) of this section, each partner shall contribute in the proportion in which the partner shares partnership losses, the amount necessary to satisfy those partnership obligations for which the partner is personally liable under W.S. 17-21-306. If a partner fails or is not obligated to contribute, the other partners shall contribute in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy those partnership obligations for which the partners are personally liable under W.S. 17-21-306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations but only to the extent such contributions are made on account of obligations for which the other partners are liable under W.S. 17-21-306.

(d) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership under subsection (b) of this section.

(e) An assignee for the benefit of creditors of a partnership or a partner or a person appointed by the court to represent creditors of a partnership or a partner, may enforce a

partner's obligation to contribute to the partnership under subsection (b) of this section.

ARTICLE 9  
CONVERSIONS AND MERGERS

**17-21-901. Conversion of partnership to limited partnership.**

(a) A partnership may be converted to a limited partnership pursuant to this section.

(b) The terms and conditions of a conversion of a partnership to a limited partnership shall be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement.

(c) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership which satisfies the requirements of W.S. 17-14-301 and includes:

(i) A statement that the partnership was converted to a limited partnership from a partnership;

(ii) Its former name; and

(iii) A statement of the number of votes cast by the partners for and against the conversion and if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(d) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(e) A partner who becomes a limited partner as a result of the conversion remains liable as a partner for an obligation incurred by the partnership before the conversion takes effect for which the partner is personally liable under W.S. 17-21-306, 17-21-807 and 17-21-808. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the partner is liable for an obligation incurred by the limited partnership within ninety (90) days after the conversion takes effect for which a general partner would be personally liable under W.S. 17-21-306, 17-21-807 and 17-21-808. The partner's liability for all other obligations of the limited partnership

incurred after the conversion takes effect is that of a limited partner as provided in the Uniform Limited Partnership Act.

**17-21-902. Conversion of limited partnership to partnership.**

(a) A limited partnership may be converted to a partnership pursuant to this section.

(b) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership shall be approved by all the partners.

(c) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to W.S. 17-14-303.

(d) The conversion takes effect when the certificate of limited partnership is canceled.

(e) A limited partner who becomes a partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The limited partner is liable as a partner for an obligation of the partnership for which the partner is personally liable under W.S. 17-21-306, 17-21-807 and 17-21-808 incurred after the conversion takes effect.

**17-21-903. Effect of conversion; entity unchanged.**

(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(i) All property owned by the converting partnership or limited partnership remains vested in the converted entity;

(ii) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(iii) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

**17-21-904. Merger of partnerships.**

(a) Pursuant to a plan of merger approved as provided in subsection (c) of this section, a partnership may be merged with one (1) or more partnerships or limited partnerships.

(b) The plan of merger shall set forth:

(i) The name of each partnership or limited partnership that is a party to the merger;

(ii) The name of the surviving entity into which the other partnerships or limited partnerships will merge;

(iii) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(iv) The terms and conditions of the merger;

(v) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into cash or other property in whole or part; and

(vi) The street address of the surviving entity's chief executive office.

(c) The plan of merger shall be approved:

(i) In the case of a partnership that is a party to the merger, by all the partners or a number or percentage specified for merger in the partnership agreement; and

(ii) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and in the absence of such specifically applicable law, by all the partners notwithstanding a provision to the contrary in the partnership agreement.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger takes effect on the later of:



(i) The approval of the plan of merger by all parties to the merger, as provided in subsection (c) of this section;

(ii) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(iii) Any effective date specified in the plan of merger.

**17-21-905. Effect of merger.**

(a) When a merger takes effect:

(i) Every partnership or limited partnership that is a party to the merger other than the surviving entity ceases to exist;

(ii) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(iii) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(iv) An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding.

(b) The secretary of state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(c) A partner of the surviving partnership or limited partnership is liable for:

(i) All obligations of a party to the merger for which the partner was personally liable before the merger;

(ii) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of that entity; and

(iii) All obligations of the surviving entity incurred after the merger takes effect.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in W.S. 17-21-808(c) as if the merged party were dissolved.

(e) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under W.S. 17-21-701. The surviving entity is bound under W.S. 17-21-702 by an act of a partner dissociated under this subsection and the partner is liable under W.S. 17-21-703 for transactions entered into by the surviving entity after the merger takes effect.

#### **17-21-906. Statement of merger.**

(a) After a merger, the surviving partnership or limited partnership may file a statement that one (1) or more partnerships or limited partnerships have merged into the surviving entity.

(b) A statement of merger shall contain:

(i) The name of each partnership or limited partnership that is a party to the merger;

(ii) The name of the surviving entity into which the other partnerships or limited partnership were merged;

(iii) The street address of the surviving entity's chief executive office and of an office in this state, if any; and

(iv) Whether the surviving entity is a partnership or limited partnership.

(c) Except as provided in subsection (d) of this section and for purposes of W.S. 17-21-302, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(d) For purposes of W.S. 17-21-302, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger with the appropriate county clerk.

(e) A filed and where appropriate, recorded statement of merger, executed and declared to be accurate pursuant to W.S. 17-21-105(c), stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (b) of this section, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (c) and (d) of this section.

**17-21-907. Nonexclusive.**

This article is not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

ARTICLE 10  
MISCELLANEOUS PROVISIONS

**17-21-1001. Uniformity of application and construction.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

**17-21-1002. Short title.**

This chapter may be cited as the "Uniform Partnership Act."

**17-21-1003. Application to existing relationships.**

(a) Except as otherwise provided in this section, this chapter applies to all partnerships in existence on January 1, 1994 that were formed under the Wyoming Partnership Act or any predecessor law providing for the formation, operation and liquidation of partnerships.

(b) W.S. 17-21-802 does not apply to a partnership in existence on January 1, 1994 unless the partners agree otherwise.

(c) This chapter does not impair the obligations of a contract existing on January 1, 1994 or affect an action or proceeding begun or right accrued before January 1, 1994.

(d) A judgment against a partnership or a partner in an action commenced before January 1, 1994 may be enforced in the same manner as a judgment rendered before January 1, 1994.

#### ARTICLE 11 REGISTERED LIMITED LIABILITY PARTNERSHIPS

##### **17-21-1101. Registered limited liability partnerships.**

(a) To become a registered limited liability partnership, a partnership shall file with the office of the secretary of state a statement of registration as a registered limited liability partnership. The statement of registration shall state:

(i) The name of the partnership;

(ii) The address of its principal office and the name of the registered agent for service of process in this state at such address which, if in this state, shall be its registered office for service of process;

(iii) If the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership will be required to maintain;

(iv) A brief statement of the business in which the partnership engages;

(v) Any other matters that the partnership determines to include; and

(vi) That the partnership thereby registers as a registered limited liability partnership.

(b) The statement of registration shall be executed by one (1) or more partners authorized to execute a statement of registration. The statement of registration shall be accompanied by a written consent to appointment manually signed by the registered agent.

(c) Repealed By Laws 2000, Ch. 35, § 2.

(d) The secretary of state shall register as a registered limited liability partnership any partnership that submits a statement of registration that substantially complies with this section and the required fee.

(e) Repealed By Laws 2000, Ch. 35, § 2.

(f) Registration is effective immediately upon the filing of a statement of registration or at any later date or time specified in the statement of registration, and remains effective until:

(i) It is voluntarily withdrawn by filing with the office of the secretary of state a written statement of withdrawal executed by one (1) or more partners authorized to execute a statement of withdrawal; or

(ii) Sixty (60) days after notice by the secretary of state that the partnership has failed to make timely payment of the annual fee specified in subsection (n) of this section or has failed to pay any penalties imposed under W.S. 17-28-109, unless the fee and any penalties are paid within the sixty (60) day period, or that the partnership is without a registered agent or registered office in this state, unless the partnership regains a registered agent or registered office in this state during the sixty (60) day period. The secretary of state shall mail such notice by first class mail to the last known mailing address of the partnership or by electronic means if the partnership has consented to receive notices electronically. Notwithstanding any other provisions of this paragraph, any domestic registered limited liability partnership whose statement of registration has lapsed under this paragraph may be reinstated as provided in W.S. 17-21-1107.

(g) A registered limited liability partnership registered under this chapter ceases to be a registered limited liability partnership upon filing with the office of the secretary of state a statement of withdrawal as a registered limited liability partnership, which shall set forth:

(i) The name of the registered limited liability partnership;

(ii) The date of filing of the initial statement of registration;

(iii) The reason for filing the statement of withdrawal;

(iv) The effective date (which shall be a date certain) of withdrawal if it is not to be effective on the filing of the statement of withdrawal, provided that any effective date other than the date of filing of the statement of withdrawal shall be a date subsequent to the filing; and

(v) Any other information the partners determine to include therein.

(h) The filing of a statement of withdrawal by or on behalf of a partnership pursuant to this section shall be effective only to cancel the partnership's registration as a limited liability partnership, and shall not, unless it specifically so provides, indicate the dissolution of the partnership.

(j) A partnership becomes a registered limited liability partnership at the time of the filing of the initial statement of registration with the office of the secretary of state or at any later date or time specified in the statement of registration if, in either case, there has been substantial compliance with the requirements of this chapter. A partnership continues as a registered limited liability partnership if there has been substantial compliance with the requirements of this chapter. The status of a partnership as a registered limited liability partnership and the liability of a partner of such registered limited liability partnership shall not be affected by errors or subsequent changes in the information stated in a statement of registration under subsection (a) of this section or a statement of renewal under subsection (e) of this section. The filing of a statement of withdrawal shall not affect the

liability of the partners for debts, obligations or liabilities of the partnership incurred, assumed or arising prior to the date of the statement of withdrawal.

(k) The fact that a statement of registration or a statement of renewal is on file with the office of the secretary of state is notice that the partnership is a registered limited liability partnership and is notice of all other facts set forth in the statement of registration or statement of renewal.

(m) The secretary of state shall provide forms for a statement of registration under subsection (a) of this section or a statement of renewal.

(n) An initial registration fee of one hundred dollars (\$100.00) shall be paid to the secretary of state. In addition each registered limited liability partnership and foreign limited liability partnership shall annually comply with and pay the fees provided by W.S. 17-16-1630(a) through (e) and 17-16-120(j) as if it were a corporation. Any registered foreign limited liability partnership transacting business in this state without registering or annually maintaining its registration is subject to the penalties provided by W.S. 17-16-1502(d).

(o) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all registered limited liability partnerships.

**17-21-1102. Effect of registration; entity unchanged.**

(a) A partnership that has registered pursuant to this article is for all purposes of the laws of this state the same entity that existed before the registration.

(b) When registration takes effect:

(i) All property owned by the registering partnership remains vested in the registered partnership;

(ii) All obligations of the registering partnership continue as obligations of the registered partnership; and

(iii) An action or proceeding pending against the registering partnership may be continued as if the registration had not occurred.

(c) If a registered limited liability partnership or foreign registered limited liability partnership dissolves and

its business continues without winding up the partnership affairs and without liquidating or terminating the partnership, the registration of the registered limited liability partnership or the foreign registered limited liability partnership shall continue to be applicable to the partnership continuing the business, and the partnership shall not be required to file a new statement of registration or statement of renewal. The partnership continuing the business shall be deemed to have filed any documents required or permitted under this section which were filed by the dissolved partnership. The partnership continuing the business shall file a statement of renewal at such time as the dissolved partnership would have been required to file a statement of renewal.

(d) If a registered limited liability partnership or foreign registered limited liability partnership dissolves and winds up its affairs, liquidates or terminates, the statement of registration or statement of renewal remains in effect as to the partnership and the partners during the period of winding up, and as to the partners subsequent to liquidation or termination as to liabilities of the partnership incurred, assumed or arising prior to liquidation or termination.

**17-21-1103. Name of registered limited liability partnership; limited rights.**

(a) The name of a registered limited liability partnership shall not be the same as or deceptively similar to any trademark or service mark registered in this state, shall be distinguishable upon the records of the secretary of state from other business names filed with that office and must end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(b) The authorization granted by the secretary of state to file a statement of registration under a registered limited liability partnership name does not:

(i) Abrogate or limit the law governing unfair competition or unfair trade practices;

(ii) Derogate from the common law the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or



(iii) Create an exclusive right in geographic or generic terms contained within a name.

**17-21-1104. Applicability of act to foreign and interstate commerce.**

(a) A partnership, including a registered limited liability partnership, formed pursuant to an agreement governed by this chapter, may conduct its business, carry on its operations and have and exercise the powers granted by this chapter in any state, territory, district or possession of the United States or in any foreign country.

(b) It is the intent of the legislature that the legal existence of registered limited liability partnerships formed pursuant to an agreement governed by this chapter be recognized outside the boundaries of this state and that the laws of this state governing such registered limited liability partnerships transacting business outside this state be granted the protection of full faith and credit under the constitution of the United States.

(c) Notwithstanding W.S. 17-21-106, the internal affairs of registered limited liability partnerships, including the liability of partners for debts, obligations and liabilities of or chargeable to the partnership or another partner or partners and the liability of partners to the partnership and other partners, shall be subject to and governed by the laws of this state.

(d) Before transacting business in this state, a foreign registered limited liability partnership shall:

(i) Comply with any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership is engaged; and

(ii) File a statement of registration as a foreign registered limited liability partnership with the office of the secretary of state, on such forms as the secretary shall provide, stating:

(A) The name of the partnership;

(B) The jurisdiction under the laws of which govern its partnership agreement and under which it is registered as a limited liability partnership;

(C) The address of its principal office which, if in this state, shall be its registered office for service of process;

(D) If the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, which the partnership will be required to maintain;

(E) A brief statement of the business in which the partnership engages;

(F) Any other information that the partnership determines to include; and

(G) A statement that the partnership is a registered limited liability partnership.

(e) Repealed By Laws 2000, Ch. 35, § 2.

(f) A foreign registered limited liability partnership registered to transact business in this state may withdraw its registration as a foreign registered limited liability partnership by filing with the office of the secretary of state a statement of withdrawal as a foreign registered limited liability partnership, which shall set forth:

(i) The name of the foreign registered limited liability partnership and the state or other jurisdiction under whose jurisdiction it is or was registered as a registered limited liability partnership;

(ii) That the foreign registered limited liability partnership is not transacting business in this state and that it surrenders its registration to transact business in this state;

(iii) That the foreign registered limited liability partnership revokes the authority of its registered agent in this state to accept service of process and appoints the secretary of state as its agent for service of process in any action, suit or proceeding based upon any cause of action arising during the time the foreign registered limited liability partnership was registered to transact business in this state; and

(iv) A mailing address to which the secretary of state may mail a copy of any process served on him in his capacity as agent for such registered limited liability partnership.

(g) The failure of a foreign registered limited liability partnership to file a statement of registration or a statement of renewal pursuant to W.S. 17-21-1101 or to appoint and maintain a registered agent in this state shall not affect the liability of the partners or impair the validity of any contract or act of the foreign registered limited liability partnership and shall not prevent the foreign registered limited liability partnership from defending any action or proceeding in any court of this state, but the foreign registered limited liability partnership shall not maintain any action or proceeding in any court of this state until it has filed a statement of registration. A foreign registered limited liability partnership, by transacting business in this state without registration, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

(h) The name of a foreign registered limited liability partnership doing business in this state shall not be the same as or deceptively similar to any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from other business names filed with that office. A foreign limited liability partnership must use a name which satisfies the requirements of the state or other jurisdiction under whose law it is formed and ends with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

(j) The laws under which a foreign limited liability partnership is formed govern relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(k) The authorization granted by the secretary of state to file a statement of registration under a foreign registered limited liability partnership name does not:

(i) Abrogate or limit the law governing unfair competition or unfair trade practices;

(ii) Derogate from the common law the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(iii) Create an exclusive right in geographic or generic terms contained within a name.

(m) Failure of a foreign registered limited liability partnership to make timely payment of the annual fee specified in W.S. 17-21-1101(n) or to pay any penalties imposed under W.S. 17-28-109 shall result in the statement of registration being revoked by the secretary of state pursuant to W.S. 17-21-1101(f).

(n) A foreign registered limited liability partnership whose registration has lapsed for failure to pay fees or failure to maintain a registered agent in this state as provided in this article may apply to the secretary of state for reinstatement within two (2) years after the effective date of lapse as provided in W.S. 17-21-1107.

**17-21-1105. Registered limited liability partnership by licensed persons.**

Nothing in this act shall be interpreted as precluding an individual whose occupation requires licensure under Wyoming law or the law of another jurisdiction from forming a registered limited liability partnership if the applicable licensing statutes do not prohibit it and the licensing body does not prohibit it by rule or regulation adopted consistent with the appropriate licensing statute. Each licensed professional offering professional services through a registered limited liability partnership shall retain their professional license in good standing and shall be subject to all rules, regulations, standards and requirements pertaining thereto.

**17-21-1106. Statement of continuance.**

(a) Any foreign registered limited liability partnership, except partnerships acting as an insurer as defined in W.S. 26-1-102(a)(xvi) or acting as a financial institution as defined in W.S. 13-1-101(a)(ix), may register with the secretary of state to continue as a registered limited liability partnership in this state.

(b) To become a registered limited liability partnership, the foreign registered limited liability partnership shall file with the office of the secretary of state a statement of continuance that meets the following requirements:

(i) Complies with the provisions of W.S. 17-21-1101, including payment of the registration fee;

(ii) Contains written confirmation from the state in which the partnership was formed that the partnership's registered domicile in that state is terminated or will be terminated upon continuance in this state;

(iii) Includes a certified copy of the partnership's original statement of registration as a registered limited liability partnership;

(iv) Contains a statement of duration of the partnership from the date of formation to present;

(v) Contains a statement that the partnership will abide by the constitution and laws of this state;

(vi) Contains any additional information necessary to enable the secretary of state to determine whether the foreign registered limited liability partnership is entitled to continue in this state as a registered limited liability partnership.

(c) The secretary of state shall register as a registered limited liability partnership any partnership that submits the required fee and a statement of continuance that substantially complies with this section.

(d) Registration is effective immediately upon the filing of the statement of continuance or at any later date or time specified in the statement. Upon the effective date, the laws of Wyoming shall apply to the partnership as a registered limited liability partnership.

(e) Except for the purpose of W.S. 16-6-101 through 16-6-121, the existence of any registered limited liability partnership registered upon a statement of continuance shall be deemed to have commenced on the date the partnership was originally registered under the laws of another state.

(f) The continuance shall not affect the ownership of partnership property, liability for any existing obligation,

cause of action, claim, pending or threatened prosecution, civil or administrative action, conviction, ruling, order or judgment. The continuance does not deprive a partner of any right or privilege, nor relieve a partner of any liability.

**17-21-1107. Reinstatement following lapse of registration.**

(a) A domestic registered limited liability partnership whose registration has lapsed for failure to pay fees as provided in W.S. 17-21-1101(f)(ii) may apply to the secretary of state for reinstatement within two (2) years after the effective date of lapse. The application shall recite the name of the domestic registered limited liability partnership and the effective date of its lapse of registration.

(b) A domestic registered limited liability partnership applying for reinstatement pursuant to subsection (a) of this section shall include payment of fees and taxes then delinquent and a reinstatement certificate fee prescribed by the secretary of state by rule.

(c) If the secretary of state determines that the application contains the information required by subsection (a) of this section, that the information is correct and the application contains the fees and taxes required by subsection (b) of this section, he shall prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate and return a copy to the domestic registered limited liability partnership.

(d) When the reinstatement is effective, it relates back and takes effect as of the effective date of the lapse of registration pursuant to W.S. 17-21-1101(f)(ii) and the domestic registered limited liability partnership resumes carrying on its business as if the lapse of registration had never occurred.

(e) The domestic registered limited liability partnership shall retain its registered name during the two (2) year reinstatement period.

CHAPTER 22  
UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT

**17-22-101. Short title.**

This act shall be known and may be cited as the "Wyoming Unincorporated Nonprofit Association Act."

**17-22-102. Definitions.**

(a) As used in this act:

(i) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association;

(ii) "Nonprofit association" means an unincorporated organization consisting of two (2) or more members joined by mutual consent for a common, nonprofit purpose. However, a joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share the use of the property for a nonprofit purpose;

(iii) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, agency, joint venture, government, governmental subdivision or instrumentality, or any other legal or commercial entity;

(iv) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States;

(v) "This act" means W.S. 17-22-101 through 17-22-115.

**17-22-103. Territorial application.**

Real and personal property in Wyoming may be acquired, held, encumbered and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to the state.

**17-22-104. Real and personal property; nonprofit association as legatee, devisee or beneficiary.**

(a) A nonprofit association in its name may acquire, hold, encumber or transfer an estate or interest in real and personal property.

(b) A nonprofit association may be a legatee, devisee or beneficiary of a trust or contract.

**17-22-105. Statement of authority as to real property.**

(a) A nonprofit association shall execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the county clerk in which a transfer of the property would be recorded.

(c) A statement of authority shall set forth:

(i) The name of the nonprofit association;

(ii) The address in this state, including the street address, if any, of the nonprofit association. If the nonprofit association does not have an address in this state, its address out of state;

(iii) The name or title of the person authorized to transfer an estate or interest in real property held in the name of the nonprofit association; and

(iv) The action, procedure or vote of the nonprofit association which authorizes the person to transfer the real property of the nonprofit association and which authorizes the person to execute the statement of authority.

(d) A statement of authority shall be executed in the same manner as a deed. The person who executes the statement of authority shall not be the named person in the statement of authority authorized to transfer the estate or interest.

(e) The filing officer may collect a fee for recording the statement of authority in the amount authorized for recording a transfer of real property.

(f) An amendment, including a cancellation, of a statement of authority shall meet the requirements for execution and recording of an original statement. Unless canceled earlier, a recorded statement of authority or its most recent amendment is



canceled by operation of law five (5) years after the date of the most recent recording.

(g) If the record title to the real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the county clerk in which a transfer of real property would be recorded, the authority of the person named in a statement of authority is conclusive in favor of a transferee who gives value without notice that the person named in the statement of authority lacks authority.

**17-22-106. Liability in tort and contract.**

(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties and liabilities in contract and tort.

(b) A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered as a member by the nonprofit association.

(c) A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered as a member by the nonprofit association.

(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association or is a person considered as a member by the nonprofit association.

(e) A member of, or a person considered as a member by, a nonprofit association may assert a claim against the nonprofit association. A nonprofit association may assert a claim against a member or a person considered as a member by the nonprofit association.

**17-22-107. Capacity to assert and defend; standing.**

(a) A nonprofit association, in its name, may institute, defend, intervene or participate in a judicial, administrative

or other governmental proceeding or in an arbitration, mediation or any other form of alternative dispute resolution.

(b) A nonprofit association may assert a claim in its name on behalf of its members if one (1) or more members of the nonprofit association have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member.

**17-22-108. Effect of judgment or order.**

A judgment or order against a nonprofit association is not by itself a judgment or order against a member.

**17-22-109. Disposition of personal property of inactive nonprofit association.**

(a) If a nonprofit association has been inactive for three (3) years or longer, a person in possession or control of personal property of the nonprofit association may transfer the property:

(i) If a nonprofit association document specifies a person to whom transfer is to be made under these circumstances, to that person; or

(ii) If no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or governmental agency.

**17-22-110. Appointment of agent to receive service of process.**

(a) A nonprofit association may file in the office of the secretary of state a statement appointing an agent authorized to receive service of process.

(b) A statement appointing an agent shall set forth:

(i) The name of the nonprofit association;

(ii) The address in this state, including the street address, if any, of the nonprofit association. If the nonprofit association does not have an address in this state, its address out of state; and

(iii) The name of the person in this state authorized to receive service of process and the person's address, including the state address, in this state.

(c) A statement appointing an agent shall be signed and acknowledged by a person authorized to manage the affairs of the nonprofit association. The statement shall also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. An appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association.

(d) A filing officer may collect a fee of five dollars (\$5.00) for filing a statement appointing an agent to receive service of process, an amendment, or a resignation.

(e) An amendment to a statement appointing an agent to receive service of process shall meet the requirements for execution of an original statement.

**17-22-111. Claim not abated by change of members of officers.**

A claim for relief against a nonprofit association does not abate solely by reason of a change in its members or persons authorized to manage the affairs of the nonprofit association.

**17-22-112. Venue.**

For purposes of venue, a nonprofit association is a resident of a county in which it has an office.

**17-22-113. Summons and complaint; service on whom.**

In an action or proceeding against a nonprofit association a summons and complaint shall be served on an agent authorized by appointment to receive service of process, an officer, managing or general agent, or a person authorized to participate in the management of its affairs. If none of them can be served, service may be made on a member.

**17-22-114. Transition concerning real and personal property.**

(a) If, before July 1, 1993, an estate or interest in real or personal property was purportedly transferred to a nonprofit

association, on July 1, 1993 the estate or interest vests in the nonprofit association unless the parties have treated the transfer as ineffective.

(b) If, before July 1, 1993, the transfer vested the estate or interest in another person to hold the estate or interest as a fiduciary for the benefit of the nonprofit association, its members, or both, on or after July 1, 1993 the fiduciary may transfer the estate or interest to the nonprofit association in its name or the nonprofit association, by appropriate proceedings, may require that the estate or interest be transferred to it in its name.

**17-22-115. Savings clause.**

This act does not affect an action or proceeding begun or right accrued before July 1, 1993.

CHAPTER 23  
WYOMING STATUTORY TRUST ACT

ARTICLE 1  
GENERAL PROVISIONS

**17-23-101. Short title.**

This chapter shall be known as the "Wyoming Statutory Trust Act."

**17-23-102. Definitions.**

(a) As used in this chapter:

(i) "Beneficial owner" means any owner of a beneficial interest in a statutory trust. The fact of ownership shall be determined and evidenced, whether by means of registration, the issuance of certificates or otherwise, in conformity to the applicable provisions of the governing instrument of the statutory trust;

(ii) "Governing instrument" means a trust instrument which creates a statutory trust and provides for the governance of the affairs of the statutory trust and the conduct of its business. A governing instrument may:

(A) Provide that a person shall become a beneficial owner and shall become bound by the governing

instrument if the person, or a representative authorized by the person orally, in writing or by other action such as payment for a beneficial interest, complies with the conditions for becoming a beneficial owner set forth in the governing instrument or any other writing and acquires a beneficial interest; and

(B) Consist of one (1) or more agreements, instruments or other writings and may include or incorporate bylaws containing provisions relating to the business of the statutory trust, the conduct of its affairs and its rights or powers or the rights or powers of its trustees, beneficial owners, agents or employees.

(iii) "Other business entity" means a corporation, a partnership, a limited partnership, a limited liability company, a common-law trust or any other unincorporated business, excluding a statutory trust;

(iv) "Person" means a natural person, partnership, limited partnership, limited liability company, trust, estate, association, corporation, custodian, nominee or any other individual or entity in its own or any representative capacity;

(v) "Statutory trust" means an unincorporated association which:

(A) Is created by a trust instrument under which property is or will be held, managed, administered, controlled, invested, reinvested or operated, or business or professional activities for profit are carried on or will be carried on, by a trustee or trustees for the benefit of a person who is or may become entitled to a beneficial interest in the trust property, including but not limited to a trust of the type known at common law as a "business trust," "Massachusetts trust," a trust qualifying as a real estate investment trust under sections 856 through 859 of the United States Internal Revenue Code of 1986, as amended, or under any successor provision, or a trust qualifying as a real estate mortgage investment conduit under section 860D of the United States Internal Revenue Code of 1986, as amended, or under any successor provision; and

(B) Files a certificate of trust pursuant to W.S. 17-23-114. Any association meeting the definition of this paragraph whether organized before or after the effective date of this chapter shall be a statutory trust and a separate legal entity.

(vi) "Trustee" means the person or persons appointed as a trustee in accordance with the governing instrument of a statutory trust, and may include the beneficial owners or any of them.

### **17-23-103. Purpose.**

Statutory trusts may be organized under this chapter for any lawful purpose, except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution as defined by W.S. 13-1-101(a)(ix) or its successor statute, whether or not conducted for profit, or for any of the purposes referred to in W.S. 17-23-102(a)(v)(A) including, without limitation, for the purpose of holding or otherwise taking title to property, whether in an active or custodial capacity.

### **17-23-104. Contributions by beneficial owners.**

(a) A contribution of a beneficial owner to the statutory trust may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. A person may become a beneficial owner of a statutory trust and may receive a beneficial interest in a statutory trust without making a contribution or being obligated to make a contribution to the statutory trust.

(b) Except as provided in the governing instrument, a beneficial owner is obligated to the statutory trust to perform any promise to contribute cash, property or to perform services, even if the beneficial owner is unable to perform because of death, disability or any other reason. If a beneficial owner does not make the required contribution of property or services, the beneficial owner is obligated at the option of the statutory trust to contribute cash equal to that portion of the agreed value, as stated in the records of the statutory trust, of the contribution that has not been made. The cash contribution shall be in addition to any other rights, including the right to specific performance, that the statutory trust may have against the beneficial owner under the governing instrument or applicable law.

(c) A governing instrument may provide that the interest of any beneficial owner who fails to make any contribution that he is obligated to make shall be subject to specific penalties or consequences for the failure. The penalty or consequence may take the form of:

(i) Reducing or eliminating the defaulting beneficial owner's proportionate interest in the statutory trust;

(ii) Subordinating his beneficial interest to that of nondefaulting beneficial owners;

(iii) A forced sale of his beneficial interest;

(iv) Forfeiture of his beneficial interest;

(v) The lending by other beneficial owners of the amount necessary to meet his commitment;

(vi) Fixing of the value of his beneficial interest by appraisal or by formula and redemption or sale of his beneficial interest at that value; or

(vii) Any other penalty or consequence.

#### **17-23-105. Liability of beneficial owners and trustees.**

(a) Except to the extent otherwise provided in the governing instrument, the beneficial owner shall be entitled to any limitations of personal liability extended to shareholders of private corporations for profit organized under the Wyoming Business Corporation Act or extended to members of limited liability companies organized under the Wyoming Limited Liability Company Act.

(b) Except to the extent otherwise provided in the governing instrument, a trustee, when acting in that capacity, shall not be personally liable to any persons other than the statutory trust or a beneficial owner for any act, omission or obligation of the statutory trust or any trustee. Notwithstanding the provisions of W.S. 17-23-113, trustees of a statutory trust shall not be held to a more rigorous standard of care than that imposed upon directors of a business corporation under the Wyoming Business Corporation Act.

#### **17-23-106. Legal proceedings.**

(a) A statutory trust may sue and be sued in its own name, and service of process upon any one (1) of the trustees or upon the registered agent shall be sufficient. A statutory trust may be sued for debts and other obligations or liabilities contracted or incurred by the trustees, or by the duly

authorized agents of the trustees, in the performance of their respective duties under the governing instrument of the statutory trust, and for any damages to persons or property resulting from the negligence of the trustees or agents acting in the performance of their respective duties. The property of a statutory trust shall be subject to attachment and execution pursuant to the Wyoming Code of Civil Procedure, as if it were a corporation.

(b) Notwithstanding the provisions of subsection (a) of this section, in the event that the governing instrument of a statutory trust which is a registered investment company under the Investment Company Act of 1940, as amended, creates one (1) or more series as provided in W.S. 17-23-108(b)(ii), the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the statutory trust generally if:

(i) Separate and distinct records are maintained for the series;

(ii) The assets associated with the series are held and accounted for separately from the other assets of the statutory trust, or any other series of that trust; and

(iii) The governing instrument so provides, and notice of the limitation on liabilities of a series as referenced in this subsection is set forth in the certificate of trust of the statutory trust.

(c) A trustee of a statutory trust may be served with process in the manner prescribed in subsection (d) of this section in all civil actions or proceedings brought in this state involving or relating to the activities of the statutory trust or a violation by a trustee of a duty to the statutory trust, or any beneficial owner, whether or not the trustee is a trustee at the time suit is commenced. Every resident or nonresident of the state who accepts election or appointment or serves as a trustee of a statutory trust shall, by the acceptance or service, have consented to the appointment of the registered agent of the statutory trust required by W.S. 17-23-109 as that person's agent upon whom service of process may be made as provided in this section. Any process served in accordance with this section shall be of the same legal force and validity as if served upon the trustee within the state and the appointment of the registered agent shall be irrevocable.



(d) Service of process shall be effected by serving a Wyoming trustee or registered agent of the statutory trust required by W.S. 17-23-109, with one (1) copy of the process in the manner provided by law for service of process.

(e) In the governing instrument or other writing, a trustee may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of, or the exclusivity of arbitration in, this state, and to be served with legal process in the manner prescribed in the governing instrument or other writing.

(f) Nothing in this section limits or affects the right to serve process in any other manner provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(g) A partnership, limited partnership, corporation, limited liability company or other nonnatural person formed or organized under the laws of any foreign country or other foreign jurisdiction or the laws of any state other than the state of Wyoming shall not be deemed to be doing business in the state solely by reason of its being a trustee of a statutory trust.

**17-23-107. Rights of beneficial owners in trust property.**

(a) Except to the extent otherwise provided in the governing instrument, a beneficial owner shall have an undivided beneficial interest in the property of the statutory trust and shall share in the profits or losses of the statutory trust in the proportion of the entire undivided beneficial interest in the statutory trust he owns. The governing instrument of a statutory trust may provide that the statutory trust or the trustees, acting for and on behalf of the statutory trust, shall be deemed to hold beneficial ownership of any income earned on securities of the statutory trust issued by any business entities formed, organized or existing under the laws of any jurisdiction, including the laws of any foreign country.

(b) No creditor of the beneficial owner shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the statutory trust.

(c) A beneficial owner's beneficial interest in the statutory trust is personal property notwithstanding the nature of the property of the trust. Except to the extent otherwise provided in the governing instrument, a beneficial owner has no interest in specific statutory trust property.

(d) Except to the extent otherwise provided in the governing instrument, the transferee of a beneficial owner's beneficial interest in the statutory trust shall only be entitled to receive the share of profits and the return of contributions to which the beneficial owner otherwise would be entitled. In the absence of the unanimous written consent of the owners of all other beneficial interests and of all trustees of the statutory trust, and except to the extent otherwise provided in the governing instrument, a transferee of a beneficial owner's beneficial interest shall have no right to participate in, be kept apprised of the affairs of the statutory trust or to become a beneficial owner of a beneficial interest in the statutory trust.

(e) Except to the extent otherwise provided in the governing instrument, at the time a beneficial owner becomes entitled to receive a distribution, he has the status of, and is entitled to all remedies available to, a creditor of the statutory trust with respect to the distribution. A governing instrument may provide for the establishment of record dates with respect to allocations and distributions by a statutory trust.

#### **17-23-108. Management of statutory trust.**

(a) The business and affairs of a statutory trust shall be managed by or under the direction of its trustees. To the extent provided in the governing instrument, any person, including a beneficial owner, shall be entitled to direct the trustees in the management of a statutory trust. Except to the extent otherwise provided in the governing instrument, neither the power to give direction to a trustee nor the exercise thereof by any person, including a beneficial owner, shall cause the person to be a trustee.

(b) A governing instrument may contain any provision relating to the management of the business and affairs of the statutory trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons, which is not contrary to any provision or requirement of this chapter and, without limitation may:

(i) Provide for classes, groups or series of trustees or beneficial owners, or classes, groups or series of beneficial interests, having the relative rights, powers and duties as the governing instrument may provide, and may make provision for the future creation in the manner provided in the governing instrument of additional classes, groups or series of trustees, beneficial owners or beneficial interests, having such relative rights, powers and duties as may be established, including rights, powers and duties senior or subordinate to existing classes, groups or series of trustees, beneficial owners or beneficial interests;

(ii) Establish or provide for the establishment of designated series of trustees, beneficial owners or beneficial interests having separate rights, powers or duties with respect to specified property or obligations of the statutory trust or profits and losses associated with specified property or obligations, and, to the extent provided in the governing instrument, any designated series may have a separate business purpose or investment objective;

(iii) Provide for the taking of any action, including the amendment of the governing instrument, the accomplishment of a merger or consolidation, the appointment of one (1) or more trustees, the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the statutory trust or the assets of any series, or the dissolution of the statutory trust, or may provide for the taking of any action to create under the provisions of the governing instrument a class, group or series of beneficial interests that was not previously outstanding, in any such case without the vote of or approval of any particular trustee or beneficial owner, or class, group or series of trustees or beneficial owners;

(iv) Grant to, or withhold from, all or certain trustees or beneficial owners, or a specified class, group or series of trustees or beneficial owners, the right to vote, separately or with any other classes, groups or series of the trustees or beneficial owners, on any matter, with voting being on a per capita, number, financial interest, class, group series or any other basis;

(v) To the extent that voting rights are granted under the governing instrument, set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on, waiver of any notice, action by

consent without a meeting, the establishment of record dates, quorum requirements, voting in person, by proxy or in any other manner, or any other matter with respect to the exercise of any right to vote;

(vi) Provide for the present or future creation of more than one (1) statutory trust, including the creation of a future statutory trust to which all or any part of the assets, liabilities, profits or losses of any existing statutory trust will be transferred, and for the conversion of beneficial interests in an existing statutory trust, or series thereof, into beneficial interests in the separate statutory trust, or series thereof.

(c) To the extent that, at law or in equity, a trustee has duties, including fiduciary duties, and liabilities relating to a statutory trust or to a beneficial owner:

(i) Any trustee acting under a governing instrument shall not be liable to the statutory trust or to any beneficial owner for the trustee's good faith reliance on the provisions of the governing instrument; and

(ii) The trustee's duties and liabilities may be expanded or restricted by provisions in a governing instrument.

**17-23-109. Registered office and registered agent to be maintained.**

(a) Each statutory trust shall have and continuously maintain in this state:

(i) A registered office as provided in W.S. 17-28-101 through 17-28-111; and

(ii) A registered agent as provided in W.S. 17-28-101 through 17-28-111.

(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all statutory trusts.

**17-23-110. Repealed by Laws 2008, Ch. 90, § 3.**

**17-23-111. Failure to maintain registered agent or registered office or pay annual fee.**

If any statutory trust has failed to comply with the provisions of W.S. 17-28-101 through 17-28-111 or has failed to pay the fee required by W.S. 17-23-117, it is transacting business within this state without authority and shall forfeit any franchises, rights or privileges acquired under the laws of this state. The forfeiture shall be made effective in the following manner. The secretary of state shall mail by first class mail, or by electronic means if the statutory trust has consented to receive notices electronically, a notice of its failure to comply. Unless compliance is made within sixty (60) days of mailing or electronic submission of the notice, the statutory trust shall be deemed defunct and to have forfeited its certificate of organization acquired under the laws of this state. Any defunct statutory trust may at any time within two (2) years after the forfeiture of its certificate, be revived and reinstated, by filing the necessary statement under this chapter and paying the prescribed fee, together with a penalty of one hundred dollars (\$100.00). The statutory trust shall retain its registered name during the two (2) year reinstatement period.

**17-23-112. Existence of statutory trust.**

(a) Except to the extent otherwise provided in the governing instrument, the statutory trust shall have perpetual existence.

(b) Except to the extent otherwise provided in the governing instrument, the death, incapacity, dissolution, termination or bankruptcy of a beneficial owner shall not result in the termination or dissolution of a statutory trust.

**17-23-113. Applicability of trust law.**

Except to the extent otherwise provided in the governing instrument or in this chapter, the laws of this state pertaining to trusts are hereby made applicable to statutory trusts. A statutory trust complying with the provisions of this chapter shall not be considered a financial institution as defined in W.S. 13-1-101(a)(ix).

**17-23-114. Certificate of trust; amendment; cancellation.**

(a) Every statutory trust shall file a certificate of trust in the office of the secretary of state. The certificate of trust shall set forth:

(i) The name of the statutory trust, which shall not be the same as, or deceptively similar to any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from other business names as required by W.S. 17-16-401;

(ii) The name and the business address of at least one (1) of the trustees authorized to manage the statutory trust;

(iii) The future effective date or time of the certificate if it is not to be effective upon the filing of the certificate; and

(iv) Any other information the trustee determines to include.

(b) A certificate of trust may be amended by filing a certificate of amendment in the office of the secretary of state. The certificate of amendment shall set forth:

(i) The name of the statutory trust;

(ii) The amendment to the certificate; and

(iii) The future effective date or time of the certificate if it is not to be effective upon the filing of the certificate.

(c) A certificate of trust may be amended at any time for any purpose as the trustees may determine. A trustee who becomes aware that any statement in a certificate of trust was false when made or that any matter described has changed making the certificate false in any material respect, shall promptly file a certificate of amendment.

(d) A certificate of trust shall be canceled upon the completion of winding up of the statutory trust and its termination. A certificate of cancellation shall be filed in the office of the secretary of state and set forth:

(i) The name of the statutory trust;

(ii) The date of filing of its certificate of trust;

(iii) The future effective date or time of cancellation if it is not to be effective upon the filing of the certificate; and

(iv) Any other information the trustee determines to include.

**17-23-115. Execution of certificate.**

(a) Each certificate required by this chapter to be filed with the secretary of state shall be executed in the following manner:

(i) A certificate of trust shall be signed by at least one (1) of the trustees;

(ii) A certificate of amendment shall be signed by at least one (1) of the trustees;

(iii) A certificate of cancellation shall be signed by all of the trustees or as otherwise provided in the governing instrument;

(iv) If a statutory trust is filing a certificate of merger or consolidation, the certificate of merger or consolidation shall be signed by all of the trustees or as otherwise provided in the governing instrument. If the certificate of merger or consolidation is being filed by another business entity, the certificate of merger or consolidation shall be signed by a person authorized to execute the instrument on behalf of the other business entity; and

(v) The certificate of trust shall be accompanied by a written consent to appointment manually signed by the registered agent.

(b) The execution of a certificate by a trustee constitutes an oath or affirmation, under the penalties of false swearing of W.S. 6-5-303, that, to the best of the trustee's knowledge and belief, the facts stated are true.

**17-23-116. Filing of certificate; effective date; fee; organization.**

(a) The original signed copy together with a duplicate copy, which may be either a signed or conformed copy, of the certificate of trust and any certificates of amendment or

cancellation or any certificate of merger or consolidation shall be delivered to the secretary of state. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required he shall:

(i) Certify that the certificate of trust, the certificate of amendment, the certificate of cancellation or the certificate of merger or consolidation has been filed in his office by endorsing upon the original and duplicate copy of the certificate the word "Filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(ii) File and index the original endorsed certificate; and

(iii) Issue a certificate of organization to which he shall affix the duplicate copy of the certificate of trust. In the case of the filing of any certificate other than a certificate of trust, the secretary of state shall return the duplicate copy, similarly endorsed, to the person who filed it or his representative.

(b) A certificate of trust, certificate of amendment, certificate of cancellation or certificate of merger or consolidation which acts as a certificate of cancellation shall be effective as provided in W.S. 17-23-118.

(c) A fee as set forth in W.S. 17-23-117 shall be paid at the time of the filing of a certificate of trust, a certificate of amendment, a certificate of cancellation or a certificate of merger or consolidation.

(d) Upon the issuance of the certificate of organization, the statutory trust shall be considered organized. The certificate of organization shall be conclusive evidence that all conditions precedent required to be performed by the trustee and beneficial owners have been complied with and that the statutory trust has been legally organized under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of organization or for involuntary dissolution of the statutory trust.

(e) A statutory trust shall not transact business or incur indebtedness, except that which is incidental to its organization or until the secretary of state has issued a certificate of organization.



**17-23-117. Administration; filing, service and copying fees; annual fee.**

(a) The secretary of state has the power reasonably necessary to perform the duties required by this chapter. The secretary of state shall promulgate reasonable rules and regulations necessary to carry out the purposes of this chapter.

(b) The secretary of state shall set and collect filing, service and copying fees to recover costs to administer this chapter. Fees shall not exceed the costs of providing these services.

(c) The secretary of state shall collect an annual tax of one hundred dollars (\$100.00), due and payable January 2 of each year. This tax is delinquent if not paid by February 1 and an addition to the tax shall then be due of one hundred dollars (\$100.00).

**17-23-118. Effective time and date of document.**

(a) Except as provided in subsection (b) of this section, a document accepted for filing is effective:

(i) At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document; or

(ii) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, which shall be a date and time certain, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than ninety (90) days after the date it is filed.

**17-23-119. Reserved name.**

(a) A person may apply to reserve the exclusive use of a statutory trust name by delivering an application to the secretary of state for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the statutory

trust name applied for is available, the secretary shall file the application and reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty (120) day period.

(b) The owner of a reserved statutory trust name may transfer the reservation to another person by delivering to the secretary of state a manually signed notice of the transfer that states the name and address of the transferee.

#### **17-23-120. Derivative actions.**

(a) A beneficial owner may bring an action in the district court in the right of a statutory trust to recover a judgment in its favor if trustees with authority to do so have refused to bring the action or if an effort to cause those trustees to bring the action is not likely to succeed.

(b) In a derivative action, the plaintiff must be a beneficial owner at the time of bringing the action and:

(i) At the time of the transaction of which he complains; or

(ii) His status as a beneficial owner had devolved upon him by operation of law or pursuant to the terms of the governing instrument of the statutory trust from a person who was a beneficial owner at the time of the transaction.

(c) In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by the trustees, or the reasons for not making the effort.

(d) If a derivative action is successful, in whole or in part, or if anything is received by a statutory trust as a result of a judgment, compromise or settlement of any derivative action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees. If anything is so received by the plaintiff, the court shall make the award of the plaintiff's expenses payable out of those proceeds and direct the plaintiff to remit to the statutory trust the remainder of the proceeds. If those proceeds are insufficient to reimburse the plaintiff's reasonable expenses, the court may direct that any award of plaintiff's expenses or portion thereof be paid by the statutory trust.

(e) A beneficial owner's right to bring a derivative action may be subject to additional standards and restrictions, if any, as are set forth in the governing instrument, including, without limitation, the requirement that beneficial owners owning a specified beneficial interest in the statutory trust join in the bringing of the derivative action.

**17-23-121. Indemnification.**

(a) Subject to standards and restrictions, if any, as are set forth in the governing instrument, a statutory trust shall have the power to indemnify and hold harmless any trustee or beneficial owner or other person from and against any and all claims and demands whatsoever.

(b) The absence of a provision for indemnity in the governing instrument shall not be construed to deprive any trustee or beneficial owner or other person of any right to indemnity which is otherwise available to the person under the laws of this state.

ARTICLE 2

MERGER, CONSOLIDATION AND CONTINUANCE

**17-23-201. Merger and consolidation.**

(a) Pursuant to an agreement of merger or consolidation, a statutory trust may merge or consolidate with or into one (1) or more statutory trusts or other business entities formed or organized or existing under the laws of this state or any other state of the United States or any foreign country or other foreign jurisdiction, with the statutory trust or other business entity as the agreement provides being the surviving or resulting statutory trust or other business entity. Unless otherwise provided in the governing instrument of a statutory trust, a merger or consolidation shall be approved by all of the trustees and the beneficial owners of each statutory trust which is to merge or consolidate. In connection with a merger or consolidation, rights or securities of, or interests in, a statutory trust or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting statutory trust or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a statutory trust or other business entity which is not the surviving or resulting

statutory trust or other business entity in the merger or consolidation. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for termination or amendment contained in the agreement of merger or consolidation.

(b) If a statutory trust is merging or consolidating under this section, the statutory trust or other business entity surviving or resulting from the merger or consolidation shall file a certificate of merger or consolidation in the office of the secretary of state. The certificate of merger or consolidation shall state:

(i) The name and jurisdiction of formation or organization of each statutory trust or other business entity which is to merge or consolidate;

(ii) That an agreement of merger or consolidation has been approved and executed by each statutory trust or other business entity which is to merge or consolidate;

(iii) The name of the surviving or resulting statutory trust or other business entity;

(iv) The future effective date or time of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(v) That the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or resulting statutory trust or other business entity, and the address thereof;

(vi) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting statutory trust or other business entity, on request and without cost, to any beneficial owner of any statutory trust or any person holding an interest in any other business entity which is to merge or consolidate; and

(vii) If the surviving or resulting entity is not a statutory trust or other business entity formed or organized or existing under the laws of this state, a statement that the surviving or resulting other business entity agrees that it may be served with process in this state in any action, suit or proceeding for the enforcement of any obligation of any statutory trust which is to merge or consolidate. The statement

shall irrevocably appoint the secretary of state as the agent to accept service of process in any such action, suit or proceeding and specify the address to which a copy of the process shall be mailed by the secretary of state. In the event of service under this paragraph upon the secretary of state, the plaintiff shall furnish the secretary of state with the address specified in the certificate of merger or consolidation provided for in this paragraph and any other address which the plaintiff may elect to furnish, together with copies of the process required by the secretary of state. The secretary of state shall notify the surviving or resulting other business entity at all addresses furnished by the plaintiff by letter, certified mail, return receipt requested. The letter shall enclose a copy of the process and any other papers served upon the secretary of state. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the secretary of state that service is being made pursuant to this paragraph, and to pay the secretary of state the sum of fifty dollars (\$50.00) for use of the state, which shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail. The secretary of state shall maintain an alphabetical record of any process under this paragraph setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceedings in which process has been served upon him, the return date thereof, and the day and hour when the service was made. The secretary of state shall not be required to retain the information for a period longer than five (5) years from his receipt of the service of process.

(c) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at the future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the secretary of state of a certificate of merger or consolidation.

(d) A certificate of merger or consolidation shall act as a certificate of cancellation for a statutory trust which is not the surviving or resulting entity in the merger or consolidation.

(e) Notwithstanding anything to the contrary contained in the governing instrument, a governing instrument containing a specific reference to this subsection may provide that an agreement of merger or consolidation approved in accordance with subsection (a) of this section may:

(i) Effect any amendment to the governing instrument of the statutory trust; or

(ii) Effect the adoption of a new governing instrument of the statutory trust if it is the surviving or resulting statutory trust in the merger or consolidation.

(f) Any amendment to the governing instrument of a statutory trust or adoption of a new governing instrument of the statutory trust made pursuant to subsection (e) of this section shall be effective at the effective time or date of the merger or consolidation. The provisions of subsection (e) of this section and this subsection shall not be construed to limit the accomplishment of a merger or consolidation or of any of the matters referred to in this article by any other means provided for in the governing instrument of a statutory trust or other agreement or as otherwise permitted by law, including that the governing instrument of any constituent statutory trust to the merger or consolidation, including a statutory trust formed for the purpose of consummating a merger or consolidation, shall be the governing instrument of the surviving or resulting statutory trust.

(g) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the state, all of the rights, privileges and powers of each of the statutory trusts and other business entities that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of those statutory trusts and other business entities, as well as all other things and causes of action belonging to each of such statutory trusts and other business entities, shall be vested in the surviving or resulting statutory trust or other business entity as they were of each of the statutory trusts and other business entities that have merged or consolidated. The title to any real property vested by deed or otherwise, under the laws of the state, in any of merging or consolidating statutory trusts and other business entities, shall not revert or be in any way impaired by reason of this chapter. All rights of creditors and all liens upon any property of any merging or consolidating statutory trusts and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the statutory trusts and other business entities that have merged or consolidated shall attach to the surviving or resulting statutory trust or other business entity, and may be enforced against it to the

same extent as if the debts, liabilities and duties had been incurred or contracted by it.

**17-23-202. Continuance of foreign statutory trusts.**

(a) Subject to subsection (b) of this section, any statutory trust created for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution as defined by W.S. 13-1-101(a)(ix) or its successor statute, under the laws of any jurisdiction other than this state may, if the jurisdiction will acknowledge the statutory trust's termination of domicile in the foreign jurisdiction, apply to the secretary of state for registration under this chapter, thus continuing the statutory trust in Wyoming as if it had been organized under the laws of this state. The secretary of state may issue a certificate of continuance upon receipt of an application for continuance as provided in subsection (c) of this section. The certificate of continuance may then be issued subject to any limitations and conditions and may contain any provisions as appear proper to the secretary of state.

(b) The secretary of state shall cause notice of issuance of a certificate of continuance to be given forthwith to the proper officer of the jurisdiction in which the statutory trust was previously organized.

(c) The application for continuance filed by a foreign statutory trust with the secretary of state shall include:

(i) A certified copy of its original certificate of trust and all amendments thereto or its equivalent;

(ii) The name of the statutory trust and the jurisdiction under the laws of which it is organized;

(iii) The date of organization and the period of duration of the statutory trust;

(iv) The address of the principal office of the statutory trust;

(v) The street address of the proposed registered office of the statutory trust in this state and the name of its proposed registered agent in this state at the address;

(vi) The purpose or purposes of the statutory trust which it proposes to pursue in the transaction of business in this state;

(vii) Any information concerning capital structure or financial status the secretary of state deems necessary to establish fees and taxes under the laws of this state;

(viii) Any additional information necessary or appropriate to enable the secretary of state to determine whether the statutory trust is entitled to a certificate of organization evidencing its existence and authority to transact business in this state.

(d) The application shall be executed by the statutory trust by its trustees or a trustee who is authorized to execute the application on behalf of the statutory trust and shall be verified by the trustee signing the application.

(e) The provisions of the application for continuance may without expressly so stating, vary from the provisions of the statutory trust's certificate of trust or governing instrument or equivalent, if the variation is one which a statutory trust organized under the Wyoming Statutory Trust Act could effect by way of amendment to its certificate of trust or governing instrument. Upon issuance of a certificate of continuance by the secretary of state, the certificate of continuance shall be the certificate of trust of the continued statutory trust. The statutory trust may elect to incorporate by reference in and attachment to the application for continuance its original certificate of trust or other authorization which had been adopted by the statutory trust in the foreign jurisdiction, in order to permit the original to continue to act as the certificate of trust of the statutory trust provided, however, that the original certificate of trust or other authorization shall be deemed amended to the extent necessary to make it conform to the laws of this state.

(f) The existence of any statutory trust issued a certificate of continuance under this chapter shall be deemed to have commenced on the date the statutory trust commenced its existence in the jurisdiction in which the statutory trust was first formed, organized or otherwise came into being. The laws of this state shall apply to a statutory trust continuing under this chapter to the same extent as if the statutory trust had been organized under the laws of this state from and after the issuance of a certificate of continuance under this chapter by



the secretary of state to the statutory trust. When a foreign statutory trust is continued as a statutory trust under this chapter, the continuance shall not affect the statutory trust's ownership of its property or liability for any existing obligations, causes of action, claims, pending or threatened prosecutions or civil or administrative actions, convictions, rulings, orders, judgments or any other characteristics or aspects of the statutory trust and its existence.

(g) As used in this section, the term "statutory trust" shall include any business trust, association or similar entity which appears to the secretary of state to possess characteristics sufficiently similar to those of a statutory trust organized under the Wyoming Statutory Trust Act.

### ARTICLE 3 EFFECTIVENESS

#### **17-23-301. Reserved power of state to amend or repeal chapter.**

All provisions of this chapter may be altered from time to time or repealed and all rights of statutory trusts, trustees, beneficial owners and other persons are subject to this reservation.

#### **17-23-302. Construction and application of chapter and governing instrument.**

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(b) It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of governing instruments.

### CHAPTER 24 BUSINESS NAMES

#### **17-24-101. Business entity name; limited rights.**

(a) The authorization granted under this title by the secretary of state to file articles of incorporation, a certificate of limited partnership, articles of organization, articles of formation, a certificate of trust or other similar document authorizing the transaction of business in this state

under a corporate, limited partnership, limited liability company, statutory trust, statutory foundation or other business entity name or to reserve a name does not:

(i) Abrogate or limit the law governing unfair competition or unfair trade practices;

(ii) Derogate from the common law the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or

(iii) Create an exclusive right in geographic or generic terms contained within a name.

## CHAPTER 25 CLOSE LIMITED LIABILITY COMPANY SUPPLEMENT

### **17-25-101. Short title.**

This chapter shall be known and may be cited as the "Wyoming Close Limited Liability Company Supplement."

### **17-25-102. Application of Wyoming Limited Liability Company Act.**

(a) The Wyoming Limited Liability Company Act applies to close limited liability companies to the extent not inconsistent with the provisions of this chapter and the powers provided the secretary of state by W.S. 17-29-1102 shall apply to this supplement.

(b) This chapter does not repeal or modify any statute or rule of law that is or would apply to a limited liability company that is organized under the Wyoming Limited Liability Company Act that does not elect to become a close limited liability company.

### **17-25-103. Definition and election of close limited liability company status.**

(a) A close limited liability company is a limited liability company whose articles of organization contain a statement that the company is a close limited liability company.

(b) A limited liability company formed under W.S. 17-29-101 through 17-29-1102 may convert to a close limited

liability company by amending its articles of organization to include the statement required by subsection (a) of this section.

(c) A statement in substantially the following form shall appear conspicuously in the operating agreement and on any certificates of ownership in a close limited liability company:

#### NOTICE OF RESTRICTIONS ON TRANSFERS AND WITHDRAWALS

The rights of members in a close limited liability company may differ materially from the rights of members in other limited liability companies. The Close Limited Liability Company Supplement, articles of organization, and operating agreement of a close limited liability company may restrict transfer of ownership interests, withdrawal or resignation from the company, return of capital contributions and dissolution of the company.

#### **17-25-104. Formation.**

Any person may form a close limited liability company which shall have one (1) or more members by signing and delivering one (1) original and one (1) exact or conformed copy of the articles of organization to the secretary of state for filing. The person forming the close limited liability company need not be a member of the company.

#### **17-25-105. Articles of organization.**

The articles of organization of a close limited liability company shall include a statement that the company is a close limited liability company and shall set forth the matters required by W.S. 17-29-201.

#### **17-25-106. Management.**

Management of a close limited liability company shall be vested in its members which, unless otherwise provided in the operating agreement, shall be in proportion to the division of profits and losses among members. If provision is made for it in the articles of organization, management of the company may be vested in a manager or managers who shall be appointed in the articles of organization or operating agreement or elected by the members in the manner prescribed by the operating agreement of the company. The manager or managers, or persons appointed by the manager or managers, shall also hold the offices and have

the responsibilities accorded to them by the members and set out in the operating agreement of the company.

**17-25-107. Withdrawal of members and return of members' contributions to capital.**

(a) A member may only withdraw from a close limited liability company upon the terms and conditions set forth in the operating agreement. If no terms and conditions for withdrawal of a member are set forth in the company's operating agreement, a member may withdraw only with the consent of all other members of the company.

(b) A member shall not receive out of close limited liability company property any part of his or its contribution to capital unless:

(i) All liabilities of the company, except liabilities to members on account of their contributions to capital, have been paid or there remains property of the company sufficient to pay them; and

(ii) All members consent to such return of contributions to capital; and either:

(A) The company is dissolved; or

(B) The articles of organization or operating agreement of the company otherwise provide for the return of contributions to capital.

(iii) Repealed By Laws 2008, Ch. 116, § 2.

(iv) Repealed By Laws 2008, Ch. 116, § 2.

(c) In the absence of a statement in the articles of organization to the contrary or the consent of all members of the close limited liability company, a member, irrespective of the nature of his or its contribution, has only the right to demand and receive cash in return for his or its contribution to capital.

(d) A member of a close limited liability company may not have the company dissolved for a failure to return his or its contribution to capital.

**17-25-108. Dissolution.**

(a) A close limited liability company organized under this chapter shall be dissolved upon the occurrence of any of the following events:

(i) When the period fixed for the duration of the company expires;

(ii) By the unanimous written agreement of all members; or

(iii) At the time or upon the occurrence of events specified in the operating agreement.

(b) As soon as possible following the occurrence of any of the events specified in subsection (a) of this section causing the dissolution of a close limited liability company, the company shall execute a statement of intent to dissolve in the form prescribed by the secretary of state.

**17-25-109. Repealed By Laws 2010, Ch. 94, § 3.**

**17-25-110. Sharing of profits and losses; distributions.**

(a) A close limited liability company may divide and allocate the profits and losses of its business among the members and transferees of the company upon the basis provided in the operating agreement. If the operating agreement does not so provide, profits and losses shall be allocated on the basis of the value of contributions to the company by each member and transferee to the extent they have been received by the company and have not been returned.

(b) Distributions by a close limited liability company before its dissolution and winding up may be made among the members and transferees of the company upon the basis provided in the operating agreement. If the operating agreement does not so provide, distributions shall be made on the basis of the value of contributions to the company by each member and transferee to the extent they have been received by the company and have not been returned.

**17-25-111. Transferability of interest.**

All interests in a close limited liability company, including transferable interests, shall only be transferred as provided in the operating agreement. If the operating agreement does not so

provide, no transfer of a close limited liability company interest, including a transferable interest, shall be made without the consent of all members of the company.

## CHAPTER 26 CONVERSION

### **17-26-101. Conversion of entities.**

(a) Any entity, domestic or foreign, may convert to any other entity, domestic or foreign, pursuant to this section. As used in this section, "entity" means any entity authorized to be formed under this title and organized under the laws of this state or the laws of another state that are the functional equivalent.

(b) A domestic entity may be converted into any form of foreign entity recognized in that foreign jurisdiction pursuant to this section.

(c) A foreign entity may be converted into a domestic entity if the conversion is authorized pursuant to the articles of incorporation, articles of organization, certificate of limited partnership, articles of association, registration statement or other document of similar import filed or recorded by or for an entity in the jurisdiction in which the entity is formed.

(d) The converting domestic or foreign entity shall approve the terms and conditions of the conversion in accord with the documents enumerated in subsection (c) of this section.

(e) After the conversion is approved, the newly converted domestic entity shall file the appropriate document of organization as enumerated in subsection (c) of this section and include:

(i) Information that clearly names and identifies the converting entity and the newly converted entity;

(ii) The state of original formation and the date of original organization; and

(iii) Proof that conversion is approved by the owners or members of the converting entity in accordance with the authority given the converting entity.

(f) The conversion takes effect when the appropriate document of organization enumerated in subsection (c) of this section is filed or at any later date specified in the document.

(g) Upon conversion, all property owned by the converting entity remains in the newly converted entity. All obligations of the converting entity continue as obligations of the newly converted entity. Any action or proceeding pending against the converting entity may be continued as if the conversion had not occurred.

## CHAPTER 27 ELECTRONIC ANNUAL REPORTS

### **17-27-101. Electronic filing of annual reports authorized; rules; penalty.**

(a) Notwithstanding any other provision of law, any entity required to file an annual report and pay an annual license fee under title 17 of the Wyoming statutes, may be authorized by rules of the secretary of state to file the annual report electronically and pay the annual license fee through credit card, electronic funds transfer or by other means. For each electronically transmitted annual report filed in the office of the secretary of state, the office shall assign a unique number to the filed report, create a record that bears the number assigned and the date and time of filing, and maintain the filed annual report for public inspection.

(b) Repealed by Laws 2008, Ch. 91, § 3.

## CHAPTER 28 REGISTERED OFFICES AND AGENTS

### **17-28-101. Registered office and registered agent.**

(a) Each business entity shall continuously maintain in this state:

(i) A registered office that may be the same as any of its places of business but shall be located at a street address in Wyoming which shall be a physical location where the business entity's registered agent, or a natural person who has an agency relationship with the registered agent, can accept service of process as provided in W.S. 17-28-104 and is physically present at that location; and

(ii) A registered agent, who shall be:

(A) An individual who is at least eighteen (18) years of age, resides in this state and whose business office is identical with the registered office;

(B) A domestic business entity whose business office is identical with the registered office and which has a written agreement creating an agency relationship with an individual providing for acceptance of service of process as provided in W.S. 17-28-104;

(C) A foreign business entity authorized to transact business in this state whose business office is identical with the registered office and which has a written agreement creating an agency relationship with an individual providing for acceptance of service of process as provided in W.S. 17-28-104; or

(D) A business entity or an individual, at least eighteen (18) years of age, who is:

(I) In the business of serving as a registered agent for more than ten (10) entities, including a registered agent which serves as a registered agent for the entities served by another commercial registered agent; and

(II) Registered as a commercial registered agent under W.S. 17-28-105 and whose business office is identical with the registered office. A business entity registered as a commercial registered agent shall have a written agreement creating an agency relationship with a natural person providing for acceptance of service of process as provided in W.S. 17-28-104.

(b) For purposes of this chapter, "business entity" means a corporation, nonprofit corporation, limited liability company, limited partnership, cooperative marketing association, statutory trust, statutory foundation or registered limited liability partnership, whether foreign or domestic.

(c) Every registered agent shall certify compliance with the requirements of this chapter on a form prescribed by the secretary of state on the date of registration.

(d) For purposes of this chapter, "written agreement" or "contract creating an agency relationship" means any written



document granting a natural person representing a registered agent the authority to accept service of process on behalf of any entity served by the registered agent. A single document may serve as authorization for each natural person representing the registered agent without listing each natural person individually.

**17-28-102. Change of registered office or registered agent.**

(a) A business entity may change its registered office or registered agent by signing and delivering to the secretary of state for filing a statement of change that sets forth:

- (i) The name of the business entity;
- (ii) The street address of its current registered office;
- (iii) If the current registered office is to be changed, the street address of the new registered office;
- (iv) The name of its current registered agent;
- (v) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment executed by the registered agent, either on the statement or attached to it;
- (vi) That the new registered office and registered agent comply with the requirements of W.S. 17-28-101 through 17-28-111; and
- (vii) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical, if applicable.

(b) If a registered agent changes the street address of his business office, he shall change the street address of the registered office of any business entity for which he is the registered agent by notifying the business entity in writing of the change and signing and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) of this section and recites that every entity which the registered agent serves has been notified of the change.

(c) If a registered agent changes its name, it shall change the name of the registered agent of any business entity for which it is the registered agent by notifying the business entity in writing of the change and signing and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (a) of this section and recites that every entity which the registered agent serves has been notified of the change.

**17-28-103. Resignation of registered agent.**

(a) A registered agent may resign his agency appointment by signing and delivering to the secretary of state for filing the signed original and one (1) exact or conformed copy of a statement of resignation for each entity from which the registered agent resigns. The statement may include a statement that the registered office is also discontinued. The statement of resignation shall state that the registered agent has sent notice to each affected entity at least thirty (30) days prior to the filing of the statement of resignation to the address of the entity last known to the registered agent. The statement shall be addressed to any officer or other authorized person of the entity other than the registered agent.

(b) Upon receiving the resignation of a registered agent where no successor is appointed, the entity shall provide the secretary of state with a statement of change in compliance with W.S. 17-28-102(a) within thirty (30) days following receipt by the business entity of the statement of resignation by a registered agent.

(c) A registered agent may resign his agency appointment and appoint a new registered agent that complies with W.S. 17-28-101(a) by signing and delivering to the secretary of state on a statement of change of registered agent form designated by the secretary of state:

(i) A signed original and one (1) exact or conformed copy of a statement of resignation for each entity from which the registered agent resigns;

(ii) A statement from each affected entity ratifying and approving the appointment of the new registered agent;

(iii) A statement designating a new registered office for each entity affected; and

(iv) A statement from the new registered agent certifying his compliance with all requirements of this chapter and acknowledging his appointment to serve as registered agent for each entity affected.

(d) The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement of resignation was filed under subsections (a) and (b) of this section. The agency appointment is terminated, the registered office discontinued if so provided, and the new registered agent and registered office are effective on the date on which the statement of change of registered agent was filed under subsection (c) of this section.

(e) If an agency appointment is terminated under the provisions of this section and no successor is appointed, service of process on the business entity shall be upon the secretary of state until a new appointment is made or until the entity is administratively dissolved or revoked.

(f) Upon receipt of resignation by a registered agent where no successor is appointed, the secretary of state shall classify the entity as delinquent awaiting administrative dissolution, revocation or forfeiture of its articles of organization as appropriate.

(g) Failure of a commercial registered agent to renew registration pursuant to W.S. 17-28-106 shall constitute a resignation of the registered agent pursuant to this section for purposes of administrative dissolution, revocation or forfeiture of the entities represented, but the registered agent shall remain responsible for all the requirements of this chapter with respect to each entity represented until a new registered agent is appointed, the registered agent has resigned in accordance with subsection (a) of this section or until the entity is administratively dissolved, revoked or its authority to transact business is forfeited.

#### **17-28-104. Service on business entity.**

(a) A business entity's registered agent, or the natural person having an agency relationship with the registered agent as provided in W.S. 17-28-101(a), shall accept service of process, notice, or demand required or permitted by law that is served on the entity.

(b) If a business entity has no registered agent, or the agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to the entity at its principal office. Service is perfected under this subsection at the earliest of:

(i) The date the entity receives the mail;

(ii) The date shown on the return receipt, if signed, either manually or in facsimile, on behalf of the entity; or

(iii) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) A business entity may be served as provided in this section or as provided in the Wyoming Rules of Civil Procedure.

(d) Every entity shall provide to its registered agent, or to the secretary of state as provided in W.S. 17-28-107(b), and keep current the name, mailing address and physical address, if different, and business telephone number of a natural person who is an officer, director, limited liability company member or manager, managing partner or trustee of the entity who is authorized to receive communications from the registered agent and is deemed the designated communications contact for the entity. The designated communications contact for the entity shall not be the entity's registered agent or an employee of the entity's registered agent unless the registered agent is the entity's officer, director, limited liability company member or manager, managing partner or trustee.

**17-28-105. Commercial registered agent registration required.**

(a) Except as provided in subsection (b) of this section, no person shall transact business in this state as a registered agent unless the person is registered with the secretary of state in accordance with the provisions of this section and W.S. 17-28-106. Violation of this section is punishable under W.S. 17-28-109.

(b) The registration requirements of this section and W.S. 17-28-106 shall not apply to a person who serves as registered agent for ten (10) or fewer business entities, unless the registered agent is serving as registered agent for an entity or

entities that is serving as registered agent for more than ten (10) business entities.

(c) Any person claiming to be exempt from registration requirements based upon the provisions of subsection (b) of this section shall have the burden of proving the exemption in any administrative or other civil action.

(d) For purposes of W.S. 17-28-106, "commercial registered agent" means a registered agent required to register under this section.

(e) A commercial registered agent shall not:

(i) Have been convicted of any felony;

(ii) Have any officer, director, partner, manager or other authorized person who has been convicted of any felony;

(iii) Engage in conduct in connection with acting as a registered agent that is intended or likely to deceive or defraud the public; nor

(iv) Have any officer, director, partner, manager or other authorized person whose ability to act as a registered agent has been revoked by the secretary of state or a comparable official in another state for engaging in conduct in connection with acting as a registered agent that is intended or likely to deceive or defraud the public, or who was an officer, director, partner, manager or other authorized person of an entity whose ability to act as a registered agent has been so revoked.

#### **17-28-106. Registration requirements.**

(a) A commercial registered agent shall obtain a registration by filing an application with the secretary of state. The application shall be executed and sworn under penalty of perjury and contain information the secretary of state requires by rule including:

(i) The legal name of the applicant;

(ii) The applicant's physical street address of its registered office in this state where service may be made. A separate mailing address may be included in addition to the physical street address;

(iii) Whether the applicant, or in the case of a corporation or other business entity its officers or directors, members, partners or persons serving in a similar capacity, has ever been convicted of a felony;

(iv) The name, address and phone number of the person who has authority to act on behalf of the commercial registered agent;

(v) A statement that the applicant is eighteen (18) years or older if the applicant is a natural person;

(vi) The name, physical street address, phone number and normal business hours of the registered office where the natural person with whom the agent has an agency agreement for purposes of receiving service of process, if applicable may be served; and

(vii) Other information the secretary of state deems appropriate in the registration and identification of registered agents.

(b) Every applicant for registration shall pay a filing fee as set by rule adopted pursuant to this chapter. The fee, other than the late filing fee provided in subsection (c) of this section, shall be designed to recover the cost of administering the provisions of this chapter relating to registered agents. If an application is withdrawn or denied, the secretary of state shall retain the entire fee.

(c) Registration of a commercial registered agent shall be valid for the calendar year of registration and shall expire December 31 of each year subject to the following:

(i) Renewal of registration shall be made by paying the annual registration fee by November 30 of each calendar year;

(ii) Any person acting as a commercial registered agent who renews the registration between December 1 and December 31 shall pay an additional late registration fee equal to the annual filing fee;

(iii) Any person who acts as a commercial registered agent after the expiration of his registration on December 31 of each year and willfully or by neglect fails to renew such registration as provided in this subsection shall be acting in

violation of this act. Renewal of a commercial agent registration after December 31 shall be accompanied by a late renewal fee of five hundred dollars (\$500.00) plus an administrative fee which reflects the reasonable costs incurred by the secretary of state for notification of the entities, represented by the commercial registered agent, classified as delinquent awaiting administrative dissolution, revocation or forfeiture of its authority to transact business as provided in W.S. 17-28-103(f);

(iv) All fees shall be paid in full prior to any reregistration as a commercial registered agent.

(d) The secretary of state may publish or cause a listing of registrants to be disseminated to interested persons under such rules as the secretary of state prescribes.

**17-28-107. Duties of the registered agent; duties of the entity.**

(a) The registered agent shall:

(i) Maintain a physical address in accordance with W.S. 17-28-102(a)(ii) and as defined by the secretary of state by rule;

(ii) Accept service of process in accordance with W.S. 17-28-104(a);

(iii) Maintain the address of record to which all service of process is to be delivered for each entity represented;

(iv) Register as a commercial registered agent pursuant to W.S. 17-28-105 if applicable; and

(v) Maintain at the registered office, the following information for each domestic entity represented which shall be current within sixty (60) days of any change until the entity's first annual report is accepted for filing with the secretary of state and thereafter when the annual report is due for filing and shall be maintained in a format that can be reasonably produced on demand:

(A) Names and addresses of each entity's directors, officers, limited liability company managers,

managing partners, trustees or persons serving in a similar capacity;

(B) The name, physical address and business telephone number of a natural person who is authorized to receive communications from the registered agent as specified in W.S. 17-28-104(d);

(C) A copy of the written contract or agreement creating an agency relationship between the registered agent and a natural person with respect to accepting service of process on behalf of each business entity represented by the registered agent.

(b) If the registered agent and the entity agree, the entity shall file with the secretary of state the information specified in paragraph (a)(iii) and subdivisions (a)(v)(A) and (B) of this section and the information specified in W.S. 17-28-104(d). As verification of the agreement, the entity shall file with the secretary of state a consent form, as provided by that office, which acknowledges the entity's election under this subsection. If the information or form acknowledging the entity's election is filed with the secretary of state, then the registered agent has complied with the requirement to maintain such information under this section.

#### **17-28-108. Production of records.**

(a) All records maintained pursuant to W.S. 17-28-107 are subject to periodic, special or other examination by the secretary of state or his representatives as deemed necessary or appropriate in investigations.

(b) The secretary of state may compel production of records required to be maintained pursuant to W.S. 17-28-107 in accordance with the provisions of the Wyoming Administrative Procedure Act.

(c) The secretary of state shall hold any records obtained pursuant to this section confidential except for information already on file with the secretary of state as part of a public document and information required to be in the annual report required by W.S. 17-16-1630(a). The secretary of state may release any such confidential information only pursuant to court ordered subpoena or to a bona fide law enforcement agency for use in a criminal investigation.



(d) Failure to produce or denial of access to records maintained pursuant to W.S. 17-28-107 to the secretary of state on demand or failure to answer a validly issued and enforceable subpoena shall be punishable as provided in W.S. 17-28-109.

(e) Any business entity which provides false records required to be maintained pursuant to W.S. 17-28-107 to the entity's registered agent shall be punished by a fine not exceeding one thousand dollars (\$1,000.00), or by imprisonment not exceeding six (6) months, or both.

**17-28-109. Actions against registered agents.**

(a) The secretary of state may impose a civil penalty not to exceed five hundred dollars (\$500.00) for each violation, with respect to each entity represented, of this chapter for which no other specific penalty is provided, and may deny or revoke any registration, require enhanced recordkeeping and refuse to accept filings for business entities served by a registered agent if the registered agent, or in the case of registered agent that is a corporation or other business entity, its officers, directors, members, partners or persons serving in a similar capacity:

(i) Has failed to make application for registration as a commercial registered agent under W.S. 17-28-105 if applicable;

(ii) Has failed to maintain records as required by W.S. 17-28-107;

(iii) Cannot be served at the address of the registered office;

(iv) Has willfully violated or willfully failed to comply with any provision of this chapter; or

(v) Cannot be located at the address on the application provided to the secretary of state.

(b) A registered agent has complied with W.S. 17-28-107 if he has timely requested from the entity, either by certified letter or through an engagement letter or other similar document, that the required information be provided and be kept current within sixty (60) days of any change until the entity's first annual report is accepted for filing with the secretary of state. It shall be a defense to an action under paragraph

(a)(ii) of this section if the registered agent notifies the secretary of state of the entity's failure to provide the required information or of the registered agent's belief that the information is inaccurate, and the registered agent resigns within sixty (60) days after the date the certified letter requesting information has been sent. No fee shall be assessed a registered agent resigning pursuant to this subsection.

(c) The secretary of state may deny or revoke the registration of a registered agent who has been convicted of any felony or has had an application for commercial registered agent denied or revoked, or in the case of a registered agent that is a corporation or other business entity, its officers, directors, members, partners or persons serving in a similar capacity have been convicted of any felony or have had an application for commercial registered agent denied or revoked.

(d) In any action pursuant to this section the prevailing party may recover costs of investigation, court costs and attorney's fees.

(e) It shall be a defense to any violation under this section if the agent, in the exercise of reasonable diligence could not have known that:

(i) The information maintained by the agent is inaccurate;

(ii) The information provided by the entity represented is inaccurate; or

(iii) An entity used the registered agent's identity or address without the registered agent's knowledge or consent.

(f) The secretary of state may deny registration, require enhanced recordkeeping and refuse to accept filings from any registered agent pursuant to this section without a contested case hearing. If a contested case hearing is requested, this authority shall only apply until the hearing is resolved.

(g) Any penalty imposed against a registered agent pursuant to this act shall be paid pursuant to the final order as issued by the secretary of state. If the penalty is not paid within sixty (60) days of the order, or according to an alternate schedule indicated in the order, the secretary of state may refuse all filings by a registered agent until the penalty is paid. In addition, in the case of a registered agent

that is a corporation or other business entity, the secretary of state may administratively dissolve the entity or revoke its certificate of authority if the penalty is not paid as provided in this subsection.

**17-28-110. Reinstatement after administrative dissolution or revocation of authority.**

(a) Except as otherwise provided by law for specific business entities, a business entity administratively dissolved or whose certificate of authority is revoked for violation of any provision of this chapter may apply to the secretary of state for reinstatement within two (2) years after the effective date of dissolution or revocation. Reinstatement may be denied by the secretary of state if the business entity has been the subject of secretary of state and law enforcement investigation pertaining to fraud or any other violation of state or federal law, or if there is other reason to believe the business entity was engaged in illegal operations.

(b) If the secretary of state determines that the business entity is in compliance with this chapter, he shall cancel the certificate of dissolution or revocation and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the business entity as provided in this chapter.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution or revocation and the business entity resumes carrying on its business as if the administrative dissolution or revocation had never occurred.

(d) Appeals of decisions of the secretary of state under this section may be made as provided in W.S. 17-16-1423.

**17-28-111. Rules and regulations; applicability.**

(a) The secretary of state shall have the power reasonably necessary to perform the duties required of him by this chapter. The secretary of state shall promulgate reasonable rules and regulations necessary to carry out the purposes of this chapter.

(b) The Financial Technology Sandbox Act shall apply to this chapter.

CHAPTER 29  
WYOMING LIMITED LIABILITY COMPANY ACT

ARTICLE 1  
GENERAL PROVISIONS

**17-29-101. Short title.**

This chapter may be cited as the "Wyoming Limited Liability Company Act".

**17-29-102. Definitions.**

(a) As used in this chapter:

(i) "Articles of organization" means the articles required by W.S. 17-29-201(b). The term includes the articles as amended or restated;

(ii) "Contribution" means any benefit provided by a person to a limited liability company:

(A) In order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(B) In order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(C) In the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(iii) "Debtor in bankruptcy" means a person that is the subject of:

(A) An order for relief under Title 11 of the United States Code or a successor statute of general application; or

(B) A comparable order under federal, state or foreign law governing insolvency.

(iv) "Designated office" means:

(A) The office of a registered agent that a limited liability company is required to designate and maintain under W.S. 17-28-101; or

(B) The principal office of a foreign limited liability company.

(v) "Distribution", except as otherwise provided in W.S. 17-29-405(g), means a transfer of money or other property from a limited liability company to another person on account of a transferable interest;

(vi) "Effective" with respect to a record required or permitted to be delivered to the secretary of state for filing under this article, means effective under W.S. 17-29-205(c);

(vii) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company or which appears to the secretary of state to possess characteristics sufficiently similar to those of a limited liability company organized under this chapter;

(viii) "Limited liability company", except in the phrase "foreign limited liability company", means an entity formed under this chapter;

(ix) "Low profit limited liability company" means a limited liability company that has set forth in its articles of organization a business purpose that satisfies, and which limited liability company is at all times operated to satisfy, each of the following requirements:

(A) The entity significantly furthers the accomplishment of one (1) or more charitable or educational purposes within the meaning of section 170(c)(2)(B) of the Internal Revenue Code and would not have been formed but for the entity's relationship to the accomplishment of charitable or educational purposes;

(B) No significant purpose of the entity is the production of income or the appreciation of property provided, however, that the fact that an entity produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property; and

(C) No purpose of the entity is to accomplish one (1) or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Internal Revenue Code.

(x) "Manager" means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in W.S. 17-29-407(c);

(xi) "Manager-managed limited liability company" means a limited liability company that qualifies under W.S. 17-29-407(a);

(xii) "Member" means a person that has become a member of a limited liability company under W.S. 17-29-401 and has not dissociated under W.S. 17-29-602;

(xiii) "Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company;

(xiv) "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in W.S. 17-29-110(a). The term includes the agreement as amended or restated;

(xv) "Organizer" means a person that acts under W.S. 17-29-201 to form a limited liability company;

(xvi) "Person" means as defined by W.S. 8-1-102(a)(vi);

(xvii) "Principal office" means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state;

(xviii) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(xix) "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature;

(xx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

(xxi) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift or transfer by operation of law;

(xxii) "Transferable interest" means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right;

(xxiii) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member;

(xxiv) "Financial institution" means a bank, savings and loan association or state chartered credit union;

(xxv) "Majority of the members," unless the operating agreement provides otherwise, means:

(A) For a limited liability company formed before July 1, 2010, more than fifty percent (50%) of its membership interests based on each member's proportionate contribution to the capital of the limited liability company, as adjusted from time to time to properly reflect any additional contributions or withdrawals by the members, unless the limited liability company amends its articles of organization to provide otherwise;

(B) For a limited liability company formed on or after July 1, 2010, a per capita majority of the members.

#### **17-29-103. Knowledge; notice.**

(a) A person knows a fact when the person:

(i) Has actual knowledge of it; or

(ii) Is deemed to know it under paragraph (d)(i) of this section or law other than this chapter.

(b) A person has notice of a fact when the person:

(i) Has reason to know the fact from all of the facts known to the person at the time in question; or

(ii) Is deemed to have notice of the fact under paragraph (d)(ii) of this section.

(c) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(d) A person that is not a member is deemed:

(i) To know of a limitation on authority to transfer real property as provided in W.S. 17-29-302(g); and

(ii) To have notice of a limited liability company's:

(A) Dissolution, ninety (90) days after articles of dissolution under W.S. 17-29-702(b)(ii)(A) and the limitation on the member's or manager's authority as a result of the statement of dissolution becomes effective;

(B) Reserved; and

(C) Merger, conversion, continuance, transfer or domestication, ninety (90) days after articles of merger, conversion, continuance, transfer or domestication under article 10 of this chapter become effective.

**17-29-104. Nature, purpose and duration of limited liability company.**

(a) A limited liability company is an entity distinct from its members.

(b) A limited liability company may have any lawful purpose, regardless of whether for profit.

(c) A limited liability company has perpetual duration.

(d) Limited liability companies may be organized under this chapter for any lawful purpose, except for the purpose of acting as a financial institution or acting as an insurer as defined in W.S. 26-1-102(a)(xvi).



(e) Nothing in this chapter shall be interpreted as precluding an individual whose occupation requires licensure under Wyoming law from forming a limited liability company if the applicable licensing statutes do not prohibit it and the licensing body does not prohibit it by rule or regulation adopted consistent with the appropriate licensing statute. No limited liability company may offer professional services or practice a profession except by and through its licensed members or licensed employees, each of whom shall retain his professional license in good standing and shall remain as fully liable and responsible for his professional activities, and subject to all rules, regulations, standards and requirements pertaining thereto, as though practicing individually rather than in a limited liability company.

**17-29-105. Powers.**

A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities.

**17-29-106. Governing law.**

(a) The law of this state governs:

(i) The internal affairs of a limited liability company; and

(ii) The liability of a member as member and a manager as manager for the debts, obligations or other liabilities of a limited liability company.

**17-29-107. Supplemental principles of law; applicability.**

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) The Financial Technology Sandbox Act shall apply to this chapter.

**17-29-108. Name.**

(a) The words "limited liability company," or its abbreviations "LLC" or "L.L.C.," "limited company," or its abbreviations "LC" or "L.C.," "Ltd. liability company," "Ltd. liability co." or "limited liability co." shall be included in

the name of every limited liability company formed under the provisions of this act except the name of a low profit limited liability company, as defined in W.S. 17-29-102(a)(ix) shall contain the abbreviations "L3C," "l3c," "low profit ltd. liability company," "low profit ltd. liability co." or "low profit limited liability co.". In addition, the limited liability company name may not:

(i) Contain a word or phrase which indicates or implies that it is organized for a purpose other than one (1) or more of the purposes contained in its articles of organization;

(ii) Be the same as, or deceptively similar to, any trademark or service mark registered in this state and shall be distinguishable upon the records of the secretary of state from other business names as provided in W.S. 17-16-401;

(iii) Contain a word or phrase which indicates or implies that it is organized under the Wyoming Business Corporation Act, the Wyoming Statutory Close Corporation Supplement or the Nonprofit Corporation Act.

(b) Nothing in this article shall prohibit the use of a tradename in accordance with applicable law.

#### **17-29-109. Reservation of name.**

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the name for which application has been made is available, it shall be reserved for the applicant's exclusive use for a one hundred twenty (120) day period.

(b) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the secretary of state for filing a signed notice of the transfer which states the name and address of the transferee.

#### **17-29-110. Operating agreement; scope, function and limitations.**

(a) Except as otherwise provided in subsections (b) and (c) of this section, the operating agreement governs all of the following:

(i) Relations among the members as members and between the members and the limited liability company;

(ii) The rights and duties under this chapter of a person in the capacity of manager;

(iii) The activities of the company and the conduct of those activities;

(iv) The means and conditions for amending the operating agreement;

(v) Management rights and voting rights of members;

(vi) Transferability of membership interests;

(vii) Distributions to members prior to dissolution;

(viii) All other aspects of the management of the limited liability company.

(b) To the extent the operating agreement does not otherwise provide for a matter described in subsection (a) of this section, this chapter governs the matter.

(c) An operating agreement shall not:

(i) Vary a limited liability company's capacity under W.S. 17-29-105 to sue and be sued in its own name;

(ii) Vary the law applicable under W.S. 17-29-106;

(iii) Vary the power of the court under W.S. 17-29-204;

(iv) Reserved;

(v) Eliminate the contractual obligation of good faith and fair dealing under W.S. 17-29-409(d);

(vi) Unreasonably restrict the duties and rights stated in W.S. 17-29-410;

(vii) Vary the power of a court to decree dissolution in the circumstances specified in W.S. 17-29-701(a)(iv) and (v);

(viii) Vary the requirement to wind up a limited liability company's business as specified in W.S. 17-29-702(a) and (b)(i);

(ix) Unreasonably restrict the right of a member to maintain an action under article 9 of this chapter;

(x) Reserved; or

(xi) Reserved.

**17-29-111. Operating agreement; effect on limited liability company and persons becoming members; preformation agreement.**

(a) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(b) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(c) Two (2) or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One (1) person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

**17-29-112. Operating agreement; effect on third parties and relationship to records effective on behalf of limited liability company.**

(a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. An amendment to the operating agreement made after a person becomes

a transferee or dissociated member is effective with regard to any debt, obligation or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(c) If a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter contains a provision that would be ineffective under W.S. 17-29-110(c) if contained in the operating agreement, the provision is likewise ineffective in the record.

(d) Subject to subsection (c) of this section, if a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter conflicts with a provision of the operating agreement:

(i) The operating agreement prevails as to members, dissociated members, transferees and managers; and

(ii) The record prevails as to other persons to the extent they reasonably rely on the record.

**17-29-113. Registered office and registered agent to be maintained.**

(a) Each limited liability company shall have and continuously maintain in this state:

(i) A registered office as provided in W.S. 17-28-101 through 17-28-111;

(ii) A registered agent as provided in W.S. 17-28-101 through 17-28-111.

(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all limited liability companies.

**17-29-114. Foreign limited liability companies; operation; revocation and reinstatement of certificates of authority.**

To the extent not inconsistent with this act or the provisions of the Wyoming Business Corporations Act, a foreign limited liability company shall do business in Wyoming by complying with the provisions of W.S. 17-16-1501 through 17-16-1536 in the same manner as a foreign corporation. A foreign limited liability

company's certificate of authority shall be revoked or reinstated in the manner provided for foreign corporations in W.S. 17-16-1530 through 17-16-1532.

ARTICLE 2  
FORMATION, ARTICLES OF ORGANIZATION AND OTHER FILINGS

**17-29-201. Formation of limited liability company; articles of organization.**

(a) One (1) or more persons may act as organizers to form a limited liability company by signing and delivering to the secretary of state for filing articles of organization.

(b) Articles of organization shall state:

(i) The name of the limited liability company, which must comply with W.S. 17-29-108;

(ii) The street address of the limited liability company's initial registered office and the name of its initial registered agent at that office; and

(iii) Reserved.

(c) The articles of organization shall be accompanied by a written consent to appointment signed by the registered agent.

(d) Subject to W.S. 17-29-112(c), articles of organization may also contain statements as to matters other than those required by subsection (b) of this section. However, a statement in articles of organization is not effective as a statement of authority.

(e) The following rules apply:

(i) A limited liability company is formed when the articles of organization become effective, unless the articles state a delayed effective date pursuant to W.S. 17-29-205(c);

(ii) If the articles state a delayed effective date, a limited liability company is not formed if, before the articles take effect, a statement of cancellation is signed and delivered to the secretary of state for filing and the secretary of state files the articles;

(iii) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the articles of organization by the secretary of state is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

**17-29-202. Amendment or restatement of articles of organization.**

(a) Articles of organization may be amended or restated at any time. Articles of organization shall be amended when:

(i) There is a change in the name of the limited liability company;

(ii) There is a false or erroneous statement in the articles of organization.

(b) To amend its articles of organization, a limited liability company must deliver to the secretary of state for filing an amendment stating:

(i) The name of the company;

(ii) The date of filing of its articles of organization; and

(iii) The changes the amendment makes to the articles as most recently amended or restated.

(c) To restate its articles of organization, a limited liability company shall deliver to the secretary of state for filing a restatement, designated as such in its heading, stating:

(i) In the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial articles of organization; and

(ii) The changes the restatement makes to the articles as most recently amended or restated.

(d) Subject to W.S. 17-29-112(c) and 17-29-205(c), an amendment to or restatement of articles of organization is effective when delivered for filing with the secretary of state.

(e) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in filed articles of organization was inaccurate when the articles were filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(i) Cause the articles to be amended; or

(ii) If appropriate, deliver to the secretary of state for filing a statement of correction under W.S. 17-28-102 or a statement of correction under W.S. 17-29-206.

**17-29-203. Signing of records to be delivered for filing to secretary of state.**

(a) A record delivered to the secretary of state for filing pursuant to this chapter shall be signed as follows:

(i) Except as otherwise provided in paragraphs (ii) through (iv) of this subsection, a record signed on behalf of a limited liability company shall be signed by a person authorized by the company;

(ii) A limited liability company's initial articles of organization shall be signed by at least one (1) person acting as an organizer;

(iii) Reserved;

(iv) A record filed on behalf of a dissolved limited liability company that has no members shall be signed by the person winding up the company's activities under W.S. 17-29-702(c) or a person appointed under W.S. 17-29-702(d) to wind up those activities;

(v) A statement of cancellation under W.S. 17-29-201(e)(ii) shall be signed by each organizer that signed the initial articles of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent;

(vi) A statement of denial by a person under W.S. 17-29-303 shall be signed by that person; and



(vii) Any other record shall be signed by the person on whose behalf the record is delivered to the secretary of state.

(b) Any record filed under this chapter may be signed by an agent.

**17-29-204. Signing and filing pursuant to judicial order.**

(a) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing under this chapter does not do so, any other person that is aggrieved may petition the appropriate court to order:

(i) The person to sign the record;

(ii) The person to deliver the record to the secretary of state for filing; or

(iii) The secretary of state to file the record unsigned.

(b) If a petitioner under subsection (a) of this section is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

**17-29-205. Delivery to and filing of records by secretary of state; effective time and date.**

(a) A record authorized or required to be delivered to the secretary of state for filing under this chapter shall be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the filing fees required by this act or other law and any past due fees, taxes or penalties have been paid, unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, the secretary of state shall file the record and:

(i) For a statement of denial under W.S. 17-29-303, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(ii) For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(b) Upon request and payment of the requisite fee, the secretary of state shall send to the requester a certified copy of a requested record.

(c) Except as otherwise provided in W.S. 17-28-103 and 17-29-206, a record delivered to the secretary of state for filing under this article shall be effective as provided in W.S. 17-16-123.

**17-29-206. Correcting filed record.**

(a) A limited liability company or foreign limited liability company may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the company to the secretary of state and filed by the secretary of state, if at the time of filing the record contained inaccurate information or was defectively signed.

(b) A statement of correction under subsection (a) of this section may not state a delayed effective date and shall:

(i) Describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(ii) Specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(iii) Correct the defective signature or inaccurate information.

(c) When filed by the secretary of state, a statement of correction under subsection (a) of this section is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(i) For the purposes of W.S. 17-29-103(d); and

(ii) As to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

**17-29-207. Liability for inaccurate information in filed record.**

(a) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(i) A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(ii) Subject to subsection (b) of this section, a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(A) The record was delivered for filing on behalf of the company; and

(B) The member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(I) Effected an amendment under W.S. 17-29-202;

(II) Filed a petition under W.S. 17-29-204; or

(III) Delivered to the secretary of state for filing a statement of correction under W.S. 17-28-102 or a statement of correction under W.S. 17-29-206.

(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the secretary of state for filing under this chapter and imposes that responsibility on one (1) or more other members, the liability stated in paragraph (a)(ii) of this section applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(c) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

**17-29-208. Certificate of existence or authorization.**

(a) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the secretary of state show that the company has been formed under W.S. 17-29-201 and the secretary of state has not filed articles of dissolution pertaining to the company. A certificate of existence shall state:

(i) The company's name;

(ii) That the company was duly formed under the laws of this state and the date of formation;

(iii) Whether all fees, taxes and penalties due under this chapter or other law to the secretary of state have been paid;

(iv) Whether the company's most recent annual report required by W.S. 17-29-209 has been filed by the secretary of state;

(v) Whether the secretary of state has administratively dissolved the company;

(vi) Whether the company has delivered to the secretary of state for filing articles of dissolution;

(vii) Reserved; and

(viii) Other facts of record in the office of the secretary of state which are specified by the person requesting the certificate.

(b) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the secretary of state is conclusive evidence that the limited liability company is in existence.

**17-29-209. Annual report for secretary of state.**

(a) Every limited liability company organized under the laws of this state and every foreign limited liability company which obtains a certificate of authority to transact and carry on business within this state shall file with the secretary of state on or before the first day of the month of organization of every year a certification, under the penalty of perjury, by its treasurer or other fiscal agent setting forth its capital, property and assets located and employed in the state of Wyoming. The statement shall give the address of its principal office. On or before the first day of the month of organization of every year the limited liability company or foreign limited liability company shall pay to the secretary of state in addition to all other statutory taxes and fees a license fee based upon the sum of its capital, property and assets reported, of fifty dollars (\$50.00) or two-tenths of one mill on the dollar (\$.0002), whichever is greater.

(b) The provisions of subsection (a) of this section shall be modified as follows:

(i) Any limited liability company or foreign limited liability company engaged in the public calling of carrying goods, passengers or information interstate is not required to comply with the provisions of subsection (a) of this section except to the extent of capital, property and assets used in intrastate business in this state;

(ii) The value of all mines and mining claims from which gold, silver and other precious metals, soda, saline, coal, mineral oil or other valuable deposit, is or shall be produced is deemed equivalent to the assessed value of the gross product thereof, for the previous year;

(iii) The assessed value of any property shall be its actual value.

(c) Financial information in the annual report shall be current as of the end of the limited liability company's or foreign limited liability company's fiscal year immediately preceding the date the annual report is executed on behalf of the company. All other information in the annual report shall be current as of the date the annual report is executed on behalf of the company.

(d) If an annual report does not contain the information required by this section, the secretary of state shall promptly

notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(e) Every limited liability company or foreign limited liability company registered or authorized to do business in the state of Wyoming shall preserve for three (3) years at its principal place of business, suitable records and books as may be necessary to determine the amount of fee for which it is liable under this section. All records and books shall be available for examination by the secretary of state or his designee during regular business hours except as arranged by mutual consent.

**17-29-210. Fees; annual fee.**

(a) The secretary of state shall charge and collect fees from limited liability companies and foreign limited liability companies for:

(i) Filing the original articles of organization or issuing a certificate of authority for a foreign limited liability company, one hundred dollars (\$100.00);

(ii) For amending the articles of organization, a filing fee of fifty dollars (\$50.00);

(iii) An annual fee accompanying the report required in W.S. 17-29-209, due and payable on or before the date of the filing under W.S. 17-29-209;

(iv) Filing, service and copying fees for those services provided by his office for which a fee is not otherwise established. A fee shall not exceed the cost of providing the service.

(b) Except for articles of organization, any document to be filed with the secretary of state shall be signed by the member, members, manager, managers or other authorized individual as set forth in the operating agreement. A person signing a document, including the articles of organization, he knows is false in any material respect with intent that the document be delivered to the secretary of state for filing under this act is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00), by imprisonment for not more than six (6) months, or both.

(c) Any foreign limited liability company transacting business in this state without obtaining a certificate of authority as required by W.S. 17-16-1501 and 17-29-114 is subject to the penalties provided by W.S. 17-16-1502(d).

**17-29-211. Series of members, managers, transferable interests or assets.**

(a) An operating agreement may establish or provide for the establishment of one (1) or more designated series of members, managers, transferable interests or assets. This section shall govern any matter with respect to a series to the extent not otherwise provided in the operating agreement.

(b) Subject to subsection (c) of this section, if an operating agreement establishes or provides for the establishment of a particular series:

(i) The debts, obligations or other liabilities of the particular series, whether arising in contract, tort or otherwise, shall be enforceable against the assets of the series only and not against:

(A) The assets of the limited liability company generally or any other series thereof;

(B) Any member of the limited liability company.

(ii) The debts, obligations or other liabilities of the limited liability company generally or any other series thereof, whether arising in contract, tort or otherwise, shall not be enforceable against the assets of the particular series.

(c) The limitations on liabilities in subsection (b) of this section shall only apply if:

(i) The records for the particular series that account for the assets of the series are separately maintained from the records that account for the assets of the limited liability company or any other series thereof. Records that reasonably identify the assets of a particular series, including by specific listing, category, type, quantity, computational or allocational formula or procedure such as a percentage or share of assets or by any other method where the identity of the assets is objectively determinable, shall be deemed to account for the assets of the particular series separately from the

assets of the limited liability company or any other series thereof;

(ii) The operating agreement specifically provides for the limitations on liabilities; and

(iii) Notice of the limitations on liabilities of the particular series is included in the articles of organization. Notice under this paragraph shall be sufficient whether or not the limited liability company has established or referenced any particular series in the notice.

(d) Nothing in this section, an operating agreement or articles of organization shall restrict:

(i) A series or limited liability company on behalf of a series from agreeing in the operating agreement or otherwise that any or all of the debts, obligations or other liabilities of the limited liability company generally or any other series thereof shall be enforceable against the assets of the series;

(ii) A limited liability company from agreeing in the operating agreement or otherwise that any or all of the debts, obligations or other liabilities of a series shall be enforceable against the assets of the limited liability company generally; or

(iii) Notwithstanding W.S. 17-29-304(a), a member or manager from agreeing in the operating agreement or otherwise to be personally liable for any or all of the debts, obligations or other liabilities of a series.

(e) A series established under this section shall have the power and capacity to, in its own name, contract, hold title to assets including real, personal and intangible property, grant liens and security interests and sue and be sued. A series may:

(i) Have separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations;

(ii) Carry on any lawful purpose regardless of whether for profit, except for the purpose of acting as a financial institution or acting as an insurer as defined in W.S. 26-1-102(a) (xvi);



(iii) Hold assets directly or indirectly, including in the name of the series or the name of the limited liability company.

(f) An operating agreement that establishes or provides for the establishment of a series may:

(i) Provide for classes or groups of members or managers of the series having the relative rights, powers and duties specified in the operating agreement;

(ii) Provide for and specify the future creation of additional classes or groups of members or managers of the series having the relative rights, powers and duties as may be established, including rights, powers and duties senior to existing classes and groups of members or managers of the series;

(iii) Provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers of the series;

(iv) Provide that any member or class or group of members of a series shall have no voting rights;

(v) Grant to all or certain identified members or managers or class or group of members or managers of the series the right to vote on any matter separately or with all or any class or group of members or managers of the series. Voting by members or managers may be on a per capita, number, financial interest, class, group or other basis.

(g) The management of a series shall be vested as follows:

(i) In the members of the series pursuant to W.S. 17-29-407(b). A member shall cease to be a member of a series upon the divestment of all of the member's transferable interests of the series. The fact that a person ceases to be a member of a particular series shall not by itself cause the person to cease to be a member of the limited liability company or any other series thereof or cause the termination of the series, regardless of whether the person was the last remaining member of the series; or

(ii) If the operating agreement provides for the management of the series in whole or in part by a manager, the management shall be vested in one (1) or more managers who shall be chosen as provided in the operating agreement and who shall hold the offices and have the responsibilities as specified in the agreement. A manager shall cease to be a manager of a series as provided in an operating agreement and subject to W.S. 17-29-407(c)(v). The fact that a person ceases to be a manager of a particular series shall not by itself cause the person to cease to be a manager of the limited liability company or any other series thereof.

(h) Notwithstanding W.S. 17-29-404 and subject to subsections (j) and (m) of this section, if a member of a series becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution. An operating agreement may provide for the establishment of a record date for allocations and distributions associated with a series.

(j) Notwithstanding W.S. 17-29-405(a), a limited liability company may make a distribution with respect to a series that has been established under this section unless the total assets of the series after the distribution would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon winding up and termination of members whose preferential rights are superior to those of the persons receiving the distribution. A member that receives a distribution knowing that the distribution was made in violation of this subsection is personally liable to the series for the amount of the distribution. This subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution, except that any action under this subsection shall be subject to W.S. 17-29-406(e). For purposes of this subsection, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

(k) Subject to W.S. 17-29-702, a series established under this section may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of the series shall not affect the limitations on

liabilities of the series as provided in subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the occurrence of any of the following:

(i) The dissolution of the limited liability company under W.S. 17-29-702;

(ii) The time or happening of events specified in the operating agreement;

(iii) The vote or consent of members of the series who own more than two-thirds (2/3) of the interests in the profits of the series; or

(iv) On application by a member or manager of the series, the entry of a court order terminating the series on the grounds that it is not reasonably practicable to carry on the purposes of the series in conformity with the operating agreement.

(m) A person winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and the series, take all actions with respect to the series as authorized by W.S. 17-29-702. The person shall provide for the claims and obligations of the series and distribute the assets of the series as provided in W.S. 17-29-708. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee appointed in accordance with this subsection. Notwithstanding W.S. 17-29-702, the following persons may wind up the affairs of a series:

(i) A manager of the series who has not wrongfully terminated the series;

(ii) If the series has no manager who qualifies under paragraph (i) of this subsection, the members of the series or a person approved by the members;

(iii) The members who own more than fifty (50%) percent of the interests in the profits of the series;

(iv) On application of a member or manager of the series or any personal representative or assignee of the member or manager, and upon cause shown, a court or a liquidating trustee appointed by the court.

(n) A foreign limited liability company doing business in this state and governed by an operating agreement that establishes or provides for the establishment of one (1) or more designated series of members, managers, transferable interests or assets shall state the following on its certificate of authority:

(i) That the operating agreement of the foreign limited liability company establishes or provides for the establishment of series having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations;

(ii) If any of the debts, obligations or other liabilities of any particular series, whether arising in contract, tort or otherwise, shall be enforceable against the assets of the particular series only and not against the assets of the foreign limited liability company generally or any other series thereof;

(iii) If any of the debts, obligations or other liabilities of the foreign limited liability company generally or any other series thereof, whether arising in contract, tort or otherwise, shall be enforceable against the assets of the particular series.

ARTICLE 3  
RELATIONS OF MEMBERS AND MANAGERS  
TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

**17-29-301. No agency power of member as member.**

(a) A member is not an agent of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

**17-29-302. Statement of authority.**

(a) A limited liability company may deliver to the secretary of state for filing a statement of authority. The statement:

(i) Shall include the name of the company and the street and mailing addresses of its designated office;

(ii) With respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(A) Execute an instrument transferring real property held in the name of the company; or

(B) Enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(iii) May state the authority, or limitations on the authority, of a specific person to:

(A) Execute an instrument transferring real property held in the name of the company; or

(B) Enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) To amend or cancel a statement of authority filed by the secretary of state under W.S. 17-29-205(a), a limited liability company shall deliver to the secretary of state for filing an amendment or cancellation stating:

(i) The name of the company;

(ii) The street and mailing addresses of the company's designated office;

(iii) The caption of the statement being amended or cancelled and the date the statement being affected became effective; and

(iv) The contents of the amendment or a declaration that the statement being affected is cancelled.

(c) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(d) Subject to subsection (c) of this section and W.S. 17-29-103(d) and except as otherwise provided in subsections (f), (g) and (h) of this section, a limitation on the authority

of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(e) Subject to subsection (c) of this section, a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(i) The person has knowledge to the contrary;

(ii) The statement has been cancelled or restrictively amended under subsection (b) of this section; or

(iii) A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c) of this section, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(i) The statement has been cancelled or restrictively amended under subsection (b) of this section and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(ii) A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later effective statement is recorded in the office for recording transfers of the real property.

(g) Subject to subsection (c) of this section, if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(h) Subject to subsection (j) of this section, an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (f) of this section and is a limitation on authority for the purposes of subsection (g) of this section.

(j) After a statement of dissolution becomes effective, a limited liability company may deliver to the secretary of state for filing and, if appropriate, may record a statement of authority that is designated as a post dissolution statement of authority. The statement operates as provided in subsections (f) and (g) of this section.

(k) Unless earlier cancelled, an effective statement of authority is cancelled by operation of law five (5) years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g) of this section.

(m) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of paragraph (f)(i) of this section.

#### **17-29-303. Statement of denial.**

(a) A person named in a filed statement of authority granting that person authority may deliver to the secretary of state for filing a statement of denial that:

(i) Provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(ii) Denies the grant of authority.

#### **17-29-304. Liability of members and managers.**

(a) The debts, obligations or other liabilities of a limited liability company, whether arising in contract, tort or otherwise:

(i) Are solely the debts, obligations or other liabilities of the company; and

(ii) Do not become the debts, obligations or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(b) Repealed by Laws 2016, ch. 54, § 2.

(c) For purposes of imposing liability on any member or manager of a limited liability company for the debts, obligations or other liabilities of the company, a court shall consider only the following factors no one (1) of which, except fraud, is sufficient to impose liability:

(i) Fraud;

(ii) Inadequate capitalization;

(iii) Failure to observe company formalities as required by law; and

(iv) Intermingling of assets, business operations and finances of the company and the members to such an extent that there is no distinction between them.

(d) In any analysis conducted under subsection (c) of this section, a court shall not consider factors intrinsic to the character and operation of a limited liability company, whether a single or multiple member limited liability company. Factors intrinsic to the character and operation of a limited liability company include but are not limited to:

(i) The ability to elect treatment as a disregarded or pass-through entity for tax purposes;

(ii) Flexible operation or organization including the failure to observe any particular formality relating to the exercise of the company's powers or management of its activities;

(iii) The exercise of ownership, influence and governance by a member or manager;

(iv) The protection of members' and managers' personal assets from the obligations and acts of the limited liability company.

#### ARTICLE 4



RELATIONS OF MEMBERS TO EACH OTHER AND TO THE LIMITED LIABILITY  
COMPANY

**17-29-401.   Becoming a member.**

(a) If a limited liability company is to have only one (1) member upon formation, the person becomes a member as determined by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company is to have more than one (1) member upon formation, those persons become members as agreed by them. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) Reserved.

(d) After formation of a limited liability company, a person becomes a member:

(i) As provided in the operating agreement;

(ii) As the result of a transaction effective under article 10 of this chapter;

(iii) With the consent of all the members; or

(vi) If, within ninety (90) consecutive days after the company ceases to have any members:

(A) The last person to have been a member, or the legal representative of that person, designates a person to become a member; and

(B) The designated person consents to become a member.

(e) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

**17-29-402.   Form of contribution.**

A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property and contracts for services to be performed.

**17-29-403. Liability for contributions.**

A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

**17-29-404. Sharing of and right to distributions before dissolution.**

(a) Any distributions made by a limited liability company before its dissolution and winding up shall be in equal shares among members and dissociated members, except:

(i) To the extent otherwise provided in a written or verbal operating agreement as set forth in W.S. 17-29-110;

(ii) To the extent necessary to comply with any transfer effective under W.S. 17-29-502 and any charging order in effect under W.S. 17-29-503; or

(iii) To the extent otherwise represented by the company through an authorized representative in tax filings with the Internal Revenue Service in which the status elected by the company is not timely disputed by any member.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in W.S. 17-29-708(c), a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each

person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

**17-29-405. Limitations on distribution.**

(a) A limited liability company shall not make a distribution if after the distribution:

(i) The company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or

(ii) The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (f) of this section, the effect of a distribution under subsection (a) of this section is measured:

(i) In the case of a distribution by purchase, redemption or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

(ii) In all other cases, as of the date:

(A) The distribution is authorized, if the payment occurs within one hundred twenty (120) days after that date; or

(B) The payment is made, if the payment occurs more than one hundred twenty (120) days after the distribution is authorized.

(d) Except as otherwise expressly agreed in writing, a limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.

(e) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (a) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In subsection (a) of this section, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

#### **17-29-406. Liability for improper distributions.**

(a) Except as otherwise provided in subsection (b) of this section, if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of W.S. 17-29-405 and in consenting to the distribution fails to comply with W.S. 17-29-409, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of W.S. 17-29-405.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one (1) or more other members, the liability stated in subsection (a) of this section applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of W.S. 17-29-405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under W.S. 17-29-405.

(d) A person against which an action is commenced because the person is liable under subsection (a) of this section may:

(i) Implead any other person that is subject to liability under subsection (a) of this section and seek to compel contribution from the person; and

(ii) Implead any person that received a distribution in violation of subsection (c) of this section and seek to compel contribution from the person in the amount the person received in violation of subsection (c) of this section.

(e) An action under this section is barred if not commenced within two (2) years after the distribution.

**17-29-407. Management of limited liability company.**

(a) A limited liability company is a member-managed limited liability company unless the articles of organization or the operating agreement:

(i) Expressly provides that:

(A) The company is or will be "manager-managed";

(B) The company is or will be "managed by managers"; or

(C) Management of the company is or will be "vested in managers"; or

(ii) Includes words of similar import.

(b) In a member-managed limited liability company, unless the articles of organization or the operating agreement provide otherwise, the following rules apply:

(i) The management and conduct of the company are vested in the members;

(ii) Each member has equal rights in the management and conduct of the company's activities except:

(A) That a member's interest is otherwise defined in W.S. 17-29-102(a)(xxiv);

(B) To the extent otherwise provided in any other provision in this chapter; or

(C) To the extent otherwise represented by the company through an authorized representative in tax filings with the Internal Revenue Service in which the status elected by the company is not timely disputed by any member.

(iii) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members;

(iv) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members;

(v) The operating agreement may be amended only with the consent of all members.

(c) In a manager-managed limited liability company, unless the articles of organization or the operating agreement provide otherwise, the following rules apply:

(i) Except as otherwise expressly provided in this chapter, any matter relating to the activities of the company is decided exclusively by the managers;

(ii) Each manager has equal rights in the management and conduct of the activities of the company;

(iii) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers;

(iv) The consent of all members is required to:

(A) Sell, lease, exchange or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities;

(B) Approve a merger, conversion, continuance, transfer or domestication under article 10 of this chapter;

(C) Undertake any other act outside the ordinary course of the company's activities; and

(D) Amend the operating agreement.

(v) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause;

(vi) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member;

(vii) A person's ceasing to be a manager does not discharge any debt, obligation or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the consent of members under this article may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) This article does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

**17-29-408. Indemnification and insurance.**

(a) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation or other liability, the member or manager complied with the duties stated in W.S. 17-29-405 and 17-29-409.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status.

**17-29-409. Standards of conduct for members and managers.**

(a) A member of a member-managed limited liability company owes to the company and, subject to W.S. 17-29-901(b), the other members the fiduciary duties of loyalty and care stated in subsections (b) and (c).

(b) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(i) To account to the company and to hold as trustee for it any property, profit or benefit derived by the member:

(A) In the conduct or winding up of the company's activities;

(B) From a use by the member of the company's property; or

(C) From the appropriation of a limited liability company opportunity;

(ii) To refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(iii) To refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

(c) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company



in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests or at least not opposed to the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

(d) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) It is a defense to a claim under paragraph (b)(ii) of this section and any comparable claim in equity or at common law that the transaction was fair to or at least not opposed to the limited liability company.

(f) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) In a manager-managed limited liability company, the following rules apply:

(i) Subsections (a), (b), (c) and (e) of this section apply to the manager or managers and not the members;

(ii) The duty stated under paragraph (b)(iii) of this section continues until winding up is completed;

(iii) Subsection (d) of this section applies to the members and managers;

(iv) Subsection (f) of this section applies only to the members;

(v) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

**17-29-410. Right of members, managers and dissociated members to information.**

(a) In a member-managed limited liability company, the following rules apply:

(i) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter;

(ii) The company shall furnish to each member:

(A) On demand, any information concerning the company's activities, financial condition and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(B) On demand, any other information concerning the company's activities, financial condition and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(iii) The duty to furnish information under paragraph (ii) of this subsection also applies to each member to the extent the member knows any of the information described in paragraph (ii) of this subsection.

(b) In a manager-managed limited liability company, the following rules apply:

(i) The informational rights stated in subsection (a) of this section and the duty stated in paragraph (a)(iii) of this section apply to the managers and not the members;

(ii) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition and other circumstances of the company as is just and reasonable if:

(A) The member seeks the information for a purpose material to the member's interest as a member;

(B) The member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) The information sought is directly connected to the member's purpose.

(iii) Within ten (10) days after receiving a demand pursuant to subparagraph (ii)(B) of this subsection, the company shall in a record inform the member that made the demand:

(A) Of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(B) If the company declines to provide any demanded information, the company's reasons for declining.

(iv) Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, upon demand, provide the member with all information that is known to the company and is material to the member's decision.

(c) On ten (10) days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith and the person satisfies the requirements imposed on a member by paragraph (b)(ii) of this section. The company shall respond to a demand made pursuant to this subsection in the manner provided in paragraph (b)(iii) of this section.

(d) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(e) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or

under subsection (g) of this section applies both to the agent or legal representative and the member or dissociated member.

(f) The rights under this section do not extend to a person as transferee.

(g) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

ARTICLE 5  
TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES  
AND CREDITORS

**17-29-501. Nature of transferable interest.**

A transferable interest is personal property.

**17-29-502. Transfer of transferable interest.**

(a) A transfer, in whole or in part, of a transferable interest:

(i) Is permissible;

(ii) Except as otherwise provided in this chapter, does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(iii) Subject to W.S. 17-29-504, does not entitle the transferee to:

(A) Participate in the management or conduct of the company's activities; or

(B) Except as otherwise provided in subsection (c) of this section, have access to records or other information concerning the company's activities.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in W.S. 17-29-602(a)(iv)(B), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(h) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under W.S. 17-29-403 and 17-29-406(c) known to the transferee when the transferee becomes a member.

### **17-29-503. Charging order.**

(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(b) Reserved.

(c) Reserved.

(d) The member or transferee whose transferable interest is subject to a charging order under subsection (a) of this section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) A limited liability company or one (1) or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) This article does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(g) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a judgment debtor, including any judgment debtor who may be the sole member, dissociated member or transferee, may, in the capacity of the judgment creditor, satisfy the judgment from the judgment debtor's transferable interest or from the assets of the limited liability company. Other remedies, including foreclosure on the judgment debtor's limited liability interest and a court order for directions, accounts and inquiries that the judgment debtor might have made are not available to the judgment creditor attempting to satisfy a judgment out of the judgment debtor's interest in the limited liability company and may not be ordered by the court.

**17-29-504. Power of personal representative of deceased member.**

If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in W.S. 17-29-502(c) and, for the purposes of settling the estate, the rights of a current member under W.S. 17-29-410.

ARTICLE 6  
MEMBER'S DISSOCIATION

**17-29-601. Member's power to dissociate; wrongful dissociation.**

(a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under W.S. 17-29-602(a)(i).

(b) A person's dissociation from a limited liability company is wrongful only if the dissociation:

(i) Is in breach of an express provision of the operating agreement; or

(ii) Occurs before the termination of the company and:

(A) The person is expelled as a member by judicial order under W.S. 17-29-602(a)(v); or

(B) The person is dissociated under W.S. 17-29-602(a)(vii)(A) by becoming a debtor in bankruptcy.

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to W.S. 17-29-901, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation or other liability of the member to the company or the other members.

#### **17-29-602. Events causing dissociation.**

(a) A person is dissociated as a member from a limited liability company when:

(i) The company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;

(ii) An event stated in the operating agreement as causing the person's dissociation occurs;

(iii) The person is expelled as a member pursuant to the operating agreement;

(iv) The person is expelled as a member by the unanimous consent of the other members if:

(A) It is unlawful to carry on the company's activities with the person as a member;

(B) There has been a transfer of all of the person's transferable interest in the company, other than:

(I) A transfer for security purposes; or

(II) A charging order in effect under W.S. 17-29-503.

(C) The person is an entity as defined in W.S. 17-16-140(a)(xiii) and, within ninety (90) days after the company notifies the person that it will be expelled as a member because the person has filed articles of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the articles of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

(D) The person is some other entity not described in subparagraph (C) of this paragraph that has been dissolved and whose business is being wound up.

(v) On application by the company, the person is expelled as a member by judicial order because the person:

(A) Has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;

(B) Has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under W.S. 17-29-409; or

(C) Has engaged in, or is engaging in, conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member.

(vi) In the case of a person who is an individual:

(A) The person dies; or

(B) In a member-managed limited liability company:



(I) A guardian or general conservator for the person is appointed; or

(II) There is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under this chapter or the operating agreement.

(vii) In a member-managed limited liability company, the person:

(A) Becomes a debtor in bankruptcy;

(B) Executes an assignment for the benefit of creditors; or

(C) Seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the person or of all or substantially all of the person's property.

(viii) In the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;

(ix) In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed;

(x) In the case of a member that is not an individual, partnership, limited liability company, corporation, trust or estate, the termination of the member;

(xi) The company participates in a merger under article 10 of this chapter, if:

(A) The company is not the surviving entity; or

(B) Otherwise as a result of the merger, the person ceases to be a member.

(xii) The company participates in a conversion under article 10 of this chapter;

(xiii) The company participates in a continuance, transfer or domestication under article 10 of this chapter, if,

as a result of the continuance, transfer or domestication, the person ceases to be a member; or

(xiv) The company terminates.

**17-29-603. Effect of person's dissociation as member.**

(a) When a person is dissociated as a member of a limited liability company:

(i) The person's right to participate as a member in the management and conduct of the company's activities terminates;

(ii) If the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(iii) Subject to W.S. 17-29-504 and article 10 of this chapter, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

(b) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation or other liability to the company or the other members which the person incurred while a member.

ARTICLE 7  
DISSOLUTION AND WINDING UP

**17-29-701. Events causing dissolution.**

(a) A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

(i) An event or circumstance that the operating agreement or articles of organization states causes dissolution;

(ii) The consent of all the members;

(iii) The passage of ninety (90) consecutive days during which the company has no members;

(iv) On application by a member, the entry of a court order dissolving the company on the grounds that:

(A) The conduct of all or substantially all of the company's activities is unlawful; or

(B) It is not reasonably practicable to carry on the company's activities in conformity with the articles of organization and the operating agreement; or

(v) On application by a member or dissociated member, the entry of a court order dissolving the company on the grounds that the managers or those members in control of the company:

(A) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(B) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

(b) In a proceeding brought under paragraph (a)(v) of this section, the court may order a remedy other than dissolution.

#### **17-29-702. Winding up.**

(a) A dissolved limited liability company shall wind up its activities and the company continues after dissolution only for the purpose of winding up.

(b) In winding up its activities, a limited liability company:

(i) Shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities and marshal and distribute the assets of the company; and

(ii) May:

(A) Deliver to the secretary of state for filing articles of dissolution stating the name of the company and that the company is dissolved;

(B) Preserve the company activities and property as a going concern for a reasonable time;

(C) Prosecute and defend actions and proceedings, whether civil, criminal or administrative;

- (D) Transfer the company's property;
- (E) Settle disputes by mediation or arbitration;
- (F) Reserved; and
- (G) Perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under W.S. 17-29-407(c) and is deemed to be a manager for the purposes of W.S. 17-29-304(a)(ii).

(d) If the legal representative under subsection (c) of this section declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

- (i) Has the powers of a sole manager under W.S. 17-29-407(c) and is deemed to be a manager for the purposes of W.S. 17-29-304(a)(ii); and

- (ii) Shall promptly deliver to the secretary of state for filing an amendment to the company's articles of organization to:

- (A) State that the company has no members;
  - (B) State that the person has been appointed pursuant to this subsection to wind up the company; and
  - (C) Provide the street and mailing addresses of the person.

(e) A court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:

- (i) On application of a member, if the applicant establishes good cause;

- (ii) On the application of a transferee, if:

(A) The company does not have any members;

(B) The legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(C) Within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (c) of this section; or

(iii) In connection with a proceeding under W.S. 17-29-701(a)(iv) or (v).

**17-29-703. Known claims against dissolved limited liability company.**

(a) Except as otherwise provided in subsection (d) of this section, a dissolved limited liability company may give notice of a known claim under subsection (b) of this section, which has the effect as provided in subsection (c) of this section.

(b) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice shall:

(i) Specify the information required to be included in a claim;

(ii) Provide a mailing address to which the claim is to be sent;

(iii) State the deadline for receipt of the claim, which may not be less than one hundred twenty (120) days after the date the notice is received by the claimant; and

(iv) State that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) of this section are met and:

(i) The claim is not received by the specified deadline; or

(ii) If the claim is timely received but rejected by the company:

(A) The company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within ninety (90) days after the claimant receives the notice; and

(B) The claimant does not commence the required action within the ninety (90) days.

(d) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

**17-29-704. Other claims against dissolved limited liability company.**

(a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) The notice authorized by subsection (a) of this section shall:

(i) Be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the county in which the company's designated office is or was last located;

(ii) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(iii) State that a claim against the company is barred unless an action to enforce the claim is commenced within three (3) years after publication of the notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b) of this section, unless the claimant commences an action to enforce the claim against the company within three (3) years after the publication date of the notice, the claim of each of the following claimants is barred:

(i) A claimant that did not receive notice in a record under W.S. 17-29-703;

(ii) A claimant whose claim was timely sent to the company but not acted on; and

(iii) A claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(d) A claim not barred under this section or W.S. 17-29-703(c) may be enforced:

(i) Against a dissolved limited liability company, to the extent of its undistributed assets; and

(ii) If assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

**17-29-705. Administrative forfeiture of authority and articles of organization.**

(a) If any limited liability company's registered agent has filed its resignation with the secretary of state and the limited liability company has not replaced its registered agent and registered office, or the limited liability company is without a registered agent or registered office in this state for any reason, it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof and the forfeiture shall be made effective in the following manner. The secretary of state shall mail by first class mail, or by electronic means if the limited liability company has consented to receive notices electronically, a notice of its failure to comply with aforesaid provisions. Unless compliance is made within sixty (60) days of mailing or electronic submission of the notice, the limited liability company shall be deemed defunct and to have forfeited its articles of organization acquired under the laws of this state. Provided, that any defunct limited liability company may at any time within two (2) years after the forfeiture of its articles of

organization or certificate of authority, in the manner herein provided, be revived and reinstated, by filing the necessary statement under this act and paying a reinstatement fee established by the secretary of state by rule, together with a penalty of two hundred fifty dollars (\$250.00). The reinstatement fee shall not exceed the costs of providing the reinstatement service. The limited liability company shall retain its registered name during the two (2) year reinstatement period under this section.

(b) If any limited liability company has failed to pay the fee required by W.S. 17-29-210 or any penalties imposed under W.S. 17-28-109, it shall be deemed to be transacting business within this state without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof. The forfeiture shall be made effective in the following manner. The secretary of state shall provide notice to the limited liability company at its last known mailing address by first class mail. Unless compliance is made within sixty (60) days of the date of notice the limited liability company shall be deemed defunct and to have forfeited its articles of organization or certificate of authority acquired under the laws of this state. Provided, that any defunct limited liability company may at any time within two (2) years after the forfeiture of its articles of organization or certificate of authority, be revived and reinstated by paying the amount of the delinquent fees. When the reinstatement is effective, it relates back to and takes effect as of the effective date deemed defunct pursuant to this subsection and the limited liability company resumes carrying on its business as if it had never been deemed defunct.

(c) A limited liability company shall be deemed to be transacting business within this state without authority, to have forfeited any franchises, rights or privileges acquired under the laws thereof and shall be deemed defunct and to have forfeited its articles of organization or certificate of authority acquired under the laws of this state, and the forfeiture shall be made effective in the manner provided in subsection (a) of this section, if:

(i) A member of the limited liability company signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing;



(ii) The limited liability company has failed to respond to a valid and enforceable subpoena; or

(iii) It is in the public interest and the limited liability company or any of its members:

(A) Failed to provide records to the registered agent as required in this chapter;

(B) Has provided fraudulent information or has failed to correct false information upon request of the secretary of state on any filing with the secretary of state under this chapter; or

(C) Cannot be served by either the registered agent or by mail by the secretary of state acting as the agent for process.

(d) The secretary of state may classify a limited liability company as delinquent awaiting forfeiture of its articles of organization or certificate of authority at the time the secretary of state mails the notice required under subsections (a) through (c) of this section to the limited liability company.

(e) In addition to the other provisions of this section, if any low profit limited liability company has ceased to meet the definition of a low profit limited liability company as provided in W.S. 17-29-102(a)(ix) and has failed for thirty (30) days after ceasing to meet the definition to file an amendment to its articles of organization with the secretary of state amending its name to conform with the requirements of W.S. 17-29-108, it shall be deemed to be transacting business in this state without authority and to have forfeited any franchises, rights or privileges acquired under the laws thereof and the forfeiture shall be made effective in the same manner as provided in subsection (a) of this section. The reinstatement provisions and fees provided in subsection (a) of this section shall apply.

**17-29-706. Reserved.**

**17-29-707. Appeal from rejection of reinstatement.**

Appeals of decisions of the secretary of state under this article may be made as provided in W.S. 17-16-1423.

**17-29-708. Distribution of assets in winding up limited liability company's activities.**

(a) In winding up its activities, a limited liability company shall apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a) of this section, any surplus shall be distributed in the following order, subject to any charging order in effect under W.S. 17-29-503:

(i) To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(ii) In equal shares among members and dissociated members, except:

(A) To the extent otherwise provided in a written or verbal operating agreement as set forth in W.S. 17-29-110;

(B) To the extent necessary to comply with any transfer effective under W.S. 17-29-502; or

(C) To the extent otherwise represented by the company through an authorized representative in tax filings with the Internal Revenue Service in which the status elected by the company is not timely disputed by any member.

(c) If a limited liability company does not have sufficient surplus to comply with paragraph (b)(i) of this section, any surplus shall be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(d) Repealed by Laws 2017, ch. 51, § 2.

ARTICLE 8  
RESERVED

ARTICLE 9  
ACTIONS BY MEMBERS

**17-29-901. Direct action by member.**

(a) Subject to subsection (b) of this section, a member may maintain a direct action against another member, a manager or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(b) A member maintaining a direct action under this section shall plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

#### **17-29-902. Derivative action.**

(a) A member may maintain a derivative action to enforce a right of a limited liability company if:

(i) The member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or

(ii) A demand under paragraph (i) of this subsection would be futile.

#### **17-29-903. Proper plaintiff.**

(a) Except as otherwise provided in subsection (b) of this section, a derivative action under W.S. 17-29-902 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

(b) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

#### **17-29-904. Pleading.**

(a) In a derivative action under W.S. 17-29-902, the complaint shall state with particularity:

(i) The date and content of plaintiff's demand and the response to the demand by the managers or other members; or

(ii) If a demand has not been made, the reasons a demand under W.S. 17-29-902(a)(i) would be futile.

**17-29-905. Special litigation committee.**

(a) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person's right to information under W.S. 17-29-410 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee may be composed of one (1) or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

(i) In a member-managed limited liability company:

(A) By the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(B) If all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(ii) In a manager-managed limited liability company:

(A) By a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(B) If all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

- (i) Continue under the control of the plaintiff;
- (ii) Continue under the control of the committee;
- (iii) Be settled on terms approved by the committee;

or

- (iv) Be dismissed.

(e) After making a determination under subsection (d) of this section, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to proceed under the direction of the plaintiff.

#### **17-29-906. Proceeds and expenses.**

(a) Except as otherwise provided in subsection (b) of this section:

(i) Any proceeds or other benefits of a derivative action under W.S. 17-29-902, whether by judgment, compromise or settlement, belong to the limited liability company and not to the plaintiff; and

(ii) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(b) If a derivative action under W.S. 17-29-902 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

#### **ARTICLE 10**

MERGER, CONVERSION, CONTINUANCE, TRANSFER AND DOMESTICATION

**17-29-1001. Definitions.**

(a) As used in this chapter:

(i) "Constituent limited liability company" means a constituent organization that is a limited liability company;

(ii) "Constituent organization" means an organization that is party to a merger;

(iii) "Converted organization" means the organization into which a converting organization converts pursuant to W.S. 17-29-1006;

(iv) "Converting limited liability company" means a converting organization that is a limited liability company;

(v) "Converting organization" means an organization that converts into another organization pursuant to W.S. 17-29-1006;

(vi) "Governing statute" means the statute that governs an organization's internal affairs;

(vii) "Organization" means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, statutory trust, corporation or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit;

(viii) "Organizational documents" means:

(A) For a domestic or foreign general partnership, its partnership agreement;

(B) For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) For a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) For a business or statutory trust, its agreement of trust, declaration of trust or certificate of trust;

(E) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws and other agreements among its shareholders which are authorized by its governing statute or comparable records as provided in its governing statute; and

(F) For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it or are members of it.

(ix) "Personal liability" means liability for a debt, obligation or other liability of an organization which is imposed on a person that co-owns, has an interest in or is a member of the organization:

(A) By the governing statute solely by reason of the person co-owning, having an interest in or being a member of the organization; or

(B) By the organization's organizational documents under a provision of the governing statute authorizing those documents to make one (1) or more specified persons liable for all or specified debts, obligations or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in or being a member of the organization.

(x) "Surviving organization" means an organization into which one (1) or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

#### **17-29-1002. Merger.**

(a) A limited liability company may merge with one (1) or more other constituent organizations pursuant to this section, W.S. 17-29-1003 through 17-29-1005 and a plan of merger, if:

(i) The governing statute of each of the other organizations authorizes the merger;

(ii) The merger is not expressly prohibited by the law of a jurisdiction that enacted any of the governing statutes;

(iii) Each of the other organizations complies with its governing statute in effecting the merger; and

(iv) No member of a domestic limited liability company that is a party to the merger will, as a result of the merger, become personally liable for the liabilities or obligations of any other person or entity unless that member approves the plan of merger and otherwise consents to becoming personally liable.

(b) A plan of merger shall be in a record and shall include:

(i) The name and form of each constituent organization;

(ii) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(iii) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization or other consideration;

(iv) If the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(v) If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

**17-29-1003. Action on plan of merger by constituent limited liability company.**

(a) Subject to W.S. 17-29-1014, a plan of merger shall be consented to by all the members of a constituent limited liability company.

(b) Subject to W.S. 17-29-1014 and any contractual rights, after a merger is approved, and at any time before articles of



merger are delivered to the secretary of state for filing under W.S. 17-29-1004, a constituent limited liability company may amend the plan or abandon the merger:

(i) As provided in the plan; or

(ii) Except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

**17-29-1004. Filings required for merger; effective date.**

(a) After each constituent organization has approved a merger, articles of merger shall be signed on behalf of:

(i) Each domestic constituent limited liability company, as provided in W.S. 17-29-203(a); and

(ii) Each other constituent organization, as provided in its governing statute.

(b) Articles of merger under this section shall include:

(i) The name and form of each constituent organization and the jurisdiction of its governing statute;

(ii) The name and form of the surviving organization, the jurisdiction of its governing statute and, if the surviving organization is created by the merger, a statement to that effect;

(iii) The date the merger is effective under the governing statute of the surviving organization;

(iv) If the surviving organization is to be created by the merger:

(A) If it will be a limited liability company, the company's articles of organization; or

(B) If it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record.

(v) If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(vi) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(vii) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that the secretary of state may use for the purposes of W.S. 17-29-1005(b); and

(viii) Any additional information required by the governing statute of any constituent organization.

(c) Each constituent limited liability company shall deliver the articles of merger for filing in the office of the secretary of state.

(d) A merger becomes effective under this chapter:

(i) If the surviving organization is a limited liability company, upon the later of:

(A) Compliance with subsection (c) of this section; or

(B) Subject to W.S. 17-29-205(c), as specified in the articles of merger; or

(ii) If the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

(e) If the secretary of state finds that the articles of merger comply with the requirements of law, that all required fees have been paid and a certificate has been requested, he shall issue a certificate of merger.

**17-29-1005. Effect of merger.**

(a) When a merger becomes effective:

(i) The surviving organization continues or comes into existence;

(ii) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(iii) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(iv) All debts, obligations or other liabilities of each constituent organization that ceases to exist continue as debts, obligations or other liabilities of the surviving organization;

(v) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(vi) Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(vii) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(viii) Except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of article 7 of this chapter;

(ix) If the surviving organization is created by the merger:

(A) If it is a limited liability company, the articles of organization becomes effective; or

(B) If it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

(x) If the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation or other liability owed by a constituent organization. A surviving organization that is a foreign organization and not authorized to transact business in

this state appoints the secretary of state as its agent for service of process for the purposes of enforcing a debt, obligation or other liability under this subsection.

**17-29-1006. Conversion.**

An organization other than a limited liability company may be converted to a limited liability company pursuant to chapter 26 of this title and the organization's governing statutes.

**17-29-1007. Reserved.**

**17-29-1008. Reserved.**

**17-29-1009. Effect of conversion.**

(a) The effect of an organization other than a limited liability company converting to a limited liability company shall be as provided in chapter 26 of this title and the organization's governing statutes.

(b) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation or other liability for which the converting limited liability company is liable. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation or other liability under this subsection.

**17-29-1010. Continuance.**

(a) Subject to subsection (b) of this section, any organization organized for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution under the laws of any foreign jurisdiction may, if the foreign jurisdiction will acknowledge that the organization's domicile has terminated in the foreign jurisdiction, apply to the secretary of state for registration under this act. The secretary of state may issue a certificate of registration upon receipt of an application supported by articles of continuance as provided by this act together with the statements, information and documents set out in subsection (c) of this section. The certificate of registration may then be issued continuing the organization in Wyoming as if it had been organized as a limited liability company in this state.

The certificate of registration may be subject to any limitations and conditions as may appear proper to the secretary of state.

(b) The secretary of state shall cause notice of issuance of a certificate of registration to be given forthwith to the proper officer of the foreign jurisdiction in which the organization was previously organized.

(c) The articles of continuance filed by a foreign organization with the secretary of state shall contain:

(i) A certified copy of its original articles of organization and all amendments thereto or its equivalent basic charter;

(ii) The names of the organization and the foreign jurisdiction in which it has previously been lawfully organized;

(iii) The date of organization;

(iv) The address of its principal mailing address;

(v) The name and address of the proposed registered agent in this state;

(vi) Reserved;

(vii) Repealed By Laws 2014, Ch. 65, § 2.

(viii) Repealed By Laws 2014, Ch. 65, § 2.

(ix) Repealed By Laws 2014, Ch. 65, § 2.

(x) Any additional information permitted in articles of organization under W.S. W.S. 17-29-201.

(d) The application shall be executed by the manager or managers if any or by any member who is authorized to execute the application on behalf of the organization.

(e) The provisions of the articles of continuance may, without expressly so stating, vary from the provisions of the organization's articles of organization or equivalent basic charter or other authorization, if the variation is one which a company organized under the Revised Uniform Limited Liability Company Act could effect by way of amendment to its articles of

organization. Upon issuance of a certificate of continuance by the secretary of state, the articles of continuance shall be deemed to be the articles of organization of the continued organization. The organization may elect to incorporate by reference in the articles of continuance its basic charter or other authorization which has been adopted by it in the foreign jurisdiction, in order to permit the same to continue to act as the articles of organization, provided, however, that the basic charter or other authorization shall be deemed amended to the extent necessary to make the same conform to the laws of Wyoming and to the provisions of the articles of continuance.

(f) Except for the purpose of W.S. 16-6-101 through 16-6-118, the existence of any organization heretofore or hereafter issued a certificate of continuation under this act shall be deemed to have commenced on the date the organization commenced its existence in the jurisdiction in which it was first formed, organized or otherwise came into being. The laws of Wyoming shall apply to an organization continuing under this act to the same extent as if it had been organized under the laws of Wyoming from and after the issuance of a certificate of continuation under this act by the secretary of state. When a foreign organization is continued under this act, the continuance shall not affect the ownership of its property, or its liability for any existing obligations, causes of action, claims, pending or threatened prosecution or civil or administration actions, convictions, rulings, orders or judgments.

(g) Continuance under this act does not deprive a member of any right or privilege that he claims under, or relieve any member of any liability in respect of, his membership.

**17-29-1011. Transfer of a Wyoming limited liability company to another jurisdiction.**

(a) A limited liability company created, domesticated or continued under this chapter may, if authorized by resolution duly adopted as set forth in subsection (f) of this section, and by the laws of any other jurisdiction, within or without the United States, apply to the proper officer of the other jurisdiction for a certificate of registration, and to the secretary of state of this state for a certificate of transfer. The application for certificate of transfer shall set forth the following:

(i) The name of the limited liability company immediately prior to the transfer, and if that name is unavailable for use in the foreign jurisdiction or the limited liability company desires to change its name in connection with the transfer, the name by which the limited liability company will be known in the foreign jurisdiction;

(ii) A statement of the jurisdiction to which the limited liability company is to be transferred;

(iii) A statement that the limited liability company shall surrender its articles of organization under this chapter upon the effectiveness of the transfer;

(iv) A statement that the transfer was duly approved by the members in the manner required under subsection (f) of this section; and

(v) Any other terms and conditions of the transfer, including any desired amendments to the articles of organization of the limited liability company following its transfer.

(b) The secretary of state shall require that the limited liability company maintain within the state an agent for service of process for at least one (1) year after the transfer is effected and shall impose any conditions he considers appropriate for the protection of creditors, including the provision of notice to the public of the application described in subsection (a) of this section, the provision of a bond or a deposit of funds in an appropriate depository located in Wyoming and subject to the jurisdiction of the courts of Wyoming, and if such conditions are not met, the secretary of state may refuse to issue a certificate of transfer.

(c) The secretary of state, upon compliance by the applicant and the secretary with subsections (a) and (b) of this section and receipt of payment of the special toll charge prescribed by subsection (e) of this section shall immediately transmit a notice of issuance of a certificate of transfer to the proper officer of the jurisdiction to which the limited liability company is transferred.

(d) Upon issuance of a certificate of transfer, the limited liability company shall be continued as if it had been organized under the laws of the other jurisdiction and becomes a limited liability company under the laws of the other

jurisdiction upon issuance by such jurisdiction of a certificate of registration.

(e) Every limited liability company organized, domesticated or continued under the laws of this state in order to receive a certificate of transfer pursuant to subsection (c) of this section shall pay to the secretary of state, in addition to all other statutory taxes and fees, a special toll charge of fifty dollars (\$50.00).

(f) A resolution to transfer the limited liability company to another jurisdiction shall be adopted by the members.

(g) The limited liability company may represent to the proper officer of the jurisdiction to which the limited liability company is transferred that the laws of the state of Wyoming permit such transfer, and may describe the permission extended by this section as authorizing the domestication, continuance or other transfer of domicile as may be required by the laws of the foreign jurisdiction in order for the limited liability company to be accepted in that jurisdiction, provided that the limited liability company may not misrepresent the requirements or effects of the provisions of this section.

**17-29-1012. Domestication of foreign limited liability companies.**

Any limited liability company created under the laws of any of the several states of the United States for any purpose except acting as an insurer as defined in W.S. 26-1-102(a)(xvi), or acting as a financial institution may become a domestic limited liability company of this state by delivering or causing to be delivered to the secretary of state articles of domestication. Upon filing the articles of domestication, the secretary of state shall issue to the foreign limited liability company a certificate of domestication which shall continue the company as if it had been created under this chapter. The articles of domestication, upon being filed by the secretary of state, constitute the articles of the domesticated foreign limited liability company and it shall thereafter have all the powers and privileges and be subjected to all the duties and limitations granted and imposed upon domestic limited liability companies under the provisions of the Revised Uniform Limited Liability Company Act.

**17-29-1013. Application for certificate of domestication; articles of domestication.**



(a) A foreign limited liability company, in order to procure a certificate of domestication shall file articles of domestication with the secretary of state, which articles shall include and set forth:

(i) A certified copy of its original articles of organization and all amendments thereto or its equivalent basic charter or other authorization, and a certificate of good standing not more than thirty (30) days old;

(ii) The name of the company and the jurisdiction under the laws of which it is created;

(iii) The date of organization and the period of duration of the company;

(iv) The address of the principal office of the company and the jurisdiction under the laws of which it is created;

(v) The address of the proposed registered office of the company in this state, and the name of its proposed registered agent in this state at that address;

(vi) Repealed By Laws 2014, Ch. 65, § 2.

(vii) Repealed By Laws 2014, Ch. 65, § 2.

(viii) Repealed By Laws 2014, Ch. 65, § 2.

(ix) Repealed By Laws 2014, Ch. 65, § 2.

(x) Any additional information permitted in articles of organization under W.S. 17-29-201.

**17-29-1014. Restrictions on approval of mergers, conversions, continuances, transfers and domestications.**

(a) If a member of a constituent, converting, continuing, transferring or domesticating limited liability company will have personal liability with respect to a surviving, converted, continued, transferred or domesticated organization, approval or amendment of a plan of merger, conversion, continuance, transfer or domestication are ineffective without the consent of the member, unless:

(i) The company's operating agreement provides for approval of a merger, conversion, continuance, transfer or domestication with the consent of fewer than all the members; and

(ii) The member has consented to the provision of the operating agreement.

(b) A member does not give the consent required by subsection (a) of this section merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

**17-29-1015. Article not exclusive.**

This article does not preclude an entity from being merged, converted, continued, transferred or domesticated under law other than this chapter.

ARTICLE 11  
MISCELLANEOUS PROVISIONS

**17-29-1101. Uniformity of application and construction.**

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**17-29-1102. Secretary of state powers.**

The secretary of state has the power reasonably necessary to perform the duties required of him by this chapter. The secretary of state shall promulgate reasonable rules and regulations necessary to carry out the purposes of this chapter.

**17-29-1103. Application to existing domestic limited liability companies.**

(a) Except as provided in subsection (b) of this section, this chapter applies to domestic limited liability companies in existence on July 1, 2010 that were organized under any general statute of this state providing for organization of limited liability companies.

(b) For limited liability companies organized in Wyoming prior to the effective date of this chapter, the management

provisions contained in former W.S. 17-15-116, the division of profits provisions contained in former W.S. 17-15-119, the distribution of assets upon dissolution provisions contained in former W.S. 17-15-126 and the stated term provisions contained in former W.S. 17-15-107(a)(ii) are continued for a period of four (4) years from the effective date of this chapter unless the limited liability company amends its articles of organization to provide otherwise.

**17-29-1104. Applications to qualified foreign limited liability companies.**

A foreign limited liability company authorized to transact business in this state on the effective date of this chapter is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

**17-29-1105. Saving provisions.**

(a) Except as provided in subsection (b) of this section, the repeal of a statute by this act does not affect:

(i) The operation of the statute or any action taken under it before its repeal;

(ii) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

(iii) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or

(iv) Any proceeding or dissolution commenced under the statute before its repeal, and the proceeding or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this act is reduced by this act, the penalty or punishment if not already imposed shall be imposed in accordance with this act.

ARTICLE 1  
GENERAL PROVISIONS

**17-30-101. Short title.**

This chapter may be cited as the "Wyoming Statutory Foundation Act".

**17-30-102. Definitions.**

(a) As used in this act:

(i) "Articles of formation" means the articles required by W.S. 17-30-303, including any amendments thereto and restatements thereof;

(ii) "Beneficiary" means a person designated as a beneficiary in the operating agreement of a statutory foundation, which may be any of the following:

(A) A person who has a present or future, vested or contingent, beneficial interest in the statutory foundation;

(B) If permitted under the terms in the operating agreement, a person designated as a beneficiary of the statutory foundation by the board of directors, at the discretion of the board of directors;

(C) A charitable organization, as defined in paragraph (v) of this subsection.

(iii) "Certificate of existence" means the certificate issued to a statutory foundation under W.S. 17-30-308;

(iv) "Certificate of registration" means the certificate of registration of a foreign foundation required under W.S. 17-30-1101;

(v) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of a health, governmental or municipal purpose or the achievement of other purposes which are beneficial to the community;

(vi) "Contributor" means any person, excluding a founder, who contributes property to a statutory foundation;

(vii) "Court" means the district court of the county where a statutory foundation has its registered office or another court of competent jurisdiction which is the most appropriate forum in the circumstances;

(viii) "Financial institution" means as defined in W.S. 13-1-101(a) (ix);

(ix) "Foreign foundation" means an entity formed under the law of a foreign jurisdiction as a statutory foundation, pursuant to the law of the foreign jurisdiction, or which appears to the secretary of state to possess characteristics sufficiently similar to those of a statutory foundation organized under this act;

(x) "Founder" or "organizer" means one (1) or more persons that acts under W.S. 17-30-303 to form a statutory foundation;

(xi) "Insolvency law" means title 11, United States Code or successor federal statutes of general application;

(xii) "Operating agreement" means the written agreement, whether or not designated as an operating agreement, of a founder of a statutory foundation concerning the matters described in W.S. 17-30-309, including any amendments thereto and restatements thereof;

(xiii) "Person" means as defined in W.S. 8-1-102(a) (vi);

(xiv) "Power" shall include discretion as to the way in which an act may be performed;

(xv) "Principal office" means the principal executive office of a statutory foundation or a foreign foundation, whether or not the office is located in this state;

(xvi) "Protector" means the person designated as a protector of a statutory foundation under W.S. 17-30-503;

(xvii) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(xviii) "Registered agent" means a person appointed as a registered agent under W.S. 17-28-101 through 17-28-111;

(xix) "Sign" or "signature" shall include any manual, facsimile, conformed or electronic signature;

(xx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

(xxi) "Statutory foundation" means an entity formed or continued under this act;

(xxii) "This act" means W.S. 17-30-101 through 17-30-1102.

### **17-30-103. Governing law.**

(a) This act governs:

(i) The internal affairs of a statutory foundation;  
and

(ii) The liability of a person as a founder or contributor of a statutory foundation for the debts, obligations or other liabilities of a statutory foundation.

(b) The transfer of property by a founder or a contributor to the statutory foundation, or any disposition made subject to the terms of the operating agreement of the foundation, shall not rendered ineffective for any reason, including the following:

(i) The law of a foreign jurisdiction prohibits or does not recognize the concept of a statutory foundation;

(ii) The statutory foundation, a transfer of property by a founder or a contributor to a foundation or a disposition made subject to the terms of the operating agreement of the foundation, avoids or defeats any forced heirship or legitimate right, claim or interest under the law of a foreign jurisdiction.

### **17-30-104. Supplemental principles of law.**

The principles of law and equity shall supplement this act, unless in conflict with this act.

**17-30-105. Electronic records and signatures.**

The provisions of this act governing the legal effect, validity or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, shall be construed to conform to the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7002, and supersede, modify and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

**17-30-106. Powers of secretary of state.**

The secretary of state shall promulgate reasonable rules, forms and other requirements which are necessary to carry out the purposes of this act.

ARTICLE 2  
PURPOSE, POWERS AND CAPITAL

**17-30-201. Nature, purpose and duration of statutory foundations.**

(a) A statutory foundation shall be an entity distinct from its founders, contributors, beneficiaries and any other persons.

(b) Unless stated otherwise in the articles of formation, a statutory foundation has perpetual duration.

(c) Except for those purposes provided in subsection (e) of this section, a statutory foundation may be created for any lawful purpose, which may be included in the articles of formation of the foundation, regardless of whether the foundation is for profit or for charitable purposes, as defined in W.S. 17-30-102(a)(v), provided that a statutory foundation shall:

(i) Confer a benefit on at least one (1) person; and

(ii) Be authorized to hold tangible and intangible property and accumulate income generated by that property for the purposes of this act.

(d) In addition to those purposes provided in subsection (c) of this section, a statutory foundation may be organized for the purpose of holding or investing in other entities or assets,

including those entities or assets that are the property of the statutory foundation.

(e) A statutory foundation may not be created to act as a financial institution or an insurer, as defined in W.S. 26-1-102(a)(xvi).

(f) The purposes for which a statutory foundation may be created under this act shall not be amended or restated unless the articles of formation expressly provide that the purpose of the statutory foundation "may be amended", "may be restated" or include words of similar import or an amendment or restatement is required pursuant to a court order.

#### **17-30-202. Enforcement of charitable purposes.**

(a) If the articles of formation or the operating agreement of a statutory foundation formed for a charitable purpose do not indicate or otherwise provide for selection of a particular charitable purpose or beneficiary, or if the designated charitable purpose cannot be completed or no longer exists, the court may select one (1) or more charitable purposes or beneficiaries. The selection shall be consistent with the intent of the founder, to the extent intent can be ascertained.

(b) A founder, the board of directors or the protector of a statutory foundation formed for a charitable purpose may commence a civil action to enforce the charitable purpose of the statutory foundation.

#### **17-30-203. Powers of a statutory foundation.**

A statutory foundation has the capacity to sue and be sued in its own name and has the power to take all actions necessary or convenient to carry on the activities of the foundation.

#### **17-30-204. Property contribution.**

(a) The initial property contributed to a statutory foundation may consist of tangible or intangible property, whether or not the contribution is made as a gift or otherwise.

(b) After the contribution of initial property to the statutory foundation, and if permitted by the operating agreement of the foundation, additional contributions may be made to the statutory foundation by a founder or any contributor.



(c) The tangible and intangible property of the statutory foundation may include:

- (i) Initial contributions of property;
- (ii) Additional contributions of property;
- (iii) Any accumulated income.

### ARTICLE 3

#### NAME, FORMATION, ARTICLES OF FORMATION, OTHER FILINGS AND ORGANIZATIONAL DOCUMENTS

##### **17-30-301. Name of a statutory foundation.**

(a) The words "statutory foundation", or its abbreviations "SF" or "S.F.", shall be included in the name of a statutory foundation formed under this act. A statutory foundation name shall not:

(i) Contain words indicating or implying that the foundation is organized for a purpose other than one (1) or more of the purposes contained in its articles of formation;

(ii) Be the same as, or deceptively similar to in the determination of the secretary of state, any trademark or service mark registered in this state. The name shall be distinguishable by the secretary of state from other business names as provided in W.S. 17-16-401;

(iii) Contain a word or phrase which indicates or implies that it is organized under the Wyoming Business Corporation Act, the Wyoming Statutory Close Corporation Supplement, the Wyoming Nonprofit Corporation Act, the Wyoming Limited Liability Company Act or the Wyoming Statutory Trust Act.

(b) Nothing in this article shall prohibit the use of a trade name in accordance with applicable law.

##### **17-30-302. Registered office and registered agent.**

(a) Each statutory foundation shall continuously maintain a registered office and registered agent, as provided in W.S. 17-28-101 through 17-28-111, in this state.

(b) The provisions of W.S. 17-28-101 through 17-28-111 shall apply to all statutory foundations.

**17-30-303. Formation of statutory foundation; articles of formation.**

(a) One (1) or more persons may act as an organizer to form a statutory foundation by signing and delivering articles of formation to the secretary of state. Articles of formation shall be accompanied by a written consent of appointment signed by a registered agent.

(b) Articles of formation shall state:

(i) The name of the statutory foundation, which shall comply with W.S. 17-30-301; and

(ii) The street address of the statutory foundation's initial registered office and the name of its initial registered agent at that office.

(c) Articles of formation may state:

(i) The names and addresses of the individuals who are to serve as the initial directors;

(ii) The name and address of the individual who is to serve as the initial protector;

(iii) Other provisions not inconsistent with law, which may include:

(A) The purpose for which the statutory foundation is organized;

(B) An express statement that the purpose of the statutory foundation "may be amended", "may be restated" or words of similar import, pursuant to W.S. 17-30-201(f);

(C) A statement of the duration of the statutory foundation;

(D) Any provision under this act that is required or permitted to be stated in the operating agreement.

(d) A statutory foundation is formed when the articles of formation become effective. The filing of articles of formation

by the secretary of state is conclusive proof that the organizer has satisfied all conditions required for the formation of a statutory foundation, except in a civil action commenced by the state of Wyoming to terminate a statutory foundation. In that case, a court may require other additional evidence as it determines appropriate.

**17-30-304. Signing of records to be delivered for filing to secretary of state.**

(a) A record delivered to the secretary of state for filing under this act shall be signed as follows:

(i) Except as otherwise provided by this subsection, a record signed on behalf of a statutory foundation shall be signed by a person who has appropriate authority granted by the foundation;

(ii) The initial articles of formation of a statutory foundation shall be signed by at least one (1) person acting as founder or organizer;

(iii) A record filed on behalf of a terminated statutory foundation that has no founders shall be signed by the person winding up the activities of the foundation under article 9 of this chapter, the organizer or another person appointed by the board of directors of the foundation;

(iv) Any other record shall be signed by the person on whose behalf the record is delivered to the secretary of state or by the person appointed by the board of directors of the statutory foundation.

(b) Any record filed under this act may be signed by an agent.

**17-30-305. Delivery to and filing of records by secretary of state; effective time and date.**

(a) A record authorized or required to be delivered to the secretary of state for filing under this act shall be captioned to describe the purpose of the record and be delivered to the secretary of state in an authorized medium. The secretary of state shall file the record upon receipt, unless:

(i) The secretary of state determines that a record does not comply with the filing requirements of this act;

(ii) The filing fees required by this act or other provisions of law or past due fees, taxes or penalties have not been paid.

(b) Upon filing the record, the secretary of state shall send a copy of the filed record and a receipt for fees to the person on whose behalf the record was filed.

(c) Upon request and payment of the requisite fee, the secretary of state shall send to the requester a certified copy of a requested record.

(d) Except as otherwise provided in this section and W.S. 17-28-103, a record delivered to the secretary of state for filing under this act shall be effective as of the date of filing by the secretary of state.

#### **17-30-306. Correcting filed record.**

(a) A statutory foundation or foreign foundation may deliver to the secretary of state for filing a statement of correction to correct a record if the record contained inaccurate information or a defective signature.

(b) A statement of correction shall:

(i) Describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(ii) Specify the inaccurate information and the reason the information is inaccurate or the manner in which the signature was defective; and

(iii) Correct the inaccurate information or defective signature.

(c) When filed by the secretary of state, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, except that the statement shall be effective when filed in the context of persons that previously relied on the uncorrected record and would be adversely impacted by retroactive effect.

#### **17-30-307. Liability for inaccurate information in filed record.**

(a) If a record delivered to and filed by the secretary of state under this act contains inaccurate information, a person that suffers a loss by relying in good faith on the record may recover damages relating to the loss from the statutory foundation or foreign foundation if:

(i) The record was delivered for filing on behalf of the statutory foundation or foreign foundation; and

(ii) The statutory foundation or foreign foundation had notice of the inaccuracy for a reasonably sufficient time and was able to correct the record in the period of time before the record was relied upon.

(b) An individual who signs a record authorized or required to be filed with the secretary of state under this act shall affirm, under penalty of perjury, that the information stated in the record is accurate.

**17-30-308. Certificate of existence.**

(a) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a statutory foundation or a foreign foundation.

(b) A certificate of existence shall state:

(i) The name of the statutory or foreign foundation used in this state;

(ii) That the statutory foundation was duly formed under the laws of this state and the date of formation, or that the foreign foundation is registered in this state;

(iii) Whether all fees, taxes and penalties due under this act or under other provisions of law have been paid;

(iv) Whether the most recent annual report required pursuant to W.S. 17-30-703 has been filed by the secretary of state;

(v) Whether the secretary of state has classified the statutory foundation or foreign foundation as delinquent;

(vi) Whether articles of termination were delivered to the secretary of state for filing; and

(vii) Other facts of record maintained by the secretary of state which are specified by the person requesting the certificate of existence.

(c) Subject to any qualification stated in a certificate of existence, a certificate of existence issued by the secretary of state shall be conclusive evidence that the statutory foundation or foreign foundation is in existence.

**17-30-309. Operating agreement; scope, function and limitations.**

(a) The founders or board of directors of a statutory foundation shall adopt an operating agreement for the foundation as soon as possible after filing articles of formation with the secretary of state.

(b) An operating agreement may contain any provision for managing the business and regulating the affairs of the statutory foundation that is not inconsistent with this act, other provisions of law or the articles of formation of the foundation.

ARTICLE 4  
FOUNDERS

**17-30-401. Reservation to founder of power to amend, revoke, restate or terminate.**

(a) Subject to subsections (b) and (c) of this section, a founder may reserve the following powers to himself, or a specific number of founders if applicable:

(i) The power to amend or restate the articles of formation of a statutory foundation;

(ii) Pursuant to W.S. 17-30-201, the power to amend the purposes of the statutory foundation;

(iii) The power to amend, revoke or restate the terms of the operating agreement of the statutory foundation;

(iv) The power to terminate the statutory foundation.

(b) A founder must expressly reserve those powers specified in paragraphs (a)(i) and (ii) of this section in the articles of formation of the statutory foundation. The founder

may expressly reserve those powers specified by paragraphs (a)(iii) and (iv) of this section in the articles of formation.

(c) Unless the articles of formation or operating agreement of a statutory foundation provide otherwise, any powers reserved to a founder in subsection (a) of this section shall lapse on the death, dissolution or termination of the founder.

**17-30-402. Protection from founder's successors.**

(a) The heirs, spouse or creditors of a founder shall not:

(i) Amend or restate the articles of formation of a statutory foundation;

(ii) Amend the purpose of a statutory foundation, if any;

(iii) Terminate the statutory foundation.

ARTICLE 5  
DIRECTORS AND PROTECTORS

**17-30-501. Board of directors.**

(a) A statutory foundation shall maintain a board of directors.

(b) Unless the articles of formation or operating agreement of a statutory foundation provide otherwise:

(i) The board of directors of the foundation shall have the authority to exercise all powers of the foundation and to manage foundation affairs;

(ii) The board of directors shall consist of one (1) or more persons;

(iii) One (1) or more founders may be appointed as a director; and

(iv) No director shall simultaneously serve as a director and a protector for the same statutory foundation.

(c) A board of directors shall conduct the affairs of the statutory foundation in accordance with the articles of

formation and operating agreement, if any, of the foundation, as well as this act and any other applicable provision of law.

(d) Each director shall act:

(i) In good faith; and

(ii) In a manner not opposed to the best interests of the statutory foundation.

(e) An act of a director shall be retroactively valid despite any defect that may be found in:

(i) The appointment of the director;

(ii) The qualifications of the director.

#### **17-30-502. Liability of directors.**

A director is not personally liable for the acts, omissions, obligations or debts of the statutory foundation, whether arising in contract, tort or otherwise.

#### **17-30-503. Protector.**

(a) If a statutory foundation has a charitable purpose, the foundation shall maintain a protector in relation to that purpose.

(b) If a statutory foundation has any purpose permitted under this act other than a charitable purpose, then the foundation may have a protector in relation to that purpose.

(c) Except as otherwise provided by law, a founder or other person may be appointed as the protector of a statutory foundation.

(d) The operating agreement of a statutory foundation may authorize a protector to approve or disapprove any specified action of the board of directors of the statutory foundation.

#### **17-30-504. Protector as a fiduciary.**

A protector shall serve as a fiduciary to the extent of authority and duties granted under the terms of the operating agreement.



**17-30-505. Liability of protector.**

(a) Except as otherwise provided in subsection (b) of this section, the debts, obligations or other liabilities of a statutory foundation, whether arising in contract, tort or otherwise:

(i) Are solely the debts, obligations or other liabilities of the foundation; and

(ii) Do not become the debts, obligations or other liabilities of a protector solely by reason of the protector performing his duties.

(b) A court may impose liability for the debts, obligations or other liabilities of the statutory foundation on a protector in the following circumstances, except that no single factor other than fraud is sufficient to impose liability:

(i) Fraud;

(ii) Inadequate capitalization;

(iii) Failure to observe foundation formalities as required by law;

(iv) Intermingling of assets, business operations and finances of the foundation and the protector to such an extent that there is no distinction between them.

(c) A court shall not consider factors intrinsic to the character and operation of a statutory foundation under subsection (b) of this section. These factors shall include:

(i) The ability to elect treatment as a disregarded or pass-through entity for tax purposes;

(ii) Flexible operation or organization, including the failure to observe any particular formality relating to the exercise of the powers of the foundation or management of activities;

(iii) The exercise of ownership, influence and governance by a protector;

(iv) The protection of the personal assets of the protector from the obligations and acts of the foundation.

**17-30-506. Conflict of interest transactions.**

(a) A sale, encumbrance or other transaction involving the investment or management of the property of the statutory foundation which is entered into by a director or protector for the personal account of the director or protector or which is otherwise affected by a conflict between the fiduciary or personal interests of the director or protector is voidable by a beneficiary affected by the transaction unless:

(i) The transaction was authorized by the terms of the operating agreement;

(ii) The transaction was approved by a court;

(iii) The beneficiary did not commence a judicial proceeding within the time specified by W.S. 4-10-1005;

(iv) The beneficiary consented to the transaction, ratified the transaction or released the director or protector pursuant to W.S. 4-10-1009; or

(v) The transaction involves a contract entered into, or claim acquired by the director or protector, before the person became or contemplated becoming a director or protector.

ARTICLE 6  
BENEFICIARIES

**17-30-601. Beneficiaries.**

(a) The articles of formation or operating agreement of a statutory foundation may provide for the distribution of property of the foundation to one (1) or more beneficiaries.

(b) Notwithstanding subsection (a) of this section, a beneficiary of a statutory foundation shall not have the right to, or interest in, property of the statutory foundation unless such right or interest arises by express terms stated in the operating agreement of the statutory foundation.

**17-30-602. Beneficial interest.**

(a) A beneficiary may have a beneficial interest in the property of the statutory foundation in the form of cash, property, a promissory note or other obligation. A beneficiary may have a beneficial interest in a statutory foundation without making a contribution, or being obligated to make a contribution, to the foundation.

(b) Except to the extent otherwise provided in the governing instrument, a beneficial owner shall have an undivided beneficial interest in the property of the statutory foundation and shall share in the profits or losses of the foundation in the proportion of the entire undivided beneficial interest he owns in the foundation. The governing instrument of a statutory foundation may provide that the foundation or the directors, acting for and on behalf of the foundation, shall be deemed to hold beneficial ownership of any income earned on securities of the foundation issued by any business entities formed, organized or existing under the laws of any jurisdiction, including the laws of any foreign country.

(c) No creditor of the beneficial owner shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the statutory foundation.

(d) The beneficial interest of a beneficial owner in the statutory foundation is personal property notwithstanding the nature of the property of the foundation. Except to the extent otherwise provided in the governing instrument, a beneficial owner has no interest in specific foundation property.

(e) Except to the extent otherwise provided in the governing instrument, the transferee of the beneficial interest of a beneficial owner in the statutory foundation shall only be entitled to receive the share of profits and the return of contributions to which the beneficial owner otherwise would be entitled. In the absence of the unanimous written consent of the owners of all other beneficial interests and of all directors of the foundation, and except to the extent otherwise provided in the governing instrument, the transferee of the beneficial interest of a beneficial owner shall have no right to participate in or be kept apprised of the affairs of the foundation or to become a beneficial owner of a beneficial interest in the foundation.

(f) Except to the extent otherwise provided in the governing instrument, at the time a beneficial owner becomes

entitled to receive a distribution, the owner has the status of, and is entitled to all remedies available to, a creditor of the statutory foundation with respect to the distribution. A governing instrument may provide for the establishment of record dates with respect to allocations and distributions by a statutory foundation.

**17-30-603. Limitation of transferability of rights.**

Subject to the operating agreement of the statutory foundation, a beneficial interest in a foundation is transferable.

ARTICLE 7  
RECORDS AND REPORTS

**17-30-701. Right to information.**

(a) Unless the operating agreement of a statutory foundation provides otherwise, upon written request by a beneficiary, the foundation shall provide, within a reasonable time, a copy of the operating agreement of the foundation to the beneficiary. Information regarding beneficiaries other than the beneficiary making a request under this section may be redacted.

(b) Upon written request by a protector, a statutory foundation shall provide all information requested by the protector within a reasonable time. After the death of the last founder of a statutory foundation or if there is no protector, the foundation shall provide all information requested by a beneficiary within a reasonable time, upon written request by a beneficiary.

(c) Except as otherwise provided in this section, no beneficiary shall have the right to receive information related to the administration, operation or affairs of a statutory foundation.

**17-30-702. Recordkeeping and identification of statutory foundation property.**

(a) The board of directors of a statutory foundation shall keep and maintain adequate records regarding the administration of the foundation.

(b) The board of directors of a statutory foundation may invest property of two (2) or more statutory foundations as a

whole as long as the board maintains clear records indicating the respective interests of each foundation.

**17-30-703. Annual report for secretary of state.**

(a) Every statutory foundation formed under the laws of this state and every foreign foundation that obtains a certificate of registration shall file an annual report, under penalty of perjury, with the secretary of state on or before the first day of the month of formation. The annual report shall contain the address of the principal office of the statutory foundation or the foreign foundation.

(b) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting statutory foundation or foreign foundation in writing and return the annual report for correction.

(c) Every statutory foundation formed under the laws of this state and every foreign foundation registered in this state shall preserve annual reports at its principal office for three (3) years after submission to the secretary of state.

**17-30-704. Fees; annual fee.**

(a) The secretary of state shall collect the following fees from statutory foundations and foreign statutory foundations:

(i) Filing the original articles of formation or issuing a certificate of authority for a foreign statutory foundation, a fee of two hundred fifty dollars (\$250.00);

(ii) Filing amended articles of formation, a fee of one hundred dollars (\$100.00);

(iii) Filing the annual report required under W.S. 17-30-703, due and payable on or before the date of the annual filing, a fee of one hundred dollars (\$100.00);

(iv) A fee for other services provided by the secretary of state which is not established by this section, including other filings, service of process and copying, provided the fee shall not exceed the actual cost of the service.

**ARTICLE 8**

## RIGHTS AND LIMITATIONS OF CREDITORS

### **17-30-801. Creditor claim against founder.**

The property of a statutory foundation contributed by a founder, and all income, appreciation and proceeds thereof, shall not be subject to the claims of a founder's creditor, including any claims for forced heirship or legitime right.

## ARTICLE 9 TERMINATION

### **17-30-901. Termination.**

(a) A statutory foundation may be terminated, and its activities wound up, upon the occurrence of any of the following:

(i) An event or circumstance provided in the operating agreement or articles of formation of the foundation that results in or authorizes termination;

(ii) Upon consent of all adult beneficiaries, the founder and the protector, if any, agree to terminate the statutory foundation, provided that this consent is only valid to the extent that termination is not inconsistent with a material purpose of the statutory foundation;

(iii) Upon a finding of a court that the purpose of the statutory foundation can no longer be achieved.

### **17-30-902. Cancellation of articles of formation.**

(a) The articles of formation of the statutory foundation shall be cancelled upon the completion of termination and winding up of the foundation. A certificate of cancellation shall be filed with the secretary of state and shall set forth:

(i) The name of the statutory foundation;

(ii) The date of filing of its articles of formation;  
and

(iii) Any other information the board of directors determines is necessary or advisable for inclusion.

(b) The certificate of cancellation shall be effective as of the filing date.

**17-30-903. Claims against terminated statutory foundation.**

(a) A terminated statutory foundation may publish notice of termination and, in the notice, request persons with claims against the foundation to present them in accordance with the notice.

(b) The notice authorized by subsection (a) of this section shall:

(i) Be published at least once in a newspaper of general circulation in the county of this state in which the principal office of the terminated statutory foundation was located or, if the foundation does not have a principal office in this state, in the county in which the designated office of the foundation is or was last located;

(ii) Describe the information required to be contained in a claim and provide a mailing address to which a claim may be sent; and

(iii) State that a claim against the foundation is barred one hundred twenty (120) days after the date of first publication of the notice.

(c) A creditor may file a claim against the assets of a terminated statutory foundation within the earlier of:

(i) One hundred twenty (120) days after the termination of the statutory foundation;

(ii) If the terminated statutory foundation publishes a notice under subsection (a) of this section, one hundred twenty (120) days after the first publication of a notice complying with subsection (b) of this section; or

(iii) One hundred twenty (120) days after a known creditor has been mailed notice, by certified mail return receipt requested. As part of notice under this paragraph, notice shall inform a known creditor:

(A) Of the information required to be included in a claim;

(B) Of the name of the terminated statutory foundation and the mailing address to which a claim may be sent; and

(C) Of the deadline for the known creditor to make a claim, one hundred twenty (120) days after a notice is mailed by certified mail return receipt requested.

(d) A creditor failing to file a claim within the times set forth in this section is prohibited from making a claim against the assets of a terminated statutory foundation.

**17-30-904. Administrative forfeiture of authority and articles of formation.**

(a) If the registered agent of the statutory foundation has filed its resignation with the secretary of state and the foundation has not replaced its registered agent, or the statutory foundation is without a registered agent or registered office in this state for any reason, the foundation shall be deemed to be operating in this state without authority and to have forfeited any rights or privileges acquired under the laws of this state.

(b) A forfeiture under subsection (a) of this section shall be made effective as follows:

(i) The secretary of state shall mail by first class mail, or submit by electronic means if the statutory foundation has consented to receive notices electronically, a notice of the failure of the statutory foundation to comply with subsection (a) of this section; and

(ii) Unless compliance is made within sixty (60) days of mailing or electronic submission, the statutory foundation shall be deemed defunct and to have forfeited its articles of formation filed in this state.

(c) A statutory foundation, at any time within two (2) years after a forfeiture under subsection (a) or (b) of this section, may be revived and reinstated by filing the necessary statement under this act and paying a reinstatement fee established by the secretary of state by rule, together with a penalty of two hundred fifty dollars (\$250.00). A reinstatement fee under this subsection shall not exceed the costs of providing the reinstatement service. The foundation shall retain



its registered name during the two (2) year reinstatement period under this section.

(d) If a statutory foundation has failed to pay any fee required by the secretary of state under W.S. 17-30-704 or any penalties imposed under W.S. 17-28-109, the statutory foundation shall be deemed to be operating within this state without authority and to have forfeited any rights or privileges acquired under the laws of this state.

(e) A forfeiture under subsection (d) of this section shall be made effective as follows:

(i) The secretary of state shall provide notice to the statutory foundation at its last known mailing address by first class mail, or submit by electronic means if the statutory foundation has consented to receive notices electronically, a notice of the failure of the statutory foundation to comply; and

(ii) Unless compliance is made within sixty (60) days of the date of mailing of the notice, the statutory foundation shall be deemed defunct and to have forfeited its articles of formation filed in this state.

(f) A statutory foundation, at any time within two (2) years after a forfeiture under subsection (d) of this section, may be revived and reinstated by paying the delinquent fees.

(g) Upon reinstatement of a statutory foundation under this section, the reinstatement shall relate back to and take effect as of the date the forfeiture was made effective under this section and the statutory foundation may resume carrying on operations as if the forfeiture was never effective.

(h) A statutory foundation shall be deemed to be operating within this state without authority, to have forfeited any rights or privileges acquired under the laws of this state and shall be deemed to have forfeited its articles of formation filed in this state if:

(i) An organizer, founder or any other person authorized to act on behalf of the foundation signed a document he knew was false in any material respect with intent that the document be delivered to the secretary of state for filing;

(ii) The statutory foundation has failed to respond to a valid subpoena; or

(iii) The public interest is served by forfeiture and the statutory foundation, its founder or any other person authorized to act on behalf of the statutory foundation:

(A) Failed to provide records to the registered agent as required by this act;

(B) Provided fraudulent information or failed to correct false information upon request of the secretary of state on any filing under this act;

(C) Cannot be served by either the registered agent or by the secretary of state using mail and acting as the agent for process.

(j) The secretary of state may classify a statutory foundation as delinquent and as awaiting forfeiture of its articles of formation at the time the secretary of state mails any notice required under this section to the foundation.

**17-30-905. Appeal from rejection of reinstatement.**

Appeals from decisions of the secretary of state made under this act shall occur as provided in W.S. 17-16-1423.

**17-30-906. Distribution upon termination.**

Upon the occurrence of an event terminating a statutory foundation, including forfeiture under this section, the board of directors shall proceed expeditiously to distribute the property of the foundation as provided in the articles of formation or the operating agreement of the foundation.

ARTICLE 10  
JUDICIAL PROCEEDINGS

**17-30-1001. Role of court in administration.**

(a) The court may intervene in the administration of a statutory foundation only to the extent its jurisdiction is invoked as provided in this act or as otherwise provided by law.

(b) A statutory foundation is not subject to continuing judicial supervision unless ordered by a court.

(c) A civil proceeding to approve or disapprove a proposed decision or transaction of a statutory foundation may be commenced by the board of directors of the foundation.

**17-30-1002. Power of court to give directions.**

(a) Upon application to the court by a founder, protector or statutory foundation, the court may issue a declaratory judgment regarding the following:

(i) The meaning and effect of a provision in the articles of formation or operating agreement of the foundation;

(ii) The administration of the property or purpose of the foundation;

(iii) The function of the board of directors of the foundation;

(iv) Such other matters as determined by the court to be relevant to the statutory foundation and its purpose.

(b) If there is no express power to amend the purpose of a statutory foundation in the articles of formation of the foundation, then a founder or the protector may apply to a court for an order to amend the purpose stated in the articles in accordance with the probable intent of the founder, based on one (1) of the following grounds:

(i) The purpose stated in the articles of formation has been fulfilled;

(ii) The purpose stated in the articles of formation cannot be carried out in accordance with the intent of the founder;

(iii) The purpose stated in the articles of formation provides a use for only part of the property of the foundation;

(iv) The purpose stated in the articles of formation cannot be completed or no longer exists.

**17-30-1003. Sealing and availability of documents.**

Except for information that is otherwise publicly available, the privacy of persons who have organized a statutory foundation shall be protected in any judicial proceeding. A filed document

or court order issued concerning a statutory foundation shall be sealed and shall not be made a part of the public record of the proceeding except as otherwise required by law. A filed document or court order issued shall be available to the court, a founder, the board of directors, a protector, the attorney of any of the persons specified in this section and any other interested person as the court may order upon a showing of need.

ARTICLE 11  
CONTINUANCE AND TRANSFER

**17-30-1101. Continuance.**

(a) Consistent with subsection (d) of this section, a foreign foundation organized under the laws of a foreign jurisdiction may apply to the secretary of state for registration under this act, upon acknowledgement by the foreign jurisdiction that the domicile of the foreign foundation in that jurisdiction has terminated.

(b) The secretary of state may issue a certificate of registration upon receipt of an application supported by articles of continuance specified by subsection (e) of this section together with the other statements, information and documents required by this section.

(c) Upon issuance of a certificate of registration by the secretary of state, the foreign foundation shall continue to operate under the laws of this state as if the foreign foundation had been organized as a statutory foundation in this state. The secretary of state may impose limitations or conditions on a certificate of registration as appropriate.

(d) The secretary of state shall cause notice of issuance of a certificate of registration to be given to the proper officer of the foreign jurisdiction in which the foreign foundation was previously organized.

(e) Articles of continuance filed with the secretary of state by a foreign foundation under this section shall contain:

(i) A certified copy of the original articles of formation of the foundation, including any amendments thereto, or its equivalent basic charter or other authorization;

(ii) The name of the foreign foundation and the foreign jurisdiction in which the foundation was lawfully organized;

(iii) The date of organization of the foreign foundation in the foreign jurisdiction;

(iv) The principal mailing address of the foreign foundation;

(v) The name and address of the proposed registered agent in this state;

(vi) Any additional information specified for articles of formation under W.S. 17-30-303.

(f) An application for articles of continuance shall be executed by any member of the board of directors of the foreign foundation or any officer authorized to execute the application on behalf of the foundation.

(g) The provisions of the articles of continuance may vary from the provisions of the articles of formation of the foreign foundation, the equivalent basic charter or other authorization in the foreign jurisdiction only if those variations could be lawfully effectuated by amending articles of formation as otherwise provided under this act.

(h) Upon issuance of a certificate of registration by the secretary of state, the articles of continuance shall be deemed to be the articles of formation of the foreign foundation. The foreign foundation may elect to incorporate by reference in its articles of continuance the basic charter or other authorization adopted in the foreign jurisdiction in which the foreign foundation was formed, for the purpose of continuing to act under the charter or other authorization, provided that the basic charter or other authorization shall be deemed amended to the extent necessary to make the charter or authorization conform to this act and other provisions of law.

(j) The existence of a foreign foundation that is issued a certificate of continuation under this act shall be deemed to have commenced on the date the foreign foundation commenced its existence in the foreign jurisdiction in which it was first formed, organized or otherwise came into being. The laws of this state shall apply to a foreign foundation continuing under this act to the same extent as if it had been organized under

the laws of this state from and after the issuance of a certificate of continuation under this act by the secretary of state. If a foreign foundation is continued under this act, the continuance shall not affect the ownership of its property or its liability for any existing obligations, causes of action, claims, pending or threatened prosecutions or civil or administrative actions, or other convictions, rulings, orders or judgments.

**17-30-1102. Transfer of a statutory foundation to another jurisdiction.**

(a) A statutory foundation formed or continued under this act may, if authorized under subsection (f) of this section and by the laws of the foreign jurisdiction, apply to the proper officer of the foreign jurisdiction for a certificate of registration and to the secretary of state of this state for a certificate of transfer. The application for a certificate of transfer shall set forth the following:

(i) The name of the statutory foundation immediately before the transfer, and if that name is unavailable for use in the foreign jurisdiction or, if the foundation desires to change its name in connection with the transfer, the name by which the foundation will be known in the foreign jurisdiction;

(ii) The name of the foreign jurisdiction to which the foundation is to be transferred;

(iii) Acknowledgement that the foundation shall surrender its articles of formation under this act upon transfer to the foreign jurisdiction; and

(iv) A statement that the transfer was duly approved by the board of directors in the manner required by subsection (f) of this section.

(b) The secretary of state shall require that a statutory foundation transferred under this section maintain an agent for service of process within this state for at least one (1) year after the transfer is complete and may impose any conditions the secretary of state considers appropriate for the protection of creditors, including the provision of notice to the public of the application described in subsection (a) of this section, the provision of a bond or a deposit of funds in an appropriate bank located in Wyoming and subject to the jurisdiction of the courts of Wyoming. If any conditions imposed under this subsection are

not met, the secretary of state may refuse to issue a certificate of transfer.

(c) The secretary of state shall, upon compliance by the applicant with subsections (a) and (b) of this section and receipt of payment under subsection (e) of this section, immediately transmit a notice of issuance of a certificate of transfer to the proper officer of the foreign jurisdiction to which the statutory foundation is transferred.

(d) For the purposes of the laws of this state, upon issuance of a certificate of transfer, the statutory foundation shall be continued as if it had been organized under the laws of the foreign jurisdiction and shall become a statutory foundation under the laws of the foreign jurisdiction, upon issuance by such foreign jurisdiction of a certificate of registration.

(e) In addition to all other fees and impositions, a statutory foundation organized or continued under the laws of this state shall pay to the secretary of state a special fee established by rule before receiving a certificate of transfer pursuant to subsection (c) of this section.

(f) A resolution to transfer the statutory foundation to a foreign jurisdiction shall be adopted by the board of directors unless the operating agreement of the foundation provides otherwise.

(g) The statutory foundation may represent to the proper officer of the foreign jurisdiction to which the statutory foundation is transferred that the laws of this state permit such transfer, and may describe the authorization extended by this section as permitting the continuance or other transfer of domicile as may be required by the laws of the foreign jurisdiction, in order for the statutory foundation to be accepted in that foreign jurisdiction, provided that the statutory foundation may not misrepresent the requirements or effects of this section.