CHAPTER 9. NON-PROFIT, COOPERATIVE, RELIGIOUS AND CHARITABLE

Art. 1396-1.01. SHORT TITLE, CAPTIONS, PARTS, ARTICLES, SECTIONS, SUBSECTIONS AND PARAGRAPHS. A. This Act shall be known and may be cited as the "Texas Non-Profit Corporation Act."

B. The division of this Act into Parts, Articles, Sections, Subsections, and Paragraphs and the use of captions in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Act.

C. This Act has been organized and subdivided in the following manner:

(1) The Act is divided into Parts, containing groups of related Articles. Parts are numbered consecutively with cardinal numbers.

(2) The Act is also divided into Articles, numbered consecutively with Arabic numerals.

(3) Articles are divided into Sections. The Sections within each Article are numbered consecutively with capital letters.

(4) Sections are divided into Subsections. The Subsections within each Section are numbered consecutively with Arabic numerals enclosed in parentheses.

(5) Subsections are divided into Paragraphs. The Paragraphs within each Subsection are numbered consecutively with lower case letters enclosed in parentheses.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 1.01.

Art. 1396-1.02. DEFINITIONS. A. As used in this Act, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this Act, except a foreign corporation.

(2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this State.

(3) "Non-Profit Corporation" is the equivalent of "not for profit corporation" and means a corporation no part of the income of which is distributable to its members, directors, or officers.

(4) "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto.

(5) "By-laws" means the code or codes of rules adopted for the regulation or management of the corporation, irrespective of the name or names by which such rules are designated.

(6) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or its by-laws.

(7) "Board of Directors" means the group of persons vested with the management of the affairs of the corporation, irrespective of the name by which such group is designated.

(8) "President" means that officer designated as "president" in the articles of incorporation or by-laws of a corporation, or that officer authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of the principal executive officer, irrespective of the name by which he may be designated, or that committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of the principal executive officer.

(9) "Vice-president" means that officer designated as "vice-president" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the duties of the president upon the death, absence, or resignation of the president or upon his inability to perform the duties of his office, irrespective of the name by which he, or they, may be designated.

(10) "Secretary" means that officer designated as "secretary" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of secretary, irrespective of the name by which he, or they, may be designated.

(11) "Treasurer" means that officer designated as "treasurer" in the articles of incorporation or the by-laws of a corporation, or that officer or committee of persons authorized, in the articles of incorporation, the by-laws, or otherwise, to perform the functions of a treasurer, irrespective of the name by which he, or they, may be designated.

(12) "Insolvency" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(13) "Verified" means subscribed and sworn to under the sanction of an oath, or such affirmation as is by law equivalent to an oath, made before an officer authorized to administer oaths.

(14) "Director" means a member of the board of directors of a corporation organized under this Act.

(15) "Ordinary care" means the care that an ordinarily prudent person in a similar position would exercise under similar circumstances.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 1.02. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 1, eff. Jan. 1, 1994.

Art. 1396-2.01. PURPOSES. A. Except as hereinafter in this Article expressly excluded herefrom, non-profit corporations may be organized under this Act for any lawful purpose or purposes, which purposes shall be fully stated in the articles of incorporation. Such purpose or purposes may include, without being limited to, any one or more of the following: charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural and horticultural; and the conduct of professional, commercial, industrial, or trade associations; and animal husbandry. Subject to the provisions of Chapter 2, Title 83, of the

Revised Civil Statutes of Texas, 1925, and of such Chapter or any part thereof as it may hereafter be amended, a corporation may be organized under this Act if any one or more of its purposes for the conduct of its affairs in this State is to organize laborers, working men, or wage earners to protect themselves in their various pursuits.

(1) Charitable corporations may be formed for the purpose of operating a Dental Health Service Corporation which service corporation will manage and coordinate the relationship between the contracting dentist, who will perform the dental services, and the patient who will receive such services where such patient is a member of a group which has contracted with the Dental Health Service Corporation to provide dental care to members of that group. An application for a charter under this Section shall have attached as exhibits (1) an affidavit by the applicants that not less than thirty percent (30%) of the dentists legally engaged in the practice of dentistry in this state together with their names and addresses have signed contracts to perform the required dental services for a period of not less than one (1) year, after incorporation, and (2) a certification by the Texas State Board of Dental Examiners that the applicant incorporators are reputable citizens of the State of Texas and are of good moral character and that the corporation sought to be formed will be in the best interest of the public health. A corporation formed hereunder shall have not less than twelve (12) directors, nine (9) of whom shall be dentists licensed by the Texas State Board of Dental Examiners to practice dentistry in this state and be actively engaged in the practice of dentistry in this state. A corporation formed hereunder shall maintain not less than thirty percent (30%) of the number of dentists actually engaged in the practice of dentistry in this state as participating or contracting dentists, and shall file with the Texas State Board of Dental Examiners each September the names and addresses of all contracting or participating dentists. A corporation formed hereunder shall not (1) prevent any patient from selecting the licensed dentist of his choice to render dental services to him, (2) deny any licensed dentist the right to participate as a contracting dentist to perform the dental services contracted for by the patient, (3) discriminate among patients or licensed dentists regarding payment or reimbursement for the cost of performing dental services provided the dentist is licensed to perform the dental service, or (4) authorize any person to regulate, interfere, or intervene in any manner in the diagnosis or treatment rendered by a licensed dentist to his patient. A corporation formed hereunder may require the attending dentist to provide a narrative oral or written description of the dental services rendered for the purpose of determining benefits or providing proof of treatment. Diagnostic aids used in the course of treatment may be requested by the corporation, but may not be required for any purpose.

B. This Act shall not apply to any corporation, nor may any corporation be organized under this Act or obtain authority to conduct its affairs in this State under this Act:

(1) If any one or more of its purposes for the conduct of its affairs in this State is expressly forbidden by any law of this State.

(2) If any one or more of its purposes for the conduct of its affairs in this State is to engage in any activity which cannot lawfully be engaged in without first obtaining a license under the authority of the laws of this State to engage in such activity and such license cannot lawfully be granted to a corporation, except as provided by Subsection C.

(3) If any one or more of its purposes for the conduct of its affairs in this State is to organize Group Hospital Service, Rural Credit Unions, Agricultural and Livestock Pools, Mutual Loan Corporations, Co-operative Credit Associations, Farmers' Co-operative Societies, Co-operative Marketing Act Corporations, Rural Electric Co-operative Corporations, Telephone Co-operative Corporations, or fraternal organizations operating under the lodge system and heretofore or hereafter incorporated under Articles 1399 through 1407, both inclusive, of Revised Civil Statutes of Texas, 1925.

(4) If any one or more of its purposes for the conduct of its affairs in this State is to operate a bank under the banking laws of this State or to operate an insurance company of any type or character that operates under the insurance laws of this State.

C. Doctors of medicine and osteopathy licensed by the Texas State Board of Medical Examiners and podiatrists licensed by the Texas State Board of Podiatric Medical Examiners may organize a non-profit corporation under this Act that is jointly owned, managed, and controlled by those practitioners to perform a professional service that falls within the scope of practice of those practitioners and consists of:

(1) carrying out research in the public interest in medical science, medical economics, public health, sociology, or a related field;

(2) supporting medical education in medical schools through grants or scholarships;

(3) developing the capabilities of individuals or institutions studying, teaching, or practicing medicine, including podiatric medicine;

(4) delivering health care to the public; or

(5) instructing the public regarding medical science, public health, hygiene, or a related matter.

D. When doctors of medicine, osteopathy, and podiatry organize a non-profit corporation that is jointly owned by those practitioners, the authority of each of the practitioners is limited by the scope of practice of the respective practitioners and none can exercise control over the other's clinical authority granted by their respective licenses, either through agreements, articles of incorporation, bylaws, directives, financial incentives, or other arrangements that would assert control over treatment decisions made by the practitioner. The Texas State Board of Medical Examiners and the Texas State Board of Podiatric Medical Examiners continue to exercise regulatory authority over their respective licenses.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 201. Amended by Acts 1961, 57th Leg., p. 959, ch. 418, Sec. 1; Acts 1983, 68th Leg., p. 142, ch. 36, Sec. 1, eff. Aug. 29, 1983; Acts 1989, 71st Leg., ch. 1039, Sec. 4.07, eff. Sept. 1, 1989; Acts 1999, 76th Leg., ch. 813,

Sec. 2, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 534, Sec. 1, eff. June 20, 2003.

Art. 1396-2.02. GENERAL POWERS. A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

(1) To have perpetual succession by its corporate name, unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before August 10, 1959, is perpetual if all fees and franchise taxes have been paid as provided by law.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed on, affixed to, or in any manner reproduced upon, instruments of any nature required to be executed by its proper officers.

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require, or as shall be donated to it.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets.

(6) To lend money to and otherwise assist its employees and officers, but not its directors, if the loan or assistance may reasonably be expected to benefit, directly or indirectly, the corporation providing the assistance. Loans made to officers must be:

(a) made for the purpose of financing the principal residence of the officer; or

(b) made during the first year of that officer's employment, in which case the original principal amount may not exceed 100 percent of the officer's annual salary; or

(c) made in any subsequent year, in which case the original principal amount may not exceed 50 percent of the officer's annual salary.

(7) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, government district, or municipality, or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have officers and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or any foreign country.

(11) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties and fix their compensation.

(12) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes and in time of war to make donations in aid of war activities.

(14) To cease its corporate activities and terminate its existence by voluntary dissolution.

(15) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

(16) Any religious, charitable, educational, or eleemosynary institution organized under the laws of this State may acquire, own, hold, mortgage, and dispose of and invest its funds in real and personal property for the use and benefit and under the discretion of, and in trust for any convention, conference or association organized under the laws of this State or another state with which it is affiliated, or which elects its board of directors, or which controls it, in furtherance of the purposes of the member institution.

(17) To pay pensions and establish pension plans and pension trusts for all of, or class, or classes of its officer and employees, or its officers or its employees.

(18) To deliver money to a scholarship fund for rural students.

B. Nothing in this Article grants any authority to officers or directors of a corporation for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the articles of incorporation or by-laws or in any other laws of this State. Authority of officers and directors to act beyond the scope of the purpose or purposes of a corporation is not granted by any provisions of this Article.

C. Nothing in this Article shall be deemed to authorize any action in violation of the Anti-Trust Laws of this State or of any of the provisions of Chapter 4 of Title 32 of Revised Civil Statutes of Texas, 1925, as now existing or hereafter amended.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.02. Amended by Acts 1977, 65th Leg., p. 837, ch. 313, Sec. 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 174, ch. 96, Sec. 1, eff. May 2, 1979; Acts 1989, 71st Leg., ch. 1199, Sec. 1, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 904, Sec. 5, eff. Sept. 1, 1997.

Art. 1396-2.03. DEFENSE OF ULTRA VIRES. A. Lack of capacity of a corporation shall never be made the basis of any claim or defense at law or in equity.

B. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that such act, conveyance or transfer was beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation or by reason of limitations on authority of its officers and directors to exercise any statutory power of the corporation, as such limitations are expressed in the articles of incorporation, but that such act, conveyance or transfer was, or is, beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation or inconsistent with any such expressed limitations of authority, may be asserted:

(1) In a proceeding by a member against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceedings and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as part of the loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation for exceeding their authority.

(3) In a proceeding by the Attorney General, as provided in this Act, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from performing unauthorized acts, or to enforce divestment of real property acquired or held contrary to the laws of this State.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.03.

Art. 1396-2.04. CORPORATE NAME. A. The corporate name shall conform to the following requirements:

(1) It shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) It shall not be the same as, or deceptively similar to, the name of any domestic corporation, whether for profit or not for profit, existing under the laws of this State, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved in

the manner provided by the Texas Business Corporation Act, or the name of a corporation which has in effect a registration of its corporate name as provided in the Texas Business Corporation Act; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar, or the person, or corporation, for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State.

(3) It shall not contain the word "lottery."

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.04. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 6, Sec. 11A(b).

Art. 1396-2.04A. RESERVED NAME. A. The exclusive right to the use of a corporate name may be reserved by:

(1) a person intending to organize a corporation under this Act;

(2) a domestic corporation intending to change its name;

(3) a foreign corporation intending to apply for a certificate of authority to conduct affairs in this State;

(4) a foreign corporation authorized to conduct affairs in this State and intending to change its name; or

(5) a person intending to organize a foreign corporation and intending to have that corporation apply for a certificate of authority to conduct affairs in this State.

B. An application for name reservation or transfer of the exclusive use of a specified corporate name is subject to the procedures and period prescribed by Article 2.06, Texas Business Corporation Act.

Added by Acts 1993, 73rd Leg., ch. 733, Sec. 2, eff. Jan. 1, 1994.

Art. 1396-2.05. REGISTERED OFFICE AND REGISTERED AGENT. Each corporation shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this State which has a business office identical with such registered office.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.05. Amended by Acts 1979, 66th Leg., p. 213, ch. 120, Sec. 1, eff. May 9, 1979; Acts 1993, 73rd Leg., ch. 733, Sec. 3, eff. Jan. 1, 1994.

Art. 1396-2.06. CHANGE OF REGISTERED OFFICE OR AGENT. A. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the

Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The post-office address of its then registered office.

(3) If the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent is to be changed, the name of its successor registered agent.

(6) That the post-office address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical.

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors, or if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act, by the members.

B. The statement required by this Article shall be signed by the corporation by an officer. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as prescribed by law:

(1) Endorse on the original and the copy the word "Filed" and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

C. Upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.06. Amended by Acts 1969, 61st Leg., p. 2477, ch. 834, Sec. 1, 2; Acts 1979, 66th Leg.,

p. 213, ch. 120, Sec. 2, eff. May 9, 1979; Acts 1987, 70th Leg., ch. 93, Sec. 36, eff. Aug. 31, 1987.

Art. 1396-2.06A. CHANGE OF ADDRESS OF REGISTERED AGENT. A. The location of the registered office in this State for a corporation may be changed from one address to another by filing in the office of the Secretary of State a statement setting forth:

(1) the name of the corporation represented by the registered agent;

(2) the street address at which the registered agent has maintained the registered office for that corporation;

(3) the new street address at which the registered agent will maintain the registered office for that corporation; and

(4) a statement that notice of the change has been given to the corporation in writing at least ten (10) days before the date of the filing.

B. The statement required by this article shall be signed by the registered agent or, if the agent is a corporation, by an officer of the corporate agent on its behalf. If the registered agent is simultaneously filing statements for more than one corporation, each statement may contain facsimile signatures in the execution. The original and one copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to this Act, the Secretary of State shall:

(1) endorse on the original and the copy the word "Filed," and the month, day, and year of the filing;

(2) file the original in the Secretary of State's office; and

(3) return the copy to the registered agent.

C. The registered office of the corporation named in the statement shall be changed to the new street address of the registered agent on the filing of the statement by the Secretary of State.

Added by Acts 1993, 73rd Leg., ch. 733, Sec. 4, eff. Jan. 1, 1994.

Art. 1396-2.07. SERVICE OF PROCESS ON CORPORATION. A. The president and all vice-presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Where the chief executive function of a corporation is authorized to be performed by a committee, service on any member of such committee shall be deemed to be service on the president.

B. Whenever a corporation shall fail to appoint or maintain a registered agent in this State, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any process, notice, or demand shall be made by delivering to and leaving with him, or with the Deputy Secretary of State, or with any clerk having charge of the

corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the Secretary of State, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

C. The Secretary of State shall keep a record of all processes, notices, and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

D. Service of process, notice, or demand required or permitted by law to be served by a political subdivision of this state or by a person, including another political subdivision or an attorney, acting on behalf of a political subdivision in connection with the collection of a delinquent ad valorem tax may be served on a corporation whose corporate privileges are forfeited under Section 171.251, Tax Code, or is involuntarily dissolved under Article 7.01 of this Act by delivering the process, notice, or demand to any officer or director of the corporation, as listed in the most recent records of the secretary of state. If the officers or directors of the corporation are unknown or cannot be found, service on the corporation may be made in the same manner as service is made on unknown shareholders under law. Notwithstanding any disability or reinstatement of a corporation, service of process under this section is sufficient for a judgment against the corporation or a judgment in rem against any property to which the corporation holds title.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.07. Amended by Acts 1999, 76th Leg., ch. 1481, Sec. 39, eff. Sept. 1, 1999.

Sec. B amended by Acts 2005, 79th Leg., ch. 41, Sec. 5, eff. Sept. 1, 2005.

Art. 1396-2.08. MEMBERS. A. A corporation may have one or more classes of members or may have no members.

B. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or by-laws.

C. If the corporation is to have no members, that fact shall be set forth in the articles of incorporation.

D. A corporation may issue certificates, or cards, or other instruments evidencing membership rights, voting rights or ownership rights as may be authorized in the articles of incorporation or in the by-laws.

E. The members of a non-profit corporation shall not be personally liable for the debts, liabilities, or obligations of the corporation.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.08. Amended by Acts 1961, 57th Leg., p. 653, ch. 302, Sec. 1.

Art. 1396-2.09. BY-LAWS. A. The initial by-laws of a corporation shall be adopted by its board of directors or, if the management of the corporation is vested in its members, by the members. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

B. A corporation's board of directors may amend or repeal the corporation's by-laws, or adopt new by-laws, unless:

(1) the articles of incorporation or this Act reserves the power exclusively to the members in whole or in part;

(2) the management of the corporation is vested in its members; or

(3) the members in amending, repealing, or adopting a particular by-law expressly provide that the board of directors may not amend or repeal that by-law.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.09. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 5, eff. Jan. 1, 1994.

Art. 1396-2.10. MEETINGS OF MEMBERS. A. If a corporation has members:

(1) Meetings of members shall be held at such place, either within or without this State, as may be provided in the by-laws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.

(2) An annual meeting of the members shall be held at such times as may be provided in the by-laws, except that where the by-laws of a corporation provide for more than one regular meeting of members each year, an annual meeting shall not be required, and directors may be elected at such meetings as the by-laws may provide. Failure to hold the annual meeting at the designated time shall not work a dissolution of the corporation. In the event the board of directors fails to call the annual meeting at the designated time, any member may make demand that such meeting be held within a reasonable time, such demand to be made in writing by registered mail directed to any officer of the corporation. If the annual meeting of members is not called within sixty (60) days following such demand, any member may compel the holding of such annual meeting by legal action directed against said board, and all of the extraordinary writs of common law and of courts of equity shall be available to such member to compel the holding of such annual meeting. Each and every member is hereby declared to have a justiciable interest sufficient to enable him to institute and prosecute such legal proceedings.

(3) Special meetings of the members may be called by the president, the board of directors, by members having not less than one-tenth (1/10) of the votes entitled to be cast at such meeting, or such other officers or persons as may be provided in the articles of incorporation or by-laws.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.10.

Art. 1396-2.11. NOTICE OF MEMBERS' MEETINGS. A. In the case of a corporation other than a church, written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally, by facsimile transmission, or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon paid. If transmitted by facsimile, notice is deemed to be delivered on successful transmission of the facsimile.

B. In the case of a corporation which is a church, notice of meetings of members will be deemed sufficient if made by oral announcement at a regularly scheduled worship service prior to such meeting, or as otherwise provided in its articles of incorporation or its by-laws.

C. The by-laws may provide that no notice of annual or regular meetings shall be required.

D. If its by-laws so provide, a corporation having more than one thousand (1,000) members at the time a meeting is scheduled or called may give notice of such meeting by publication in any newspaper of general circulation in the community in which the principal office of such corporation is located.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.11. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 6, eff. Jan. 1, 1994.

Art. 1396-2.11A. RECORD DATE FOR DETERMINING MEMBERS ENTITLED TO NOTICE AND VOTE. A. The by-laws 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 by-laws do not fix and do not provide for fixing the record date, the board of directors may fix a future date as the record date. If a record date is not fixed, members at the close of business on the business day preceding the date on which notice is given, or if notice is waived, at the close of business on the business day preceding the date of the meeting, are entitled to notice of the meeting.

B. The by-laws 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 by-laws do not fix and do not provide for fixing a record date, the board may fix a future date as the record date. If a record date is not fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

C. The by-laws may fix or provide the manner for fixing a date as the record date for the purpose of determining the members entitled to exercise any rights regarding any other lawful action. If the by-laws do not fix and do not provide for fixing a record date, the board of directors may fix in advance a record date. If a

record date is not fixed, members at the close of business on the date on which the board of directors adopts the resolution relating to the record date, or the 60th day before the date of the other action, whichever is later, are entitled to exercise those rights.

D. A record date fixed under this section may not be more than sixty (60) days before the date of the meeting or action that requires the determination of the members.

E. A determination of members entitled to notice of or to vote at a members' 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. The board must fix a new date for determining the right to notice or the right to vote if the meeting is adjourned to a date more than ninety (90) days after the record date for determining members entitled to notice of the original meeting.

Added by Acts 1993, 73rd Leg., ch. 733, Sec. 7, eff. Jan. 1, 1994.

Art. 1396-2.11B. VOTING MEMBERS' LIST FOR MEETING. A. After fixing a record date for the notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its voting members who are entitled to notice of the meeting. The list must show the address and number of votes each voting member is entitled to cast at the meeting. The corporation shall maintain, through the time of the members' meeting, a list of members who are entitled to vote at the meeting but are not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of voting members.

B. Not later than two (2) business days after the date notice is given of a meeting for which a list was prepared, as provided by Section A of this article, and continuing through the meeting, the list of voting members must be available for inspection by any member entitled to vote at the meeting for the purpose of communication with other members concerning 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 voting member or voting member's agent or attorney is entitled on written demand to inspect and, subject to the limitations of Section B, Article 2.23, of this Act 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 voting members available at the meeting, and any voting member or voting member's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

Added by Acts 1993, 73rd Leg., ch. 733, Sec. 7, eff. Jan. 1, 1994.

Art. 1396-2.12. QUORUM OF MEMBERS. A. Unless otherwise provided in the articles of incorporation or in the by-laws, members holding one-tenth of the votes entitled to be cast, represented in person or by proxy, shall constitute a quorum. The vote of the majority of the votes entitled to be cast by the members

present, or represented by proxy at a meeting at which a quorum is present, shall be the act of the members meeting, unless the vote of a greater number is required by law, the articles of incorporation, or the by-laws.

B. In the absence of an express provision to the contrary in the articles of incorporation or the by-laws, a church incorporated prior to the effective date of this Act shall be deemed to have provided in its articles of incorporation or its by-laws that members present at a meeting, notice for which shall have been duly given, shall constitute a quorum.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.12.

Art. 1396-2.13. VOTING OF MEMBERS. A. Each member, regardless of class, shall be entitled to one (1) vote on each matter submitted to a vote of the members, except to the extent that the voting rights of members of any class or classes are limited, enlarged, or denied by the articles of incorporation or the by-laws.

B. A member may vote in person or, unless the articles of incorporation or the by-laws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and in no event shall it remain irrevocable for more than eleven (11) months. Where directors or officers are to be elected by members, the by-laws may provide that such elections may be conducted by mail, by facsimile transmission, or by any combination of the two.

C. At each election for directors every member entitled to vote at such election shall have the right to vote, in person or by proxy, for as many persons as there are directors to be elected and for whose election he has a right to vote, or, if expressly authorized by the articles of incorporation, to cumulate his vote by giving one candidate as many votes as the number of such directors multiplied by his vote shall equal, or by distributing such votes on the same principle among any number of such candidates. Any member who intends to cumulate his votes as herein authorized shall give written notice of such intention to the secretary of the corporation on or before the day preceding the election at which such member intends to cumulate his votes.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.13. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 8, eff. Jan. 1, 1994.

Art. 1396-2.14. BOARD OF DIRECTORS. A. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this State or members of the corporation unless the articles of incorporation or the by-laws so require. The articles of incorporation or the by-laws may prescribe other qualifications for directors.

B. Boards of directors of religious, charitable,

educational, or eleemosynary institutions may be affiliated with, elected and controlled by a convention, conference or association organized under the laws of this State or another state, whether incorporated or unincorporated, whose membership is composed of representatives, delegates, or messengers from any church or other religious association.

C. The articles of incorporation of a corporation may vest the management of the affairs of the corporation in its members. If the corporation has a board of directors, it may limit the authority of the board of directors to whatever extent as may be set forth in the articles of incorporation or by-laws. Except for a church organized and operating under a congregational system, was incorporated before January 1, 1994, and has the management of its affairs vested in its members, a corporation shall be deemed to have vested the management of the affairs of the corporation in its board of directors in the absence of an express provision to the contrary in the articles of incorporation or the by-laws.

D. The board of directors may be designated by any name appropriate to the customs, usages, or tenets of the corporation.

E. The board of directors of a corporation may be elected (in whole or in part) by one or more associations or corporations, organized under the laws of this State or another state if (1) the articles of incorporation or the by-laws of the former corporation so provide, and (2) the former corporation has no members with voting rights.

F. The articles of incorporation or the by-laws may provide that any one or more persons may be ex-officio members of the board of directors. A person designated as an ex-officio member of the board of directors is entitled to notice of and to attend meetings of the board of directors. The ex-officio member is not entitled to vote unless otherwise provided in the articles of incorporation or the by-laws. An ex-officio member of the board of directors who is not entitled to vote does not have the duties or liabilities of a director as provided in this Act.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.14. Amended by Acts 1967, 60th Leg., p. 1716, ch. 656, Sec. 1, eff. June 17, 1967; Acts 1993, 73rd Leg., ch. 733, Sec. 9, eff. Jan. 1, 1994.

Art. 1396-2.15. NUMBER, ELECTION, CLASSIFICATION, AND REMOVAL OF DIRECTORS. A. The number of directors of a corporation shall be not less than three (3). Subject to such limitation, the number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the by-laws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. 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 by-laws, but no decrease shall have the effect of shortening the term of any incumbent director. The number of directors may not be decreased to fewer than three (3). In the absence of a by-law or a provision of the articles of incorporation fixing the number of directors or providing for the manner in which the number of directors shall be fixed, the number of directors

shall be the same as the number constituting the initial board of directors as fixed by the articles of incorporation.

B. The directors constituting the initial board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected, appointed, or designated in the manner and for the terms provided in the articles of incorporation or the by-laws. If the method of election, designation, or appointment is not provided in the articles of incorporation or by-laws, the directors, other than the initial directors, shall be elected by the board of directors. In the absence of a provision in the articles of incorporation or the by-laws fixing the term of office, a director shall hold office until the next annual election of directors and until his successor shall have been elected, appointed, or designated and qualified.

C. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Unless removed in accordance with the provisions of the articles of incorporation or the by-laws, each director shall hold office for the term for which he is elected, appointed, or designated and until his successor shall have been elected, appointed, or designated and qualified.

D. A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or by-laws. In the absence of a provision providing for removal, a director may be removed from office, with or without cause, by the persons entitled to elect, designate, or appoint the director. If the director was elected to office, removal requires an affirmative vote equal to the vote necessary to elect the director.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.15. Amended by Acts 1989, 71st Leg., ch. 801, Sec. 45, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 733, Sec. 10, eff. Jan. 1, 1994.

Art. 1396-2.16. VACANCIES. A. Unless otherwise provided in the articles of incorporation or the by-laws, any vacancy occurring in the board of directors shall be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

B. Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of members called for that purpose. If a corporation has no members, or no members having the right to vote thereon, such directorship shall be filled as provided in the articles of incorporation or the by-laws.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.16.

Art. 1396-2.17. QUORUM AND VOTING DIRECTORS. A. A quorum for the transaction of business by the board of directors shall be whichever is less:

(1) A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, a majority of the number of directors stated in the articles of incorporation, or

(2) Any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

B. Directors present by proxy may not be counted toward a quorum.

C. The act of the majority of the directors present in person or by proxy at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

D. A director may vote in person or (if the articles of incorporation or the bylaws so provide) by proxy executed in writing by the director. No proxy shall be valid after three months from the date of its execution. Each proxy shall be revocable unless expressly provided therein to be irrevocable, and unless otherwise made irrevocable by law.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.17. Amended by Acts 1967, 60th Leg., p. 1716, ch. 656, Sec. 2, eff. June 17, 1967.

Art. 1396-2.18. COMMITTEES. A. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate one or more committees, which, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws, shall have and exercise the authority of the board of directors in the management of the corporation. Each such committee shall consist of two or more persons, a majority of whom are directors; the remainder, if the articles of incorporation or the bylaws so provide, need not be directors. The designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director, of any responsibility imposed upon it or him by law. Any non-director who becomes a member of any such committee shall have the same responsibility with respect to such committee as a director who is a member thereof.

B. Other committees not having and exercising the authority of the board of directors in the management of the corporation may be designated and appointed by a resolution adopted by a majority of the directors at a meeting at which a quorum is present, or by the president thereunto authorized by a like resolution of the board of directors or by the articles of incorporation or by the by-laws. Membership on such committees may, but need not be, limited to directors.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.18. Amended by Acts 1967, 60th Leg., p. 1716, ch. 656, Sec. 3, eff. June 17, 1967.

Art. 1396-2.19. PLACE AND NOTICE OF DIRECTORS' MEETINGS. A. Meetings of the board of directors, regular or special, may be held either within or without this State.

B. Regular meetings of the board of directors may be held with or without notice as prescribed in the by-laws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the by-laws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the by-laws.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.19.

Art. 1396-2.20. OFFICERS. A. The officers of a corporation shall consist of a president and a secretary and may also consist of one or more vice-presidents, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three (3) years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors, or, if the management of the corporation is vested in its members, by the members. Any two or more offices may be held by the same person, except the offices of president and secretary. A committee duly designated may perform the functions of any officer and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary.

B. The officers of a corporation may be designated by such other or additional titles as may be provided in the articles of incorporation or the by-laws.

C. In the case of a corporation which is a church, it shall not be necessary that there be officers as provided herein, but such duties and responsibilities may be vested in the board of directors or other designated body in any manner provided for in the articles of incorporation or the by-laws.

D. In the discharge of a duty imposed or power conferred on an officer of a corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the corporation or another person, that were prepared or presented by:

(1) one or more other officers or employees of the corporation, including members of the board of directors;

(2) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(3) 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.

E. An officer is not relying in good faith as required by

Section D of this article if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by Section D of this article unwarranted.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.20. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 11, eff. Jan. 1, 1994.

Art. 1396-2.21. REMOVAL OF OFFICERS. A. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.21.

Art. 1396-2.22. OFFICER LIABILITY. (a) An officer is not liable to the corporation or any other person for an action taken or omission made by the officer in the person's capacity as an officer unless the officer's conduct was not exercised:

(1) in good faith;

(2) with ordinary care; and

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

(b) This article shall not affect the liability of the corporation for an act or omission of the officer.

Added by Acts 2001, 77th Leg., ch. 727, Sec. 1, eff. Sept. 1, 2001.

Art. 1396-2.22A. POWER TO INDEMNIFY AND TO PURCHASE INDEMNITY INSURANCE; DUTY TO INDEMNIFY. A. In this article:

(1) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the liabilities of the predecessor are transferred to the corporation by operation of law and in any other transaction in which the corporation assumes the liabilities of the predecessor but does not specifically exclude liabilities that are the subject matter of this article.

(2) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

(3) "Expenses" includes court costs and attorneys' fees.

(4) "Official capacity" means:

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

(b) when used with respect to a person other than a director, the elective or appointive office in the corporation held

by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation; but

(c) in both Paragraphs (a) and (b) does not include service for any other foreign or domestic corporation or any partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise.

(5) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

B. A corporation may indemnify a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director only if it is determined in accordance with Section F of this article that the person:

(1) conducted himself in good faith;

(2) reasonably believed:

(a) in the case of conduct in his official capacity as a director of the corporation, that his conduct was in the corporation's best interests; and

(b) in all other cases, that his conduct was at least not opposed to the corporation's best interests; and

(3) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful.

C. Except to the extent permitted by Section E of this article, a director may not be indemnified under Section B of this article in respect of a proceeding:

(1) in which the person is found liable on the basis that personal benefit was improperly received by him, whether or not the benefit resulted from an action taken in the person's official capacity; or

(2) in which the person is found liable to the corporation.

D. The termination of a proceeding by judgment, order, settlement, or conviction or on a plea of nolo contendere or its equivalent is not of itself determinative that the person did not meet the requirements set forth in Section B of this article. A person shall be deemed to have been found liable in respect of any claim, issue or matter only after the person shall have been so adjudged by a court of competent jurisdiction after exhaustion of all appeals therefrom.

E. A person may be indemnified under Section B of this article against judgments, penalties (including excise and similar taxes), fines, settlements, and reasonable expenses actually incurred by the person in connection with the proceeding; but if the person is found liable to the corporation or is found liable on the basis that personal benefit was improperly received by the person, the indemnification (1) is limited to reasonable expenses actually incurred by the person in connection with the proceeding, and (2) shall not be made in respect of any proceeding in which the person shall have been found liable for willful or intentional misconduct in the performance of his duty to the corporation.

F. A determination of indemnification under Section B of this article must be made:

(1) by a majority vote of a quorum consisting of directors

who at the time of the vote are not named defendants or respondents in the proceeding;

(2) if such a quorum cannot be obtained, by a majority vote of a committee of the board of directors, designated to act in the matter by a majority vote of all directors, consisting solely of two or more directors who at the time of the vote are not named defendants or respondents in the proceeding;

(3) by special legal counsel selected by the board of directors or a committee of the board by vote as set forth in Subsection (1) or (2) of this section, or, if such a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all directors; or

(4) by the members in a vote that excludes the vote of directors who are named defendants or respondents in the proceeding.

G. Authorization of indemnification and determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses must be made in the manner specified by Subsection (3) of Section F of this article for the selection of special legal counsel. A provision contained in the articles of incorporation, the bylaws, a resolution of members or directors, or an agreement that makes mandatory the indemnification permitted under Section B of this article shall be deemed to constitute authorization of indemnification in the manner required by this section even though such provision may not have been adopted or authorized in the same manner as the determination that indemnification is permissible.

H. A corporation shall indemnify a director against reasonable expenses incurred by him in connection with a proceeding in which he is a named defendant or respondent because he is or was a director if he has been wholly successful, on the merits or otherwise, in the defense of the proceeding.

I. If, in a suit for the indemnification required by Section H of this article, a court of competent jurisdiction determines that the director is entitled to indemnification under that section, the court shall order indemnification and shall award to the director the expenses incurred in securing the indemnification.

J. If, upon application of a director, a court of competent jurisdiction determines, after giving any notice the court considers necessary, that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the requirements set forth in Section B of this article or has been found liable in the circumstances described by Section C of this article, the court may order the indemnification that the court determines is proper and equitable; but if the person is found liable to the corporation or is found liable on the basis that personal benefit was improperly received by the person, the indemnification shall be limited to reasonable expenses actually incurred by the person in connection with the proceeding.

K. Reasonable expenses incurred by a director who was, is, or is threatened to be made a named defendant or respondent in a

proceeding may be paid or reimbursed by the corporation, in advance of the final disposition of the proceeding and without the determination specified in Section F of this article or the authorization or determination specified in Section G of this article, after the corporation receives a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification under this article and a written undertaking by or on behalf of the director to repay the amount paid or reimbursed if it is ultimately determined that he has not met that standard or if it is ultimately determined that indemnification of the director against expenses incurred by him in connection with that proceeding is prohibited by Section E of this article. A provision contained in the articles of incorporation, the bylaws, a resolution of members or directors, or an agreement that makes mandatory the payment or reimbursement permitted under this section shall be deemed to constitute authorization of that payment or reimbursement.

L. The written undertaking required by Section K of this article must be an unlimited general obligation of the director but need not be secured. It may be accepted without reference to financial ability to make repayment.

M. A provision for a corporation to indemnify or to advance expenses to a director who was, is, or is threatened to be made a named defendant or respondent in a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of members or directors, an agreement, or otherwise, except in accordance with Section R of this article, is valid only to the extent it is consistent with this article as limited by the articles of incorporation, if such a limitation exists.

N. Notwithstanding any other provision of this article, a corporation may pay or reimburse expenses incurred by a director in connection with his appearance as a witness or other participation in a proceeding at a time when he is not a named defendant or respondent in the proceeding.

O. An officer of the corporation shall be indemnified as, and to the same extent, provided by Sections H, I, and J of this article for a director and is entitled to seek indemnification under those sections to the same extent as a director. A corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to directors under this article.

P. A corporation may indemnify and advance expenses to a person who is not or was not an officer, employee, or agent of the corporation but who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise to the same extent that it may indemnify and advance expenses to directors under this article.

Q. A corporation may indemnify and advance expenses to an officer, employee, agent, or person identified in Section P of this article and who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or

contract or as permitted or required by common law.

R. (1) A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who is or was serving at the request of the corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article.

(2)(a) In addition to the powers described in Subsection (1), a corporation may purchase, maintain, or enter into other arrangements on behalf of any person who is or was a director, officer, or trustee of the corporation against any liability asserted against him and incurred by him in such capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against that liability under this article.

(b) If the other arrangement is with a person or entity that is not regularly engaged in the business of providing insurance coverage, the arrangement may provide for payment of a liability with respect to which the corporation would not have the power to indemnify a person only if coverage for that liability has been approved by the corporation's members, if the corporation has members.

(c) Without limiting the power of the corporation to procure or maintain any kind of other arrangement, a corporation, for the benefit of persons described in Subsection (2)(a) may:

(i) create a trust fund;

(ii) establish any form of self-insurance;

(iii) secure its indemnity obligation by grant of a security interest or other lien on the assets of the corporation; or

(iv) establish a letter of credit, guaranty, or surety arrangement.

(d) For the limited purposes of Subsection (2) of this section only, any liability indemnification arrangement, other than coverage through an insurance carrier, is not considered to be the business of insurance under the Insurance Code, including the Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Vernon's Texas Civil Statutes), or any other law of this state.

(3) The insurance may be procured or maintained with an insurer, or the other arrangement may be procured, maintained, or established within the corporation or with any insurer or other person considered appropriate by the board of directors, regardless of whether all or part of the stock or other securities of the insurer or other person are owned in whole or part by the corporation. In the absence of fraud, the judgment of the board of directors as to the terms and conditions of the insurance or other arrangement and the identity of the insurer or other person participating in an arrangement is conclusive, and the insurance or arrangement is not voidable and does not subject the directors approving the insurance or arrangement to liability, on any ground,

regardless of whether directors participating in the approval are beneficiaries of the insurance or arrangement.

S. Any indemnification of or advance of expenses to a director in accordance with this article shall be reported in writing to the members of the corporation with or before the notice or waiver of notice of the next meeting of members or with or before the next submission to members of a consent to action without a meeting pursuant to Section A, Article 1396-9.10 of this Act and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

T. For purposes of this article, the corporation is deemed to have requested a director to serve an employee benefit plan whenever the performance by him of his duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law are deemed fines. Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan is deemed to be for a purpose which is not opposed to the best interests of the corporation.

U. The articles of incorporation of a corporation may restrict the circumstances under which the corporation is required or permitted to indemnify a person under Section H, I, J, O, P, or Q of this article.

Added by Acts 1985, 69th Leg., ch. 128, Sec. 30, eff. May 20, 1985. Amended by Acts 1989, 71st Leg., ch. 801, Sec. 46, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1199, Sec. 2, eff. Aug. 28, 1989.

Art. 1396-2.23. BOOKS AND RECORDS. A. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any authority of the board of directors and shall keep at its registered office or principal office in this State a record of the names and addresses of its members entitled to vote.

B. A member of a corporation, on written demand stating the purpose of the demand, has the right to examine and copy, in person or by agent, accountant, or attorney, at any reasonable time, for any proper purpose, the books and records of the corporation relevant to that purpose, at the expense of the member.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.23. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 12, eff. Jan. 1, 1994.

Art. 1396-2.23A. FINANCIAL RECORDS AND ANNUAL REPORTS. A. A corporation shall maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the corporation, including all income and expenditures, in accordance with generally accepted accounting practices.

B. Based on these records, the board of directors shall annually prepare or approve a report of the financial activity of the corporation for the preceding year. The report must conform to accounting standards as promulgated by the American Institute of Certified Public Accountants and must include a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds.

C. All records, books, and annual reports of the financial activity of the corporation shall be kept at the registered office or principal office of the corporation in this state for at least three years after the closing of each fiscal year and shall be available to the public for inspection and copying there during normal business hours. The corporation may charge for the reasonable expense of preparing a copy of a record or report.

D. A corporation that fails to maintain financial records, prepare an annual report, or make a financial record or annual report available to the public in the manner prescribed by this article is guilty of a Class B misdemeanor.

E. This article does not apply to:

(1) a corporation that solicits funds only from its members;

(2) a corporation which does not intend to solicit and receive and does not actually raise or receive contributions from sources other than its own membership in excess of $10,000 during a fiscal year;

(3) a career school or college that has received a certificate of approval from the Texas Workforce Commission, a public institution of higher education and foundations chartered for the benefit of such institutions or any component part thereof, a private or independent institution of higher education as defined by Section 61.003, Education Code, a postsecondary educational institution with a certificate of authority to grant a degree issued by the Texas Higher Education Coordinating Board, or an elementary or secondary school;

(4) religious institutions which shall be limited to churches, ecclesiastical or denominational organizations, or other established physical places for worship at which religious services are the primary activity and such activities are regularly conducted;

(5) a trade association or professional society whose income is principally derived from membership dues and assessments, sales, or services;

(6) any insurer licensed and regulated by the Texas Department of Insurance;

(7) an alumni association of a public or private institution of higher education in this state, provided that such association is recognized and acknowledged by the institution as its official alumni association.

Added by Acts 1977, 65th Leg., p. 1947, ch. 773, Sec. 1, eff. Jan. 1, 1978. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 13, eff. Jan. 1, 1994.

Sec. E amended by Acts 2003, 78th Leg., ch. 238, Sec. 42, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 364, Sec. 2.31, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 8.45, eff. Sept. 1, 2003.

Art. 1396-2.23B. CORPORATIONS ASSISTING STATE AGENCIES. A. In this Article state agency means:

(1) a board, commission, department, office, or other entity that is in the executive branch of state government and that was created by the constitution or a statute of the State, including an institution of higher education as defined by Section 61.003, Texas Education Code, as amended;

(2) the legislature or a legislative agency; or

(3) the Supreme Court, the Court of Criminal Appeals, a court of appeals, or the State Bar of Texas or another state judicial agency.

B. The books and records of a corporation except a bona fide alumni association are subject to audit at the discretion of the State Auditor if both of the following obtain:

(1) the corporation's charter specifically dedicates the corporation's activities to the benefit of a particular agency of state government; and

(2) a board member, officer, or employee of the same agency of state government sits on the board of directors of the corporation in other than an ex officio, nonvoting, advisory capacity.

C. If the corporation's charter specifically dedicates the corporation's activities to the benefit of a particular agency of state government but the conditions in Section B of this Article do not obtain, before the 90th day after the last day of the corporation's fiscal year, the corporation shall file with the Secretary of State a report for the preceding fiscal year consisting of a copy of a report as described by Section B of Article 2.23A of this Act (Article 1396-2.23A, Vernon's Texas Civil Statutes).

Added by Acts 1983, 68th Leg., p. 4600, ch. 779, Sec. 1, eff. Aug. 29, 1983.

Art. 1396-2.24. DIVIDENDS PROHIBITED. A. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members, but only as permitted by this Act.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.24.

Art. 1396-2.25. LOANS TO DIRECTORS PROHIBITED. A. No loans shall be made by a corporation to its directors.

B. The directors of a corporation who vote for or assent to the making of a loan to a director of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of

such loan until repayment thereof.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.25. Amended by Acts 1989, 71st Leg., ch. 1199, Sec. 3, eff. Aug. 28, 1989.

Art. 1396-2.26. LIABILITY OF DIRECTORS IN CERTAIN CASES. A. In addition to any other liabilities imposed by law upon directors of a corporation, the directors who vote for or assent to any distribution of assets other than in payment of its debts, when the corporation is insolvent or when such distribution would render the corporation insolvent, or during the liquidation of the corporation without the payment and discharge of or making adequate provisions for all known debts, obligations and liabilities of the corporation, shall be jointly and severally liable to the corporation for the value of such assets which are thus distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

B. A director of a corporation who is present at a meeting of its board of directors at which action was taken on such corporate matter shall be presumed to have assented to such action unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of the action.

C. A director shall not be liable under Section A of this Article if, in voting for or assenting to a distribution, the director:

(1) relied in good faith and with ordinary care on information, opinions, reports, or statements, including financial statements and other financial data, concerning the corporation or another person that were prepared or presented by:

(a) one or more officers or employees of the corporation;

(b) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) a committee of the board of directors of which the director is not a member;

(2) acting in good faith and with ordinary care, considered the assets of the corporation to be at least that of their book value; or

(3) in determining whether the corporation made adequate provision for payment, satisfaction, or discharge of all of its liabilities and obligations as provided in Article 6.03 of this Act, relied in good faith and with ordinary care on financial statements of, or other information concerning, a person who was or became contractually obligated to pay, satisfy, or discharge some or all of those liabilities or obligations.

D. A director shall not be liable under this Article if, in the exercise of ordinary care, he acted in good faith and in reliance upon the written opinion of an attorney for the

corporation.

E. A director against whom a claim shall be asserted under this Article and who shall be held liable thereon shall be entitled to contribution from persons who accepted or received such distribution knowing such distribution to have been made in violation of this Article, in proportion to the amounts received by them respectively.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 2.26. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 14, eff. Jan. 1, 1994.

Art. 1396-2.27. CHARITABLE CORPORATIONS. A. Notwithstanding any provision in this Act or in the articles of incorporation to the contrary (except as provided in Section B), the articles of incorporation of each corporation which is a private foundation described in Section 509 of the Internal Revenue Code of 1986 shall be deemed to contain the following provisions: "The corporation shall make distributions at such time and in such manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1986; the corporation shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code; the corporation shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code; the corporation shall not make any investments which would subject it to tax under Section 4944 of the Code; and the corporation shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code." With respect to any such corporation organized prior to January 1, 1970, this Section A shall apply only for its taxable years beginning on or after January 1, 1972.

B. The articles of incorporation of any corporation described in Section A may be amended to expressly exclude the application of Section A, and in the event of such amendment, Section A shall not apply to such corporation.

C. All references in this Article to "the Code" are to the Internal Revenue Code of 1986, and all references in this Article to specific sections of the Code include corresponding provisions of any subsequent Federal tax laws.

Added by Acts 1971, 62nd Leg., p. 889, ch. 119, Sec. 1, eff. May 10, 1971. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 15, eff. Jan. 1, 1994.

Art. 1396-2.28. GENERAL STANDARDS FOR DIRECTORS. A. A director shall discharge the director's duties, including the director's duties as a member of a committee, in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation.

B. In the discharge of any duty imposed or power conferred on a director, including as a member of a committee, the director may in good faith rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the corporation or another person that were

prepared or presented by:

(1) one or more officers or employees of the corporation;

(2) legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) a committee of the board of directors of which the director is not a member; or

(4) in the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

C. A director is not relying in good faith, within the meaning of this article, if the director has knowledge concerning a matter in question that makes reliance otherwise permitted by this article unwarranted.

D. A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director if the director acted in compliance with this article. A person seeking to establish liability of a director must prove that the director has not acted:

(1) in good faith;

(2) with ordinary care; and

(3) in a manner the director reasonably believes to be in the best interest of the corporation.

E. A director is not deemed to have the duties of a trustee of a trust with respect to the corporation or with respect to any property held or administered by the corporation, including property that may be subject to restrictions imposed by the donor or transferor of the property.

Added by Acts 1993, 73rd Leg., ch. 733, Sec. 16, eff. Jan. 1, 1994.

Art. 1396-2.29. DELEGATION OF INVESTMENT AUTHORITY. A. The board of directors of a corporation may:

(1) from time to time contract with investment counsel, trust companies, banks, investment advisors, or investment managers; and

(2) confer on those advisors full power and authority to:

(a) purchase or otherwise acquire stocks, bonds, securities, and other investments on behalf of the corporation; and

(b) sell, transfer, or otherwise dispose of any of the corporation's assets and properties at a time and for a consideration that the advisor deems appropriate.

B. The board of directors also may:

(1) confer on an advisor described by Section A of this article other powers regarding the corporation's investments as the board of directors deems appropriate; and

(2) authorize the advisor to hold title to any of the corporation's assets and properties in its own name for the benefit of the corporation or in the name of a nominee for the benefit of the corporation.

C. The board of directors has no liability regarding any

action taken or omitted by an advisor engaged under this article if the board of directors acted in good faith and with ordinary care in selecting the advisor. The board of directors may remove or replace the advisor, with or without cause, if they deem that action appropriate or necessary.

Added by Acts 1993, 73rd Leg., ch. 733, Sec. 16, eff. Jan. 1, 1994.

Art. 1396-2.30. INTERESTED DIRECTORS. A. A contract or transaction between a corporation and one or more of its directors, officers, or members, or between a corporation and any other corporation, partnership, association, or other organization in which one or more of its directors, officers, or members are directors, officers, or members, or have a financial interest, is not void or voidable solely for that reason, solely because the director, officer, or member is present at or participates in the meeting of the board or committee of the board or of the members that authorizes the contract or transaction, or solely because the director's, officer's, or member's votes are counted for that purpose, if:

(1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors, the committee, or the members, and the board, committee, or members in good faith and with ordinary care authorizes the contract or transaction by the affirmative vote of a majority of the disinterested directors or members, even though the disinterested directors or members are less than a quorum;

(2) the material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the members entitled to vote on the contract or transaction, and the contract or transaction is specifically approved in good faith and with ordinary care by vote of the disinterested members; or

(3) the contract or transaction is fair to the corporation when it is authorized, approved, or ratified by the board of directors, a committee of the board, or the members.

B. Common or interested directors or members may be counted in determining the presence of a quorum at a meeting of the board of directors, of a committee, or of the members that authorizes the contract or transaction.

Added by Acts 1993, 73rd Leg., ch. 733, Sec. 16, eff. Jan. 1, 1994.

Art. 1396-2.31. POWER TO SERVE AS TRUSTEE. A. A corporation that is described by Section 501(c)(3) or 170(c), Internal Revenue Code of 1986, or a corresponding provision of a subsequent federal tax law, or a corporation listed by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78, may serve as the trustee of a trust:

(1) of which the corporation is a beneficiary; or

(2) benefiting another organization described by one of those sections of the Internal Revenue Code of 1986, or a corresponding provision of a subsequent federal tax law, or listed

by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78.

B. Any corporation (or person or entity assisting such corporation) described in this article shall have immunity from suit (including both a defense to liability and the right not to bear the cost, burden, and risk of discovery and trial) as to any claim alleging that the corporation's role as trustee of a trust described in this article constitutes engaging in the trust business in a manner requiring a state charter as defined in Section 181.002(a)(9), Finance Code. An interlocutory appeal may be taken if a court denies or otherwise fails to grant a motion for summary judgment that is based on an assertion of the immunity provided in this subsection.

Added by Acts 1995, 74th Leg., ch. 914, Sec. 21, eff. June 16, 1995. Amended by Acts 1997, 75th Leg., ch. 769, Sec. 9, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 344, Sec. 8.001, eff. May 29, 1999; Acts 1999, 76th Leg., ch. 1073, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 6.030, eff. Sept. 1, 2001.

Art. 1396-3.01. INCORPORATORS. A. Any natural person of the age of eighteen (18) years or more without regard to the person's place of residence or domicile may act as an incorporator of a corporation by signing the articles of incorporation for such corporation and delivering the original and a copy of the articles of incorporation to the Secretary of State.

B. Any religious society, charitable, benevolent, literary, or social association, or church may incorporate under this Act with the consent of a majority of its members, who shall authorize the incorporators to execute the articles of incorporation.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.01. Amended by Acts 1979, 66th Leg., p. 214, ch. 120, Sec. 3, eff. May 9, 1979; Acts 1987, 70th Leg., ch. 93, Sec. 37, eff. Aug. 31, 1987.

Art. 1396-3.02. ARTICLES OF INCORPORATION. A. The articles of incorporation shall set forth:

(1) The name of the corporation.

(2) A statement that the corporation is a non-profit corporation.

(3) The period of duration, which may be perpetual.

(4) The purpose or purposes for which the corporation is organized.

(5) If the corporation is to have no members, a statement to that effect.

(6) If management of the affairs of the corporation is to be vested in its members, a statement to that effect.

(7) Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the by-laws, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation.

(8) The street address of its initial registered office and the name of its initial registered agent at such street address.

(9) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors unless the management of the corporation is vested in its members, in which event a statement to that effect shall be set forth.

(10) The name and street or post office address of each incorporator.

(11) If the corporation is to be authorized on its dissolution to distribute its assets in a manner other than as provided by Article 6.02(3) of this Act, a statement describing the manner of distribution of the corporation's assets.

B. Provided that charters or articles of incorporation of corporations existing on the effective date of this Act which do not contain one or more of the requirements listed in the foregoing Section need not be amended for the purpose of meeting such requirements. Any subsequent amendment or restatement of the articles of incorporation of such corporation shall include such requirements, except that it shall not be necessary, in such amended or restated articles, to include the information required in Subsections (8), (9), and (10) of Section A.

C. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

D. Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the by-laws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.02. Amended by Acts 1965, 59th Leg., p. 1294, ch. 597, Sec. 1, eff. Aug. 30, 1965; Acts 1993, 73rd Leg., ch. 733, Sec. 17, eff. Jan. 1, 1994.

Art. 1396-3.03. FILING OF ARTICLES OF INCORPORATION. A. The original and a copy of the articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of incorporation to which he shall affix the copy.

B. The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the Secretary of State shall be delivered to the incorporators or their representatives.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.03. Amended by Acts 1979, 66th Leg., p. 214, ch. 120, Sec. 4, eff. May 9, 1979.

Art. 1396-3.04. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION. A. Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with, and that the corporation has been incorporated under this Act, except as against the State in a proceeding for involuntary dissolution.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.04.

Art. 1396-3.05. ORGANIZATION MEETING. A. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this State, at the call of the incorporators or the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting by-laws, electing officers, and for such other purposes as may come before the meeting. The incorporators or directors calling the meeting shall give at least three (3) days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

B. A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three (3) days' notice, for such purposes as shall be stated in the notice of the meeting.

C. If the management of a corporation is vested in its members, the organization meeting shall be held by the members upon the call of any of the incorporators. The incorporators calling the meeting shall (a) give at least three (3) days' notice by mail to each member stating the time and place of the meeting, or shall (b) make an oral announcement of the time and place of meeting at a regularly scheduled worship service prior to such meeting if the corporation is a church, or shall (c) give such notice of the meeting as may be provided for in the articles of incorporation.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 3.05. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 18, eff. Jan. 1, 1994.

Art. 1396-4.01. RIGHT TO AMEND ARTICLES OF INCORPORATION. A. A corporation may amend its articles of incorporation from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this Act.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.01.

Art. 1396-4.02. PROCEDURE TO AMEND ARTICLES OF INCORPORATION. A. Amendments to the articles of incorporation may be made in the following manner:

(1) Except as provided in Section A(4) of this article,

where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the proposed amendment shall not be adopted unless it also receives at least two-thirds of the votes which the members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, no members having voting rights, or in the case of an amendment under Section A(4) of this article, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in the members pursuant to Article 2.14C of this Act, the proposed amendment shall be submitted to a vote at a meeting of members which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to the members within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes of members present at such meeting.

(4) Unless the articles of incorporation provide otherwise, the board of directors of a corporation with members having voting rights may adopt one or more of the following amendments to the articles of incorporation without member approval:

(a) extend the duration of the corporation if it was incorporated when limited duration was required by law;

(b) delete the names and addresses of the initial directors;

(c) 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; or

(d) change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," "ltd.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution to the name.

B. Any number of amendments may be submitted and voted upon at any one meeting.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.02. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 19, eff. Jan. 1, 1994.

Art. 1396-4.03. ARTICLES OF AMENDMENT. A. The articles of amendment shall be signed on behalf of the corporation by an officer and shall set forth:

(1) The name of the corporation.

(2) If the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added.

(3) Where there are members having voting rights, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.03. Amended by Acts 1979, 66th Leg., p. 214, ch. 120, Sec. 5, eff. May 9, 1979; Acts 1987, 70th Leg., ch. 93, Sec. 38, eff. Aug. 31, 1987.

Art. 1396-4.04. FILING OF ARTICLES OF AMENDMENT. A. The original and a copy of the articles of amendment shall be delivered to the Secretary of State. If the Secretary of State finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of amendment to which he shall affix the copy.

B. The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.04. Amended by Acts 1979, 66th Leg., p. 215, ch. 120, Sec. 6, eff. May 9, 1979.

Art. 1396-4.05. EFFECT OF CERTIFICATE OF AMENDMENT. A. Upon the issuance of the certificate of amendment by the Secretary of State, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

B. No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.05.

Art. 1396-4.06. RESTATED ARTICLES OF INCORPORATION. A. A corporation may, by following the procedure to amend the articles of incorporation provided by this Act, authorize, execute and file restated articles of incorporation, except that member approval, if the corporation has members with voting rights, is not required if no amendments are made. The restated articles of incorporation may restate either:

(1) The entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the Secretary of State; or

(2) The entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the Secretary of State, and as further amended by such restated articles of incorporation.

B. If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the Secretary of State, without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted; and provided further that, if the management of a church is vested in its members pursuant to Article 2.14C of this Act and if, under that Article, original articles of incorporation are not required to contain a statement to that effect, any restatement of the articles of incorporation shall contain a statement to that effect.

C. If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the Secretary of State, and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) Set forth, for any amendment made by such restated articles of incorporation, a statement that each such amendment has been effected in conformity with the provisions of this Act, and shall further set forth the statements required by this act to be contained in articles of amendment, provided that the full text of such amendments need not be set forth except in the restated articles of incorporation as so amended.

(2) Contain a statement that the instrument accurately

copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of each incorporator may be omitted; and provided further that, if the management of a church is vested in its members pursuant to Article 2.14C of this Act, and if, under that Article, original articles of incorporation are not required to contain a statement to that effect, any restatement of the articles of incorporation shall contain a statement to that effect.

(3) Restate the text of the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the Secretary of State and as further amended by the restated articles of incorporation.

D. Such restated articles of incorporation shall be signed on behalf of the corporation by an officer. The original and a copy of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that the restated articles of incorporation conform to law, he shall, when the appropriate filing fee is paid as required by law:

(1) Endorse on the original and the copy the word "Filed", and the month, day, and year of the filing thereof.

(2) File the original in his office.

(3) Issue a restated certificate of incorporation to which he shall affix the copy.

E. The restated certificate of incorporation, together with the copy of the restated articles of incorporation affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

F. Upon the issuance of the restated certificate of incorporation by the Secretary of State, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 4.06. Amended by Acts 1979, 66th Leg., p. 215, ch. 120, Sec. 7, eff. May 9, 1979; Acts 1981, 67th Leg., p. 832, ch. 297, Sec. 2, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 93, Sec. 39, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 733, Sec. 20, eff. Jan. 1, 1994.

Art. 1396-5.01. PROCEDURE FOR MERGER OF DOMESTIC CORPORATIONS. A. Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this Act.

B. Each corporation shall adopt a plan of merger setting forth:

(1) The name of the corporation proposing to merge.

(2) The name of the corporation into which they propose to merge, which is hereinafter designated as the surviving

corporation.

(3) The terms and conditions of the proposed merger.

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be affected by such merger.

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.01.

Art. 1396-5.02. PROCEDURE FOR CONSOLIDATION OF DOMESTIC CORPORATIONS. A. Any two 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. Each corporation shall adopt a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate.

(2) The name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(3) The terms and conditions of the proposed consolidation.

(4) 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.

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.02.

Art. 1396-5.03. APPROVAL OF MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS. A. A plan of merger or consolidation of domestic corporations shall be adopted in the following manner:

(1) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporations shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at the meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event as to such corporations the proposed plan shall not be adopted unless it also receives at least two-thirds of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of

directors of such corporation upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of any merging or consolidating corporation is vested in its members pursuant to Article 2.14C of this Act, the proposed plan shall be submitted to a vote at a meeting of the members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice setting forth the proposed plan or a summary thereof shall be given to the members within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes of the members present at such meeting.

B. After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.03.

Art. 1396-5.04. ARTICLES OF MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS. A. Upon such approval, articles of merger or articles of consolidation shall be signed on behalf of each corporation by one of its officers and shall set forth:

(1) The plan of merger or the plan of consolidation.

(2) Where the members of any merging or consolidating corporation have voting rights, then as to each corporation (a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

B. The original and a copy of the articles of merger or articles of consolidation shall be delivered to the Secretary of State. If the Secretary of State finds that such articles conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the copy.

C. The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the Secretary of State, shall be returned to the surviving or new corporation, as the case may be, or its representative.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.04. Amended by Acts 1979, 66th Leg., p. 216, ch. 120, Sec. 8, eff. May 9, 1979; Acts 1987, 70th Leg., ch. 93, Sec. 40, eff. Aug. 31, 1987.

Art. 1396-5.05. EFFECTIVE DATE OF MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS. A. Except as provided by Article 10.07 of this Act, on the issuance of the certificate of merger or the certificate of consolidation by the Secretary of State, the merger or consolidation of domestic corporations shall be effected.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.05. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 21, eff. Jan. 1, 1994.

Art. 1396-5.06. EFFECT OF MERGER OR CONSOLIDATION OF DOMESTIC CORPORATIONS. A. When such merger or consolidation of domestic corporations has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or are permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the articles of incorporation of the new corporation.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.06.

Art. 1396-5.07. MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS. A. One or more foreign corporations and one or more domestic corporations may be merged or consolidated, if such merger or consolidation is permitted by the laws of the State under which each such foreign corporation is organized. In the case of merger, the surviving corporation may be any one of the constituent corporations and shall be deemed to continue to exist under the laws of the state of its incorporation. In the case of consolidation, the new corporation may be a corporation organized under the laws of any state under which any of the constituent corporations was organized.

B. Such merger or consolidation shall be carried out in the following manner:

(1) Each domestic corporation shall comply with the provisions of this Act with respect to merger or consolidation, as the case may be, of domestic corporations, except that if the surviving or new corporation is to be a foreign corporation, the plan of merger or consolidation shall specify the state under whose laws such surviving or new corporation is to be governed and the post office address of the registered or principal office of such surviving or new corporation in the state under whose laws it is to be governed; provided, however, that no domestic corporation shall be merged or consolidated with a foreign corporation unless and until a resolution authorizing such merger or consolidation shall receive, at a meeting of members of the domestic corporation, called and conducted in the same manner as provided by Article 5.03 of this Act, at least two-thirds (2/3) of the votes which members present at such meeting in person or by proxy are entitled to cast, and provided further that if any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, as to such corporation the resolution shall not be adopted unless it shall also receive at least two-thirds of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast, and provided further that if such a domestic corporation has no members, or no members having voting rights, the plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(2) If the surviving or new corporation, as the case may be, is a foreign corporation, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in this State, and in every case it shall file with the

Secretary of State of this State:

(a) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which was a party to such merger or consolidation.

(b) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding.

(3) Upon compliance by each domestic and foreign corporation which is a party to the merger or consolidation with the provisions of this Act with respect to merger or consolidation, and upon issuance by the Secretary of State of this State of the certificate of merger or the certificate of consolidation provided for in this Act, the merger or consolidation shall be effected in this State.

C. The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is a domestic corporation. If the surviving or new corporation is a foreign corporation, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of such other state provide otherwise.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.07. Amended by Acts 1981, 67th Leg., p. 832, ch. 297, Sec. 3, eff. Aug. 31, 1981.

Art. 1396-5.08. CONVEYANCE BY CORPORATION. A. Any corporation may convey land by deed, with or without the seal of the corporation, signed by an officer or attorney in fact of the corporation when authorized by appropriate resolution of the board of directors or members. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. Any such deed when recorded, if signed by an officer of the corporation, shall constitute prima facie evidence that such resolution of the board of directors or members was duly adopted.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.08. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 22, eff. Jan. 1, 1994.

Art. 1396-5.09. SALE, LEASE OR EXCHANGE OF ASSETS. A. A sale, lease or exchange of all, or substantially all, the property and assets of a corporation, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, or exchange, and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an

annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, or exchange of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this Act for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, or exchange, and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds (2/3) of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws in which event such authorization shall also require at least two-thirds (2/3) of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast. After such authorization by vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, or exchange of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) Unless otherwise provided in the articles of incorporation, where there are no members, or no members having voting rights, a sale, lease, or exchange of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of a corporation vested in its members pursuant to Article 2.14C of this Act, a resolution authorizing such sale, lease, or exchange shall be submitted to a vote at a meeting of the members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice stating that the purpose or one of the purposes of such meeting is to consider the sale, lease, or exchange of all, or substantially all, the property and assets of the corporation shall be given to the members, within the time and in the manner provided by this Act for the giving of notice of meetings of members. At such meeting, the members may authorize such sale, lease, or exchange, and may fix, or authorize one or more of its members to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes of the members present at such meeting.

(4) Except as otherwise provided in the articles of incorporation, the board of directors may authorize any pledge, mortgage, deed of trust, or trust indenture and no authorization or consent of members shall be required for the validity thereof or for any sale pursuant to the terms thereof; provided that where the management of the affairs of the corporation is vested in its members pursuant to Article 2.14C of this Act, the members may authorize any pledge, mortgage, deed of trust, or trust indenture in the same manner as provided in Subsection (3) of this Section, and no authorization by the board of directors shall be required for the validity thereof or for any sale pursuant to the terms thereof.

(5) Notwithstanding the provisions of Subsection (1) of this Section, when the corporation is insolvent, a sale, lease, or exchange of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 5.09.

Art. 1396-6.01. VOLUNTARY DISSOLUTION. A. A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the resolution shall not be adopted unless it also receives at least two-thirds of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in the members pursuant to Article 2.14C of this Act, a resolution that the corporation be dissolved shall be submitted to a vote at a meeting of members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to the members, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes of members present at such meeting.

B. Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of and claimant against the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this Act.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.01.

Art. 1396-6.02. APPLICATION AND DISTRIBUTION OF ASSETS. A. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged; in case its property and assets are not sufficient to satisfy or discharge all the corporation's liabilities and obligations, the corporation shall apply them so far as they will go to the just and equitable payment of the liabilities and obligations.

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(3) Unless provided otherwise by a provision of the corporation's articles of incorporation, the remaining assets of the corporation shall be distributed only for tax exempt purposes to one or more organizations which are exempt under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)), or its successor statute, or which are described in Section 170(c)(1) or (2), Internal Revenue Code of 1986 (26 U.S.C. Section 170(c)(1) or (2)), or its successor statute, pursuant to a plan of distribution adopted as provided in this Act. A district court of the county in which the corporation's principal office is located shall distribute to one or more organizations exempt under Section 501(c)(3) or described in Section 170(c)(1) or (2), or their successor statutes, the remaining assets of the corporation not distributed under the plan of distribution. Any distribution by the court shall be made in such manner as, in the judgment of the court, will best accomplish the general purposes for which the corporation was organized.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.02. Amended by Acts 1985, 69th Leg., ch. 682, Sec. 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 733, Sec. 23, eff. Jan. 1, 1994.

Art. 1396-6.03. PLAN OF DISTRIBUTION. A. A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds (2/3) of the votes which members

present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the proposed plan shall not be adopted unless it also receives at least two-thirds of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in its members pursuant to Article 2.14C of this Act, a proposed plan of distribution shall be submitted to a vote at a meeting of the members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice setting forth the proposed plan of distribution or a summary thereof shall be given to the members within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes of the members present at such meeting.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.03.

Art. 1396-6.04. REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS. A. A corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary of State, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds (2/3) of the votes which members present at such meeting in person or by proxy are entitled to cast, unless any class of members is entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, in which event the proposed resolution shall not be adopted unless it also receives at least two-thirds (2/3) of the votes which members of each such class who are present at such meeting in person or by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(3) Where the management of the affairs of the corporation is vested in its members pursuant to Article 2.14C of this Act, a resolution that the voluntary dissolution proceedings be revoked shall be submitted to a vote at a meeting of the members, which may be an annual, a regular, or a special meeting. Except as otherwise provided in the articles of incorporation or the by-laws, notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to the members, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds (2/3) of the votes of the members present at such meeting.

B. Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.04.

Art. 1396-6.05. ARTICLE OF DISSOLUTION. A. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, or, in case its property and assets are not sufficient to satisfy and discharge all the corporation's liabilities and obligations, then when all the property and assets have been applied so far as they will go to the just and equitable payment of the corporation's liabilities and obligations, and all of the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act, articles of dissolution shall be signed on behalf of the corporation by an officer and shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds (2/3) of the votes which members present at such meeting in person or by proxy were entitled to cast, as well as, in the case of any class entitled to vote as a class thereon by the terms of the articles of incorporation or of the by-laws, at least two-thirds (2/3) of the votes which members of any such class who were present at such meeting in person or by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor, or, in case the corporation's

property and assets were not sufficient to satisfy and discharge all its liabilities and obligations, that all the property and assets have been applied so far as they would go to the payment thereof in a just and equitable manner and that no property or assets remained available for distribution among its members.

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act; provided, however, that if assets were received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, there shall also be set forth a statement that a plan of distribution has been adopted as provided in this Act for the distribution of such assets, and a statement that distribution has been effected in accordance with such plan.

(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.05. Amended by Acts 1979, 66th Leg., p. 216, ch. 120, Sec. 9, eff. May 9, 1979; Acts 1987, 70th Leg., ch. 93, Sec. 41, eff. Aug. 31, 1987; Subsec. A amended by Acts 2001, 77th Leg., ch. 757, Sec. 8, eff. Sept. 1, 2001.

Art. 1396-6.06. FILING OF ARTICLES OF DISSOLUTION. A. The original and a copy of such articles of dissolution shall be delivered to the Secretary of State. If the Secretary of State finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of dissolution to which he shall affix the copy.

B. The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the Secretary of State, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 6.06. Amended by Acts 1979, 66th Leg., p. 217, ch. 120, Sec. 10, eff. May 9, 1979.

Art. 1396-6.07. FRAUDULENT TERMINATION. A. Notwithstanding any other provision of this Act, a court may order the revocation of dissolution of a corporation that was dissolved as a result of actual or constructive fraud. In an action under this article, any limitation period provided by law is tolled in accordance with the

discovery rule.

B. The secretary of state shall take any action necessary to implement an order under this article.

Added by Acts 2003, 78th Leg., ch. 238, Sec. 43, eff. Sept. 1, 2003.

Art. 1396-7.01. INVOLUNTARY DISSOLUTION; REINSTATEMENT. A. A corporation may be dissolved involuntarily by a decree of the district court of the county in which the registered office of the corporation is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that it is in default in any of the following particulars:

(1) The corporation or its incorporators have failed to comply with a condition precedent to incorporation; or

(2) The original articles of incorporation or any amendments thereof were procured through fraud; or

(3) The corporation has continued to transact business beyond the scope of the purpose or purposes of the corporation as expressed in its articles of incorporation; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Act.

B. A corporation may be dissolved involuntarily by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes or penalties prescribed by law when the same have become due and payable;

(2) The corporation has failed to maintain a registered agent in this state as required by law; or

(3) The corporation has failed to pay the filing fee for its articles of incorporation, or the fee was paid by an instrument that was dishonored when presented by the state for payment.

C. (1) No corporation shall be involuntarily dissolved under Subsection (1) or (2) of Section B hereof unless the Secretary of State, or other state agency with which such report, fees, taxes or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such involuntary dissolution to correct the neglect, omission or delinquency.

(2) When a corporation is involuntarily dissolved under Subsection (3) of Section B of this article, the Secretary of State shall give the corporation notice of the dissolution by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

D. Whenever a corporation has given cause for involuntary dissolution and has failed to correct the neglect, omission or

delinquency as provided in Sections B and C, the Secretary of State shall thereupon dissolve the corporation by issuing a certificate of involuntary dissolution, which shall include the fact of such involuntary dissolution and the date and cause thereof. The original of such certificate shall be placed in his office and a copy thereof mailed to the corporation at its registered office, or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation. Upon the issuance of such certificate of involuntary dissolution, the existence of the corporation shall cease, except for purposes otherwise provided by law.

E. Any corporation dissolved by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the dissolved corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the dissolution, or whenever the neglect, omission or delinquency resulting in dissolution has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the dissolution plus an amount equal to the total taxes from the date of dissolution to the date of reinstatement which would have been payable had the corporation not been dissolved. A reinstatement filing fee of $25.00 shall accompany the application for reinstatement.

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or registered, unless the corporation being reinstated contemporaneously amends the articles of incorporation to change its name.

When the application for reinstatement is approved and filed by the Secretary of State, the corporate existence shall be deemed to have continued without interruption from the date of dissolution except the reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between dissolution and reinstatement.

F. When a corporation is convicted of a felony, or when a high managerial agent is convicted of a felony in the conduct of the affairs of the corporation, the Attorney General may file an action to involuntarily dissolve the corporation in a district court of the county in which the registered office of the corporation is situated or in a district court of Travis County. The court may dissolve the corporation involuntarily if it is established that:

(1) The corporation, or a high managerial agent acting in behalf of the corporation, has engaged in a persistent course of felonious conduct; and

(2) To prevent future felonious conduct of the same character, the public interest requires such dissolution.

G. Article 7.02 of this Act does not apply to Section F of this article.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.01. Amended by Acts

1965, 59th Leg., p. 533, ch. 276, Sec. 1, 2, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, Sec. 3, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 990, ch. 399, Sec. 2(M), eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 833, ch. 297, Sec. 4, eff. Aug. 31, 1981; Acts 2001, 77th Leg., ch. 757, Sec. 9, eff. Sept. 1, 2001.

Art. 1396-7.02. NOTIFICATION TO ATTORNEY GENERAL, NOTICE TO CORPORATION AND OPPORTUNITY TO CURE DEFAULT. A. The Secretary of State shall certify to the Attorney General, from time to time, the names of all corporations which have given cause for judicial dissolution of their charters or revocation of their certificates of authority as provided in this Act, together with the facts pertinent thereto. Every such certificate from the Secretary of State to the Attorney General shall be taken and received in all courts as prima facie evidence of the facts therein stated.

B. Whenever the Secretary of State shall certify the name of any such corporation to the Attorney General as having given any cause for dissolution or revocation of its certificate of authority, the Secretary of State shall concurrently mail to such corporation at its registered office in this State a notice that such certification has been made and the grounds therefor. A record of the date of mailing such notice shall be kept in the office of the Secretary of State, and a certificate by the Secretary of State that such notice was mailed as indicated by such record shall be taken and received in all courts as prima facie evidence of the facts therein stated.

C. If at the expiration of thirty (30) days after the date of such mailing the corporation has not cured the defaults so certified by the Secretary of State, the Attorney General may then file an action in the name of the State against such corporation for its dissolution or revocation of its certificate of authority, as the case may be.

D. If, after any such action is filed but before judgment is pronounced in the district court, the corporation against whom such action has been filed shall cure its default and pay the costs of such action, the action shall abate.

E. If, after the issues made in any such action have been heard by the court trying same and it is found that the corporate defendant has been guilty of any default of such nature as to justify its dissolution or revocation of its certificate of authority as provided in this Act, the court shall without rendering or entering any judgment for a period of five (5) days pending the filing of an action upon a sworn application for stay of judgment as hereinafter provided, promptly pronounce its findings to such effect. If the corporation has proved by a preponderance of the evidence that the defaults of which the corporation has been found guilty were neither willful nor the result of failure to take reasonable precautions and has procured a finding to such effect it may promptly make sworn application to the court for a stay of entry of judgment in order to allow the corporation reasonable opportunity to cure the defaults of which it has been found guilty. If the court is reasonably satisfied on the basis of the corporation's sworn application and any evidence heard in support of or opposed to the application that the corporation is able and

intends in good faith to cure the defaults of which it has been found guilty and that such stay is not applied for without just cause, the court shall grant such application and stay entry of judgment for such time as in the discretion of the court is reasonably necessary to afford the corporation opportunity to cure such defaults if it acts with reasonable diligence, but in no event shall such stay be for more than sixty (60) days after the date of the pronouncement of the court's findings. If during such period of time as shall be allowed by the court the corporation shall cure its defaults and pay the costs of such action, the court shall then enter judgment dismissing the action. If the corporation does not satisfy the court that it has cured its default within said period of time, the court shall enter final judgment at the expiration thereof.

F. If the corporation does not make application for stay of such judgment but does appeal therefrom and the trial court's judgment is affirmed and if the appellate court is satisfied that the appeal was taken in good faith and not for purpose of delay or with no sufficient cause and further finds that the defaults of which the corporation has been adjudged guilty are capable of being cured, it shall, if the appealing corporation has so prayed, remand the case to the trial court with instructions to grant the corporation opportunity to cure such defaults, such cure to be accomplished within such time after issuance of the mandate as the appellate court shall determine but in no event more than sixty (60) days thereafter. If during such period of time as shall have been so allowed the corporation shall cure such defaults and pay all costs accrued in such action, the trial court shall then enter judgment dismissing such action. If the corporation does not satisfy the trial court that it has cured its defaults within such period of time, the judgment shall thereupon become final.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.02. Amended by Acts 1965, 59th Leg., p. 533, ch. 276, Sec. 3, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, Sec. 4, eff. June 18, 1969.

Art. 1396-7.03. VENUE AND PROCESS. A. Every action for the involuntary dissolution of a domestic corporation or revocation of the certificate of authority of a foreign corporation shall be commenced by the Attorney General either in the district court of the county in which the registered office of the corporation in this State is situated, or in any district court of Travis County. Citation shall issue and be served as provided by law. If process is returned not found, the Attorney General shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation in this State is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default judgment may be entered. The Attorney General may include in one notice the name of any number of such corporations against which such actions are then pending in the same court. The Attorney General shall cause a copy of such notice to be mailed to the corporation at its registered office in this State within ten days after the first publication thereof. The

certificate of the Attorney General of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once a week for two consecutive weeks, and the first publication thereof may begin at any time after the citation has been returned. Unless a corporation shall have been served with citation, no default judgment shall be taken against it earlier than thirty days after the first publication of such notice.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.03.

Art. 1396-7.04. APPOINTMENT OF RECEIVER FOR SPECIFIC CORPORATE ASSETS. A. A receiver may be appointed by any court having jurisdiction of the subject matter for specific corporate assets located within the State, whether owned by a domestic or a foreign corporation, which are involved in litigation, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve such assets and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if other remedies available either at law or in equity are determined by the court to be inadequate and only in the following instances:

(1) In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition to the mortgage has not been performed and that the property is probably insufficient to discharge the mortgage debt.

(3) In any other actions where receivers for specific assets have heretofore been appointed by the usage of the court of equity.

B. The court appointing such receiver shall have and retain exclusive jurisdiction over the specific assets placed in receivership and shall determine the rights of the parties in these assets or their proceeds.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.04.

Art. 1396-7.05. APPOINTMENT OF RECEIVER TO REHABILITATE CORPORATION. A. A receiver may be appointed for the assets and business of a corporation by the district court for the county in which the registered office of the corporation is located, whenever circumstances exist deemed by the court to require the appointment of a receiver to conserve the assets and affairs of the corporation and to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a

receiver for specific assets of the corporation, are determined by the court to be inadequate, and only in the following instances:

(1) In an action by a member when it is established:

(a) That the corporation is insolvent or in imminent danger of insolvency; or

(b) That the directors are deadlocked in the management of the corporate affairs and the members are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(c) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(d) That the corporate assets are being misapplied or wasted.

(2) In an action by a creditor when it is established:

(a) That the corporation is insolvent and the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied; or

(b) That the corporation is insolvent and the corporation has admitted in writing that the claim of the creditor is due and owing.

(3) In any other actions where receivers have heretofore been appointed by the usages of the court of equity.

B. In the event that the condition of the corporation necessitating such an appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and officers, the receiver being directed to redeliver to the corporation all its remaining properties and assets.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.05.

Art. 1396-7.06. JURISDICTION OF COURT TO LIQUIDATE ASSETS AND AFFAIRS OF CORPORATION AND RECEIVERSHIPS THEREFOR. A. The district court for the county in which the registered office of a corporation is located may order the liquidation of the assets and affairs of the corporation and may appoint a receiver to effect such liquidation, whenever circumstances demand liquidation in order to avoid damage to parties at interest, but only if all other requirements of law are complied with and if all other remedies available either at law or in equity, including the appointment of a receiver of specific assets of the corporation and appointment of a receiver to rehabilitate the corporation, are determined by the court to be inadequate and only in the following instances:

(1) When an action has been filed by the Attorney General, as provided in this Act, to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

(2) Upon application by a corporation to have its liquidation continued under the supervision of the court.

(3) If the corporation is in receivership and no plan for remedying the condition of the corporation requiring appointment of the receiver, which the court finds to be feasible, has been presented within twelve (12) months after the appointment of the receiver.

(4) Upon application of any creditor if it is established that irreparable damage will ensue to the unsecured creditors of the corporation, generally, as a class, unless there be an immediate liquidation of the assets of the corporation.

(5) Upon application by a member or director when it is made to appear that the corporation is unable to carry out its purposes.

B. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Unless provided otherwise by a provision of the corporation's articles of incorporation that refers to this subsection, the remaining assets of the corporation shall be distributed only for tax exempt purposes to one or more organizations which are exempt under Section 501(c)(3), Internal Revenue Code of 1954 (26 U.S.C. Section 501(c)(3)), or its successor statute, or which are described in Section 170(c)(1) or (2), Internal Revenue Code of 1954 (26 U.S.C. Section 170(c)(1) or (2)), or its successor statute. The distribution by the court shall be made in such manner as, in the judgment of the court, will best accomplish the general purposes for which the corporation was organized.

C. In the event the condition of the corporation necessitating the appointment of a receiver is remedied, the receivership shall be terminated forthwith and the management of the corporation shall be restored to the directors and the officers, the receiver being directed to re-deliver to the corporation all its remaining properties and assets.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.06. Amended by Acts 1985, 69th Leg., ch. 682, Sec. 2, eff. Sept. 1, 1985.

Art. 1396-7.07. QUALIFICATION, POWERS, AND DUTIES OF RECEIVERS; OTHER PROVISIONS RELATING TO RECEIVERSHIPS. A. No receiver shall be appointed for any corporation in which this Act applies or for any of its assets or for its business except as provided for and on the conditions set forth in this Act. A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this State, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

B. A receiver appointed by authority of this Act shall have authority to sue and be sued in all courts in his own name and shall have those powers and duties provided by laws of general applicability relating to receivers and in addition thereto may be

accorded such other powers and duties as the court shall deem appropriate to accomplish the objectives for which the receiver was appointed. Such additional and unusual powers and duties shall be stated in the order appointing the receiver and may be increased or diminished at any time during the proceedings.

C. In proceedings involving any receivership of the assets or business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs of their respective claims under oath. If the court requires the filing of claims, it shall fix a date as the last day for the filing thereof, which shall be not less than four months from the date of the order, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date fixed therefor may be barred, by order of court (unless presenting to the court a justifiable excuse for delay in the filing), from participating in the distribution of the assets of the corporation but no discharge shall be decreed or effected.

D. The court shall have power from time to time to make allowances to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation within the scope of the receivership or the proceeds of any sale or disposition of such assets.

E. A court authorized to appoint a receiver for a corporation to which this Act applies, and no other court in this State, shall be authorized to appoint a receiver for the corporation or its assets and business; when such a court does appoint a receiver, as authorized by this Act, for the corporation or its assets and business, that court shall have exclusive jurisdiction of the corporation and all its properties, wherever situated.

F. Notwithstanding any provision of this Article or in this Act to the contrary, the district court for the county in which the registered office of any foreign corporation doing business in this State is located shall have jurisdiction to appoint an ancillary receiver for the assets and business of such corporation, to serve ancillary to the receiver for the assets and business of the corporation acting under orders of a court having jurisdiction to appoint such a receiver for the corporation, located in any other state, whenever circumstances exist deemed by the court to require the appointment of such ancillary receiver. Moreover, such district court, whenever circumstances exist deemed by it to require the appointment of a receiver for all the assets in and out of this State, and the business of a foreign corporation doing business in this State, in accordance with the ordinary usages of equity, may appoint such a receiver for all its assets in and out of this State, and its business, even though no receiver has been appointed elsewhere; such receivership shall be converted into an ancillary receivership when deemed appropriate by such district court in the light of orders entered by a court of competent jurisdiction in some other state, providing for a receivership of all assets and business of such corporation.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.07.

Art. 1396-7.08. DIRECTORS AND MEMBERS NOT NECESSARY PARTIES DEFENDANT TO RECEIVERSHIP OR LIQUIDATION PROCEEDINGS. A. It shall not be necessary to make directors or members parties to any action or proceeding for involuntary dissolution, receivership or liquidation of the assets and business of a corporation unless relief is sought against them personally.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.08.

Art. 1396-7.09. DECREE OF INVOLUNTARY DISSOLUTION. A. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged, or adequate provision has been made for the discharge, and all of its remaining property and assets distributed in accordance with the provisions of this Act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the corporation shall cease to exist.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.09. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 24, eff. Jan. 1, 1994.

Art. 1396-7.10. FILING OF DECREE OF DISSOLUTION. A. In any case in which the court shall enter a decree dissolving a corporation it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.10.

Art. 1396-7.11. DEPOSIT WITH COMPTROLLER OF AMOUNT DUE CERTAIN PERSONS. A. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or member or other person who is unknown or cannot be found after the exercise of reasonable diligence by the person or persons responsible for the distribution in liquidation of the corporation's assets shall be reduced to cash and deposited with the Comptroller, together with a statement giving the name of the person, if known, entitled to such fund, his last known address, the amount of his distributive portion, and such other information about such person as the Comptroller may reasonably require, whereupon the person or persons responsible for the distribution in liquidation of the corporation's assets shall be released and discharged from any further liability with respect to the funds so deposited. The Comptroller shall issue his receipt for such fund and shall deposit same in a special account to be maintained by him.

B. On receipt of satisfactory written proof of ownership or of right to such fund within seven (7) years from the date such fund was so deposited, the Comptroller of Public Accounts shall issue proper warrant therefor drawn on the State Treasury in favor of the person or persons then entitled thereto. If no claimant has made satisfactory proof of rights to such fund within seven (7) years from the time of such deposit the Comptroller shall then cause to be published in one issue of a newspaper of general circulation in Travis County, Texas, a notice of the proposed escheat of such fund, giving the name of the creditor, member, or other person apparently entitled thereto, his last known address, if any, the amount of the fund so deposited, and the name of the dissolved corporation from whose assets such fund was derived. If no claimant makes satisfactory proof of right to such fund within two months from the time of such publication, the fund so unclaimed shall thereupon automatically escheat to and become the property of the General Revenue Fund of the State of Texas.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.11. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 25, eff. Jan. 1, 1994; Acts 1997, 75th Leg., ch. 1423, Sec. 21.39, eff. Sept. 1, 1997.

Art. 1396-7.12. LIMITED SURVIVAL AFTER DISSOLUTION. A. A dissolved corporation shall continue its corporate existence for a period of three (3) years from the date of dissolution, for the following purposes:

(1) prosecuting or defending in its corporate name any action or proceeding by or against the corporation;

(2) permitting the survival of any remedy not otherwise barred by limitations available to or against the corporation, its officers, directors, members, or creditors, for any right or claim existing, or any liability incurred, before the dissolution;

(3) holding title to and liquidating any assets or property that remain in the corporation at the time of, or are collected by the corporation after, its dissolution, and applying or distributing those assets or properties, or the proceeds thereof, as provided in Subsection (3) of Section A of Article 6.04 of this Act; and

(4) settling any other affairs not completed before its dissolution.

However, such a dissolved corporation may not continue its corporate existence for the purpose of continuing the business or affairs for which the dissolved corporation was organized, except in the case of a corporation whose period of duration has expired and that has chosen to revive its existence as provided in this Act or a corporation that has been dissolved by the Secretary of State pursuant to Section B of Article 7.01 of this Act and that has been reinstated pursuant to Section E of Article 7.01 of this Act.

B. During the three-year period, the members of the board of directors of a dissolved corporation serving at the time of dissolution or the majority of them then living, however reduced in number, or their successors selected by them, shall continue to manage the affairs of the dissolved corporation for the limited purpose or purposes specified in this Article, and shall have the

powers necessary to accomplish those purposes, including the power to prosecute, pay, compromise, defend, and satisfy any action, claim, demand, or judgment by or against the dissolved corporation, and to administer, sell, and distribute in final liquidation any property or assets still remaining. In the exercise of those powers, the directors shall have the same duties to the dissolved corporation that they had immediately prior to the dissolution of the corporation and shall be liable to the dissolved corporation for actions taken by them after the dissolution to the same extent that they would have been liable had those actions been taken by them prior to the dissolution. Additional directors may be elected for purposes of this section in accordance with the procedures provided in the bylaws in effect before the dissolution.

C. A corporation is not liable for any claim other than an existing claim. An existing claim by or against a dissolved corporation is extinguished unless an action or proceeding on the existing claim is brought before the third anniversary of the date of dissolution. If an action or proceeding on an existing claim by or against a dissolved corporation is brought within the period provided by this section and the existing claim is not extinguished under this article, the dissolved corporation continues to survive:

(1) for purposes of that action or proceeding until all judgments, orders, and decrees in that action or proceeding have been fully executed; and

(2) for purposes of applying or distributing any properties or assets of the dissolved corporation as provided in Article 6.02 of this Act, until the properties or assets are applied or distributed.

D. A dissolved corporation may give written notice to a person having or asserting an existing claim against the dissolved corporation to present the existing claim to the dissolved corporation in accordance with the notice. The notice must be sent by registered or certified mail, return receipt requested, to the person having or asserting the existing claim at the person's last known address, and must:

(1) state that the person's claim against the dissolved corporation must be presented in writing to the dissolved corporation on or before the date stated in the notice, which shall be not earlier than 120 days after the date the notice is sent to the person;

(2) state that the written presentation of the claim must describe the claim in sufficient detail to reasonably inform the dissolved corporation of the identity of the person and to the nature and amount of the claim;

(3) state a mailing address where the written presentation of the person's claim against the dissolved corporation is to be sent and state that if the written presentation of the claim is not received at that address on or before the date stated in the notice, the claim will be extinguished; and

(4) be accompanied by a copy of this section.

E. If a written presentation of a person's claim against the dissolved corporation that meets the requirements of Section D of this article has been received at the address of the dissolved corporation stated in the notice on or before the date stated in the notice, the dissolved corporation may give written notice to that

person that the claim is rejected by the dissolved corporation. The notice of rejection must be sent by registered or certified mail, return receipt requested, addressed to the person at the person's last known address, and must state:

(1) that the claim is rejected by the dissolved corporation;

(2) that the claim will be extinguished unless an action or proceeding on the claim is brought within 180 days after the date the notice of rejection was sent to the person and before the third anniversary of the date of dissolution; and

(3) the date the notice of rejection was sent and the date of dissolution.

F. A person's claim against a dissolved corporation is extinguished if:

(1) a written presentation of that claim meeting the requirements of this article is not received at the address of the dissolved corporation stated in the notice to the person on or before the date stated in the notice; or

(2) an action or proceeding on the claim is not brought within 180 days after the date a notice of rejection was sent to the person and before the third anniversary of the date of dissolution.

G. A dissolved corporation that was dissolved by the expiration of the period of its duration may, during the three-year period following the date of dissolution, amend its articles of incorporation by following the procedure prescribed in this Act to extend or perpetuate its period of existence. That expiration shall not of itself create any vested right on the part of any member or creditor to prevent such an action. No act or contract of a dissolved corporation during a period within which it could have extended its existence as permitted by this Article, whether or not it has taken action so to extend its existence, shall be in any degree invalidated by the expiration of its period of duration.

H. In this article:

(1) "Dissolved corporation" means a corporation that was dissolved:

(a) by the issuance of a certificate of dissolution or other action by the Secretary of State;

(b) by a decree of a court when the court has not liquidated all the assets and affairs of the corporation as provided in this Act; or

(c) by expiration of its period of duration if the corporation has not revived its existence as provided in this Act.

(2) "Claim" means a right to payment, damages, or property, whether liquidated or unliquidated, accrued or contingent, matured or unmatured.

(3) "Existing claim" means a claim that existed before dissolution and is not otherwise barred by limitations or a contractual obligation incurred after dissolution.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 7.12. Amended by Acts 1967, 60th Leg., p. 1824, ch. 704, Sec. 1, eff. Aug. 28, 1967; Acts 1987, 70th Leg., ch. 93, Sec. 42, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 801, Sec. 47, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 733, Sec. 26, eff. Jan. 1, 1994.

Art. 1396-8.01. ADMISSION OF FOREIGN CORPORATIONS. A. No foreign corporation shall have the right to conduct affairs in this State until it shall have procured a certificate of authority so to do from the Secretary of State. No foreign corporation shall be entitled to procure a certificate of authority under this Act to conduct in this State any affairs which a corporation organized under the laws of this State is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this State, and nothing in this Act contained shall be construed to authorize this State to regulate the organization of such corporation, or its internal affairs not intrastate in Texas.

B. Without excluding other activities which may not constitute conducting affairs in this State, a foreign corporation shall not be considered to be conducting affairs in this State, for the purposes of this Act, by reason of carrying on in this State any one (1) or more of the following activities:

(1) Maintaining or defending any action or suit or any administration or arbitration proceedings, or affecting the settlement thereof or the settlement of claims or disputes to which it is a party.

(2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of securities issued by it, or appointing and maintaining trustees or depositaries with relation to its securities.

(5) Voting the stock of any corporation which it has lawfully acquired.

(6) Effecting sales through independent contractors.

(7) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.

(8) Securing or collecting debts due to it or enforcing any rights in property securing the same.

(9) Conducting any affairs in interstate commerce.

(10) Conducting an isolated transaction completed within a period of thirty (30) days and not in the course of a number of repeated transactions of like nature.

(11) Exercising the powers of executor or administrator of the estate of a non-resident decedent under ancillary letters issued by a court of this State, or exercising the powers of a trustee under the will of a non-resident decedent, or under a trust created by a person, corporation or association, non-resident of this State, if the exercise of such powers in such case will not involve activities which would be deemed to constitute the transacting of business in this State in the case of a foreign corporation acting in its own right.

(12) Acquiring, in transactions outside Texas, or in interstate commerce, of debts secured by mortgages or liens on real or personal property in Texas, collecting or adjusting of principal and interest payments thereon, enforcing or adjusting any rights

and property securing said debts, taking any actions necessary to preserve and protect the interest of the mortgagee in said security, or any combinations of such transactions.

(13) Investing in or acquiring, in transactions outside of Texas, royalties and other non-operating mineral interests, and the execution of division orders, contracts of sale and other instruments incidental to the ownership of such non-operating mineral interests.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.01. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 27, eff. Jan. 1, 1994.

Art. 1396-8.02. POWERS OF FOREIGN CORPORATIONS. A. A foreign corporation which shall have received a certificate of authority under this Act, shall, until its certificate of authority shall have been revoked in accordance with the provisions of this Act or until a certificate of withdrawal shall have been issued by the Secretary of State as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, as to all matters affecting the conduct of intrastate affairs in this State, it and its officers and directors shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character and its officers and directors; provided, however, that the laws of the jurisdiction of incorporation of a foreign corporation shall govern (1) the internal affairs of the foreign corporation, including but not limited to the rights, powers, and duties of its board of directors and members and matters relating to its membership, and (2) the liability, if any, of members of the foreign corporation for the debts, liabilities, and obligations of the foreign corporation for which they are not otherwise liable by statute or agreement.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.02. Amended by Acts 1989, 71st Leg., ch. 801, Sec. 48, eff. Aug. 28, 1989.

Art. 1396-8.03. CORPORATE NAME OF FOREIGN CORPORATION. A. No certificate of authority shall be issued to a foreign corporation if the corporate name of such corporation:

(1) Contains any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Is the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any Act of this State, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this State, or a corporate name reserved or registered as permitted by the laws of this State; provided that a name may be similar if written consent is obtained from the existing corporation having the name deemed to be similar or the person, or corporation for whom the name deemed to be similar is reserved or registered in the office of the Secretary of State. A certificate

of authority shall be issued as provided by this Act to any foreign corporation having a name the same as, deceptively similar to, or, if no consent is given, similar to the name of any domestic corporation existing under the laws of this State or of any foreign corporation authorized to transact business or conduct affairs in this State, or a name the exclusive right to which is, at the time, reserved or registered in accordance with this Act, provided the foreign corporation qualifies and does business under a name that meets the requirements of this article. The foreign corporation shall set forth in the application for a certificate of authority the name under which it is qualifying and shall file an assumed name certificate in accordance with Chapter 36, Business & Commerce Code, as amended.

B. When a foreign non-profit corporation that is authorized to conduct affairs in this State changes its name to one under which a certificate of authority would not be granted to it on application for a certificate, the certificate of authority of the corporation is suspended, and after the suspension the corporation may not conduct any affairs in this State until it has changed its name to a name that is available to it under the laws of this State or until it has otherwise complied with this Act.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.03. Amended by Acts 1981, 67th Leg., p. 834, ch. 297, Sec. 5, eff. Aug. 31, 1981.

Art. 1396-8.04. APPLICATION FOR CERTIFICATE OF AUTHORITY. A. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this State, shall make application therefor to the Secretary of State, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated and, if the corporation is required to qualify under a name other than its corporate name, the name under which the corporation is to be qualified.

(2) A statement that the corporation is a non-profit corporation.

(3) The date of incorporation and the period of duration of the corporation.

(4) The street address of the principal office of the corporation in the state or country under the laws of which it is incorporated.

(5) The street address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at such address.

(6) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this State.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) A statement of whether or not the corporation has members.

(9) Such additional information as may be necessary or appropriate in order to enable the Secretary of State to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this State.

B. Such application shall be made on forms promulgated by the Secretary of State and shall be signed on behalf of the corporation by an officer.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.04. Amended by Acts 1979, 66th Leg., p. 218, ch. 120, Sec. 11, eff. May 9, 1979; Acts 1981, 67th Leg., p. 835, ch. 297, Sec. 6, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 93, Sec. 43, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 733, Sec. 28, eff. Jan. 1, 1994.

Art. 1396-8.05. FILING OF APPLICATION FOR CERTIFICATE OF AUTHORITY. A. The original and a copy of the application of the corporation for a certificate of authority shall be delivered to the Secretary of State, together with a certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence. If the certificate is in a language other than English, a translation of the certificate, under oath of the translator, must be attached to the certificate. The certificate must be dated after the 91st day preceding the date on which the application is filed. If the Secretary of State finds that such application conforms to law, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on each of such documents the word "Filed," and the month, day and year of the filing thereof.

(2) File in his office the original application and the certificate evidencing corporate existence.

(3) Issue a certificate of authority to conduct affairs in this State to which he shall affix the copy of the application.

B. The certificate of authority, together with the copy of the application affixed thereto by the Secretary of State, shall be delivered to the corporation or its representative.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.05. Amended by Acts 1979, 66th Leg., p. 218, ch. 120, Sec. 12, eff. May 9, 1979; Acts 1981, 67th Leg., p. 835, ch. 297, Sec. 7, eff. Aug. 31, 1981.

Art. 1396-8.06. EFFECT OF CERTIFICATE OF AUTHORITY. A. Upon the issuance of a certificate of authority by the Secretary of State, the corporation shall be authorized to conduct affairs in this State for those purposes set forth in its application and the certificate shall be conclusive evidence of the right of the corporation to conduct affairs in this State for that purpose, except as against this State in a proceeding to revoke the certificate.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.06. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 29, eff. Jan. 1, 1994.

Art. 1396-8.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION. A. Each foreign corporation authorized to conduct affairs in this State shall have and continuously maintain in this State:

(1) A registered office which may be, but need not be, the same as its principal office.

(2) A registered agent, which agent may be either an individual resident in this State whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation whether for profit or not for profit, authorized to transact business or conduct affairs in this State, having an office identical with such registered office.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.07.

Art. 1396-8.08. CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION. A. A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

(1) The name of the corporation.

(2) The street address of its then registered office.

(3) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed.

(4) The name of its then registered agent.

(5) If its registered agent is to be changed, the name of its successor registered agent.

(6) That the street address of its registered office and the post-office address of the business office of its registered agent, as changed, will be identical.

(7) That such change was authorized by its Board of Directors or by an officer of the corporation so authorized by the Board of Directors, or if the management of the corporation is vested in its members pursuant to Article 2.14C of this Act, by the members.

B. Such statement shall be signed on behalf of the corporation by an officer. The original and a copy of such statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of this Act, he shall, when all fees have been paid as required by law:

(1) Endorse on the original and the copy the word "Filed," and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return the copy to the corporation or its representative.

C. Upon the filing of such statement by the Secretary of State, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

D. Any registered agent of a corporation may resign

(1) by giving written notice to the corporation at its last known address

(2) and by giving written notice, in triplicate (the original and two copies of the notice), to the Secretary of State within ten days after mailing or delivery of said notice to the

corporation. Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof.

Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of thirty (30) days after receipt of such notice by the Secretary of State.

If the Secretary of State finds that such written notice conforms to the provisions of this Act, he shall:

(1) Endorse on the original and both copies the word "filed" and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Return one copy to such resigning registered agent.

(4) Return one copy to the corporation at the last known address of the corporation as shown in such written notice.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.08. Amended by Acts 1969, 61st Leg., p. 2477, ch. 834, Sec. 5, 6, eff. June 18, 1969; Acts 1979, 66th Leg., p. 218, ch. 120, Sec. 13, eff. May 9, 1979; Acts 1987, 70th Leg., ch. 93, Sec. 44, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 733, Sec. 30, eff. Jan. 1, 1994.

Art. 1396-8.09. SERVICE OF PROCESS ON FOREIGN CORPORATION. A. The president and all vice-presidents of a foreign corporation authorized to conduct affairs in this State and the registered agent so appointed by a foreign corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served. Where the chief executive function is performed by a committee, service may be had on any member thereof.

B. Whenever a foreign corporation authorized to conduct affairs in this State shall fail to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be revoked, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of State of any such process, notice, or demand shall be made by delivering to and leaving with him, or with the Deputy Secretary of State, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice, or demand. In the event any such process, notice or demand is served on the Secretary of State, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the Secretary of State shall be returnable in not less than thirty (30) days.

C. The Secretary of State shall keep a record of all processes, notices and demands served upon him under this Article, and shall record therein the time of such service and his action with reference thereto.

D. Provisions of Article 2031A of Revised Civil Statutes of

Texas as amended shall not apply to any corporation to which this Act applies.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.09.

Sec. B amended by Acts 2005, 79th Leg., ch. 41, Sec. 6, eff. Sept. 1, 2005.

Art. 1396-8.12. AMENDED CERTIFICATE OF AUTHORITY. A. If a foreign corporation authorized to conduct affairs in this State changes its corporate name or desires to pursue in this State purposes other than or in addition to the purposes authorized by its existing certificate of authority, the corporation shall file with the Secretary of State an application for amended certificate of authority setting forth the change.

B. A foreign corporation may change any other statement on its original application for certificate of authority or any amendment to that certificate by filing with the Secretary of State an application for an amended certificate of authority setting forth the change.

C. An application for an amended certificate of authority submitted because of a name change must be accompanied by a certificate from the proper filing officer in the jurisdiction of incorporation evidencing the name change.

D. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of the original and a copy of the application with the Secretary of State, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.12. Amended by Acts 1979, 66th Leg., p. 219, ch. 120, Sec. 14, eff. May 9, 1979; Acts 1981, 67th Leg., p. 835, ch. 297, Sec. 8, eff. Aug. 31, 1981; Acts 1993, 73rd Leg., ch. 733, Sec. 31, eff. Jan. 1, 1994.

Art. 1396-8.13. WITHDRAWAL OR TERMINATION OF FOREIGN CORPORATION. A. A foreign corporation authorized to conduct affairs in this State may withdraw from this State upon procuring from the Secretary of State a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary of State an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not conducting affairs in this State.

(3) That the corporation surrenders its authority to conduct affairs in this State.

(4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this State during the time

the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State.

(5) A street or post office address to which the Secretary of State may mail a copy of any process against the corporation that may be served on him.

(6) A statement that all sums due, or accrued, to this State have been paid, or that adequate provision has been made for the payment thereof.

(7) A statement that all known creditors or claimants have been paid or provided for and that the corporation is not involved in or threatened with litigation in any court in this State, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suits.

B. The application for withdrawal shall be made on forms promulgated by the Secretary of State and shall be signed on behalf of the corporation by an officer, or, if the corporation is in the hands of a receiver or trustee, it shall be signed on behalf of the corporation by such receiver or trustee.

C. When the existence of a foreign corporation terminates because of dissolution, merger, or any other reason, a certificate from the proper officer in the jurisdiction of the corporation's incorporation evidencing the termination shall be filed with the Secretary of State.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.13. Amended by Acts 1981, 67th Leg., p. 836, ch. 297, Sec. 9, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 93, Sec. 45, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 733, Sec. 32, eff. Jan. 1, 1994.

Art. 1396-8.14. FILING OF APPLICATION FOR WITHDRAWAL. A. The original and a copy of such application for withdrawal shall be delivered to the Secretary of State. If the Secretary of State finds that such application conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

(1) Endorse on the original and the copy the word "Filed", and the month, day and year of the filing thereof.

(2) File the original in his office.

(3) Issue a certificate of withdrawal to which he shall affix the copy.

B. The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the Secretary of State, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this State shall cease.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.14. Amended by Acts 1979, 66th Leg., p. 219, ch. 120, Sec. 15, eff. May 9, 1979.

Art. 1396-8.15. REVOCATION OF CERTIFICATE OF AUTHORITY. A. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by a decree of the district

court for the county in which the registered office of the corporation in this state is situated or of any district court in Travis County in an action filed by the Attorney General when it is established that:

(1) The corporation has failed to comply with a condition precedent to the issuance of its certificate of authority or a renewal or amendment thereof; or

(2) The certificate of authority to transact business in this state or any amendment thereof was procured through fraud; or

(3) The corporation has continued to conduct affairs beyond the scope of the purpose or purposes expressed in its certificate of authority to conduct affairs in this state; or

(4) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation as required by law.

B. The certificate of authority of a foreign corporation to conduct affairs in this State may be revoked by order of the Secretary of State when it is established that it is in default in any of the following particulars:

(1) The corporation has failed to file any report within the time required by law, or has failed to pay any fees, franchise taxes, or penalties prescribed by law when the same have become due and payable; or

(2) The corporation has failed to maintain a registered agent in this State as required by law; or

(3) The corporation has changed its corporate name or the purposes authorized by its existing certificate of authority and has failed to file with the Secretary of State within thirty days after such change became effective, an application for an amended certificate of authority, or that the corporation has changed its corporate name and that the newly adopted name is not available for use in this State; or

(4) The corporation has failed to pay the filing fee for the corporation's certificate of authority, or the fee was paid by an instrument that was dishonored when presented by this State for payment.

C. (1) No foreign corporation shall have its certificate of authority to conduct affairs in this state revoked under Subsections (1), (2), or (3) of Section B hereof unless the Secretary of State, or other state agency to which such report, taxes, fees or penalties is required to be made, gives the corporation not less than 90 days notice of its neglect, delinquency, or omission by certified mail addressed to its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation, and the corporation has failed prior to such revocation to correct the neglect, omission or delinquency.

(2) When the certificate of authority of a corporation to conduct affairs in this state is revoked under Subsection (4) of Section B of this article, the Secretary of State shall give the corporation notice of the revocation by regular mail addressed to its registered office, its principal place of business, the last known address of one of its officers or directors, or any other known place of business of the corporation.

D. Whenever a corporation has given cause for revocation of its certificate of authority and has failed to correct the neglect, omission or delinquency as provided in Sections B and C, the Secretary of State shall thereupon revoke the certificate of authority of the corporation by issuing a certificate of revocation which shall include the fact of such revocation and the date and cause thereof. The original of such certificate shall be placed in his office and a copy thereof mailed to the corporation at its registered office or to its principal place of business, or to the last known address of one of its officers or directors, or to any other known place of business of said corporation. Upon the issuance of such certificate of revocation, the authority to conduct affairs in this state shall cease.

E. Any corporation whose certificate of authority has been revoked by the Secretary of State under the provisions of Section B of this article may be reinstated by the Secretary of State at any time within a period of 36 months from the date of such dissolution, upon approval of an application for reinstatement signed by an officer or director of the corporation. Such application shall be filed by the Secretary of State whenever it is established to his satisfaction that in fact there was no cause for the revocation, or whenever the neglect, omission or delinquency resulting in revocation has been corrected and payment made of all fees, taxes, penalties and interest due thereon which accrued before the revocation plus an amount equal to the total taxes from the date of revocation to the date of reinstatement which would have been payable had the corporation's certificate not been revoked. A reinstatement filing fee of $25.00 shall accompany the application for reinstatement.

Reinstatement shall not be authorized if the corporate name is the same as or deceptively similar to a corporate name already on file or reserved or registered, unless the corporation being reinstated contemporaneously amends its certificate of authority to change its name.

When the application for reinstatement is approved and filed by the Secretary of State, the corporate authority to do business in Texas shall be deemed to have continued without interruption from the date of revocation, except that reinstatement shall have no effect upon any issue of personal liability of the directors, officers, or agents of the corporation during the period between revocation and reinstatement.

F. When a foreign corporation is convicted of a felony, or when a high managerial agent is convicted of a felony committed in the conduct of the affairs of the foreign corporation, the Attorney General may file an action to revoke the certificate of authority of the foreign corporation to conduct affairs in this state in a district court of the county in which the registered office of the foreign corporation in this state is situated or in a district court of Travis County. The court may revoke the foreign corporation's certificate of authority if it is established that:

(1) The foreign corporation, or a high managerial agent acting in behalf of the foreign corporation, has engaged in a persistent course of felonious conduct; and

(2) To prevent future felonious conduct of the same character, the public interest requires such revocation.

G. Article 7.02 of this Act does not apply to Section F of this article.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.15. Amended by Acts 1965, 59th Leg., p. 533, ch. 276, Sec. 4, 5, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, Sec. 7, eff. June 18, 1969; Acts 1973, 63rd Leg., p. 990, ch. 399, Sec. 2(N), eff. Jan. 1, 1974; Acts 1981, 67th Leg., p. 837, ch. 297, Sec. 10, eff. Aug. 31, 1981; Acts 1993, 73rd Leg., ch. 733, Sec. 33, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 757, Sec. 10, eff. Sept. 1, 2001.

Art. 1396-8.16. FILING OF DECREE OF REVOCATION. A. In case the court shall enter a decree revoking the certificate of authority of a foreign corporation to conduct affairs in this State, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary of State. No fee shall be charged by the Secretary of State for the filing thereof.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.16.

Art. 1396-8.17. CONDUCTING AFFAIRS WITHOUT CERTIFICATE OF AUTHORITY. A. No foreign corporation which is conducting affairs in this State without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this State until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation in this State, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets. It is expressly provided, however, that the provisions of this Article shall not affect the rights of any assignee of the foreign corporation as the holder in due course of a negotiable promissory note, check or bill of exchange, or as the bona-fide purchaser for value of a warehouse receipt, stock certificate, or other instrument made negotiable by law.

B. The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this State.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 8.17.

Art. 1396-9.01. REPORT OF DOMESTIC AND FOREIGN CORPORATIONS. A. The Secretary of State is authorized to require each domestic corporation and each foreign corporation authorized to conduct affairs in this State to file, not more often than once every four (4) years for any corporation, a report setting forth:

(1) The name of the corporation and the state or country

under the laws of which it is incorporated.

(2) The address of the registered office of the corporation in this State, and the name of its registered agent in this State at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

(3) The names and respective addresses of the directors and officers of the corporation.

B. Such report shall be made on forms promulgated by the Secretary of State, and the information contained shall be given as of the date of the execution of the report. It shall be signed on behalf of the corporation by an officer; or, if the corporation is in the hands of a receiver or trustee, it shall be signed on behalf of the corporation by such receiver or trustee.

C. Such report shall be delivered to the Secretary of State within thirty (30) days of the mailing of notice by the Secretary of State to the corporation that such report is due. Such notice may be either written or printed and shall be addressed to such corporation and mailed to the address named in its articles of incorporation as its principal place of business, or to its registered agent, or to the last address of the corporation as it appears on record in the office of the Secretary of State, or to any other known place of business of such corporation.

D. Along with the notice that such report is due, the Secretary of State shall mail to the corporation two (2) copies of a report form which shall be prepared and filed as herein provided.

E. One (1) copy of such report shall be delivered to the Secretary of State. If the Secretary of State finds that such report conforms to the provisions of this Act, he shall:

(1) Endorse on such report the word "Filed," and the month, day, and year of the filing thereof.

(2) Notify the corporation of the filing of such report.

F. Within two (2) years after September 1, 1961, the Secretary of State shall mail such notice to each non-profit corporation organized under the laws of this State prior to the effective date of this Act and subject to the provisions of this Act, and such report shall thereafter be filed as provided herein.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.01. Amended by Acts 1987, 70th Leg., ch. 93, Sec. 46, eff. Aug. 31, 1987.

Art. 1396-9.02. FAILURE TO FILE REPORTS; FORFEITURE; RIGHT OF CORPORATION TO CURE DEFAULT. A. Any domestic or foreign corporation which shall fail to file the report provided for in Article 9.01 of this Act, when the same shall become due, shall, for such default, forfeit its right to conduct affairs in this State.

B. Such forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation the words "right to conduct affairs forfeited," together with the date of such forfeiture. Notice of such forfeiture shall thereupon be mailed to the corporation to the address named in its articles of incorporation as its principal place of business, or to its registered agent, or to the last address of the corporation as it

appears on record in the office of the Secretary of State, or to any other known place of business of such corporation. Until the right of such corporation to conduct affairs in this State shall be revived in accordance with Sections C and D of this Article, it shall not be permitted to maintain any action, suit or proceeding in any court of this State. Nor shall any action, suit or proceeding be maintained in any court of this State by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in this State, until the right of such corporation to conduct affairs in this State shall have been revived in accordance with Sections C and D of this Article. It is expressly provided, however, that the provisions of this Article shall not affect the rights of any assignee of the corporation as the holder in due course of a negotiable promissory note, check, or bill of exchange, or as the bona fide purchaser for value of a warehouse receipt, stock certificate, or other instrument negotiable by law. The forfeiture of the right to conduct affairs in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this State.

C. Any corporation whose right to conduct affairs may have been forfeited as provided in this Act, shall be relieved from such forfeiture by filing the required report with the Secretary of State within 120 days of the date of mailing such notice of forfeiture, together with a late filing fee of One Dollar ($1) for each month, or fractional part thereof, which shall have elapsed after such forfeiture of its right to conduct affairs; provided, that such amount shall in no case be less than Five Dollars ($5) nor more than Twenty-five Dollars ($25).

D. When such report shall be filed and the revival fee shall be paid to the Secretary of State, he shall revive the right of the corporation to conduct affairs in this State, cancelling the words "right to conduct affairs forfeited" upon his record, and endorsing thereon the word "Revived" and the date of such revival.

E. If any corporation whose right to conduct affairs within this State shall hereafter be forfeited under the provisions of this Act shall fail to file such report and pay to the Secretary of State the required revival fee within one hundred and twenty (120) days after the date of mailing of the notice of such forfeiture, such failure shall constitute sufficient ground for the involuntary dissolution of the corporation or the revocation of its certificate of authority, which dissolution or revocation shall be consummated without judicial ascertainment, by the Secretary of State entering upon the record of such corporation filed in his office, the word "Forfeited" giving the date thereof and citing this Act as authority therefor.

F. Any corporation which is involuntarily dissolved or whose certificate of authority is revoked without judicial ascertainment, as provided in Section E hereof, and which has paid all fees, taxes, penalties and interest due thereon which accrued before the dissolution or revocation plus an amount equal to the total taxes from the date of dissolution or revocation to the date of reinstatement which would have been payable had the corporation not been dissolved or its certificate revoked may be relieved from

such dissolution or revocation by filing the required report with the Secretary of State together with a filing fee of Twenty-five ($25.00) Dollars.

G. When such report shall be filed and the revival fee shall be paid to the Secretary of State, he shall reinstate the certificate of incorporation or charter or certificate of authority without judicial ascertainment, cancelling the word "Forfeited" upon his record, and endorsing thereon the words "Set Aside" and the date of such reinstatement; provided, if such dissolution or revocation is to be set aside, the corporation shall ascertain from the Secretary of State whether the name of the corporation is available, and if not available, amend its corporate name pursuant to the provisions of this Act.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.02. Amended by Acts 1965, 59th Leg., p. 533, ch. 276, Sec. 7 to 9, eff. Aug. 30, 1965; Acts 1969, 61st Leg., p. 2477, ch. 834, Sec. 8, eff. June 18, 1969.

Art. 1396-9.03. FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES. A. The Secretary of State shall charge and collect for:

(1) Filing articles of incorporation and issuing a certificate of incorporation, Twenty-five Dollars ($25).

(2) Filing articles of amendment and issuing a certificate of amendment, Twenty-five Dollars ($25).

(3) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, Fifty Dollars ($50).

(4) Filing a statement of change of address of registered office or change of registered agent, or both, Five Dollars ($5).

(5) Filing articles of dissolution, Five Dollars ($5).

(6) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, Twenty-five Dollars ($25).

(7) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, Twenty-five Dollars ($25).

(8) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, Five Dollars ($5).

(9) Filing any other statement or report of a domestic or foreign corporation, Five Dollars ($5).

(10) Filing restatement of articles of incorporation, Fifty Dollars ($50).

(11) Filing a statement of change of address of registered agent, Fifteen Dollars ($15), except that the maximum fee for simultaneous filings by a registered agent for more than one corporation may not exceed Two Hundred Fifty Dollars ($250).

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.03. Amended by Acts 1961, 57th Leg., p. 450, ch. 223, Sec. 1; Acts 1981, 67th Leg., p. 837, ch. 297, Sec. 11, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 1007, Sec. 10, eff. June 19, 1987; Acts 1993, 73rd Leg., ch. 733, Sec. 34, eff. Jan. 1, 1994.

Art. 1396-9.03A. PENALTY FOR SIGNING FALSE DOCUMENT. A. A person commits an offense if he signs a document he knows is false in any material respect with intent that the document be delivered on behalf of a corporation to the Secretary of State for filing.

B. An offense under this Article is a Class A misdemeanor.

Added by Acts 1987, 70th Leg., ch. 93, Sec. 47, eff. Aug. 31, 1987.

Art. 1396-9.04. POWERS OF SECRETARY OF STATE. A. The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.04.

Art. 1396-9.05. APPEALS FROM SECRETARY OF STATE. A. If the Secretary of State shall fail to approve any articles of incorporation, application for certificate of authority to conduct affairs in this State, amendment, merger, consolidation, or dissolution, or any other document required by this Act to be approved by the Secretary of State before the same shall be filed in his office, he shall, within ten (10) days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying in such notice the reasons therefor. From such disapproval such person or corporation may appeal to any district court of Travis County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the Secretary of State; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary of State or direct him to take such action as the court may deem proper.

B. Appeals from all final orders and judgments entered by the district court under this Article in review of any ruling or decision of the Secretary of State may be taken as in other civil actions.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.05.

Art. 1396-9.06. CERTIFICATES AND CERTIFIED COPIES TO BE RECEIVED IN EVIDENCE. A. All certificates issued by the Secretary of State in accordance with the provisions of this Act, and all copies of documents filed in his office, in accordance with the provisions of this Act when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated and may be officially recorded. A certificate by the Secretary of State under the state seal, as to the existence or non-existence of the facts relating to corporations which would not appear from a certified

copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.06. Amended by Acts 1993, 73rd Leg., ch. 300, Sec. 13, eff. Aug. 30, 1993.

Art. 1396-9.07. FORMS TO BE PROMULGATED BY SECRETARY OF STATE. A. Forms may be promulgated by the Secretary of State for all reports and all other documents required to be filed in the office of the Secretary of State. The use of such forms, however, shall not be mandatory, except in instances in which the law may specifically so provide.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.07.

Art. 1396-9.08. GREATER VOTING REQUIREMENTS. A. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, then required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.08.

Art. 1396-9.09. WAIVER OF NOTICE. A. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.09.

Art. 1396-9.10. ACTION WITHOUT A MEETING BY MEMBERS, DIRECTORS OR COMMITTEES. A. Any action required by this Act to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors or of any committee, may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all the members entitled to vote with respect to the subject matter thereof, or all of the directors, or all of the members of the committee, as the case may be.

B. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the Secretary of State under this Act.

C. (1) The articles of incorporation may provide that any action required by this Act to be taken at a meeting of the members

or directors of a corporation or any action that may be taken at a meeting of the members or directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of members, directors, or committee members as would be necessary to take that action at a meeting at which all of the members, directors, or members of the committee were present and voted.

(2) Each written consent shall bear the date of signature of each member, director, or committee member who signs the consent. A written consent signed by less than all of the members, directors, or committee members is not effective to take the action that is the subject of the consent unless, within 60 days after the date of the earliest dated consent delivered to the corporation in the manner required by this article, a consent or consents signed by the required number of members, directors, or committee members is delivered to the corporation at its registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent, or an officer or agent of the corporation having custody of the books in which proceedings of meetings of members, directors, or committees are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the corporation's principal place of business shall be addressed to the president or principal executive officer of the corporation.

(3) Prompt notice of the taking of any action by members, directors, or a committee without a meeting by less than unanimous written consent shall be given to all members, directors, or committee members who did not consent in writing to the action.

(4) If any action by members, directors, or a committee is taken by written consent signed by less than all of the members, directors, or committee members, any articles or documents filed with the Secretary of State as a result of the taking of the action shall state, in lieu of any statement required by this Act concerning any vote of the members or directors, that written consent has been given in accordance with the provisions of this article and that any written notice required by this article has been given.

(5) A telegram, telex, cablegram, or similar transmission by a member, director, or member of a committee or a photographic, photostatic, facsimile, or similar reproduction of a writing signed by a member, director, or member of a committee shall be regarded as signed by the member, director, or member of a committee for purposes of this article.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 9.10. Amended by Acts 1993, 73rd Leg., ch. 733, Sec. 35, eff. Jan. 1, 1994.

Art. 1396-9.11. MEETINGS BY TELEPHONE CONFERENCE OR OTHER REMOTE COMMUNICATIONS TECHNOLOGY. A. Subject to the provisions required or permitted by this Act for notice of meetings, unless otherwise restricted by the articles of incorporation or bylaws, members of a corporation, members of the board of directors of a corporation, or members of any committee designated by such board may participate in and hold a meeting of such members, board, or committee by means of:

(1) conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other; or

(2) another suitable electronic communications system, including videoconferencing technology or the Internet, only if:

(a) each member entitled to participate in the meeting consents to the meeting being held by means of that system; and

(b) the system provides access to the meeting in a manner or using a method by which each member participating in the meeting can communicate concurrently with each other participant.

B. Participation in a meeting pursuant to this Article shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Added by Acts 1985, 69th Leg., ch. 128, Sec. 32, eff. May 20, 1985. Amended by Acts 1999, 76th Leg., ch. 696, Sec. 1, eff. June 18, 1999.

Art. 1396-10.01. APPLICATION TO FOREIGN AND INTERSTATE AFFAIRS. A. The provisions of this Act shall apply to the conduct of affairs with foreign nations and among the several states only in so far as the same may be permitted under the provisions of the Constitution of the United States.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.01.

Art. 1396-10.02. RESERVATION OF POWER. A. The Legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the Legislature shall have power to amend, repeal, or modify this Act.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.02.

Art. 1396-10.03. EFFECT OF INVALIDITY OF PART OF THIS ACT. A. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection, section, or Article of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, section, or Article of this Act so adjudged to be invalid or unconstitutional.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.03.

Art. 1396-10.04. TO WHAT CORPORATIONS THIS ACT APPLIES; PROCEDURE FOR ADOPTION OF ACT BY EXISTING CORPORATION. A. Except as otherwise provided by this article, this Act does not apply to

domestic corporations organized under any statute other than this Act or to any foreign corporations granted authority to conduct affairs within this State under any statute other than this Act. If any domestic corporation is organized under or is governed by a statute that does not contain a provision regarding a matter provided for in this Act, or any foreign corporation is granted authority to conduct affairs within this State under a statute that does not contain a provision regarding a matter provided for in this Act in respect of foreign corporations, or if a statute specifically provides that the general laws for incorporation or for the granting of a certificate of authority to conduct affairs in this State supplement the provisions of that statute, the provisions of this Act apply only to the extent not inconsistent with the provisions of the other statute.

B. Repealed by Acts 2001, 77th Leg., ch. 1419, Sec. 31(b)(16), eff. June 1, 2003.

C. This Act shall not apply to those corporations excepted under Article 2.01 B, Subsections (3), (4), and (5) of this Act; provided however, that if any of said excepted domestic corporations were heretofore or are hereafter organized not for profit under special statutes which contain no provisions in regard to some of the matters provided for in this Act, or if such special statutes specifically applicable provide that the general laws for incorporation shall supplement the provisions of such statutes, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such special statutes.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.04. Amended by Acts 1961, 57th Leg., p. 653, ch. 302, Sec. 2; Acts 1993, 73rd Leg., ch. 733, Sec. 36, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 1419, Sec. 31(b)(16), eff. June 1, 2003.

Art. 1396-10.05. EXTENT TO WHICH EXISTING LAWS SHALL REMAIN APPLICABLE TO CORPORATIONS. A. Except as provided in the last preceding Article, existing corporations shall continue to be governed by the laws heretofore applicable thereto, until September 1, 1961.

B. Except as provided in Article 10.06 of this Act, any limitations, obligations, liabilities and powers applicable to a particular kind of corporation, for which special provision is made by the laws of this State, shall continue to be applicable to any such corporation, and this Act is not intended to repeal and does not repeal the statutory provisions providing for these special limitations, obligations, liabilities and powers.

C. Provided that nothing in this Act shall in any wise affect or nullify the Anti-Trust laws of this State.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.05.

Art. 1396-10.06. REPEAL OF EXISTING LAWS; EXTENT AND EFFECT THEREOF. A. Subject to the provisions of the last two (2) preceding Articles of this Act and of Section B of Article 2.01 of this Act, and excluding any existing general Act not inconsistent

with any provisions of this Act, no law of this State pertaining to private corporations, domestic or foreign, shall hereafter apply to corporations organized under this Act, or which obtain authority to conduct affairs in this State under this Act, or to existing corporations which adopt this Act.

B. The repeal of a prior Act by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such Act prior to the repeal thereof.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 10.06.

Art. 1396-10.07. DELAYED EFFECTIVENESS OF CERTAIN FILINGS. A. In this article the following are permitted acts:

(1) the incorporation of a corporation under this Act;

(2) an amendment to a corporation's articles of incorporation;

(3) the restatement of articles of incorporation of a corporation;

(4) a voluntary dissolution;

(5) the authorization or withdrawal of a foreign corporation to conduct affairs in this State;

(6) an amendment to the certificate of authority of a foreign corporation;

(7) a change in registered office or registered agent;

(8) a change of address of a registered agent; or

(9) a merger or consolidation of domestic corporations or of domestic and foreign corporations.

B. A permitted act may be made effective as of a time and date after the time and date otherwise provided in this Act or may be made effective on the occurrence of events or facts that may occur in the future. Those events or facts may include future acts of any person or entity, if:

(1) the articles, statement, application, or other filing that is required by this Act to be filed with the Secretary of State to make the permitted act effective clearly and expressly sets forth, in addition to any other statement or information required to be set forth:

(a) the time and date on which the permitted act is to become effective; or

(b) if the permitted act is to become effective on the occurrence of events or facts that may occur in the future, the manner in which the events or facts will operate to cause the permitted act to become effective;

(2) in the case of a permitted act that is to become effective on the mere passage of time as of a time or date after the time and date otherwise provided in this Act, the subsequent time and date must not be more than 90 days after the date of the filing of the articles, statement, application, or other filing that is otherwise required by this Act to be filed with the Secretary of State to make effective the permitted act; and

(3) in the case of a permitted act that is to be made effective on the occurrence of events or facts that may occur in the future, other than the mere passage of time, a statement that all the events or facts on which the effectiveness of the permitted act

is conditioned have been satisfied or waived and the date on which the condition was satisfied or waived must be filed with the Secretary of State within 90 days of the date of the filing of the articles, statement, application, or other filing that is otherwise required by this Act for the permitted act to become effective.

C. The statement required by Section A(3) of this article shall be executed on behalf of each domestic or foreign corporation or other entity that was required to execute the articles, statement, application, or other filing that is otherwise required by this Act to be filed with the Secretary of State to make effective the permitted act by an officer or other duly authorized representative, including an officer or duly authorized representative of any successor domestic or foreign corporation or other entity, and an original and copy shall be filed with the Secretary of State. If the Secretary of State finds that the statement conforms to the provisions of this Act, the Secretary of State shall:

(1) endorse on the original and the copy the word "Filed" and the month, day, and year of the filing;

(2) file the original in the Secretary of State's office; and

(3) return the copy to the filing party or its representative.

D. If any permitted act is to become effective as of a time or date after the time and date otherwise provided in this Act, for the permitted act to become effective, notwithstanding any other provision of this Act to the contrary, the permitted act shall become, to the extent permitted by Section A of this article, effective as of the subsequent time and date, and any certificate issued by the Secretary of State on the filing of the articles, statement, application, or other filing that is otherwise required by this Act for the permitted act to become effective shall expressly state the time and date on which the permitted act is to become effective.

E. If a permitted act is to be made effective on the occurrence of events or facts that may occur in the future, other than the mere passage of time, and the statement required by Section A(3) of this article is filed with the Secretary of State within the time prescribed, the permitted act becomes effective as of the time and date on which the latest specified event or fact occurs or the time and date on which the condition is otherwise satisfied or waived. Any certificate issued or notation, acknowledgement, or other statement made by the Secretary of State on the filing of the articles, statement, application, or other filing that is otherwise required by this Act for the permitted act to become effective shall state that "The effectiveness of the action to which this instrument relates is conditioned on the occurrence of certain facts or events described in the filing to which this instrument relates" or shall make reference in a manner the Secretary of State approves, to the fact that the effectiveness of the action is conditioned. The time and date on which a condition to the effectiveness of a permitted act is satisfied or waived as set forth in a statement filed with the Secretary of State pursuant to Section A(3) of this article shall be conclusively regarded as the time and date on which the condition was satisfied or waived for purposes of

this article.

F. If the effectiveness of any permitted act is conditioned on the occurrence of events or facts that may occur in the future, other than the mere passage of time, and the statement required by Section A(3) of this article is not filed with the Secretary of State within the time prescribed, the permitted act is not effective unless there is subsequently filed with the Secretary of State the articles, statement, application, or other filing required by this Act to be filed with the Secretary of State to make the permitted act effective.

Added by Acts 1993, 73rd Leg., ch. 733, Sec. 37, eff. Jan. 1, 1994.

Art. 1396-11.01. EMERGENCY CLAUSE. A. The fact that existing laws of the State of Texas have been amended from time to time over a period of some seventy (70) years and more without any adoption meanwhile of a complete Act relating to non-profit corporations generally, the provisions of which are consistent with one another; the fact that with so many amendments of the corporation laws applicable to non-profit corporations generally over so many years there have developed many uncertainties in the corporation laws of this State and with the result that there is now an imperative need for clarification of certain provisions of the existing laws; the fact that existing Texas laws are incomplete and that there are no existing Texas laws for many aspects of the non-profit corporation; all such facts create an emergency and public necessity that the Constitutional Rule requiring bills to be read on three separate days in each House be suspended and said Rule is hereby suspended; and require that this Act take effect and be in force from and after its passage, and it is so enacted.

Acts 1959, 56th Leg., p. 286, ch. 162, art. 11.01.

Art. 1396-11.02. APPLICABILITY; EXPIRATION. A. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a corporation to which the Business Organizations Code applies.

B. This Act expires January 1, 2010.

Added by Acts 2003, 78th Leg., ch. 182, Sec. 4, eff. Jan. 1, 2006.

Art. 1396-50.01. COOPERATIVE ASSOCIATION ACT.

Text of article effective until January 1, 2010

Short Title

Sec. 1. This Act may be cited as the Cooperative Association Act.

Definitions

Sec. 2. In this Act:

(1) "Association" means a group enterprise legally incorporated under this Act.

(2) "Member" means a member of a nonshare or share association.

(3) "Net savings" means the total income of an association less the costs of operation.

(4) "Savings returns" means the amount returned to patrons in proportion to their patronage or otherwise.

(5) "Cooperative basis" means that the net savings after payment, if any, of investment dividends and after making provisions for separate funds required or specifically permitted by statute, articles, or by-laws is allocated or distributed to member patrons, or to all patrons, in proportion to their patronage or retained by the enterprise for the actual or potential expansion of its services, the reduction of its charges to the patrons, or for other purposes not inconsistent with its non-profit character.

(6) "Membership Capital" means those funds of the association derived from the members generally either as a requirement of membership or in lieu of patronage dividends. Deposits and loans from members shall not be construed as "membership capital."

(7) "Invested Capital" means those funds invested in the association by an investor with the expectation of receiving investment dividends.

(8) "Investment Dividends" means the return on invested capital or on membership capital derived from the net savings of the association.

(9) "Patronage Dividends" means a share of net savings distributed among members on a basis of extent of patronage, as provided for in the articles of incorporation.

Applicability of Texas Non-Profit Corporation Act

Sec. 3. An association incorporated under this Act is subject to the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), to the extent that the provisions of the Texas Non-Profit Corporation Act do not conflict with the provisions of the Act. An association incorporated under this Act may exercise the same powers and privileges and is subject to the same duties, restrictions, and liabilities as non-profit corporations except to the extent that these are limited or enlarged by this Act.

Who May Incorporate

Sec. 4. Five or more natural persons, five or more hospitals or a hospital council or related subgroup, or two or more associations may incorporate under this Act; provided, however, an association may not be incorporated or organized to serve or function as a health maintenance organization or furnish medical, or health care nor may an association employ or contract with providers of medical care in any manner which is prohibited by any licensing law of this state under which such persons are licensed.

Purposes

Sec. 5. An association may be incorporated under this Act to engage in acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type of property, commodities, goods, or services for the primary and mutual benefit of the members of the association.

Powers

Sec. 6. An association may exercise all the powers granted to a nonprofit corporation under Article 2.02, Texas Non-Profit Corporation Act and may:

(1) own and hold membership in and share capital of other associations or corporations, and own and exercise ownership rights in bonds or other obligations;

(2) make agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(3) exercise all powers not inconsistent with this Act that are necessary or convenient for the accomplishment of its purposes, and to that end the enumeration of powers in this section is not exclusive;

(4) not engage, either directly or indirectly, in insurance companies of every type or character as the insurance business is defined and regulated by the Insurance Code, as amended, health maintenance organizations, or prepaid legal service corporations; and

(5) deliver money to a scholarship fund for rural students.

Registered Office and Registered Agent

Sec. 7. An association shall maintain a registered office and registered agent in accordance with the provisions of Article 2.05, Texas Non-Profit Corporation Act. An association may change its registered office and registered agent in accordance with the provisions of Article 2.06, Texas Non-Profit Corporation Act. Process may be served on an association in accordance with the provisions of Article 2.07, Texas Non-Profit Corporation Act.

Articles of Incorporation; Contents

Sec. 8. (a) Articles of incorporation shall be signed and acknowledged by each of the incorporators if they are natural persons and by the presidents and secretaries if they are associations.

(b) Subject to the limitations of this Act, the articles must contain:

(1) a statement of the purpose or purposes for which the association is formed;

(2) the name of the association, which must include the word "cooperative" or an abbreviation or derivative of it;

(3) the term of existence of the association, which may be perpetual;

(4) the location and street address of the initial registered office of the association and the initial registered agent at that address;

(5) the names and street addresses of the incorporators of the association;

(6) the names and street addresses of the directors who shall manage the affairs of the association for the first year, unless sooner changed by the members;

(7) a statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) if organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value, if any, of the shares, and the rights, preferences, and restrictions of each type of share;

(9) the method by which a surplus is distributed on dissolution of the association, in conformity with the requirements of Section 38 of this Act for division of surplus.

(c) The articles may contain other provisions for the conduct of the association's affairs not inconsistent with this Act or any other law.

Filing, Certificate of Incorporation, Organization Meeting

Sec. 9. (a) The articles shall be delivered to the secretary of state in accordance with the provisions of Article 3.03, Texas Non-Profit Corporation Act. If he finds that the articles conform to law, he shall file them on payment by the association of the fee required by Article 9.03, Texas Non-Profit Corporation Act.

(b) After filing and recording the articles, the secretary of state shall issue a certificate of incorporation, in accordance with Article 3.04, Texas Non-Profit Corporation Act, at which point the corporate existence begins.

(c) After the issuance of the certificate of incorporation, an organization meeting shall be held in accordance with Article 3.05, Texas Non-Profit Corporation Act.

Amendments

Sec. 10. (a) An amendment to the articles may be proposed by a two-thirds vote of the board of directors or by petition of the association's members as provided in the by-laws. The secretary shall send notice of a meeting to consider an amendment to each member at the member's last known address, or shall post a written notice of the meeting in a conspicuous place in all principal places of activity of the association. Either type of notice shall be accompanied by the full text of the proposal and by the text of the part of the articles to be amended, at least 30 days before the meeting.

(b) Two-thirds of the members voting may adopt an amendment. When adoption of an amendment is verified by the president and secretary, it shall be filed and recorded with the secretary of state within 30 days after its adoption in accordance with Article 4.04, Texas Non-Profit Corporation Act.

Adoption of By-Laws

Sec. 11. By-laws may be adopted, amended, or repealed by a simple majority vote of the members voting, unless the articles or by-laws require a greater majority.

Contents of By-Laws

Sec. 12. Subject to the limitations of this Act, the by-laws may provide for:

(1) the requirements for the admission to membership and disposal of members' interests on cessation of membership;

(2) the time, place and manner of calling and conducting meetings;

(3) the number or percentage of the members constituting a quorum;

(4) the number, qualifications, powers, duties, method of election, and terms of directors and officers, and the division or classification, if any, of directors to provide for rotating or overlapping terms;

(5) the compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;

(6) the method of distributing the net savings;

(7) the bonding of every individual acting as officer or employee of an association handling funds or securities; and

(8) the various discretionary provisions of this Act as well as other provisions incident to the purposes and activities of the association.

Meetings

Sec. 13. (a) Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership. When a meeting is demanded, it is the duty of the secretary to call the meeting for a date 30 days after the demand.

(b) Regular or special meetings, including meetings by units, may be held inside or outside this state as the articles may prescribe.

Notice of Meetings

Sec. 14. The secretary shall give notice of the time and place of meetings to members in the manner provided for in the by-laws. In the case of a special meeting the notice shall specify the purpose for which the meeting is called.

Meetings by Units of the Membership

Sec. 15. The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes cast at unit meetings to the central meeting, or for a method of representation of units by the election of delegates to the central meeting, or for a combination of both

methods.

One Member--One Vote

Sec. 16. (a) Each member of an association has one vote, except that if an association includes among its members any number of other associations or groups organized on a cooperative basis, the voting rights of the member associations or groups may be as prescribed in the articles or by-laws.

(b) No voting agreement or other device to evade the one-member-one-vote rule is enforceable.

Proxy

Sec. 17. No member may vote by proxy.

Voting By Mail

Sec. 18. (a) The articles or by-laws may provide for either or both of the following procedures for voting by mail:

(1) the secretary may send to the members a copy of any proposal to be offered at a meeting with the notice of the meeting, and the mail votes cast by the members shall be counted together with those cast at the meeting if the mail votes are returned to the association within a specified number of days;

(2) the secretary may send to any member absent from a meeting an exact copy of the proposal acted on at the meeting, and the mail vote of the member on the proposal, if returned within a specified number of days, is counted together with the votes cast at the meeting.

(b) The articles or by-laws may also determine whether and to what extent mail votes are counted in computing a quorum.

Application of Voting Provisions in This Act to Voting by Mail

Sec. 19. If an association has provided for voting by mail, any provision of this Act referring to votes cast by the members applies to votes cast by mail.

Application of Voting Provisions in This Act to Voting by Delegates

Sec. 20. If an association has provided for voting by delegates, any provision of this Act referring to votes cast by the members applies to votes cast by delegates, but this does not permit delegates to vote by mail.

Directors

Sec. 21. (a) An association shall be managed by a board of not less than five directors, who are elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association, and who hold office until their successors are elected or until removed. Vacancies which occur in the board of directors, other than by removal or expiration of term, are filled in the manner the by-laws provide.

(b) The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

(c) An executive committee of the board of directors may be elected in the manner and with the powers and duties as prescribed by the articles or by-laws.

(d) Meetings of directors and of the executive committee may be held inside or outside this state.

Officers

Sec. 22. The officers of an association are a president, one or more vice-presidents, and a secretary and a treasurer or a secretary-treasurer. Any two or more offices may be held by the same person, except the offices of president and secretary. The officers of an association may be designated by such other titles as may be provided in the articles of incorporation or the by-laws. A committee duly designated may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary. The officers are elected annually by the directors unless the by-laws provide otherwise.

Removal of Directors and Officers

Sec. 23. A director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer involved shall be given an opportunity to be heard at the meeting. A vacancy caused by removal is filled by the vote provided in the by-laws for election of directors.

Referendum

Sec. 24. The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 percent of all the members or by vote of at least a majority of the directors. Rights of third parties which have vested between the time of the action and the referendum are not impaired by the results of the referendum.

Limitations on the Return on Capital

Sec. 25. (a) Investment dividends will not exceed eight percent on investment capital unless otherwise provided for in the by-laws and the investment dividend will not be cumulative unless otherwise provided for in the by-laws.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period.

Eligibility and Admission to Membership

Sec. 26. (a) A natural person, association, trust,

incorporated or unincorporated group organized on a cooperative basis, or a nonprofit group, may be admitted to membership in an association if it meets the qualifications for eligibility stated in the articles or by-laws.

(b) Hospitals licensed in this state or a hospital council or related subgroup may be admitted to membership in an association if:

(1) the qualifications for eligibility stated in the association's articles or by-laws are met; and

(2) the entities are not organizing to:

(A) serve or function as a health maintenance organization;

(B) provide medical or health care; or

(C) employ or contract with a medical or health care provider in a manner that is prohibited by a licensing law of this state under which that medical or health care provider is licensed.

Text of section 27 as amended by Acts 1991, 72nd Leg., ch. 855, Sec. 3

Subscribers

Sec. 27. A natural person, entity, or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether and the conditions under which voting rights or other rights of membership are granted to subscribers.

Text of section 27 as amended by Acts 1991, 72nd Leg., ch. 897, Sec. 1

Subscribers

Sec. 27. A natural person, trust, or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether and the conditions under which voting rights or other rights of membership are granted to subscribers.

Share and Membership Certificates: Issuance and Contents

Sec. 28. (a) No certificates for membership capital may be issued until its par value, if any, has been paid in full. Each certificate issued by an association shall bear a full or condensed statement of the requirements of Sections 16, 17, and 29(a) of this Act.

(b) No certificate for invested capital may be issued until its par value, if any, has been paid in full. Each certificate for invested capital issued by an association shall bear a full or condensed statement of restrictions on transferability if specifically provided for in the by-laws of the association.

Transfer of Shares and Membership: Withdrawal

Sec. 29. (a) If a member decides to withdraw from the association, the member shall offer his membership certificates to the directors in writing and the directors may purchase such holdings within a 90-day period following receipt of notice by paying the member the par value. The directors shall then reissue or cancel those shares. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

(b) If an investor owning investor certificates desires to sell, assign, or convey his certificates, he must do so in accordance with the by-laws of the association; otherwise such investment certificates shall be repurchased by the association upon written notice to the directors within a 90-day period following receipt of notice by paying the investor the par value of the certificate, together with any investment dividend accrued.

Share and Membership Certificates: Recall

Sec. 30. (a) The by-laws may give the directors the power to use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount requisite for membership, and may also provide that if any member has failed to patronize the association during a time specified and in accordance with the by-laws, the directors may recall the member's membership certificates, thereby terminating his membership in the association. When membership certificates are recalled, they shall be either reissued or cancelled. No recall may be made if the solvency of the association would be jeopardized.

(b) The directors shall have the power to use the reserve funds to recall and repurchase at par value, together with any investment dividends due on the investment certificates of any investor. The by-laws may establish specific procedures, terms and conditions for such recall and repurchase.

Certificates: Attachment

Sec. 31. The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed $50, are exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to attachment, execution, or garnishment, the directors of the association may either admit the purchaser to membership, or may purchase the holdings at par value.

Liability of Members

Sec. 32. Members are not jointly or severally liable for debts of the association, nor is a subscriber liable, except to the extent of the unpaid amount on the membership certificates or on the invested capital certificates subscribed by him. No subscriber may be released from liability by assignment of his interest in the membership capital certificates or the invested capital certificates, but he is jointly and severally liable with the

assignee until the membership certificates or investor certificates are fully paid up.

Expulsion

Sec. 33. A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed of the charges in writing at least 10 days in advance of the meeting, and shall be given an opportunity to be heard in person or by counsel at the meeting. If the association votes to expel a member, the board of directors shall purchase the member's capital holdings at par value if and when such purchases may be made without jeopardizing the solvency of the association.

Allocation and Distribution of Net Savings

Sec. 34. (a) At least once each year the members or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) investment dividends, within the limitations of Section 25 may be paid on invested capital, or if the by-laws so provide, on the membership certificates, but the investment dividends may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities;

(2) a portion of the remainder, as determined by the articles or by-laws, may be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(3) a portion of the remainder may be allocated to retained earnings;

(4) the remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage as follows:

(A) in the case of a member patron, the proportionate amount of savings return distributed to the member may be in the form of cash, property, membership certificates, investment certificates or in any combination of these;

(B) in the case of a subscriber patron, his proportionate amount of savings returns as the articles or by-laws provide, may be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent an association engaged in rendering services from disposing of the net savings from the rendering of services in a manner calculated to lower the fees charged for services or otherwise to further the common benefit of the members.

(c) This section does not prevent an association from adopting a system in which the payment of savings returns which would otherwise be distributed are deferred for a fixed period of time, nor from adopting a system in which the savings returns distributed are partly in cash, partly in shares, with the shares to be retired at a fixed future date, in the order of their serial number or date of issue.

Recordkeeping

Sec. 35. (a) To record its business operation, every association shall keep a set of books according to standard accounting practices.

(b) A written report shall be submitted to the annual meeting of the association which shall include the following:

(1) a balance sheet, and income and expense statement;

(2) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders, and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any return on capital has been paid; and

(3) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received.

(c) The directors shall appoint a review committee, composed of members who are not principal bookkeepers, accountants, or employees of the association.

(d) The committee shall report on the quality of the annual report and the bookkeeping system at the annual meeting.

Annual Report

Sec. 36. (a) Every association having 100 or more members or an annual business amounting to $20,000 or more shall prepare, within 120 days of the close of its operations each year, a report of its condition, sworn to by the president and secretary, which shall be filed in its registered office. The report shall state:

(1) the name and principal address of the association;

(2) the names, addresses, occupations, and date of expiration of the terms of the officers and directors, and their compensation, if any;

(3) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any investment dividends have been paid;

(4) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received; and

(5) the receipts, expenditures, assets, and liabilities of the association.

(b) Every association having 3,000 or more members or an annual business amounting to $750,000 or more shall file a copy of the report with the secretary of state.

(c) A person who subscribes or verifies a report containing a materially false statement, known to the person to be false, commits a misdemeanor punishable by a fine of not less than $25 nor more than $200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Notice of Delinquent Reports

Sec. 37. (a) If an association required by Section 36 of this

Act to file a report with the secretary of state fails to do so in the prescribed time, the secretary of state shall notify the association of the delinquency by registered letter mailed to its principal office within 60 days after the report becomes delinquent. If an association required by Section 36 of this Act to file a report at its registered office but not required to file a copy with the secretary of state fails to do so in the prescribed time, the secretary of state or any member may notify the association of the delinquency by registered letter mailed to its principal office.

(b) If the association fails to file the report within 60 days from the date of notice under Subsection (a) of this section, a member of the association or the attorney general may seek a writ of mandamus against the association and the appropriate officer or officers to compel the filing to be made, and in the court shall require the association or the officers at fault to pay all the expenses of the proceeding including attorney fees.

Dissolution

Sec. 38. (a) An association may, at a regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. If it is directed to dissolve, by a vote of a majority of the members voting, three of their number shall be designated as trustees, who shall liquidate, on behalf of the association and within a time fixed in their designation or within any extension of time, its assets, and shall distribute them in the manner set forth in this section.

(b) A suit for involuntary dissolution of an association organized under this Act may be instituted for the causes and prosecuted in the manner set forth in Articles 7.01 to 7.12, Texas Non-Profit Corporation Act (Articles 1396-7.01 through 1396-7.12, Vernon's Texas Civil Statutes), except that any distribution of assets shall be in the manner set forth in this section.

(c) When an association is dissolved, its assets shall be distributed in the following manner and order:

(1) by paying its debts and expenses;

(2) by returning to the investors the par value of their capital;

(3) by returning to the subscribers to invested capital the amounts paid on their subscriptions;

(4) by returning to patrons the amount of patronage dividends credited to their accounts;

(5) by returning to members their membership capital; and

(6) by distributing any surplus in either or both of the following ways, as the articles may provide: either among those patrons who have been members or subscribers at anytime during the six years preceding dissolution, on the basis of patronage during that period, or as a gift to any cooperative association or other non-profit enterprise which may be designated in the articles.

Use of Name "Cooperative"

Sec. 39. (a) Only an association organized under this Act, a group organized on a cooperative basis under any other law of this

state, or a foreign corporation operating on a cooperative basis and authorized to do business in this state under this or any other law of this state may use the term "cooperative," or any abbreviation or derivation of the term "cooperative," as part of its business name, or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person, firm, or corporation that violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not less than $25 nor more than $200, with an additional fine of not more than $200 for each month during which a violation occurs after the first month, or by confinement in the county jail for not less than 30 days nor more than one year, or by any combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court of competent jurisdiction renders judgment that a person, firm, or corporation which employed the name "cooperative" prior to this Act, is not organized on a cooperative basis, but may nonetheless continue to use the word "cooperative," the business shall always place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type, and in letters not less than two-thirds as large, as those used in the word "cooperative."

Sec. 39A. [Expired].

Promotion Expenses

Sec. 40. (a) No association may use its funds, directly or indirectly, issue shares, or incur indebtedness for the payment of compensation for the organization of the association, except necessary legal fees, or for the payment of promotion expenses, in excess of five percent of the amount paid for the shares or membership certificates involved in the promotion transaction.

(b) An officer, director, or agent of an association who gives, or any person, firm, corporation or association who receives a promotion commission in violation of this section commits a misdemeanor and may be punished by a fine of not less than $25, nor more than $200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

False Reports

Sec. 41. A person, firm, corporation, or association that maliciously and knowingly spreads false reports about the management or finances of any association commits a misdemeanor punishable by a fine of not less than $25 and not more than $200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Existing Cooperative Groups

Sec. 42. Any group operating on a cooperative basis on the effective date of this Act may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this Act. If it elects to secure the benefits of this Act, it shall amend its

articles and by-laws to conform with this Act. A certified copy of the amended articles shall be filed and recorded with the secretary of state and a fee of $5 shall be paid.

Foreign Corporations and Associations

Sec. 43. A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state in which it is organized may transact business in this state as a foreign cooperative corporation or association.

Exemption From Taxes

Sec. 44. Each association organized under this Act is exempt from the franchise tax and from license fees imposed by the state or a political subdivision of the state. However, an association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter.

Exemption

Sec. 45. This Act does not apply to any corporation or association organized and now existing or in the future organized under the Cooperative Marketing Act, as amended (Articles 5737 through 5764, Revised Civil Statutes of Texas, 1925).

Effect of Invalidity of Part of This Act

Sec. 46. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection or section of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection or section of this Act so adjudged to be invalid or unconstitutional.

Applicability; Expiration

Text of section effective January 1, 2006

Sec. 47. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to an association to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

Acts 1975, 64th Leg., p. 814, ch. 318, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 279, ch. 134, Sec. 1, eff. May 11, 1977; Acts 1981, 67th Leg., p. 1777, ch. 389, Sec. 27, eff. Jan. 1, 1982; Acts 1991, 72nd Leg., ch. 855, Sec. 1 to 3, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 897, Sec. 1, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 904, Sec. 6, eff. Sept. 1, 1997.

Sec. 47 added by Acts 2003, 78th Leg., ch. 182, Sec. 5, eff. Jan. 1, 2006.

Art. 1396-70.01. TEXAS UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACT.

Text of article effective until January 1, 2010

Short Title

Sec. 1. This Act may be cited as the Texas Uniform Unincorporated Nonprofit Association Act.

Definitions

Sec. 2. In this Act:

(1) "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.

(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust, consisting of three or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.

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

(4) "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.

Supplementary General Principles of Law and Equity

Sec. 3. Principles of law and equity supplement this Act unless displaced by a particular provision of it.

Territorial Application

Sec. 4. Real and personal property in this state 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 this state.

Real and Personal Property; Nonprofit Association as Beneficiary

Sec. 5. (a) A nonprofit association in its name may acquire, hold, encumber, or transfer an estate or interest in real or personal property.

(b) A nonprofit association may be a beneficiary of a trust, contract, or will.

Statement of Authority as to Real Property

Sec. 6. (a) A nonprofit association may 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 county clerk's office in the county in which a transfer of the property would be recorded.

(c) A statement of authority must set forth:

(1) the name of the nonprofit association;

(2) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(3) the name or title of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.

(d) A statement of authority must be executed in the same manner as a deed by a person who is not the person authorized to transfer the estate or interest.

(e) The county clerk may collect a fee for recording a 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 must 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 on the fifth anniversary of the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the county clerk's office of the county 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 person who gives value without notice that the person lacks authority.

Liability in Tort and Contract

Sec. 7. (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 to be 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 to be 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 to be a member by the nonprofit association.

Capacity to Assert and Defend; Standing

Sec. 8. (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 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.

Effect of Judgment or Order

Sec. 9. A judgment or order against a nonprofit association is not by itself a judgment or order against a member or a person considered by the nonprofit association to be a member.

Disposition of Personal Property of Inactive Nonprofit Association

Sec. 10. (a) If a nonprofit association has been inactive for three years or longer, or a shorter period as specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer the custody of the property:

(1) if a document of a nonprofit association specifies a person to whom transfer is to be made under these circumstances, to that person; or

(2) if no person is so specified, to a nonprofit association or nonprofit corporation pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality.

(b) Notwithstanding the above, if a nonprofit association is classified under the Internal Revenue Code of 1986 as a 501(c)(3) organization or is or holds itself out to be established or operating for a charitable, religious, or educational purpose, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, then any distribution must be to another nonprofit association or nonprofit corporation with similar charitable, religious, or educational purposes.

Books and Records

Sec. 11. (a) A nonprofit association shall keep correct and complete books and records of account for at least three years after the end of each fiscal year and shall make them available to the members of the association for inspection and copying upon request.

(b) The attorney general may inspect, examine, and make copies of the books, records, and other documents the attorney general deems necessary and investigate the association to determine if a violation of any law of this state has occurred.

Appointment of Agent to Receive Service of Process

Sec. 12. (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 must set forth:

(1) the name of the nonprofit association;

(2) the federal tax identification number of the nonprofit association, if applicable;

(3) the address in this state, including the street address, if any, of the nonprofit association, or, if the nonprofit association does not have an address in this state, its address out of state; and

(4) the name of the person in this state authorized to receive service of process and the person's address, including the street address, in this state.

(c) A statement appointing an agent must be signed by a person authorized to manage the affairs of the nonprofit association. The statement must also be signed by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the secretary of state and giving notice to the nonprofit association.

(d) The secretary of state may collect a fee for filing a statement appointing an agent to receive service of process, an amendment, a cancellation, or a resignation in the amount charged for filing similar documents.

(e) An amendment to a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement.

(f) A statement appointing an agent may be canceled by filing with the secretary of state a written notice of cancellation executed by a person authorized to manage the affairs of the nonprofit association. A notice of cancellation must contain the name of the nonprofit association; the federal tax identification number of the nonprofit association, if applicable; the date of filing of its statement appointing the agent; and a current street address of the nonprofit association in this state, and outside this state, if applicable.

(g) The secretary of state may promulgate forms and adopt procedural rules on filing documents under this section.

Claim Not Abated by Change

Sec. 13. A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association.

Summons and Complaint; Service on Whom

Sec. 14. In an action or proceeding against a nonprofit association, a summons and complaint must be served on an agent authorized by appointment to receive service of process, an officer, a managing or general agent, or a person authorized to participate in the management of its affairs, in accordance with the Civil Practice and Remedies Code. Within 10 days of a request by the attorney general to an officer or board member of a nonprofit association or to the nonprofit association, the nonprofit association shall provide to the attorney general the names, current addresses, and telephone numbers of:

(1) agents authorized to receive service of process on behalf of the nonprofit association; and

(2) the officers, managing or general agents, and other persons authorized to participate in the management of the affairs of the nonprofit association.

Uniformity of Application and Construction

Sec. 15. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

Transition Concerning Real and Personal Property

Sec. 16. If, before the effective date of this Act, an estate or interest in real or personal property was by the terms of the transfer purportedly transferred to a nonprofit association, but under the law the estate or interest was vested in a fiduciary such as officers of the nonprofit association to hold the estate or interest for members of the nonprofit association, on or after the effective date of this Act 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.

Saving Clause

Sec. 17. This Act does not affect an action or proceeding commenced or a right accrued before this Act takes effect.

Effect on Other Law

Sec. 18. This Act replaces existing law with respect to matters covered by this Act but does not affect other law covering unincorporated nonprofit associations.

Applicability; Expiration

Text of section effective January 1, 2006

Sec. 19. (a) Except as provided by Title 8, Business Organizations Code, this Act does not apply to a nonprofit association to which the Business Organizations Code applies.

(b) This Act expires January 1, 2010.

Acts 1995, 74th Leg., ch. 919, eff. Sept. 1, 1995.

Sec. 19 added by Acts 2003, 78th Leg., ch. 182, Sec. 6, eff. Jan. 1, 2006.

Art. 1399. LODGES. The grand lodge of Texas, Ancient, Free and Accepted Masons, the Grand Royal Arch Chapter of Texas, the Grand Commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies expressed by a resolution or otherwise, become bodies corporate under this title. Except as provided by Title 8, Business Organizations Code, this article and Articles 1400-1407, Revised Statutes, do not apply to a grand body to which the Business Organizations Code applies.

Acts 1899, 26th Leg., p. 236, ch. 138, Sec. 1.

Amended by Acts 2003, 78th Leg., ch. 182, Sec. 13, eff. Jan. 1, 2006.

Art. 1400. [1215 TO 1218] LODGES: CHARTER. The incorporation of any such grand lodge shall include all of its subordinate lodges, or bodies holding warrant or charter under such grand body, and each of such subordinate bodies shall have all the rights of other corporations under and by the name given it in such warrant or charter issued by the grand body to which it is attached, such rights being provided for in the charter of the grand body. Such subordinate bodies shall, at all times, be subject to the jurisdiction and control of their respective grand bodies, and subject to have their warrants or charters revoked by such grand body.

Acts 1899, 26th Leg., p. 236, ch. 138, Sec. 1.

Art. 1401. [1216] LODGES: TRUSTEES. Such grand bodies and their subordinates may elect their own trustees or directors, or name certain of their officers as such, and perform such other acts as are directed or provided by law in the case of other corporations, and shall have power to make constitutions and by-laws for the government of their affairs.

Acts 1899, 26th Leg., p. 236, ch. 138, Sec. 1.

Art. 1402. [1217] LODGES: PROPERTY. Such orders, grand and subordinate, shall have the right to acquire and hold such lands and personalty as may be necessary or convenient for sites upon which to erect buildings for their use and occupancy, and for homes and schools for their widows, orphans or aged or decrepit or indigent members, and to sell or mortgage the same, such conveyances to be executed by the presiding officer, attested by the secretary with the seal. The power and authority of such subordinate bodies to sell or to mortgage shall be subject to such conditions as may be from time to time prescribed or established by the grand body to which the subordinate is attached.

Acts 1899, 26th Leg., p. 236, ch. 138, Sec. 1.

Art. 1403. [1219] LODGES: DEMISE. Upon the demise of any subordinate body so incorporated, all property and rights existing in such subordinate body shall pass to, and vest in, the grand body to which it was attached, subject to the payment of all debts due by such subordinate body; but the grand body shall never be liable for any sum greater than the actual cash value of the effects of such subordinate actually received by it, or its authority.

Acts 1899, 26th Leg., p. 236, ch. 138, Sec. 1.

Art. 1404. [1220] LODGES: LOANS. Any grand body incorporated under this subdivision shall have the right and authority to loan any funds held and owned by it for charitable purposes, for the endowment of any of its institutions, or otherwise, and may secure such loans by taking and receiving liens on real estate, or in such other manner as it may elect. Upon sale of any real estate under such lien, such grand body may become the purchaser thereof, and hold title thereto.

Acts 1899, 26th Leg., p. 236, ch. 138, Sec. 1.

Art. 1405. [1221] LODGES: DURATION. Any grand body incorporating under this subdivision may provide in its charter for the expiration of its corporate powers at the end of any given number of years; or it may provide in its charter for its perpetual existence, and by its corporate name have perpetual succession of the officers and members.

Acts 1899, 26th Leg., p. 236, ch. 138, Sec. 1.

Art. 1406. [1222] EXISTING LODGE. Any such grand body or subordinate body now having a valid chartered existence may continue under its present charter, or reincorporate under this subdivision.

Acts 1899, 26th Leg., p. 236, ch. 138, Sec. 1.

Art. 1407. [1223] LODGES: TAX. Bodies incorporated under this subdivision shall not be subject to, or required to pay a franchise tax. However, an incorporated body is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the body is exempted by that chapter.

Acts 1899, 26th Leg., p. 236, ch. 138, Sec. 1. Amended by Acts 1981, 67th Leg., p. 1775, ch. 389, Sec. 21, eff. Jan. 1, 1982.

Art. 1407a. CHURCH BENEFIT PLANS AND CHURCH BENEFITS BOARDS.

Definition

Sec. 1. In this Act "church benefits board" means an organization as described in Section 414(e)(3)(A) of the Internal Revenue Code of 1986 (26 U.S.C. Section 414(e)) that:

(1) has the principal purpose or function of administering or funding a plan or program for providing retirement benefits, welfare benefits, or both for the ministers or employees of a church or a conference, convention, or association of churches; and

(2) is controlled by or affiliated with a church or a conference, convention, or association of churches.

Pensions and Benefits

Sec. 2. If duly authorized by its members or as otherwise provided by law, a domestic or foreign nonprofit corporation formed for a religious purpose may provide, directly or through a separate church benefits board, for the support and payment of pensions and benefits to its ministers, teachers, employees, trustees, directors, or other functionaries and to the ministers, teachers, employees, trustees, directors, or functionaries of organizations controlled by or affiliated with a church or a conference, convention, or association of churches under its jurisdiction and control and may provide for the payment of pensions and benefits to the spouse, children, dependents, or other beneficiaries of those persons.

Contributions

Sec. 3. A church benefits board may provide for the collection of contributions and other payments to aid in providing pensions and benefits under this Act and for the creation, maintenance, investment, management, and disbursement of necessary annuities, endowments, reserves, and other funds for those purposes. Payments may be received from a trust fund or corporation that funds a "church plan" as defined by Section 414(e), Internal Revenue Code of 1986 (26 U.S.C. Section 414(e)).

Documents and Agreements

Sec. 4. A church benefits board may provide certificates or

agreements of participation and debentures and indemnification agreements to its program participants as appropriate to accomplish its purposes, may act as trustee under a lawful trust committed to it by contract, will, or otherwise, and may act as agent for the performance of a lawful act relating to the purposes of the trust.

Indemnification

Sec. 5. A church benefits board, directly or through an affiliate wholly owned by the board, may agree to indemnify against damage or risk of loss:

(1) its affiliated ministers, teachers, employees, trustees, functionaries, directors, and their families, dependents, and beneficiaries; and

(2) a church, a convention, conference, or association of churches, or an organization that is controlled by or affiliated with it or with a church or a convention, conference, or association of churches.

Protection of Benefits

Sec. 6. Money or other benefits that have been or will be provided to a participant or a beneficiary under a plan or program of retirement income, relief, welfare, or employee benefit provided by or through a church benefits board is not subject to execution, attachment, garnishment, or other process and may not be seized, taken, appropriated, or applied as part of a judicial, legal, or equitable process or operation of a law other than a constitution to pay a debt or liability of the participant or beneficiary. This section does not apply to a qualified domestic relations order or an amount required by the church benefits board to recover costs or expenses it incurred in the plan or program.

Assignment

Sec. 7. If a plan or program under this Act contains a provision prohibiting assignment or other transfer by a beneficiary of money or benefits to be paid or rendered or of other rights under the plan or program without the written consent of the church benefits board, a prohibited assignment or transfer or an attempt to make a prohibited assignment or transfer is void if made without that consent.

Insurance Code Not Applicable

Sec. 8. The Insurance Code does not apply to a church benefits board or its programs, plans, benefits, activities, or affiliates.

Applicability

Sec. 9. Except as provided by Title 8, Business Organizations Code, this Act does not apply to a church benefits board to which the Business Organizations Code applies.

Acts 1987, 70th Leg., ch. 963, eff. June 19, 1987.

Sec. 9 added by Acts 2003, 78th Leg., ch. 182, Sec. 14, eff. Jan. 1, 2006.