

SENATE FILE NO. SF0072

Corporations act-amendments.

Sponsored by: Joint Corporations, Elections and Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to corporations; generally updating and
2 modifying statutes to comply with the model corporations
3 act of 2007; making conforming amendments; and providing
4 for an effective date.

5
6 *Be It Enacted by the Legislature of the State of Wyoming:*

7
8 **Section 1.** W.S. 17-16-143, 17-16-727, 17-16-748,
9 17-16-831.1, 17-16-860 through 17-16-863, 17-16-870,
10 17-16-1023, 17-16-1108, 17-16-1340, 17-16-1408, 17-16-1409,
11 17-16-1605 and 17-16-1606 are created to read:

12
13 **17-16-143. Qualified director.**

14
15 (a) A "qualified director" is a director who, at the
16 time action is to be taken under:

17
18 (i) W.S. 17-16-744, does not have:

19
20 (A) A material interest in the outcome of
21 the proceeding; or

22
23 (B) A material relationship with a person
24 who has such an interest.

25
26 (ii) W.S. 17-16-853 or 17-16-855:

27
28 (A) Is not a party to the proceeding;

29
30 (B) Is not a director as to whom a
31 transaction is a director's conflicting interest
32 transaction or who sought a disclaimer of the corporation's

1 interest in a business opportunity under W.S. 17-16-870,
2 which transaction or disclaimer is challenged in the
3 proceeding; and

4
5 (C) Does not have a material relationship
6 with a director described in either subparagraph (A) or (B)
7 of this paragraph.

8
9 (iii) W.S. 17-16-862, is not a director as to
10 whom the transaction is a director's conflicting interest
11 transaction, or a director who has a material relationship
12 with another director as to whom the transaction is a
13 director's conflicting interest transaction; or

14
15 (iv) W.S. 17-16-870, would be a qualified
16 director under paragraph (iii) of this subsection if the
17 business opportunity were a director's conflicting interest
18 transaction.

19
20 (b) For purposes of this section:

21
22 (i) "Material interest" means an actual or
23 potential benefit or detriment, other than one which would
24 devolve on the corporation or the shareholders generally,
25 that would reasonably be expected to impair the objectivity
26 of the director's judgment when participating in the action
27 to be taken;

28 (ii) "Material relationship" means a familial,
29 financial, professional, employment or other relationship
30 that would reasonably be expected to impair the objectivity
31 of the director's judgment when participating in the action
32 to be taken.

33
34 (c) The presence of one (1) or more of the following
35 circumstances shall not automatically prevent a director
36 from being a qualified director:

37
38 (i) Nomination or election of the director to
39 the current board by any director who is not a qualified
40 director with respect to the matter, or by any person that
41 has a material relationship with that director, acting
42 alone or participating with others;

43
44 (ii) Service as a director of another
45 corporation of which a director who is not a qualified
46 director with respect to the matter, or any individual who

1 has a material relationship with that director, is or was
2 also a director; or

3
4 (iii) With respect to action to be taken under
5 W.S. 17-16-744, status as a named defendant, as a director
6 against whom action is demanded or as a director who
7 approved the conduct being challenged.

8
9 **17-16-727. Changing quorum or voting requirements.**

10
11 (a) The articles of incorporation may provide for a
12 greater or lesser quorum or voting requirement for
13 shareholders, or voting groups of shareholders, than is
14 provided for by this act.

15
16 (b) An amendment to the articles of incorporation
17 that adds, changes or deletes a quorum or voting
18 requirement shall meet the same quorum requirement and be
19 adopted by the same vote and voting groups required to take
20 action under the quorum and voting requirements then in
21 effect or proposed to be adopted, whichever is greater.

22
23 Subchapter E.

24 PROCEEDING TO APPOINT CUSTODIAN OR RECEIVER

25
26 **17-16-748. Shareholder action to appoint custodian or**
27 **receiver.**

28
29 (a) The district court may appoint one (1) or more
30 persons to be custodians, or, if the corporation is
31 insolvent, to be receivers, of and for a corporation in a
32 proceeding by a shareholder where it is established that:

33
34 (i) The directors are deadlocked in the
35 management of the corporate affairs, the shareholders are
36 unable to break the deadlock, and irreparable injury to the
37 corporation is threatened or being suffered; or

38
39 (ii) The directors or those in control of the
40 corporation are acting fraudulently and irreparable injury
41 to the corporation is threatened or being suffered.

42
43 (b) The court:

44
45 (i) May issue injunctions, appoint a temporary
46 custodian or temporary receiver with all the powers and
47 duties the court directs, take other action to preserve the

1 corporate assets wherever located, and carry on the
2 business of the corporation until a full hearing is held;

3
4 (ii) Shall hold a full hearing, after notifying
5 all parties to the proceeding and any interested persons
6 designated by the court, before appointing a custodian or
7 receiver; and

8
9 (iii) Has jurisdiction over the corporation and
10 all of its property, wherever located.

11
12 (c) The court may appoint an individual or domestic
13 or foreign corporation authorized to transact business in
14 this state as a custodian or receiver and may require the
15 custodian or receiver to post bond, with or without
16 sureties, in an amount the court directs.

17
18 (d) The court shall describe the powers and duties of
19 the custodian or receiver in its appointing order, which
20 may be amended from time to time. Among other powers:

21
22 (i) A custodian may exercise all of the powers
23 of the corporation, through or in place of its board of
24 directors, to the extent necessary to manage the business
25 and affairs of the corporation; and

26
27 (ii) A receiver:

28
29 (A) May dispose of all or any part of the
30 assets of the corporation wherever located, at a public or
31 private sale, if authorized by the court; and

32
33 (B) May sue and defend in the receiver's
34 own name as receiver in all courts of this state.

35
36 (e) The court during a custodianship may redesignate
37 the custodian a receiver, and during a receivership may
38 redesignate the receiver a custodian, if doing so is in the
39 best interests of the corporation.

40
41 (f) The court from time to time during the
42 custodianship or receivership may order compensation paid
43 and expense disbursements or reimbursements made to the
44 custodian or receiver from the assets of the corporation or
45 proceeds from the sale of its assets.

46
47 **17-16-831.1. Standards of liability for directors.**

1

2 (a) A director shall not be liable to the corporation
3 or its shareholders for any decision to take or not to take
4 action, or any failure to take any action including
5 abstaining from voting after full disclosure, as a director,
6 unless the party asserting liability in a proceeding
7 establishes that:

8

9 (i) No defense interposed by the director based
10 on the following precludes liability:

11

12 (A) Any provision in the articles of
13 incorporation authorized by W.S. 17-16-202(b)(iv); or

14

15 (B) The protection afforded by W.S.
16 17-16-861 for action taken in compliance with W.S. 17-16-862
17 or 17-16-863; or

18

19 (C) The protection afforded by W.S.
20 17-16-870; and

21

22 (ii) The challenged conduct consisted or was the
23 result of:

24

25 (A) Action not in good faith; or

26

27 (B) A decision:

28

29 (I) Which the director did not
30 reasonably believe to be in or at least not opposed to the
31 best interests of the corporation; or

32

33 (II) As to which the director was not
34 informed to an extent the director reasonably believed
35 appropriate in the circumstances; or

36

37 (C) Lack of objectivity due to the
38 director's familial, financial or business relationship
39 with, or a lack of independence due to the director's
40 domination or control by, another person having a material
41 interest in the challenged conduct:

42

43 (I) Which relationship or which
44 domination or control could reasonably be expected to have
45 affected the director's judgment respecting the challenged
46 conduct in a manner adverse to the corporation; and

47

1 (II) After a reasonable expectation to
2 such effect has been established, the director shall not
3 have established that the challenged conduct was reasonably
4 believed by the director to be in or at least not opposed
5 to the best interests of the corporation; or

6
7 (D) A sustained failure of the director to
8 devote attention to ongoing oversight of the business and
9 affairs of the corporation, or a failure to devote timely
10 attention, by making or causing to be made appropriate
11 inquiry, when particular facts and circumstances of
12 significant concern materialize that would alert a
13 reasonably attentive director to the need therefore; or

14
15 (E) Receipt of a financial benefit to which
16 the director was not entitled or any other breach of the
17 director's duties to deal fairly with the corporation and
18 its shareholders that is actionable under applicable law.

19
20 (b) The party seeking to hold the director liable:

21
22 (i) For money damages, shall also have the
23 burden of establishing that:

24
25 (A) Harm to the corporation or its
26 shareholders has been suffered; and

27
28 (B) The harm suffered was proximately
29 caused by the director's challenged conduct.

30
31 (ii) For other money payment under a legal
32 remedy, such as compensation for the unauthorized use of
33 corporate assets, shall also have whatever burden of proof
34 may be called for to establish that the payment sought is
35 appropriate in the circumstances; or

36
37 (iii) For other money payment under an equitable
38 remedy, such as profit recovery by or disgorgement to the
39 corporation, shall also have whatever burden of proof may be
40 called for to establish that the equitable remedy sought is
41 appropriate in the circumstances.

42
43 (c) Nothing contained in this section shall:

44
45 (i) In any instance where fairness is at issue,
46 such as consideration of the fairness of a transaction to
47 the corporation under W.S. 17-16-861(b)(iii), alter the

1 burden of proving the fact or lack of fairness otherwise
2 applicable;

3
4 (ii) Alter the fact or lack of liability of a
5 director under another section of this act, such as the
6 provisions governing the consequences of an unlawful
7 distribution under W.S. 17-16-833 or a transactional
8 interest under W.S. 17-16-861; or

9
10 (iii) Affect any rights to which the corporation
11 or a shareholder may be entitled under another statute of
12 this state or the United States.

13
14 SUBARTICLE 6

15 DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

16
17 **17-16-860. Subarticle definitions.**

18 (a) In this subarticle:

19 (i) "Control", including the term "controlled by",
20 means:

21 (A) Having the power, directly or
22 indirectly, to elect or remove a majority of the members of
23 the board of directors or other governing body of an
24 entity, whether through the ownership of voting shares or
25 interests, by contract or otherwise; or

26 (B) Being subject to a majority of the risk
27 of loss from the entity's activities or entitled to receive
28 a majority of the entity's residual returns.

29 (ii) "Director's conflicting interest transaction"
30 means a transaction effected or proposed to be effected by
31 the corporation, or by an entity controlled by the
32 corporation:

33 (A) To which, at the relevant time, the
34 director is a party; or

35 (B) Respecting which, at the relevant time,
36 the director had knowledge and a material financial
37 interest known to the director; or

38
39
40
41
42
43
44
45

1 (C) Respecting which, at the relevant time,
2 the director knew that a related person was a party or had
3 a material financial interest.

4
5 (iii) "Fair to the corporation" means, for
6 purposes of W.S. 17-16-861(b)(iii), that the transaction as
7 a whole was beneficial to or at least not harmful to the
8 corporation, taking into appropriate account whether it
9 was:

10
11 (A) Fair in terms of the director's
12 dealings with the corporation; and

13
14 (B) Comparable to what might have been
15 obtainable in an arm's length transaction, given the
16 consideration paid or received by the corporation.

17
18 (iv) "Material financial interest" means a
19 financial interest in a transaction that would reasonably
20 be expected to impair the objectivity of the director's
21 judgment when participating in action on the authorization
22 of the transaction;

23
24 (v) "Related person" means:

25
26 (A) The director's spouse;

27
28 (B) A child, stepchild, grandchild, parent,
29 stepparent, grandparent, sibling, stepsibling, half sibling,
30 aunt, uncle, niece or nephew, or spouse of any thereof, of
31 the director or of the director's spouse;

32
33 (C) An individual living in the same home
34 as the director;

35
36 (D) An entity, other than the corporation
37 or an entity controlled by the corporation, controlled by
38 the director or any person specified above in this
39 paragraph;

40
41 (E) A domestic or foreign:

42
43 (I) Business or nonprofit
44 corporation, other than the corporation or an entity
45 controlled by the corporation, of which the director is a
46 director;

47

1 (II) Unincorporated entity of which the
2 director is a general partner or a member of the governing
3 body; or

4
5 (III) Individual, trust or estate for
6 whom or of which the director is a trustee, guardian,
7 personal representative or like fiduciary; or

8
9 (F) A person that is, or an entity that is
10 controlled by, an employer of the director.

11
12 (vi) "Relevant time" means:

13
14 (A) The time at which directors' action
15 respecting the transaction is taken in compliance with W.S.
16 17-16-862; or

17
18 (B) If the transaction is not brought before
19 the board of directors of the corporation or its committee
20 for action under W.S. 17-16-862, at the time the
21 corporation or an entity controlled by the corporation
22 becomes legally obligated to consummate the transaction.

23
24 (vii) "Required disclosure" means disclosure of:

25
26 (A) The existence and nature of the
27 director's conflicting interest; and

28
29 (B) All facts known to the director
30 respecting the subject matter of the transaction that a
31 director free of such conflicting interest would reasonably
32 believe to be material in deciding whether to proceed with
33 the transaction.

34
35 **17-16-861. Judicial action.**

36
37 (a) A transaction effected or proposed to be effected
38 by the corporation, or by an entity controlled by the
39 corporation, may not be the subject of equitable relief, or
40 give rise to an award of damages or other sanctions
41 against a director of the corporation, in a proceeding by
42 a shareholder or by or in the right of the corporation,
43 on the ground that the director has an interest respecting
44 the transaction, if it is not a director's conflicting
45 interest transaction.

46

1 (b) A director's conflicting interest transaction may
2 not be the subject of equitable relief, or give rise to an
3 award of damages or other sanctions against a director of the
4 corporation, in a proceeding by a shareholder or by or in
5 the right of the corporation, on the ground that the
6 director has an interest respecting the transaction, if:

7
8 (i) Directors' action respecting the
9 transaction was taken in compliance with W.S. 17-16-862 at
10 any time; or

11
12 (ii) Shareholders' action respecting the
13 transaction was taken in compliance with W.S. 17-16-863 at
14 any time; or

15
16 (iii) The transaction, judged according to the
17 circumstances at the relevant time, is established to have
18 been fair to the corporation.

19
20 **17-16-862. Directors' action.**

21
22 (a) Directors' action respecting a director's
23 conflicting interest transaction is effective for purposes
24 of W.S. 17-16-861(b)(i) if the transaction has been
25 authorized by the affirmative vote of a majority, but no
26 fewer than two (2), of the qualified directors who voted on
27 the transaction, after required disclosure by the
28 conflicted director of information not already known by such
29 qualified directors, or after modified disclosure in
30 compliance with subsection (b) of this section, provided
31 that:

32
33 (i) The qualified directors have deliberated and
34 voted outside the presence of and without the participation
35 by any other director; and

36
37 (ii) Where the action has been taken by a
38 committee, all members of the committee were qualified
39 directors, and either:

40
41 (A) The committee was composed of all the
42 qualified directors on the board of directors; or

43
44 (B) The members of the committee were
45 appointed by the affirmative vote of a majority of the
46 qualified directors on the board.

47

1 (b) Notwithstanding subsection (a) of this section,
2 when a transaction is a director's conflicting interest
3 transaction only because a related person described in
4 W.S. 17-16-860(a)(v)(E) or (F) is a party to or has a
5 material financial interest in the transaction, the
6 conflicted director is not obligated to make required
7 disclosure to the extent that the director reasonably
8 believes that doing so would violate a duty imposed under
9 law, a legally enforceable obligation of confidentiality, or
10 a professional ethics rule, provided that the conflicted
11 director discloses to the qualified directors voting on the
12 transaction:

13
14 (i) All information required to be disclosed
15 that is not so violative;

16
17 (ii) The existence and nature of the director's
18 conflicting interest; and

19
20 (iii) The nature of the conflicted director's
21 duty not to disclose the confidential information.

22
23 (c) A majority, but no fewer than two (2), of all
24 the qualified directors on the board of directors, or on
25 the committee, constitutes a quorum for purposes of action
26 that complies with this section.

27
28 (d) Where directors' action under this section does
29 not satisfy a quorum or voting requirement applicable to
30 the authorization of the transaction by reason of the
31 articles of incorporation, the bylaws or a provision of
32 law, independent action to satisfy those authorization
33 requirements shall be taken by the board of directors or a
34 committee, in which action directors who are not qualified
35 directors may participate.

36
37 **17-16-863. Shareholders' action.**

38
39 (a) Shareholders' action respecting a director's
40 conflicting interest transaction is effective for purposes
41 of W.S. 17-16-861(b)(ii) if a majority of the votes cast by
42 the holders of all qualified shares are in favor of the
43 transaction after:

44
45 (i) Notice to shareholders describing the action
46 to be taken respecting the transaction;

47

1 (ii) Provision to the corporation of the
2 information referred to in subsection (b) of this section;
3 and
4

5 (iii) Communication to the shareholders
6 entitled to vote on the transaction of the information that
7 is the subject of required disclosure, to the extent the
8 information is not known by them.
9

10 (b) A director who has a conflicting interest
11 respecting the transaction shall, before the shareholders'
12 vote, inform the secretary or other officer or agent of the
13 corporation authorized to tabulate votes, in writing, of
14 the number of shares that the director knows are not
15 qualified shares under subsection (c) of this section and
16 the identity of the holders of those shares.
17

18 (c) For purposes of this section:
19

20 (i) "Holder" means and "held by" refers to
21 shares held by both a record shareholder, as defined in
22 W.S. 17-16-1301(a)(vi), and a beneficial shareholder as
23 defined in W.S. 17-16-1301(a)(i);
24

25 (ii) "Qualified shares" means all shares entitled
26 to be voted with respect to the transaction except for
27 shares that the secretary or other officer or agent of the
28 corporation authorized to tabulate votes either knows, or
29 under subsection (b) of this section is notified, are held
30 by:
31

32 (A) A director who has a conflicting
33 interest respecting the transaction; or
34

35 (B) A related person of the director,
36 excluding a person described in W.S. 17-16-860(a)(v)(F).
37

38 (d) A majority of the votes entitled to be cast by
39 the holders of all qualified shares constitutes a quorum
40 for purposes of compliance with this section. Subject to
41 the provisions of subsection (e) of this section,
42 shareholders' action that otherwise complies with this
43 section is not affected by the presence of holders, or by
44 the voting, of shares that are not qualified shares.
45

46 (e) If a shareholders' vote does not comply with
47 subsection (a) of this section solely because of a

1 director's failure to comply with subsection (b) of this
2 section, and if the director establishes that the failure
3 was not intended to influence and did not in fact determine
4 the outcome of the vote, the court may take such action
5 respecting the transaction and the director, and may give
6 such effect, if any, to the shareholders' vote, as the court
7 considers appropriate in the circumstances.

8
9 (f) Where shareholders' action under this section does
10 not satisfy a quorum or voting requirement applicable to
11 the authorization of the transaction by reason of the
12 articles of incorporation, the bylaws or a provision of
13 law, independent action to satisfy those authorization
14 requirements must be taken by the shareholders, in which
15 action shares that are not qualified shares may
16 participate.

17
18 SUBARTICLE 7
19 BUSINESS OPPORTUNITIES
20

21 **17-16-870. Business opportunities.**
22

23 (a) A director's taking advantage, directly or
24 indirectly, of a business opportunity may not be the subject
25 of equitable relief, or give rise to an award of damages or
26 other sanctions against the director, in a proceeding by
27 or in the right of the corporation on the ground that such
28 opportunity should have first been offered to the
29 corporation, if before becoming legally obligated
30 respecting the opportunity the director brings it to the
31 attention of the corporation and:
32

33 (i) Action by qualified directors disclaiming
34 the corporation's interest in the opportunity is taken in
35 compliance with the procedures set forth in W.S. 17-16-862,
36 as if the decision being made concerned a director's
37 conflicting interest transaction; or
38

39 (ii) Shareholders' action disclaiming the
40 corporation's interest in the opportunity is taken in
41 compliance with the procedures set forth in W.S. 17-16-863,
42 as if the decision being made concerned a director's
43 conflicting interest transaction, except that, rather than
44 making required disclosure as defined in W.S. 17-16-860, in
45 each case the director shall have made prior disclosure to
46 those acting on behalf of the corporation of all material

1 facts concerning the business opportunity that are then
2 known to the director.

3
4 (b) In any proceeding seeking equitable relief or
5 other remedies based upon an alleged improper taking
6 advantage of a business opportunity by a director, the fact
7 that the director did not employ the procedure described in
8 subsection (a) of this section before taking advantage of
9 the opportunity shall not create an inference that the
10 opportunity should have been first presented to the
11 corporation or alter the burden of proof otherwise
12 applicable to establish that the director breached a duty
13 to the corporation in the circumstances.

14
15 **17-16-1023. Bylaw provisions relating to the election**
16 **of directors.**

17
18 (a) Unless the articles of incorporation specifically
19 prohibit the adoption of a bylaw pursuant to this section,
20 alter the vote specified in W.S. 17-16-728(a) or provide
21 for cumulative voting, a public corporation may elect in
22 its bylaws to be governed in the election of directors as
23 follows:

24
25 (i) Each vote entitled to be cast may be voted
26 for or against up to that number of candidates that is
27 equal to the number of directors to be elected, or a
28 shareholder may indicate an abstention, but without
29 cumulating the votes;

30
31 (ii) To be elected, a nominee shall have
32 received a plurality of the votes cast by holders of shares
33 entitled to vote in the election at a meeting at which a
34 quorum is present, provided that a nominee who is elected
35 but receives more votes against than for election shall
36 serve as a director for a term that shall terminate on the
37 date that is the earlier of ninety (90) days from the date
38 on which the voting results are determined pursuant to W.S.
39 17-16-729(b)(v) or is the date on which an individual is
40 selected by the board of directors to fill the office held
41 by such director, which selection shall be deemed to
42 constitute the filling of a vacancy by the board to which
43 W.S. 17-16-810 applies. Subject to paragraph (iii) of this
44 subsection, a nominee who is elected but receives more
45 votes against than for election shall not serve as a
46 director beyond the ninety (90) day period referenced
47 above; and

1
2 (iii) The board of directors may select any
3 qualified individual to fill the office held by a director
4 who received more votes against than for election.
5

6 (b) Subsection (a) of this section does not apply to
7 an election of directors by a voting group if at the
8 expiration of the time fixed under a provision requiring
9 advance notification of director candidates, or absent such
10 a provision, at a time fixed by the board of directors
11 which is not more than fourteen (14) days before notice is
12 given of the meeting at which the election is to occur,
13 there are more candidates for election by the voting group
14 than the number of directors to be elected, one (1) or more
15 of whom are properly proposed by shareholders. An
16 individual shall not be considered a candidate for purposes
17 of this subsection if the board of directors determines
18 before the notice of meeting is given that such
19 individual's candidacy does not create a bona fide election
20 contest.
21

22 (c) A bylaw electing to be governed by this section
23 may be repealed:
24

25 (i) If originally adopted by the shareholders,
26 only by the shareholders, unless the bylaw otherwise
27 provides; or
28

29 (ii) If adopted by the board of directors, by
30 the board of directors or the shareholders.
31

32 **17-16-1108. Abandonment of a merger or share**
33 **exchange.**
34

35 (a) Unless otherwise provided in a plan of merger or
36 share exchange or in the laws under which a foreign
37 business corporation or a domestic or foreign eligible
38 entity that is a party to a merger or a share exchange is
39 organized or by which it is governed, after the plan has
40 been adopted and approved as required by this chapter, and
41 at any time before the merger or share exchange has become
42 effective, it may be abandoned by a domestic business
43 corporation that is a party thereto without action by its
44 shareholders in accordance with any procedures set forth in
45 the plan of merger or share exchange or, if no such
46 procedures are set forth in the plan, in the manner
47 determined by the board of directors, subject to any

1 contractual rights of other parties to the merger or share
2 exchange.

3
4 (b) If a merger or share exchange is abandoned under
5 subsection (a) of this section after articles of merger or
6 share exchange have been filed with the secretary of state
7 but before the merger or share exchange has become
8 effective, a statement that the merger or share exchange
9 has been abandoned in accordance with this section,
10 executed on behalf of a party to the merger or share
11 exchange by an officer or other duly authorized
12 representative, shall be delivered to the secretary of
13 state for filing prior to the effective date of the merger
14 or share exchange. Upon filing, the statement shall take
15 effect and the merger or share exchange shall be deemed
16 abandoned and shall not become effective.

17
18 **17-16-1340. Other remedies limited.**

19
20 (a) The legality of a proposed or completed corporate
21 action described in W.S. 17-16-1302(a) may not be
22 contested, nor may the corporate action be enjoined, set
23 aside or rescinded, in a legal or equitable proceeding by a
24 shareholder after the shareholders have approved the
25 corporate action.

26
27 (b) Subsection (a) of this section does not apply to
28 a corporate action that:

29
30 (i) Was not authorized and approved in
31 accordance with the applicable provisions of:

32
33 (A) Article 9, 10, 11 or 12 of this act;

34
35 (B) The articles of incorporation or
36 bylaws; or

37
38 (C) The resolution of the board of
39 directors authorizing the corporate action.

40
41 (ii) Was procured as a result of fraud, a
42 material misrepresentation or an omission of a material
43 fact necessary to make statements made, in light of the
44 circumstances in which they were made, not misleading;

45
46 (iii) Is approved by less than unanimous consent
47 of the voting shareholders pursuant to W.S. 17-16-704 if:

1
2 (A) The challenge to the corporate action
3 is brought by a shareholder who did not consent and as to
4 whom notice of the approval of the corporate action was not
5 effective at least ten (10) days before the corporate action
6 was effected; and

7
8 (B) The proceeding challenging the
9 corporate action is commenced within ten (10) days after
10 notice of the approval of the corporate action is effective
11 as to the shareholder bringing the proceeding.

12
13 **17-16-1408. Court proceedings.**

14
15 (a) A dissolved corporation that has published a
16 notice under W.S. 17-16-1407 may file an application with
17 the district court of the county where the dissolved
18 corporation's principal office, or, if none in this state,
19 its registered office is located for a determination of the
20 amount and form of security to be provided for payment of
21 claims that are contingent or have not been made known to
22 the dissolved corporation or that are based on an event
23 occurring after the effective date of dissolution but that,
24 based on the facts known to the dissolved corporation, are
25 reasonably estimated to arise after the effective date of
26 dissolution. Provision need not be made for any claim that
27 is or is reasonably anticipated to be barred under W.S.
28 17-16-1407(c).

29
30 (b) Within ten (10) days after the filing of the
31 application, notice of the proceeding shall be given by the
32 dissolved corporation to each claimant holding a contingent
33 claim whose contingent claim is shown on the records of the
34 dissolved corporation.

35
36 (c) The court may appoint a guardian ad litem to
37 represent all claimants whose identities are unknown in any
38 proceeding brought under this section. The reasonable fees
39 and expenses of such guardian, including all reasonable
40 expert witness fees, shall be paid by the dissolved
41 corporation.

42
43 (d) Provision by the dissolved corporation for
44 security in the amount and the form ordered by the court
45 under subsection (a) of this section shall satisfy the
46 dissolved corporation's obligations with respect to claims
47 that are contingent, have not been made known to the

1 dissolved corporation or are based on an event occurring
2 after the effective date of dissolution, and such claims
3 may not be enforced against a shareholder who received
4 assets in liquidation.

5
6 **17-16-1409. Directors' duties.**

7
8 (a) Directors shall cause the dissolved corporation
9 to discharge or make reasonable provision for the payment
10 of claims and make distributions of assets to shareholders
11 after payment or provision for claims.

12
13 (b) Directors of a dissolved corporation which has
14 disposed of claims under W.S. 17-16-1406, 17-16-1407 or
15 17-16-1408 shall not be liable for breach of this section
16 with respect to claims against the dissolved corporation
17 that are barred or satisfied under W.S. 17-16-1406,
18 17-16-1407 or 17-16-1408.

19
20 **17-16-1605. Inspection of records by directors.**

21
22 (a) A director of a corporation is entitled to inspect
23 and copy the books, records and documents of the corporation
24 at any reasonable time to the extent reasonably related to
25 the performance of the director's duties as a director,
26 including duties as a member of a committee, but not for
27 any other purpose or in any manner that would violate any
28 duty to the corporation.

29
30 (b) The district court of the county where the
31 corporation's principal office, or if none in this state,
32 its registered office, is located may order inspection and
33 copying of the books, records and documents at the
34 corporation's expense, upon application of a director who
35 has been refused inspection rights, unless the corporation
36 establishes that the director is not entitled to those
37 inspection rights. The court shall dispose of an
38 application under this subsection on an expedited basis.

39
40 (c) If an order is issued, the court may include
41 provisions protecting the corporation from undue burden or
42 expense, and prohibiting the director from using
43 information obtained upon exercise of the inspection
44 rights in a manner that would violate a duty to the
45 corporation, and may also order the corporation to
46 reimburse the director for the director's expenses,
47 including reasonable counsel fees, incurred in connection

1 with the application unless the corporation proves that it
2 refused inspection in good faith because it had a
3 reasonable basis for doubt about the right of the director
4 to inspect the records demanded.

5
6 **17-16-1606. Exception to notice requirement.**

7
8 (a) Whenever notice is required to be given under any
9 provision of this act to any shareholder, the notice shall
10 not be required to be given if:

11
12 (i) Notice of two (2) consecutive annual meetings,
13 and all notices of meetings during the period between the
14 two (2) consecutive annual meetings, have been sent to the
15 shareholder at the shareholder's address as shown on the
16 records of the corporation and have been returned
17 undeliverable; or

18
19 (ii) All, but not less than two (2), payments of
20 dividends on securities during a twelve (12) month period,
21 or two (2) consecutive payments of dividends on securities
22 during a period of more than twelve (12) months, have been
23 sent to the shareholder at the shareholder's address as
24 shown on the records of the corporation and have been
25 returned undeliverable.

26
27 (b) If any shareholder shall deliver to the
28 corporation a written notice setting forth the
29 shareholder's then current address, the requirement that
30 notice be given to the shareholder shall be reinstated.

31
32 **Section 2.** W.S. 17-16-120(d), (g)(intro), (j)(intro)
33 and by creating a new subsection (k), 17-16-123(a)(i),
34 17-16-124(a), (b)(i)(B) and (C), 17-16-125(b), 17-16-127,
35 17-16-140(a), 17-16-141(a) and (c), 17-16-202(d),
36 17-16-205(b), 17-16-401(c)(intro), (i), (d)(iii) and by
37 creating a new paragraph (v), 17-16-402(a), 17-16-601(a),
38 (b)(i), (ii), (c)(intro), (i), (ii), (iv), (d) and by
39 creating new subsection (e) and (f), 17-16-602(a)(intro),
40 by creating new paragraphs (iii) through (v), (b) and
41 (d)(intro), 17-16-621 by creating new subsections (f) and
42 (g), 17-16-624, 17-16-626(a), 17-16-627(b), 17-16-631(b)
43 and (c)(intro), 17-16-640(a) and by creating a new
44 subsection (h), 17-16-701(a), 17-16-702(a)(ii),
45 17-16-703(a)(i) and (ii)(A), 17-16-704, 17-16-706(a),
46 17-16-708(b), 17-16-720(b), 17-16-721(a) and (b),
47 17-16-722(b) and (c), 17-16-725 by creating a new

1 subsection (d), 17-16-728(d)(ii), 17-16-729(a),
2 17-16-730(a) and (c), 17-16-731(a), 17-16-732(b)(i)(B) and
3 (d), 17-16-744, 17-16-801(b) and by creating a new
4 subsection (d), 17-16-803(b), 17-16-805(b), 17-16-806,
5 17-16-807(b), 17-16-808(b) through (d), 17-16-809,
6 17-16-810(b) and (c), 17-16-821(b) and (c), 17-16-823,
7 17-16-824(d)(i) through (iii), 17-16-825(a), (c), (e)(i)
8 and (iii) and by creating a new subsection (g),
9 17-16-830(a)(intro), (i), (b), (i), (ii) and by creating
10 new subsections (f) through (j), 17-16-833, 17-16-840(b)
11 and (c), 17-16-841, 17-16-842(a)(intro), (ii), (iii), (b),
12 (d) and by creating a new subsection (f), 17-16-843,
13 17-16-850(a)(ii), by creating a new paragraph (vi) and by
14 renumbering (vi) and (vii) as (vii) and (viii),
15 17-16-851(a)(intro), (i), (iii), (iv), (b), (c) and
16 (d)(ii), 17-16-852, 17-16-853(a), (c)(i)(A), (B) and (ii),
17 17-16-854(a)(iii)(B) and (b), 17-16-855(a), (b)(i),
18 (iii)(B), (iv) and (c), 17-16-856(a)(ii)(A) and (B)(I),
19 17-16-857, 17-16-1001(a), 17-16-1002, 17-16-1003 by
20 creating a new subsection (f), 17-16-1004(a)(intro), (iv),
21 (vi), (vii), (ix), (b) and (c), 17-16-1005,
22 17-16-1006(a)(intro), (iii) through (v), 17-16-1007(a), (b)
23 and (d)(intro), 17-16-1008(a), 17-16-1020(a)(i), (ii) and
24 (v), 17-16-1022, 17-16-1101, 17-16-1102, 17-16-1103(a), (c)
25 through (e), (f)(i), (ii), by creating a new paragraph
26 (iii), (g)(intro), by creating new paragraphs (v) through
27 (viii) and by creating a new subsection (k), 17-16-1104(a)
28 and by creating new subsections (f) and (g),
29 17-16-1105(a)(intro), by creating new paragraphs (iv)
30 through (viii) and (b), 17-16-1106, 17-16-1115(a) and (b),
31 17-16-1201(a), 17-16-1202, 17-16-1301(a)(i), (ii), (iv) and
32 by creating new paragraphs (viii) through (x),
33 17-16-1302(a)(intro), (i)(A), (ii), (iii), (iv)(intro),
34 (E), by creating new paragraphs (vi) through (ix) and by
35 creating a new subsection (c), 17-16-1303, 17-16-1320,
36 17-16-1321, 17-16-1322(a), (b)(intro), (iii), (v) and by
37 creating a new paragraph (vi), 17-16-1323, 17-16-1325(a),
38 (b)(intro), (i), (ii) and (iv), 17-16-1327,
39 17-16-1328(a)(intro) and (b), 17-16-1330(a) through (d),
40 (e)(intro) and (i), 17-16-1331, 17-16-1402(e),
41 17-16-1403(a)(iii)(intro) and by creating a new subsection
42 (c), 17-16-1404(c)(vi), 17-16-1406(a) and (b)(intro),
43 17-16-1407(b)(iii), (c)(intro), (d)(intro) and (ii),
44 17-16-1420(a)(vi), (vii) and by creating a new paragraph
45 (viii), 17-16-1422(a)(intro) and by creating a new
46 subsection (e), 17-16-1430(a) by creating a new paragraph
47 (v), 17-16-1503(a)(vi) and (viii), 17-16-1506(c), (d)(iii)

1 and by creating a new paragraph (v), 17-16-1602(a),
2 (b)(intro) and (c)(i) through (iii), 17-16-1603(b), (c) and
3 (d), 17-16-1604(c), 17-16-1620(c), 17-16-1720(a) and by
4 creating new subsections (g) and (h), 17-18-102(b)(xiii)
5 and 26-24-102(b) are amended to read:

6
7 **17-16-120. Filing requirements.**

8
9 (d) The document shall be typewritten or printed or,
10 if electronically transmitted, it shall be in a format that
11 can be retrieved or reproduced in typewritten or printed
12 form.

13
14 (g) The person executing the document shall sign it
15 ~~manually~~ and shall state beneath or opposite his signature
16 his name and the capacity in which he signs. The document
17 may but need not contain:

18
19 (j) The document shall be delivered to the office of
20 the secretary of state for filing. ~~and shall be accompanied~~
21 ~~by:~~ Delivery may be made by electronic transmission if and
22 to the extent permitted by the secretary of state. If it
23 is filed in typewritten or printed form and not transmitted
24 electronically, the secretary of state may require one (1)
25 exact copy to be delivered with the document, except as
26 provided in W.S. 17-28-103.

27
28 (k) When the document is delivered to the office of
29 the secretary of state for filing, the correct filing fee,
30 and any franchise tax, license fee or penalty required to
31 be paid therewith by this act or other law shall be paid or
32 provision for payment made in a manner provided by the
33 secretary of state.

34
35 **17-16-123. Effective time and date of document.**

36
37 (a) Except as provided in subsection (b) of this
38 section and W.S. 17-16-124(c), a document accepted for
39 filing is effective:

40
41 (i) At the time of filing on the date it is
42 filed, as evidenced by ~~the secretary of state's date and~~
43 ~~time endorsement on the original document~~ such means as the
44 secretary of state may use for the purpose of recording the
45 date and time of filing; or

46
47 **17-16-124. Correcting filed document.**

1
2 (a) A domestic or foreign corporation may correct a
3 document filed ~~by~~ with the secretary of state if the
4 document:

5
6 (i) Contains an ~~incorrect statement~~ inaccuracy;
7 ~~or~~

8
9 (ii) Was defectively executed, attested, sealed,
10 verified, or acknowledged; ~~or~~ or

11
12 (iii) The electronic transmission was defective.

13
14 (b) A document is corrected:

15
16 (i) By preparing articles of correction that:

17
18 (B) Specify the ~~incorrect statement and the~~
19 ~~reason it is incorrect or the manner in which the execution~~
20 ~~was defective~~ inaccuracy or defect to be corrected; and

21
22 (C) Correct the ~~incorrect statement~~
23 inaccuracy or ~~defective execution~~ defect.

24
25 **17-16-125. Filing duty of secretary of state.**

26
27 (b) The secretary of state files a document by
28 stamping or otherwise endorsing "Filed," together with his
29 official title and the date and time of filing, on both the
30 original and the document copy and on the receipt for the
31 filing fee. The secretary of state may prescribe rules for
32 filing of electronic transmissions. After filing a
33 document, except as provided in W.S. 17-28-103, the
34 secretary of state shall deliver the document copy, with
35 the filing fee receipt (or acknowledgement of receipt if no
36 fee is required) attached, to the domestic or foreign
37 corporation or its representative. The secretary of state,
38 in his discretion, may issue a certificate evidencing the
39 filing of a document upon the payment of the requisite fee.

40
41 **17-16-127. Evidentiary effect of copy of filed**
42 **document.**

43
44 A certificate ~~attached to a copy of a document filed by~~
45 from the secretary of state, ~~bearing his signature (which~~
46 ~~may be in facsimile) and the seal of this state,~~ delivered
47 with a copy of a document filed by the secretary of state

1 is conclusive evidence that the original document is on
2 file with the secretary of state.

3
4 **17-16-140. Definitions.**

5
6 (a) In this act:

7
8 (i) "Articles of incorporation" ~~include amended~~
9 ~~and restated~~ means the original articles of incorporation,
10 ~~and articles of merger~~ all amendments thereof and any other
11 documents permitted or required to be filed by a domestic
12 business corporation with the secretary of state under any
13 provision of this act. If an amendment of the articles or
14 any other document filed under this act restates the
15 articles in their entirety thenceforth the articles shall
16 not include any prior documents;

17
18 (ii) "Authorized shares" means the shares of all
19 classes a domestic or foreign corporation is authorized to
20 issue;

21
22 (iii) "Conspicuous" means so written that a
23 reasonable person against whom the writing is to operate
24 should have noticed it. For example, printing in italics
25 or boldface or contrasting color, or typing in capitals or
26 underlined, is conspicuous;

27
28 (iv) "Corporation" or "domestic corporation"
29 means a corporation for profit, which is not a foreign
30 corporation, incorporated under or subject to the
31 provisions of this act;

32
33 (v) "Deliver" ~~includes mail or~~ "delivery" means
34 any method of delivery used in conventional commercial
35 practice, including delivery by hand, mail, commercial
36 delivery and electronic transmission;

37
38 (vi) "Distribution" means a direct or indirect
39 transfer of money or other property, except the
40 corporation's own shares, or incurrance of indebtedness by
41 a corporation to or for the benefit of its shareholders in
42 respect of any of its shares. A distribution may be in the
43 form of a declaration or payment of a dividend, a purchase,
44 redemption, or other acquisition of shares, a distribution
45 of indebtedness, or otherwise;

46

1 (vii) "Domestic unincorporated entity" means an
2 unincorporated entity whose internal affairs are governed
3 by the laws of this state;

4
5 ~~(vii)~~(viii) "Effective date of notice" is defined
6 in W.S. 17-16-141;

7
8 ~~(xxviii)~~(ix) "Electronic transmission" or
9 "transmitted electronically" means any process of
10 communication not directly involving the physical transfer
11 of paper that is suitable for the retention, retrieval and
12 reproduction of information by the recipient;

13
14 (x) "Eligible entity" means a domestic or
15 foreign unincorporated entity or a domestic or foreign
16 nonprofit corporation;

17
18 (xi) "Eligible interests" means interests;

19
20 ~~(viii)~~(xii) "Employee" includes an officer but
21 not a director. A director may accept duties that make him
22 also an employee;

23
24 ~~(ix)~~(xiii) "Entity" includes domestic corporation
25 and foreign corporation, ~~not for profit~~domestic nonprofit
26 corporation and foreign nonprofit corporation, domestic and
27 foreign profit and not-for-profit unincorporated
28 association, business trust, statutory trust, estate,
29 partnership, trust, or two (2) or more persons having a
30 joint or common economic interest, and state, United States
31 or foreign government;

32
33 (xiv) "Expenses" means reasonable expenses of any
34 kind that are incurred in connection with a matter,
35 including but not limited to attorney and expert witness
36 fees;

37
38 (xv) "Filing entity" means an unincorporated
39 entity that is of a type that is created by filing a public
40 organic document;

41
42 ~~(x)~~(xvi) "Foreign corporation" means a
43 corporation for profit incorporated under a law other than
44 the law of this state;

45

1 ~~(xi)~~(xvii) "Governmental subdivision" includes
2 authority, county, district, municipality, and any other
3 political subdivision;

4
5 ~~(xii)~~(xviii) "Includes" denotes a partial
6 definition;

7
8 ~~(xiii)~~(xix) "Individual" means a natural person
9 and includes the estate of an incompetent or deceased
10 individual;

11
12 (xx) "Interest" means either or both of the
13 following rights under the organic law of an unincorporated
14 entity:

15
16 (A) The right to receive distributions from
17 the entity either in the ordinary course or upon
18 liquidation; or

19
20 (B) The right to receive notice or vote on
21 issues involving its internal affairs, other than as an
22 agent, assignee, proxy or person responsible for managing its
23 business and affairs.

24
25 (xxi) "Interest holder" means a person who holds
26 of record an interest;

27
28 ~~(xiv)~~(xxii) "Means" denotes an exhaustive
29 definition;

30
31 ~~(xv)~~(xxiii) "Net assets" means the amount by
32 which the total assets of a corporation exceed the total
33 debts of the corporation;

34
35 (xxiv) "Nonfiling entity" means an
36 unincorporated entity that is of a type that is not created
37 by filing a public organic document;

38
39 ~~(xvi)~~(xxv) "Notice" is defined in W.S. 17-16-141;

40
41 (xxvi) "Organic document" means a public organic
42 document or a private organic document;

43
44 (xxvii) "Organic law" means the statute governing
45 the internal affairs of a domestic or foreign business or
46 nonprofit corporation or unincorporated entity;

47

1 ~~(xxviii)~~ "Owner liability" means personal
2 liability for a debt, obligation or liability of a domestic
3 or foreign business or nonprofit corporation or
4 unincorporated entity that is imposed on a person:

5
6 ~~(A)~~ Solely by reason of the person's status
7 as a shareholder or interest holder; or

8
9 ~~(B)~~ By the articles of incorporation, bylaws
10 or an organic document under a provision of the organic law of
11 an entity authorizing the articles of incorporation, bylaws
12 or an organic document to make one (1) or more specified
13 shareholders or interest holders liable in their capacity as
14 shareholders or interest holders for all or specified debts,
15 obligations or liabilities of the entity.

16
17 ~~(xvii)~~~~(xxix)~~ "Person" includes an individual,
18 partnership, joint venture, corporation, joint stock
19 company, limited liability company or any other association
20 or entity, public or private;

21
22 ~~(xviii)~~~~(xxx)~~ "Principal office" means the office
23 within or outside of this state, so designated in the
24 annual report;

25
26 ~~(xxxi)~~ "Private organic document" means any
27 document other than the public organic document, if any,
28 that determines the internal governance of an unincorporated
29 entity. Where a private organic document has been amended
30 or restated, the term means the private organic document as
31 last amended or restated;

32
33 ~~(xix)~~~~(xxxii)~~ "Proceeding" includes civil suit and
34 criminal, administrative, and investigatory action;

35
36 ~~(xxxiii)~~ "Public corporation" means a
37 corporation that has shares listed on a national securities
38 exchange or regularly traded in a market maintained by one
39 (1) or more members of a national securities association;

40
41 ~~(xxxiv)~~ "Public organic document" means the
42 document, if any, that is filed of public record to create an
43 unincorporated entity. Where a public organic document has
44 been amended or restated, the term means the public organic
45 document as last amended or restated;

46

1 (xxxv) "Qualified director" is defined in W.S.
2 17-16-143;

3
4 ~~(xx)~~ (xxxvi) "Record date" means the date
5 established under article 6 or 7 on which a corporation
6 determines the identity of its shareholders and their
7 shareholdings for purposes of this act. The determinations
8 shall be made as of the close of business on the record
9 date unless another time for doing so is specified when the
10 record date is fixed;

11
12 ~~(xxix)~~ (xxxvii) "Registered agent" means as
13 provided in W.S. 17-28-101 through 17-28-111;

14
15 ~~(xxi)~~ (xxxviii) "Secretary" means the corporate
16 officer to whom the board of directors has delegated
17 responsibility under W.S. 17-16-840(c) for custody of the
18 minutes of the meetings of the board of directors and of
19 the shareholders and for authenticating records of the
20 corporation;

21
22 ~~(xxii)~~ (xxxix) "Shareholder" means the person in
23 whose name shares are registered in the records of a
24 corporation or the beneficial owner of shares to the extent
25 of the rights granted by a nominee certificate on file with
26 a corporation;

27
28 ~~(xxiii)~~ (xl) "Shares" means the units into which
29 the proprietary interests in a corporation are divided;

30
31 (xli) "Sign" or "signature" includes any manual,
32 facsimile, conformed or electronic signature;

33
34 ~~(xxiv)~~ (xlii) "State," when referring to a part of
35 the United States, includes a state and commonwealth, and
36 their agencies and governmental subdivisions, and a
37 territory and insular possession, and their agencies and
38 governmental subdivisions, of the United States;

39
40 ~~(xxv)~~ (xliii) "Subscriber" means a person who
41 subscribes for shares in a corporation, whether before or
42 after incorporation;

43
44 (xliv) "Unincorporated entity" means an
45 organization or artificial legal person that either has a
46 separate legal existence or has the power to acquire an
47 estate in real property in its own name and that is not any

1 of the following: a domestic or foreign business or
 2 nonprofit corporation, an estate, a trust, a state, the
 3 United States or a foreign government. The term includes,
 4 but is not limited to, a general partnership, limited
 5 liability company, limited partnership, limited liability
 6 limited partnership, registered limited liability
 7 partnership, business trust, statutory trust, cooperative,
 8 joint stock association, joint venture and unincorporated
 9 nonprofit association;

10
 11 ~~(xxvi)~~(xlv) "United States" includes district,
 12 authority, bureau, commission, department, and any other
 13 agency of the United States;

14
 15 ~~(xxvii)~~(xlvi) "Voting group" means all shares of
 16 one (1) or more classes or series that under the articles
 17 of incorporation or this act are entitled to vote and be
 18 counted together collectively on a matter at a meeting of
 19 shareholders. All shares entitled by the articles of
 20 incorporation or this act to vote generally on the matter
 21 are for that purpose a single voting group;

22
 23 (xlvii) "Voting power" means the current power
 24 to vote in the election of directors;

25
 26 ~~(xxx)~~(xlvi) "This act" means W.S. 17-16-101
 27 through 17-16-1803.

28
 29 **17-16-141. Notice.**

30
 31 (a) Notice under this act shall be in writing unless
 32 oral notice is reasonable under the circumstances. Notice
 33 by electronic transmission is written notice.

34
 35 (c) Written notice by a domestic or foreign
 36 corporation to its shareholder, if in a comprehensible
 37 form, is effective: ~~when mailed, if mailed postpaid and~~
 38 ~~correctly addressed to the shareholder's address shown in~~
 39 ~~the corporation's current record of shareholders.~~

40
 41 (i) Upon deposit in the United States mail, if
 42 mailed postpaid and correctly addressed to the
 43 shareholder's address shown in the corporation's current
 44 record of the shareholders; or

45
 46 (ii) When electronically transmitted to the
 47 shareholder in a manner authorized by the shareholder.

1

2

17-16-202. Articles of incorporation.

3

4 (d) The articles of incorporation shall be accompanied
5 by a written consent to appointment ~~manually~~-signed by the
6 registered agent.

7

8

17-16-205. Organization of corporation.

9

10 (b) Action required or permitted by this act to be
11 taken by incorporators at an organizational meeting may be
12 taken without a meeting if the action taken is evidenced by
13 one (1) or more written consents describing the action
14 taken and signed, ~~either manually or in facsimile,~~ by each
15 incorporator.

16

17

17-16-401. Corporate name.

18

19

20 (c) A corporation may apply to the secretary of state
21 for authorization to use a name that is not distinguishable
22 upon the secretary of state's records from one (1) or more
23 of the names described in subsection (b) of this section.
24 The secretary of state shall authorize use of the name
25 applied for if:

26

27

28 (i) The other person whose name is not
29 distinguishable from the name which the applicant desires
30 to register or reserve, irrevocably consents to the use in
31 writing and submits an undertaking in a form satisfactory
32 to the secretary of state to change its name to a name that
33 is distinguishable upon the records of the secretary of
34 state from the name of the applicant; or

35

36

37 (d) A corporation may use the name, including the
38 fictitious name, of another domestic or foreign corporation
39 that is used in this state if the other corporation is
40 incorporated or authorized to transact business in this
41 state and the proposed user corporation:

42

43

44 (iii) Has acquired all or substantially all of
45 the assets, including the corporate name, of the other
46 corporation; ~~or~~ or

47

48

49 (v) Where the other corporation is affiliated
50 with the proposed user corporation and has consented in
51 writing to the use of the name by the proposed user
52 corporation, and the written consent also sets forth a

1 description of a proposed merger, consolidation,
2 dissolution, amendment to articles of incorporation or
3 other intended corporate action which establishes to the
4 reasonable satisfaction of the secretary of state that the
5 coexistence of two (2) corporations using the same name
6 will not continue for more than one hundred twenty (120)
7 days.

8
9 **17-16-402. Reserved name.**

10
11 (a) A person may apply to reserve the exclusive use of
12 a corporate name, including a fictitious name for a foreign
13 corporation whose corporate name is not available, by
14 delivering an application to the secretary of state for
15 filing. The application shall set forth the name and
16 address of the applicant and the name proposed to be
17 reserved. If the secretary of state finds that the
18 corporate name applied for is available, he shall ~~file the~~
19 ~~application pursuant to W.S. 17-16-125 and~~ reserve the name
20 for the applicant's exclusive use for a nonrenewable one
21 hundred twenty (120) day period.

22
23 **17-16-601. Authorized shares.**

24
25 (a) The articles of incorporation shall ~~prescribe~~ set
26 forth the classes of shares and series of shares within a
27 class, and the number, which may be unlimited, of shares of
28 each class and series that the corporation is authorized to
29 issue. If more than one (1) class or series of shares is
30 authorized, the articles of incorporation shall prescribe a
31 distinguishing designation for each class or series, and
32 shall prescribe, prior to the issuance of shares of a class
33 or series, the terms, including preferences, rights and
34 limitations, ~~and relative rights~~ of that class ~~shall be~~
35 ~~described in the articles of incorporation or series.~~
36 Except to the extent varied as permitted by this section,
37 all shares of a class or series shall have terms, including
38 preferences, rights and limitations, ~~and relative rights~~
39 that are identical with those of other shares of the same
40 class ~~except to the extent otherwise permitted by W.S.~~
41 ~~17-16-602 or series.~~

42
43 (b) The articles of incorporation shall authorize:

44
45 (i) One (1) or more classes or series of shares
46 that together have unlimited voting rights; and
47

1 (ii) One (1) or more classes or series of shares,
2 which may be the same class or classes as those with voting
3 rights, that together are entitled to receive the net
4 assets of the corporation upon dissolution.

5
6 (c) The articles of incorporation may authorize one
7 (1) or more classes or series of shares that:

8
9 (i) Have special, conditional, or limited voting
10 rights, or no right to vote, except to the extent
11 ~~prohibited otherwise provided~~ by this act;

12
13 (ii) Are redeemable or convertible as specified
14 in the articles of incorporation: ~~as follows:~~

15
16 (A) At the option of the corporation, the
17 shareholder, or another person or upon the occurrence of a
18 ~~designated~~ specified event;

19
20 (B) For cash, indebtedness, securities, or
21 other property; and

22
23 (C) ~~In a designated amount or At prices and~~
24 in ~~an amount~~ amounts specified or determined in accordance
25 with a ~~designated~~ formula. ~~or by reference to extrinsic~~
26 ~~data or events.~~

27
28 (iv) Have preference over any other class or
29 series of shares with respect to distributions, including
30 ~~dividends and~~ distributions upon the dissolution of the
31 corporation.

32
33 (d) The description of the ~~designations,~~ preferences,
34 rights and limitations, ~~and relative rights~~ of share
35 classes or series of shares in subsection (c) of this
36 section is not exhaustive.

37
38 (e) Terms of shares may be made dependent upon facts
39 objectively ascertainable outside the articles of
40 incorporation.

41
42 (f) Any of the terms of shares may vary among holders
43 of the same class or series so long as such variations are
44 expressly set forth in the articles of incorporation.

45
46 **17-16-602. Terms of class or series determined by**
47 **board of directors.**

1
2 (a) If the articles of incorporation so provide, the
3 board of directors ~~may determine, in whole or part, the~~
4 ~~preferences, limitations, and relative rights, within the~~
5 ~~limits set forth in W.S. 17-16-601, of~~ is authorized,
6 without shareholder approval, to:

7
8 (iii) Classify any unissued shares into one (1)
9 or more classes or into one (1) or more series within a
10 class;

11
12 (iv) Reclassify any unissued shares of any class
13 into one (1) or more classes or into one (1) or more series
14 within one (1) or more classes; or

15
16 (v) Reclassify any unissued shares of any series
17 of any class into one (1) or more classes or into one (1)
18 or more series within a class.

19
20 (b) If the board of directors acts pursuant to
21 subsection (a) of this section, it shall determine the
22 terms, including the preferences, rights and limitations,
23 to the same extent permitted under W.S. 17-16-601, of:

24
25 (i) Any class of shares before the issuance of
26 any shares of that class; or

27
28 ~~Each~~ Any series ~~of~~ within a class ~~shall be~~
29 ~~given a distinguishing designation~~ before the issuance of
30 any shares of that series.

31
32 (d) Before issuing any shares of a class or series
33 created under this section, the corporation shall deliver
34 to the secretary of state for filing articles of amendment,
35 ~~which are effective without shareholder action, that set~~
36 ~~forth:~~ effecting the provisions of this section in
37 accordance with article 10 of this act and setting forth
38 the terms determined under subsection (a) of this section.

39
40 **17-16-621. Issuance of shares.**

41
42 (f) An issuance of shares or other securities
43 convertible into or rights exercisable for shares, in a
44 transaction or a series of integrated transactions, requires
45 approval of the shareholders, at a meeting at which a
46 quorum exists, if:

47

1 (i) The shares, other securities, or rights are
2 issued for consideration other than cash or cash
3 equivalents; and

4
5 (ii) The voting power of shares that are issued
6 and issuable as a result of the transaction or series of
7 integrated transactions will comprise more than twenty
8 percent (20%) of the voting power of the shares of the
9 corporation that were outstanding immediately before the
10 transaction.

11
12 (g) In subsection (f) of this section:

13
14 (i) For purposes of determining the voting power
15 of shares issued and issuable as a result of a transaction
16 or series of integrated transactions, the voting power of
17 shares shall be the greater of:

18
19 (A) The voting power of the shares to be
20 issued; or

21
22 (B) The voting power of the shares that
23 would be outstanding after giving effect to the conversion
24 of convertible shares and other securities and the exercise
25 of rights to be issued.

26
27 (ii) A series of transactions is integrated if
28 consummation of one (1) transaction is made contingent on
29 consummation of one (1) or more of the other transactions.

30
31 **17-16-624. Share options.**

32
33 (a) A corporation may issue rights, options, or
34 warrants for the purchase of shares of the corporation.
35 The board of directors shall determine the terms upon which
36 the rights, options, or warrants are issued, ~~their form and~~
37 ~~content,~~ and the terms, including the consideration for
38 which the shares are to be issued. The authorization by
39 the board of directors for the corporation to issue such
40 rights, options or warrants constitutes authorization of
41 the issuance of the shares or other securities for which
42 the rights, options or warrants are exercisable.

43
44 (b) The terms and conditions of such rights, options
45 or warrants, including those outstanding on July 1, 2009,
46 may include, without limitation, restrictions or conditions
47 that:

1
2 (i) Preclude or limit the exercise, transfer or
3 receipt of such rights, options or warrants by any person
4 owning or offering to acquire a specified number or
5 percentage of the outstanding shares or other securities of
6 the corporation or by any transferee of any such person; or
7

8 (ii) Invalidate or void such rights, options or
9 warrants held by any such person or transferee.
10

11 **17-16-626. Shares without certificates.**
12

13 (a) Unless the articles of incorporation or bylaws
14 provide otherwise, the board of directors of a corporation
15 may authorize the issue of some or all of the shares of any
16 or all of ~~the-its~~ classes or series without certificates.
17 The authorization does not affect shares already
18 represented by certificates until they are surrendered to
19 the corporation.
20

21 **17-16-627. Restriction on transfer of shares and other**
22 **securities.**
23

24 (b) A restriction on the transfer or registration of
25 transfer of shares is valid and enforceable against the
26 holder or a transferee of the holder if the restriction is
27 authorized by this section and its existence is noted
28 conspicuously on the front or back of the certificate or is
29 contained in the information statement required by W.S.
30 17-16-626(b). Unless so noted or contained, a restriction
31 is not enforceable against a person without knowledge of
32 the restriction.
33

34 **17-16-631. Corporation's acquisition of its own**
35 **shares.**
36

37 (b) If the articles of incorporation prohibit the
38 reissue of the acquired shares, the number of authorized
39 shares is reduced by the number of shares acquired. ~~7~~
40 ~~effective upon amendment of the articles of incorporation.~~
41

42 (c) The board of directors may adopt articles of
43 amendment effecting the provisions of this section under
44 ~~this section article 10 of this act~~ without shareholder
45 action and deliver them to the secretary of state for
46 filing. ~~The articles shall set forth:~~
47

1 **17-16-640. Distributions to shareholders.**

2
3 (a) A board of directors may authorize and the
4 corporation may make distributions to its shareholders
5 subject to ~~restrictions imposed~~ restriction by the articles
6 of incorporation and the limitation in subsection (c) of
7 this section.

8
9 (h) This section shall not apply to distributions in
10 liquidation under article 14 of this act.

11
12 **17-16-701. Annual meeting.**

13
14 (a) Unless directors are elected by written consent in
15 lieu of an annual meeting as permitted by W.S. 17-16-704, a
16 corporation shall hold a meeting of shareholders annually
17 at a time stated in or fixed in accordance with the bylaws.

18
19 **17-16-702. Special meeting.**

20
21 (a) A corporation shall hold a special meeting of
22 shareholders:

23
24 (ii) If the holders of at least ten percent (10%)
25 of all the votes entitled to be cast on any issue proposed
26 to be considered at the proposed special meeting sign,
27 ~~either manually or in facsimile,~~ date, and deliver to the
28 corporation one (1) or more written demands for the meeting
29 describing the purpose or purposes for which it is to be
30 held, provided that the articles of incorporation may fix a
31 lower percentage or a higher percentage not exceeding
32 twenty-five percent (25%) of all the votes entitled to be
33 cast on any issue proposed to be considered. Unless
34 otherwise provided in the articles of incorporation, a
35 written demand for a special meeting may be revoked by a
36 writing to that effect received by the corporation prior to
37 the receipt by the corporation of demands sufficient in
38 number to require the holding of a special meeting.

39
40 **17-16-703. Court-ordered meeting.**

41
42 (a) The district court of the county where a
43 corporation's principal office or, if none in this state,
44 its registered office is located may summarily order a
45 meeting to be held:

46

1 (i) On application of any shareholder of the
2 corporation entitled to participate in an annual meeting if
3 an annual meeting was not held or action by written consent
4 in lieu thereof did not become effective within the earlier
5 of six (6) months after the end of the corporation's fiscal
6 year or fifteen (15) months after its last annual meeting;
7 or

8
9 (ii) On application of a shareholder who signed a
10 demand for a special meeting valid under W.S. 17-16-702,
11 if:

12
13 (A) Notice of the special meeting was not
14 given within ~~sixty (60)~~ thirty (30) days after the date the
15 demand was delivered to the corporation's secretary; or

16
17 **17-16-704. Action without meeting.**

18
19 (a) Action required or permitted by this act to be
20 taken at a shareholders' meeting may be taken without a
21 meeting if ~~notice of the proposed action is given to all~~
22 ~~voting shareholders and~~ the action is taken by ~~the holders~~
23 ~~of all shares~~ all the shareholders entitled to vote on the
24 action. The action shall be evidenced by one (1) or more
25 written consents bearing the date of signature and
26 describing the action taken, signed, ~~either manually, by~~
27 ~~electronic transmittal or in facsimile, by the holders of~~
28 ~~the requisite number of shares~~ by all the shareholders
29 entitled to vote on the action, and delivered to the
30 corporation for inclusion in the minutes or filing with the
31 corporate records.

32
33 (b) If not otherwise fixed under W.S. 17-16-703 or
34 17-16-707, and if prior board action is not required
35 respecting the action to be taken without a meeting, the
36 record date for determining shareholders entitled to take
37 action without a meeting ~~is the date the first shareholder~~
38 ~~signs the consent under subsection (a) of this section~~
39 shall be the first date on which a signed written consent
40 is delivered to the corporation. If not otherwise fixed
41 under W.S. 17-16-707 and if prior board action is required
42 respecting the action to be taken without a meeting, the
43 record date shall be the close of business on the day the
44 resolution of the board taking such prior action is
45 adopted. No written consent shall be effective to take the
46 corporate action referred to therein unless, within sixty
47 (60) days of the earliest date ~~appearing~~ on which a consent

1 delivered to the corporation ~~in the manner~~ required by this
2 section was signed, written consents signed by all
3 sufficient shareholders ~~entitled to vote on to take~~ the
4 action ~~are received by~~ have been delivered to the
5 corporation. A written consent may be revoked by a writing
6 to that effect ~~received by~~ delivered to the corporation
7 ~~prior to the receipt by the corporation of~~ before unrevoked
8 written consents sufficient in number to take corporate
9 action are delivered to the corporation.

10
11 (c) A consent signed ~~under~~ pursuant to the provisions
12 of this section has the effect of a vote taken at a meeting
13 ~~vote~~ and may be described as such in any document. Unless
14 the articles of incorporation, bylaws or a resolution of
15 the board of directors provides for a reasonable delay to
16 permit tabulation of written consents, the action taken by
17 written consent shall be effective when written consents
18 signed by sufficient shareholders to take the action are
19 delivered to the corporation.

20
21 (d) If this act requires that notice of proposed
22 action be given to nonvoting shareholders and the action is
23 to be taken by written consent of the voting shareholders,
24 the corporation shall give its nonvoting shareholders
25 written notice of the ~~proposed~~ action ~~at least not more~~
26 than ten (10) days ~~before the action is taken~~ after written
27 consents sufficient to take the action have been delivered
28 to the corporation or such later date that tabulation of
29 consents is completed pursuant to the authorization under
30 subsection (c) of this section. The notice shall reasonably
31 describe the action taken and contain or be accompanied by
32 the same material that, under any provision of this act,
33 would have been required to be sent to nonvoting
34 shareholders in a notice of meeting at which the proposed
35 action would have been submitted to the shareholders for
36 action.

37
38 (e) The articles of incorporation may provide that
39 any action required or permitted by this act to be taken at
40 a shareholders' meeting may be taken without a meeting, and
41 without prior notice, if consents in writing setting forth
42 the action so taken are signed by the holders of
43 outstanding shares having not less than the minimum number
44 of votes that would be required to authorize or take the
45 action at a meeting at which all shares entitled to vote on
46 the action were present and voted. The written consent
47 shall bear the date of signature of the shareholder who

1 signs the consent and be delivered to the corporation for
2 inclusion in the minutes or filing with the corporate
3 records.

4
5 (f) If action is taken by less than unanimous written
6 consent of the voting shareholders, the corporation shall
7 give its nonconsenting voting shareholders written notice
8 of the action not more than ten (10) days after written
9 consents sufficient to take the action have been delivered
10 to the corporation, or such later date that tabulation of
11 consents is completed pursuant to an authorization under
12 subsection (c) of this section. The notice shall reasonably
13 describe the action taken and contain or be accompanied by
14 the same material that, under any provision of this act,
15 would have been required to be sent to voting shareholders
16 in a notice of a meeting at which the action would have
17 been submitted to the shareholders for action.

18
19 (g) The notice requirements in subsections (d) and
20 (f) of this section shall not delay the effectiveness of
21 actions taken by written consent, and a failure to comply
22 with such notice requirements shall not invalidate actions
23 taken by written consent, provided that this subsection
24 shall not be deemed to limit judicial power to fashion any
25 appropriate remedy in favor of a shareholder adversely
26 affected by a failure to give such notice within the
27 required time period.

28
29 (h) An electronic transmission may be used to consent
30 to an action, if the electronic transmission contains or is
31 accompanied by information from which the corporation can
32 determine the date on which the electronic transmission was
33 signed and that the electronic transmission was authorized
34 by the shareholder, the shareholder's agent or the
35 shareholder's attorney-in-fact.

36
37 (j) Delivery of a written consent to the corporation
38 under this section is delivery to the corporation's
39 registered agent at its registered office or to the
40 secretary of the corporation at its principal office.

41
42 **17-16-706. Waiver of notice.**

43
44 (a) A shareholder may waive any notice required by
45 this act, the articles of incorporation, or bylaws before
46 or after the date and time stated in the notice. The
47 waiver shall be in writing, be signed, ~~either manually or~~

1 ~~in facsimile~~, or shall be sent by electronic transmission
2 by the shareholder entitled to the notice, and be delivered
3 to the corporation for inclusion in the minutes or filing
4 with the corporate records.

5
6 **17-16-708. Conduct of the meeting.**

7
8 (b) The chair, unless the articles of incorporation or
9 bylaws provide otherwise, shall determine the order of
10 business and shall have the authority to establish rules
11 for the conduct of the meeting.

12
13 **17-16-720. Shareholders' list for meeting.**

14
15 (b) The shareholders' list shall be available for
16 inspection by any shareholder, beginning two (2) business
17 days after notice of the meeting is given for which the
18 list was prepared and continuing through the meeting, at
19 the corporation's principal office or at a place identified
20 in the meeting notice in the city where the meeting will be
21 held. A shareholder, his agent, or attorney is entitled on
22 written demand to inspect and, subject to the requirements
23 of W.S. 17-16-1602(c), to copy the list, during regular
24 business hours and at ~~his~~the shareholder's expense, during
25 the period it is available for inspection.

26
27 **17-16-721. Voting entitlement of shares.**

28
29 (a) Except as provided in subsections (b) and ~~(e)~~(d)
30 of this section or unless the articles of incorporation
31 provide otherwise, each outstanding share, regardless of
32 class, is entitled to one (1) vote on each matter voted on
33 at a shareholders' meeting. Only shares are entitled to
34 vote.

35
36 (b) Unless authorized by a district court, the shares
37 of a corporation are not entitled to vote if they are
38 owned, directly or indirectly, by a second corporation,
39 domestic or foreign, and the first corporation owns,
40 directly or indirectly, a majority of the shares entitled
41 to vote for directors of the second corporation.

42
43 **17-16-722. Proxies.**

44
45 (b) A shareholder or his agent or attorney-in-fact may
46 appoint a proxy to vote or otherwise act for the
47 shareholder by signing, ~~either manually or in facsimile,~~ an

1 appointment form or by an electronic transmission. An
2 electronic transmission ~~must~~shall contain or be
3 accompanied by information from which one can determine
4 that the shareholder, the shareholder's agent, or the
5 shareholder's attorney-in-fact authorized the electronic
6 transmission.

7
8 (c) An appointment of a proxy is effective when a
9 signed appointment form or an electronic transmission of
10 the appointment is received by the inspector of election or
11 the officer or agent of the corporation authorized to
12 tabulate votes. An appointment is valid for eleven (11)
13 months unless a longer period is expressly provided in the
14 appointment form.

15
16 **17-16-725. Quorum and voting requirements for voting**
17 **groups.**

18
19 (d) An amendment of articles of incorporation adding,
20 changing or deleting a quorum or voting requirement for a
21 voting group greater than specified in subsection (a) or
22 (c) of this section is governed by W.S. 17-16-727.

23
24 **17-16-728. Voting for directors; cumulative voting.**

25
26 (d) Shares otherwise entitled to vote cumulatively may
27 not be voted cumulatively at a particular meeting unless:

28
29 (ii) A shareholder who has the right to cumulate
30 his votes gives notice to the corporation not less than
31 forty-eight (48) hours before the time set for the meeting
32 of ~~his~~the shareholder's intent to cumulate his votes
33 during the meeting. If one (1) shareholder gives this
34 notice all other shareholders in the same voting group
35 participating in the election are entitled to cumulate
36 their votes without giving further notice.

37
38 **17-16-729. Inspectors of election.**

39
40 (a) A public corporation ~~having any shares listed on a~~
41 ~~national securities exchange or regularly traded in a~~
42 ~~market maintained by one (1) or more members of a national~~
43 ~~or affiliated securities association~~ shall, and any other
44 corporation may, appoint one (1) or more inspectors to act
45 at a meeting of shareholders and make a written report of
46 the inspectors' determinations. Each inspector shall take
47 and sign an oath faithfully to execute the duties of

1 inspector with strict impartiality and according to the
2 best of the inspector's ability.

3
4 **17-16-730. Voting trusts.**

5
6 (a) One (1) or more shareholders may create a voting
7 trust, conferring on a trustee the right to vote or
8 otherwise act for them, by signing, ~~either manually or in~~
9 ~~facsimile,~~ an agreement setting out the provisions of the
10 trust, which may include anything consistent with its
11 purpose, and transferring their shares to the trustee.
12 When a voting trust agreement is signed, the trustee shall
13 prepare a list of the names and addresses of all owners of
14 beneficial interests in the trust, together with the number
15 and class of shares each transferred to the trust, and
16 deliver copies of the list and agreement to the
17 corporation's principal office.

18
19 (c) All or some of the parties to a voting trust may
20 extend it for additional terms of not more than ten (10)
21 years each by signing, ~~either manually or in facsimile, an~~
22 ~~extension agreement and obtaining the voting trustee's~~
23 written consent to the extension. An extension is valid
24 for ten (10) years from the date the first shareholder
25 signs the extension agreement. The voting trustee shall
26 deliver copies of the extension agreement and list of
27 beneficial owners to the corporation's principal office.
28 An extension agreement binds only those parties signing it.

29
30 **17-16-731. Voting agreements.**

31
32 (a) ~~Any shareholder may agree with one (1)~~ Two (2) or
33 more ~~other~~ shareholders ~~or the corporation to~~ may provide
34 for the manner in which ~~he~~ they will vote ~~his~~ their shares
35 by signing, ~~either manually or in facsimile,~~ an agreement
36 for that purpose. A voting agreement created under this
37 section is not subject to the provisions of W.S. 17-16-730.

38
39 **17-16-732. Shareholder agreements.**

40
41 (b) An agreement authorized by this section shall be:

42
43 (i) Set forth:

44
45 (B) In a written agreement that is signed by
46 all persons who are shareholders at the time of the

1 agreement and which agreement is made known to the
2 corporation.

3
4 (d) An agreement authorized by this section shall
5 cease to be effective when ~~shares of~~ the corporation ~~are~~
6 ~~listed on a national securities exchange or regularly~~
7 ~~traded in a market maintained by one (1) or more members of~~
8 ~~a national or affiliated securities association~~ becomes a
9 public corporation. If the agreement ceases to be
10 effective for any reason, the board of directors may, if
11 the agreement is contained or referred to in the
12 corporation's articles of incorporation or bylaws, adopt an
13 amendment to the articles of incorporation or bylaws,
14 without shareholder action, to delete the agreement and any
15 references to it.

16
17 **17-16-744. Dismissal.**

18
19 (a) A derivative proceeding shall be dismissed by the
20 court on motion by the corporation if ~~the panel one (1) of~~
21 the groups specified in subsection (b) or (e) of this
22 section has determined in good faith after conducting a
23 reasonable inquiry upon which its conclusions are based
24 that the maintenance of the derivative proceeding is not in
25 the best interests of the corporation.

26
27 (b) ~~The court may appoint a panel of one (1) or more~~
28 ~~independent persons upon motion by the corporation to make~~
29 ~~a determination whether the maintenance of the derivative~~
30 ~~proceeding is in the best interests of the corporation. In~~
31 ~~such case, the plaintiff shall have the burden of proving~~
32 ~~that the requirements of~~ Unless a panel is appointed
33 pursuant to subsection (e) of this section, the
34 determination in subsection (a) of this section ~~have not~~
35 ~~been met.~~ shall be made by:

36
37 (i) A majority vote of qualified directors
38 present at a meeting of the board of directors if the
39 qualified directors constitute a quorum; or

40
41 (ii) A majority vote of a committee consisting
42 of two (2) or more qualified directors appointed by
43 majority vote of qualified directors present at a meeting
44 of the board of directors, regardless of whether such
45 qualified directors constitute a quorum.
46

1 (c) If a derivative proceeding is commenced after a
2 determination has been made rejecting a demand by a
3 shareholder, the complaint shall allege with particularity
4 facts establishing either:

5
6 (i) That a majority of the board of directors
7 did not consist of qualified directors at the time the
8 determination was made; or

9
10 (ii) That the requirements of subsection (a) of
11 this section have not been met.

12
13 (d) If a majority of the board of directors consisted
14 of qualified directors at the time the determination was
15 made, the plaintiff shall have the burden of proving that
16 the requirements of subsection (a) of this section have not
17 been met; if not, the corporation shall have the burden of
18 proving that the requirements of subsection (a) of this
19 section have been met.

20
21 (e) Upon motion by the corporation, the court may
22 appoint a panel of one (1) or more individuals to make a
23 determination whether the maintenance of the derivative
24 proceeding is in the best interests of the corporation. In
25 such case, the plaintiff shall have the burden of proving
26 that the requirements of subsection (a) of this section
27 have not been met.

28
29 **17-16-801. Requirement for and duties of board of**
30 **directors.**

31
32 (b) All corporate powers shall be exercised by or
33 under the authority of the board of directors of the
34 corporation, and the business and affairs of the
35 corporation shall be managed by or under the direction, and
36 subject to the oversight, of 7 its board of directors,
37 subject to any limitation set forth in the articles of
38 incorporation or in an agreement authorized under W.S.
39 17-16-732.

40
41 (d) In the case of a public corporation, the board's
42 oversight responsibilities include attention to:

43
44 (i) Business performance and plans;

45
46 (ii) Major risks to which the corporation is or
47 may be exposed;

1
2 (iii) The performance and compensation of senior
3 officers;

4
5 (iv) Policies and practices to foster the
6 corporation's compliance with law and ethical conduct;

7
8 (v) Preparation of the corporation's financial
9 statements;

10
11 (vi) The effectiveness of the corporation's
12 internal controls;

13
14 (vii) Arrangements for providing adequate and
15 timely information to directors; and

16
17 (viii) The composition of the board and its
18 committees, taking into account the important role of
19 independent directors.

20
21 **17-16-803. Number and election of directors.**

22
23 (b) ~~If a board~~ The number of directors ~~has power to~~
24 ~~fix or change the number of directors, the board may~~
25 ~~increase or decrease by thirty percent (30%) or less the~~
26 ~~number of directors last approved by the shareholders, but~~
27 ~~only the shareholders may increase or decrease by more than~~
28 ~~thirty percent (30%) the number of directors last approved~~
29 ~~by the shareholders~~ may be increased or decreased from time
30 to time by amendment to, or in the manner provided in, the
31 articles of incorporation or the bylaws.

32
33 **17-16-805. Terms of directors generally.**

34
35 (b) The terms of all other directors expire at the
36 next, or if their terms are staggered in accordance with
37 W.S. 17-16-806, at the applicable second or third, annual
38 shareholders' meeting following their election ~~unless their~~
39 ~~terms are staggered under W.S. 17-16-806.~~ except to the
40 extent:

41
42 (i) Provided in W.S. 17-16-1022 if a bylaw
43 electing to be governed by that section is in effect; or

44
45 (ii) A shorter term is specified in the articles
46 of incorporation in the event of a director nominee failing
47 to receive a specified vote for election.

1
2 **17-16-806. Staggered terms for directors.**
3

4 ~~If there are three (3) or more directors,~~ The articles of
5 incorporation may provide for staggering ~~their~~the terms of
6 directors by dividing the total number of directors into
7 two (2) or three (3) groups, with each group containing
8 one-half (1/2) or one-third (1/3) of the total, as near as
9 may be practicable. In that event, the terms of directors
10 in the first group expire at the first annual shareholders'
11 meeting after their election, the terms of the second group
12 expire at the second annual shareholders' meeting after
13 their election, and the terms of the third group, if any,
14 expire at the third annual shareholders' meeting after
15 their election. At each annual shareholders' meeting held
16 thereafter, directors shall be chosen for a term of two (2)
17 years or three (3) years, as the case may be, to succeed
18 those whose terms expire.

19
20 **17-16-807. Resignation of directors.**
21

22 (b) A resignation is effective when the notice
23 resignation is delivered unless the ~~notice~~resignation
24 specifies a later effective date or an effective date
25 determined upon the happening of an event or events. A
26 resignation that is conditioned upon failing to receive a
27 specified vote for election as a director may provide that
28 it is irrevocable.
29

30 **17-16-808. Removal of directors by shareholders.**
31

32 (b) If a director is elected by a voting group of
33 shareholders, only the shareholders of that voting group
34 may participate in the vote to remove ~~him~~that director.
35

36 (c) If cumulative voting is authorized, a director may
37 not be removed if the number of votes sufficient to elect
38 ~~him~~the director under cumulative voting is voted against
39 his removal. If cumulative voting is not authorized, a
40 director may be removed only if the number of votes cast to
41 remove ~~him~~the director exceeds the number of votes cast
42 not to remove ~~him~~the director.
43

44 (d) A director may be removed by the shareholders only
45 at a meeting called for the purpose of removing ~~him~~the
46 director and the meeting notice shall state that the

1 purpose, or one (1) of the purposes, of the meeting is
2 removal of the director.

3
4 **17-16-809. Removal of directors by judicial**
5 **proceeding.**

6
7 (a) The district court of the county where a
8 corporation's principal office, or if none in this state,
9 its registered office, is located may remove a director of
10 the corporation from office in a proceeding commenced
11 ~~either by the corporation or by its shareholders holding at~~
12 ~~least ten percent (10%) of the outstanding shares of any~~
13 ~~class by or in the right of the~~ corporation if the court
14 finds that:

15
16 (i) The director engaged in fraudulent ~~or~~
17 ~~dishonest conduct, or gross abuse of authority or~~
18 ~~discretion, with respect to~~ conduct with respect to the
19 corporation or its shareholders, grossly abused the
20 position of director, or intentionally inflicted harm on
21 the corporation; and

22
23 (ii) ~~Removal is~~ Considering the director's
24 course of conduct and the inadequacy of other available
25 remedies, removal would be in the best interest of the
26 corporation.

27
28 (b) The court ~~that removes in addition to removing~~ a
29 director may bar the director from reelection for a period
30 prescribed by the court.

31
32 (c) ~~If shareholders commence~~ A shareholder proceeding
33 on behalf of the corporation under subsection (a) of this
34 section, ~~they~~ shall ~~make the corporation a party defendant~~
35 comply with all of the requirements of W.S. 17-16-740
36 through 17-16-747 excluding W.S. 17-16-741(a)(i).

37
38 (d) Nothing in this section limits the equitable
39 powers of the court to order other relief including, but
40 not limited to, reasonable attorney's fees.

41
42 **17-16-810. Vacancy on board.**

43
44 (b) If the vacant office was held by a director
45 elected by a voting group of shareholders, only the holders
46 of shares of that voting group are entitled to vote to fill
47 the vacancy if it is filled by the shareholders, and only

1 the directors elected by that voting group are entitled to
2 fill the vacancy if it is filled by the directors.

3
4 (c) A vacancy that will occur at a ~~specific~~ later
5 date, by reason of a resignation effective at a later date
6 under W.S. 17-16-807(b) or otherwise, may be filled before
7 the vacancy occurs but the new director may not take office
8 until the vacancy occurs.

9
10 **17-16-821. Action without meeting.**

11
12 (b) Action taken under this section is ~~effective when~~
13 ~~the last director signs the consent, unless the consent~~
14 ~~specifies a different effective date~~ the act of the board
15 of directors when one (1) or more consents signed by all
16 the directors are delivered to the corporation. The
17 consent may specify the time at which the action taken
18 thereunder is to be effective. A director's consent may be
19 withdrawn by a revocation signed by the director and
20 delivered to the corporation prior to delivery to the
21 corporation of unrevoked written consents signed by all the
22 directors.

23
24 (c) A consent signed under this section has the effect
25 of action taken at a meeting ~~vote~~ of the board of directors
26 and may be described as such in any document.

27
28 **17-16-823. Waiver of notice.**

29
30 (a) A director may waive any notice required by this
31 act, the articles of incorporation, or bylaws before or
32 after the date and time stated in the notice. Except as
33 provided by subsection (b) of this section, the waiver
34 shall be in writing, signed, ~~either manually or in~~
35 ~~facsimile,~~ by the director entitled to the notice, and
36 filed with the minutes or corporate records.

37
38 (b) A director's attendance at or participation in a
39 meeting waives any required notice to ~~him~~ the director of
40 the meeting unless the director at the beginning of the
41 meeting or promptly upon his arrival objects to holding the
42 meeting or transacting business at the meeting and does not
43 thereafter vote for or assent to action taken at the
44 meeting.

45
46 **17-16-824. Quorum and voting.**

1 (d) The right to dissent or abstention is not
2 available to a director who votes in favor of the action
3 taken. A director who is present at a meeting of the board
4 of directors or a committee of the board of directors when
5 corporate action is taken is deemed to have assented to the
6 action taken unless:

7
8 (i) ~~He~~The director objects at the beginning of
9 the meeting or promptly upon his arrival to holding the
10 meeting or transacting business at the meeting;

11
12 (ii) ~~His~~The director's dissent or abstention
13 from the action taken is entered in the minutes of the
14 meeting; or

15
16 (iii) ~~He~~The director delivers written notice of
17 his dissent or abstention to the presiding officer of the
18 meeting before its adjournment or to the corporation
19 immediately after adjournment of the meeting.

20
21 **17-16-825. Committees.**
22

23 (a) Unless this act, the articles of incorporation or
24 bylaws provide otherwise, a board of directors may create
25 one (1) or more committees and appoint one (1) or more
26 members of the board of directors to serve on ~~them.~~Each
27 ~~committee shall have one (1) or more members, who serve at~~
28 ~~the pleasure of the board of directors~~any such committee.
29

30 (c) W.S. 17-16-820 through 17-16-824, ~~which govern~~
31 ~~meetings, action without meetings, notice and waiver of~~
32 ~~notice, and quorum and voting requirements of the board of~~
33 ~~directors,~~ apply to committees and their members as well.
34

35 (e) A committee may not, unless specifically
36 authorized by the board of directors:
37

38 (i) Authorize or approve distributions except
39 according to a formula or method, or within limits,
40 prescribed by the board of directors;
41

42 (iii) Fill vacancies on the board of directors
43 or, subject to subsection (g) of this section, on any of
44 its committees;
45

46 (g) The board of directors may appoint one (1) or
47 more directors as alternate members of any committee to

1 replace any absent or disqualified member during the
 2 member's absence or disqualification. Unless the articles
 3 of incorporation or the bylaws or the resolution creating
 4 the committee provide otherwise, in the event of the
 5 absence or disqualification of a member of a committee, the
 6 member or members present at any meeting and not
 7 disqualified from voting, unanimously, may appoint another
 8 director to act in place of the absent or disqualified
 9 member.

10
 11 **17-16-830. General standards for directors.**

12
 13 (a) Each member of the board of directors, when
 14 discharging the duties of a director, shall discharge his
 15 duties as a director, including his duties as a member of a
 16 committee shall act:

17
 18 (i) In good faith; and

19
 20 (b) ~~In discharging his duties~~ A director is entitled
 21 to rely in accordance with subsections (h) and (j) of this
 22 section on: information, opinions, reports or statements,
 23 including financial statements and other financial data, if
 24 prepared or presented by:

25
 26 (i) One (1) or more officers or employees of the
 27 corporation whom the director reasonably believes to be
 28 reliable and competent in the ~~matters presented~~ functions
 29 performed or the information, opinions, reports or
 30 statements provided;

31
 32 (ii) Legal counsel, public accountants or other
 33 persons retained by the corporation as to matters involving
 34 skills or expertise the director reasonably believes are
 35 matters:

36
 37 (A) Within the person's professional or
 38 expert competence; or

39
 40 (B) As to which the particular person
 41 merits confidence; or

42
 43 (f) The members of the board of directors or a
 44 committee of the board, when becoming informed in
 45 connection with their decision making function or devoting
 46 attention to their oversight function, shall discharge
 47 their duties with the care that a person in a like

1 position would reasonably believe appropriate under similar
 2 circumstances.

3
 4 (g) In discharging board or committee duties a
 5 director shall disclose, or cause to be disclosed, to the
 6 other board or committee members information not already
 7 known by them but known by the director to be material to
 8 the discharge of their decision making or oversight
 9 functions, except that disclosure is not required to the
 10 extent that the director reasonably believes that doing so
 11 would violate a duty imposed under law, a legally enforceable
 12 obligation of confidentiality or a professional ethics rule.

13
 14 (h) In discharging board or committee duties a
 15 director who does not have knowledge that makes reliance
 16 unwarranted is entitled to rely on the performance by any of
 17 the persons specified in paragraph (b)(i) or (iii) of this
 18 section to whom the board may have delegated, formally or
 19 informally by course of conduct, the authority or duty to
 20 perform one (1) or more of the board's functions that are
 21 delegable under applicable law.

22
 23 (j) In discharging board or committee duties a
 24 director who does not have knowledge that makes reliance
 25 unwarranted is entitled to rely on information, opinions,
 26 reports or statements, including financial statements and
 27 other financial data, prepared or presented by any of the
 28 persons specified in subsection (b) of this section.

29
 30 **17-16-833. Liability for unlawful distributions.**

31
 32 (a) A director who votes for or assents to a
 33 distribution ~~made in violation of~~ in excess of what may be
 34 authorized and made pursuant to W.S. 17-16-640 ~~or the~~
 35 ~~articles of incorporation or 17-16-1409(a)~~ is personally
 36 liable to the corporation for the amount of the
 37 distribution that exceeds what could have been distributed
 38 without violating W.S. 17-16-640 or ~~the articles of~~
 39 ~~incorporation 17-16-1409(a)~~ if ~~it is established that he~~
 40 ~~did not perform his duties in compliance~~ the party
 41 asserting liability establishes that when taking the action
 42 the director did not comply with W.S. 17-16-830. ~~In any~~
 43 ~~proceeding commenced under this section, a director has all~~
 44 ~~of the defenses ordinarily available to a director.~~

45

1 (b) A director held liable under subsection (a) of
2 this section for an unlawful distribution is entitled to:
3 ~~contribution.~~

4
5 (i) Contribution from every other director who
6 could be held liable under subsection (a) of this section
7 for the unlawful distribution; and

8
9 (ii) Recoupment from each shareholder ~~for the~~
10 ~~amount of the pro-rata portion of the amount of the~~
11 unlawful distribution the shareholder accepted knowing the
12 distribution was made in violation of W.S. 17-16-640 or ~~the~~
13 ~~articles of incorporation~~ 17-16-1409(a).

14
15 (c) A proceeding ~~under this section is barred unless~~
16 ~~it is commenced within two (2) years after the date on~~
17 ~~which the effect of the distribution was measured under~~
18 ~~W.S. 17-16-640(e) or (g) to enforce:~~

19
20 (i) The liability of a director under subsection
21 (a) of this section is barred unless it is commenced within
22 two (2) years after the date:

23
24 (A) On which the effect of the
25 distribution was measured under W.S. 17-16-640(e) or (g);

26
27 (B) As of which the violation of W.S.
28 17-16-640(a) occurred as the consequence of disregard of a
29 restriction in the articles of incorporation; or

30
31 (C) On which the distribution of assets to
32 shareholders under W.S. 17-16-1409(a) was made.

33
34 (ii) Contribution or recoupment under subsection
35 (b) of this section is barred unless it is commenced within
36 one (1) year after the liability of the claimant has been
37 finally adjudicated under subsection (a) of this section.

38
39 **17-16-840. Required officers.**

40
41 (b) ~~A duly appointed~~ The board of directors may elect
42 individuals to fill one (1) or more offices of the
43 corporation. An officer may appoint one (1) or more
44 officers ~~or assistant officers~~ if authorized by the bylaws
45 or the board of directors.
46

1 (c) The bylaws or the board of directors shall
2 ~~delegate~~assign to one (1) of the officers responsibility
3 for preparing minutes of the directors' and shareholders'
4 meetings and for maintaining and authenticating records of
5 the corporation required to be kept under W.S.
6 17-16-1601(a) and (e).

7
8 **17-16-841. Functions of officers.**

9
10 Each officer has the authority and shall perform the ~~duties~~
11 functions set forth in the bylaws or, to the extent
12 consistent with the bylaws, the ~~duties~~functions prescribed
13 by the board of directors or by direction of an officer
14 authorized by the board of directors to prescribe the
15 ~~duties~~functions of other officers.

16
17 **17-16-842. Standards of conduct for officers.**

18
19 (a) An officer ~~with discretionary authority shall~~
20 ~~discharge his duties under that authority~~ when performing
21 in such capacity, has the duty to act:

22
23 (ii) With the care ~~an ordinarily prudent that a~~
24 person in a like position would reasonably exercise under
25 similar circumstances; and

26
27 (iii) In a manner ~~he~~ the officer reasonably
28 believes to be in or at least not opposed to the best
29 interests of the corporation.

30
31 (b) In discharging his duties an officer who does not
32 have knowledge that makes reliance unwarranted is entitled
33 to rely on: ~~information, opinions, reports or statements,~~
34 ~~including financial statements and other financial data, if~~
35 ~~prepared or presented by:~~

36
37 (i) The performance of properly delegated
38 responsibilities by one (1) or more ~~officers or~~ employees
39 of the corporation whom the officer reasonably believes to
40 be reliable and competent in ~~the matters presented~~
41 performing the responsibilities delegated; or

42
43 (ii) Information, opinions, reports or
44 statements, including financial statements and other
45 financial data, prepared or presented by one (1) or more
46 employees of the corporation whom the officer reasonably
47 believes to be reliable and competent in the matters

1 presented or by legal counsel, public accountants or other
 2 persons retained by the corporation as to matters involving
 3 skills or expertise the officer reasonably believes are
 4 matters:

5
 6 (A) Within the particular person's
 7 professional or expert competence; or

8
 9 (B) As to which the particular person
 10 merits confidence.

11
 12 (d) An officer ~~is~~shall not be liable to the
 13 corporation or its shareholders for any decisions to take
 14 or not to take action ~~taken~~ as an officer, or any failure
 15 to take any action, if he performed the duties of his
 16 office in compliance with this section. Whether an officer
 17 who does not comply with this section shall have liability
 18 shall depend in such instance on applicable law, including
 19 those principles of W.S. 17-16-831.1 that have relevance.

20
 21 (f) The duty of an officer includes the obligation:

22
 23 (i) To inform the superior officer to whom, or
 24 the board of directors or the committee thereof to which,
 25 the officer reports of information about the affairs of the
 26 corporation known to the officer, within the scope of the
 27 officer's functions, and known to the officer to be
 28 material to such superior officer, board or committee; and

29
 30 (ii) To inform the officer's superior officer,
 31 or another appropriate person within the corporation, or
 32 the board of directors, or a committee thereof, of any
 33 actual or probable material violation of law involving the
 34 corporation or material breach of duty to the corporation
 35 by an officer, employee or agent of the corporation, that
 36 the officer believes has occurred or is likely to occur.

37
 38 **17-16-843. Resignation and removal of officers.**

39
 40 (a) An officer may resign at any time by delivering
 41 notice to the corporation. A resignation is effective when
 42 the notice is delivered unless the notice specifies a later
 43 effective ~~date-time~~. If a resignation is made effective at
 44 a later ~~date-time~~ and the ~~corporation~~ board or appointing
 45 officer accepts the future effective ~~date-time~~, ~~its~~ the
 46 ~~board of directors or appointing officer~~ may fill the
 47 pending vacancy before the effective ~~date-time~~ if the board

1 ~~of directors or appointing officer~~ provides that the
 2 successor does not take office until the effective ~~date~~
 3 time.

4
 5 (b) ~~A board of directors may remove any~~ An officer may
 6 be removed at any time with or without cause. ~~by:~~

7
 8 (i) The board of directors;

9
 10 (ii) The officer who appointed such officer,
 11 unless the bylaws or the board of directors provide
 12 otherwise; or

13
 14 (iii) Any other officer if authorized by the
 15 bylaws or the board of directors.

16
 17 (c) In this section, "appointing officer" means the
 18 officer, including any successor to that officer, who
 19 appointed the officer resigning or being removed.

20
 21 **17-16-850. Subarticle definitions.**

22
 23 (a) In this subarticle:

24
 25 (ii) "Director" or "officer" means an individual
 26 who is or was a director or officer, respectively, of a
 27 corporation or who, while a director or officer of the
 28 corporation, is or was serving at the corporation's request
 29 as a director, officer, manager, partner, trustee, employee
 30 or agent of another ~~domestic or foreign corporation,~~
 31 ~~partnership, joint venture, trust, employee benefit plan or~~
 32 ~~other~~ entity or employee benefit plan. A director or
 33 officer is considered to be serving an employee benefit
 34 plan at the corporation's request if ~~his~~ the individual's
 35 duties to the corporation also impose duties on, or
 36 otherwise involve services by, ~~him~~ the individual to the
 37 plan or to participants in or beneficiaries of the plan.
 38 "Director" or "officer" includes, unless the context
 39 requires otherwise, the estate or personal representative
 40 of a director or officer;

41
 42 (vi) "Official capacity" means:

43
 44 (A) When used with respect to a director,
 45 the office of director in a corporation; and
 46

1 (B) When used with respect to an officer, as
2 contemplated in W.S. 17-16-856, the office in a corporation
3 held by the officer. "Official capacity" does not include
4 service for any other domestic or foreign corporation or any
5 partnership, joint venture, trust, employee benefit plan or
6 other entity.

7
8 ~~(vi)~~(vii) "Party" means an individual who was, is
9 or is threatened to be made, a defendant or respondent in a
10 proceeding;

11
12 ~~(vii)~~(viii) "Proceeding" means any threatened,
13 pending or completed action, suit or proceeding, whether
14 civil, criminal, administrative, arbitative or
15 investigative and whether formal or informal.

16
17 **17-16-851. Permissible indemnification.**

18
19 (a) Except as otherwise provided in this section, a
20 corporation may indemnify an individual who is a party to a
21 proceeding because ~~he~~the individual is a director against
22 liability incurred in the proceeding if:

23
24 (i) ~~He~~The director conducted himself in good
25 faith; and

26
27 (iii) In the case of any criminal proceeding, ~~he~~
28 the director had no reasonable cause to believe his conduct
29 was unlawful; or

30
31 (iv) ~~He~~The director engaged in conduct for which
32 broader indemnification has been made permissible or
33 obligatory under a provision of the articles of
34 incorporation, as authorized by W.S. 17-16-202(b)(v).

35
36 (b) A director's conduct with respect to an employee
37 benefit plan for a purpose ~~he~~the director reasonably
38 believed to be in the interests of the participants in and
39 beneficiaries of the plan is conduct that satisfies the
40 requirement of paragraph (a)(ii) of this section.

41
42 (c) The termination of a proceeding by judgment,
43 order, settlement, conviction, or upon a plea of nolo
44 contendere or its equivalent is not, of itself,
45 determinative that the director did not meet the relevant
46 standard of conduct described in this section.

47

1 (d) Unless ordered by a court under W.S.
2 17-16-854(a)(iii) a corporation may not indemnify a
3 director under this section:

4
5 (ii) In connection with any proceeding with
6 respect to conduct for which he was adjudged liable on the
7 basis that he received a financial benefit to which he was
8 not entitled, whether or not involving action in the
9 director's capacity.

10
11 **17-16-852. Mandatory indemnification.**

12
13 A corporation shall indemnify a director who was wholly
14 successful, on the merits or otherwise, in the defense of
15 any proceeding to which ~~he~~the director was a party because
16 he was a director of the corporation against reasonable
17 expenses incurred by ~~him~~the director in connection with
18 the proceeding.

19
20 **17-16-853. Advance for expenses.**

21
22 (a) A corporation may, before final disposition of a
23 proceeding, advance funds to pay for or reimburse the
24 reasonable expenses incurred ~~by a director~~in connection
25 with the proceeding by an individual who is a party to a
26 proceeding because ~~he~~that individual is a ~~director~~member
27 of the board of directors if he delivers to the
28 corporation:

29
30 (i) A written affirmation of his good faith
31 belief that ~~he has met~~ the relevant standard of conduct
32 described in W.S. 17-16-851 has been met by the director or
33 that the proceeding involves conduct for which liability
34 has been eliminated under a provision of the articles of
35 incorporation as authorized by W.S. 17-16-202(b)(iv); and

36
37 (ii) His written undertaking to repay any funds
38 advanced if ~~he~~the director is not entitled to mandatory
39 indemnification under W.S. 17-16-852 and it is ultimately
40 determined under W.S. 17-16-854 or 17-16-855 that he has
41 not met the relevant standard of conduct described in W.S.
42 17-16-851.

43
44 (c) Authorizations under this section shall be made:

45
46 (i) By the board of directors:
47

1 (A) If there are two (2) or more
2 ~~disinterested~~qualified directors, by a majority vote of
3 all the ~~disinterested~~qualified directors (a majority of
4 whom shall for such purpose constitute a quorum) or by a
5 majority of the members of a committee of two (2) or more
6 ~~disinterested~~qualified directors appointed by such a vote;
7 or

8
9 (B) If there are fewer than two (2)
10 ~~disinterested~~qualified directors, by the vote necessary
11 for action by the board in accordance with W.S.
12 17-16-824(c), in which authorization directors who ~~do not~~
13 ~~qualify as disinterested~~are not qualified directors may
14 participate; or

15
16 (ii) By the shareholders, but shares owned by or
17 voted under the control of a director who at the time ~~does~~
18 ~~not qualify as a disinterested~~is not a qualified director
19 may not be voted on the authorization.

20
21 **17-16-854. Court-ordered indemnification and advance**
22 **for expenses.**

23
24 (a) A director who is a party to a proceeding because
25 he is a director may apply for indemnification or an
26 advance for expenses to the court conducting the proceeding
27 or to another court of competent jurisdiction. After
28 receipt of an application and after giving any notice it
29 considers necessary, the court shall:

30
31 (iii) Order indemnification or advance for
32 expenses if the court determines, in view of all the
33 relevant circumstances, that it is fair and reasonable:

34
35 (B) To advance expenses to the director,
36 even if he has not met the relevant standard of conduct set
37 forth in W.S. 17-16-851(a), failed to comply with W.S.
38 17-16-853 or was adjudged liable in a proceeding referred
39 to in W.S. 17-16-851(d)(i) or (ii), but if ~~he~~the director
40 was adjudged so liable his indemnification shall be limited
41 to ~~reasonable~~ expenses incurred in connection with the
42 proceeding.

43
44 (b) If the court determines that the director is
45 entitled to indemnification under paragraph (a)(i) of this
46 section or to indemnification or advance for expenses under
47 paragraph (a)(ii) of this section, it shall also order the

1 corporation to pay the director's ~~reasonable~~ expenses
2 incurred in connection with obtaining court-ordered
3 indemnification or advance for expenses. If the court
4 determines that the director is entitled to indemnification
5 or advance for expenses under paragraph (a)(iii) of this
6 section, it may also order the corporation to pay the
7 director's ~~reasonable~~ expenses to obtain court-ordered
8 indemnification or advance for expenses.

9
10 **17-16-855. Determination and authorization of**
11 **indemnification.**

12
13 (a) A corporation may not indemnify a director under
14 W.S. 17-16-851 unless authorized for a specific proceeding
15 after a determination has been made that indemnification of
16 the director is permissible because ~~he~~ the director has met
17 the relevant standard of conduct set forth in W.S.
18 17-16-851.

19
20 (b) The determination shall be made:

21
22 (i) If there are two (2) or more ~~disinterested~~
23 qualified directors, by the board of directors by majority
24 vote of all the ~~disinterested~~ qualified directors (a
25 majority of whom shall for such purpose constitute a
26 quorum), or by a majority of the members of a committee of
27 two (2) or more ~~disinterested~~ qualified directors appointed
28 by such a vote;

29
30 (iii) By special legal counsel:

31
32 (B) If there are fewer than two (2)
33 ~~disinterested~~ qualified directors, selected by the board of
34 directors (in which selection directors who ~~do not qualify~~
35 ~~as~~ ~~disinterested~~ are not qualified directors may
36 participate); or

37
38 (iv) By the shareholders, but shares owned by or
39 voted under the control of a director who at the time ~~does~~
40 ~~not qualify as a disinterested~~ is not a qualified director
41 may not be voted on the determination.

42
43 (c) Authorization of indemnification shall be made in
44 the same manner as the determination that indemnification
45 is permissible, except that if there are fewer than two (2)
46 ~~disinterested~~ qualified directors, authorization of
47 indemnification shall be made by those entitled under

1 paragraph (b)(iii) of this section to select special legal
2 counsel.

3
4 **17-16-856. Indemnification of officers.**

5
6 (a) A corporation may indemnify and advance expenses
7 under this subarticle to an officer of the corporation who
8 is a party to a proceeding because he is an officer of the
9 corporation:

10
11 (ii) If he is an officer but not a director, to
12 such further extent as may be provided by the articles of
13 incorporation, the bylaws, a resolution of the board of
14 directors or contract, except for:

15
16 (A) Liability in connection with a
17 proceeding by or in the right of the corporation other than
18 for ~~reasonable~~ expenses incurred in connection with the
19 proceeding; or

20
21 (B) Liability arising out of conduct that
22 constitutes:

23
24 (I) Receipt by ~~him~~the officer of a
25 financial benefit to which he is not entitled;

26
27 **17-16-857. Insurance.**

28
29 A corporation may purchase and maintain insurance on behalf
30 of an individual who is a director or officer of the
31 corporation, or who, while a director or officer of the
32 corporation, serves at the corporation's request as a
33 director, officer, partner, trustee, employee or agent of
34 another domestic or foreign corporation, partnership, joint
35 venture, trust, employee benefit plan, or other entity,
36 against liability asserted against or incurred by ~~him~~the
37 individual in that capacity or arising from his status as a
38 director or officer whether or not the corporation would
39 have power to indemnify or advance expenses to ~~him~~the
40 individual against the same liability under this
41 subarticle.

42
43 **17-16-1001. Authority to amend.**

44
45 (a) A corporation may amend its articles of
46 incorporation at any time to add or change a provision that
47 is required or permitted in the articles of incorporation

1 as of the effective date of the amendment or to delete a
 2 provision that is not required to be contained in the
 3 articles of incorporation. ~~Whether a provision is required~~
 4 ~~or permitted in the articles of incorporation is determined~~
 5 ~~as of the effective date of the amendment.~~

6
 7 **17-16-1002. Amendment by board of directors.**

8
 9 (a) Unless the articles of incorporation provide
 10 otherwise, a corporation's board of directors may adopt ~~one~~
 11 ~~(1) or more~~ amendments to the corporation's articles of
 12 incorporation without shareholder ~~action to~~ approval:
 13

14 (i) To extend the duration of the corporation if
 15 it was incorporated at a time when limited duration was
 16 required by law;
 17

18 (ii) To delete the names and addresses of the
 19 initial directors;
 20

21 (iii) To delete the name and address of the
 22 initial registered agent or registered office, if a
 23 statement of change is on file with the secretary of state;
 24

25 (iv) If the corporation has only one (1) class of
 26 shares outstanding:
 27

28 (A) To change each issued and unissued
 29 authorized share of ~~an outstanding the~~ class into a greater
 30 number of whole shares ~~if the corporation has only shares~~
 31 of that class; ~~outstanding; or~~
 32

33 (B) To increase the number of authorized
 34 shares of the class to the extent necessary to permit the
 35 issuance of shares as a share dividend.
 36

37 (v) To change the corporate name by substituting
 38 the word "corporation," "incorporated," "company,"
 39 "limited," or the abbreviation "corp.," "inc.," "co.," or
 40 "ltd.," for a similar word or abbreviation in the name, or
 41 by adding, deleting, or changing a geographical attribution
 42 for the name; ~~or~~
 43

44 (vi) To reflect a reduction in authorized
 45 shares, as a result of the operation of W.S. 17-16-631(b),
 46 when the corporation has acquired its own shares and the

1 articles of incorporation prohibit the reissue of the
2 acquired shares;

3
4 (vii) To delete a class of shares from the
5 articles of incorporation, as a result of the operation of
6 W.S. 17-16-631(b), when there are no remaining shares of the
7 class because the corporation has acquired all shares of
8 the class and the articles of incorporation prohibit the
9 reissue of the acquired shares; or

10
11 ~~(vi)~~(viii) To make any ~~other~~ change expressly
12 permitted by ~~this act~~ W.S. 17-16-602(a) or (b) to be made
13 without shareholder ~~action~~ approval.

14
15 **17-16-1003. Amendment by board of directors and**
16 **shareholders.**

17
18 (f) If a corporation has issued shares, an amendment
19 to the articles of incorporation shall be adopted in the
20 following manner:

21
22 (i) The proposed amendment shall be adopted by
23 the board of directors;

24
25 (ii) Except as provided in W.S. 17-16-1002,
26 17-16-1007 and 17-16-1008, after adopting the proposed
27 amendment the board of directors shall submit the amendment
28 to the shareholders for their approval. The board of
29 directors shall also transmit to the shareholders a
30 recommendation that the shareholders approve the amendment,
31 unless the board of directors makes a determination that
32 because of conflict of interest or other special
33 circumstances it should not make such a recommendation in
34 which case the board of directors shall transmit the basis
35 for that determination to the shareholders;

36
37 (iv) The board of directors may condition its
38 submission of the amendment to the shareholders on any
39 basis;

40
41 (v) If the amendment is required to be approved
42 by the shareholders and the approval is to be given at a
43 meeting, the corporation shall notify each shareholder,
44 whether or not entitled to vote, of the shareholders'
45 meeting at which the amendment is to be submitted for
46 approval. The notice shall state that the purpose, or one
47 (1) of the purposes, of the meeting is to consider the

1 amendment and shall contain or be accompanied by a copy of
 2 the amendment;

3
 4 (vi) Unless the articles of incorporation, or the
 5 board of directors acting pursuant to subsection (c) of
 6 this section require a greater vote or a greater number of
 7 shares to be present, approval of the amendment requires
 8 the approval of the shareholders at a meeting at which a
 9 quorum exists, and, if any class or series of shares is
 10 entitled to vote as a separate group on the amendment,
 11 except as provided in W.S. 17-16-1004(c), the approval of
 12 each such separate voting group at a meeting at which a
 13 quorum of the voting group exists.

14
 15 **17-16-1004. Voting on amendments by voting groups.**

16
 17 (a) If a corporation has more than one (1) class of
 18 shares outstanding, the holders of the outstanding shares
 19 of a class are entitled to vote as a separate voting group,
 20 if shareholder voting is otherwise required by this act, on
 21 a proposed amendment to the articles of incorporation if
 22 the amendment would:

23
 24 (iv) Change the ~~designation,~~ rights, preferences,
 25 or limitations of all or part of the shares of the class;

26
 27 (vi) Create a new class of shares having rights
 28 or preferences with respect to distributions or to
 29 dissolution that are prior, or superior, ~~or substantially~~
 30 ~~equal~~ to the shares of the class;

31
 32 (vii) Increase the rights, preferences, or number
 33 of authorized shares of any class that, after giving effect
 34 to the amendment, have rights or preferences with respect
 35 to distributions or to dissolution that are prior, or
 36 superior, ~~or substantially equal~~ to the shares of the
 37 class;

38
 39 (ix) Cancel or otherwise affect rights to
 40 distributions ~~or dividends~~ that have accumulated but not
 41 yet been ~~declared~~ authorized on all or part of the shares
 42 of the class.

43
 44 (b) If a proposed amendment would affect a series of a
 45 class of shares in one (1) or more of the ways described in
 46 subsection (a) of this section, the holders of shares of

1 that series are entitled to vote as a separate voting group
2 on the proposed amendment.

3
4 (c) If a proposed amendment that entitles two (2) or
5 more classes or series of shares to vote as separate voting
6 groups under this section would affect those two (2) or
7 more classes or series in the same or a substantially
8 similar way, the holders of shares of all the classes or
9 series so affected shall vote together as a single voting
10 group on the proposed amendment, unless otherwise provided
11 in the articles of incorporation or required by the board
12 of directors.

13
14 **17-16-1005. Amendment before issuance of shares.**

15
16 If a corporation has not yet issued shares, its
17 ~~incorporators or~~ board of directors, or its incorporators
18 if it has no board of directors, may adopt one (1) or more
19 amendments to the corporation's articles of incorporation.

20
21 **17-16-1006. Articles of amendment.**

22
23 (a) ~~A~~ After an amendment to the articles of
24 incorporation has been adopted and approved in the manner
25 required by this act and by the articles of incorporation,
26 the corporation ~~amending its articles of incorporation~~
27 shall deliver to the secretary of state for filing articles
28 of amendment setting forth:

29
30 (iii) If an amendment provides for an exchange,
31 reclassification, or cancellation of issued shares,
32 provisions for implementing the amendment if not contained
33 in the amendment itself which may be made dependent upon
34 facts objectively ascertainable outside the articles of
35 amendment;

36
37 (iv) The date of each amendment's adoption; and

38
39 (v) If an amendment:

40
41 (A) Was adopted by the incorporators or
42 board of directors without shareholder ~~action approval~~, a
43 statement ~~to that effect that the amendment was duly~~
44 approved by the incorporators or by the board of directors
45 as the case may be and that shareholder ~~action approval~~ was
46 not required; ~~and or~~

47

1 (B) Required approval by the shareholders, a
2 statement that the amendment was duly approved by the
3 shareholders in the manner required by this act and by the
4 articles of incorporation.

5
6 **17-16-1007. Restated articles of incorporation.**

7
8 (a) A corporation's board of directors may restate its
9 articles of incorporation at any time with or without
10 shareholder ~~action~~ approval, to consolidate all amendments
11 into a single document.

12
13 (b) ~~The restatement may include one (1) or more~~
14 ~~amendments to the articles.~~ If the restatement includes an
15 amendment restated articles include one (1) or more new
16 amendments requiring shareholder approval, ~~it~~ the
17 amendments shall be adopted and approved as provided in
18 W.S. 17-16-1003.

19
20 (d) A corporation restating its articles of
21 incorporation shall deliver to the secretary of state for
22 filing articles of restatement setting forth the name of
23 the corporation and the text of the restated articles of
24 incorporation together with a certificate ~~setting forth:~~
25 which states that the restated articles consolidate all
26 amendments into a single document and, if a new amendment
27 is included in the restated articles, which also includes
28 the statements required under W.S. 17-16-1006.

29
30 **17-16-1008. Amendment pursuant to court-ordered**
31 **reorganization.**

32
33 (a) A corporation's articles of incorporation may be
34 amended without action by the board of directors or
35 shareholders to carry out a plan of reorganization ordered
36 or decreed by a court of competent jurisdiction under
37 ~~federal statute if the articles of incorporation after~~
38 ~~amendment contain only provisions required or permitted by~~
39 ~~W.S. 17-16-202~~ the authority of a law of the United States.

40
41 **17-16-1020. Amendment by board of directors or**
42 **shareholders.**

43
44 (a) A corporation's board of directors may amend or
45 repeal the corporation's bylaws unless:
46

1 (i) The articles of incorporation, W.S.
 2 17-16-1022 or ~~this act if applicable~~ W.S. 17-16-1023
 3 reserve this power exclusively to the shareholders in whole
 4 or part; or

5
 6 (ii) The shareholders in amending, ~~or~~ repealing
 7 or adopting a ~~particular~~ bylaw provide expressly that the
 8 board of directors may not amend, ~~or~~ repeal or reinstate
 9 that bylaw.

10
 11 (b) A corporation's shareholders may amend or repeal
 12 the corporation's bylaws. ~~even though the bylaws may also~~
 13 ~~be amended or repealed by its board of directors.~~

14
 15 **17-16-1022. Bylaw increasing quorum or voting**
 16 **requirement for directors.**

17
 18 (a) A bylaw that ~~fixes a greater~~ increases a quorum or
 19 voting requirement for the board of directors may be
 20 amended or repealed:

21
 22 (i) If originally adopted by the shareholders,
 23 only by the shareholders, unless the bylaw otherwise
 24 provides;

25
 26 (ii) If ~~originally~~ adopted by the board of
 27 directors, either by the shareholders or by the board of
 28 directors.

29
 30 (b) A bylaw adopted or amended by the shareholders
 31 that ~~fixes a greater~~ increases a quorum or voting
 32 requirement for the board of directors may provide that it
 33 may be amended or repealed only by a specified vote of
 34 either the shareholders or the board of directors.

35
 36 (c) Action by the board of directors under ~~paragraph~~
 37 ~~(a)(ii)~~ subsection (a) of this section to ~~adopt or amend or~~
 38 repeal a bylaw that changes the quorum or voting
 39 requirement for the board of directors shall meet the same
 40 quorum requirement and be adopted by the same vote required
 41 to take action under the quorum and voting requirement then
 42 in effect or proposed to be adopted, whichever is greater.

43
 44 **17-16-1101. Merger.**

45
 46 (a) One (1) or more domestic business corporations may
 47 merge ~~into another corporation if the board of directors of~~

1 ~~each corporation adopts and, if required by W.S.~~
2 ~~17-16-1103, its shareholders approve a plan of merger with~~
3 ~~one (1) or more domestic or foreign business corporations or~~
4 ~~eligible entities pursuant to a plan of merger, or two (2)~~
5 ~~or more foreign business corporations or domestic or~~
6 ~~foreign eligible entities may merge into a new domestic~~
7 ~~business corporation to be created in the merger in the~~
8 ~~manner provided in this chapter.~~

9
10 (b) The plan of merger shall ~~set forth~~ include:

11
12 (i) The name of each domestic or foreign business
13 corporation ~~planning to merge and the name of the surviving~~
14 ~~corporation into which each other corporation plans to~~
15 ~~merge~~ or eligible entity that will merge and the name of
16 the domestic or foreign business corporation or eligible
17 entity that will be the survivor of the merger;

18
19 (ii) The terms and conditions of the merger; ~~and~~

20
21 (iii) The manner and basis of converting the
22 disposition, if any, of the shares of each domestic or
23 foreign business corporation into shares, obligations or
24 other securities of the surviving or any other corporation
25 or into cash or other property in whole or part. and
26 eligible interests of each domestic or foreign eligible
27 entity;

28
29 (iv) The articles of incorporation of any
30 domestic or foreign business or nonprofit corporation, or
31 the organic documents of any domestic or foreign
32 unincorporated entity, to be created by the merger, or if a
33 new domestic or foreign business or nonprofit corporation
34 or unincorporated entity is not to be created by the merger,
35 any amendments to the survivor's articles of incorporation
36 or organic documents; and

37
38 (v) Any other provisions required by the laws
39 under which any party to the merger is organized or by which
40 it is governed, or by the articles of incorporation or
41 organic document of any such party.

42
43 (c) The terms of the plan of merger may ~~set forth~~ be
44 made dependent on facts objectively ascertainable outside
45 the plan.

46

1 (d) A foreign business corporation, or a foreign
2 eligible entity, may be a party to a merger with a domestic
3 business corporation, or may be created by the terms of the
4 plan of merger, only if the merger is permitted by the
5 foreign business corporation or eligible entity. If the
6 organic law of a domestic eligible entity does not provide
7 procedures for the approval of a merger, a plan of merger
8 may be adopted and approved, the merger effectuated, and
9 appraisal rights exercised in accordance with the
10 procedures in this article and article 13 of this chapter.
11 For the purposes of applying this article and article 13 of
12 this chapter:

13
14 (i) The eligible entity, its members or interest
15 holders, eligible interests and organic documents taken
16 together shall be deemed to be a domestic business
17 corporation, shareholders, shares and articles of
18 incorporation, respectively and vice versa as the context
19 may require; and

20
21 (ii) If the business and affairs of the eligible
22 entity are managed by a group of persons that is not
23 identical to the members or interest holders, that group
24 shall be deemed to be the board of directors.

25
26 (e) The plan of merger may also include a provision
27 that the plan may be amended prior to filing articles of
28 merger, but if the shareholders of a domestic corporation
29 that is a party to the merger are required or permitted to
30 vote on the plan, the plan must provide that subsequent to
31 approval of the plan by such shareholders the plan may not
32 be amended to change:

33
34 (i) The disposition of shares or other securities,
35 eligible interests, obligations, rights to acquire shares,
36 other securities or eligible interests, cash, or other
37 property, if any, to be received under the plan by the
38 shareholders of or owners of eligible interests in any
39 party to the merger;

40
41 (ii) The articles of incorporation of any
42 corporation, or the organic documents of any unincorporated
43 entity, that will survive or be created as a result of the
44 merger, except for changes permitted by W.S. 17-16-1002 or
45 by comparable provisions of the organic laws of any such
46 foreign corporation or domestic or foreign unincorporated
47 entity; or

1
2 (iii) Any of the other terms or conditions of
3 the plan if the change would adversely affect such
4 shareholders in any material respect.

5
6 (f) Property held in trust or for charitable purposes
7 under the laws of this state by a domestic or foreign
8 eligible entity shall not be diverted by a merger from the
9 objects for which it was donated, granted or devised,
10 unless and until the eligible entity obtains an order of
11 the district court specifying the disposition of the
12 property to the extent required by and pursuant to the laws
13 of this state.

14
15 **17-16-1102. Share exchange.**

16
17 (a) Through a share exchange:

18
19 (i) A domestic corporation may acquire all of
20 the ~~outstanding~~ shares of one (1) or more classes or series
21 of shares of another domestic or foreign corporation, ~~if~~
22 ~~the board of directors of each corporation adopts and, if~~
23 ~~required by W.S. 17-16-1103, its shareholders approve the~~
24 ~~exchange.~~ or all of the interests of one (1) or more
25 classes or series of interests of a domestic or foreign
26 other entity, in exchange for shares or other securities,
27 interests, obligations, rights to acquire shares or other
28 securities, cash, other property, or any combination of the
29 foregoing, pursuant to a plan of share exchange; or

30
31 (ii) All of the shares of one (1) or more classes
32 or series of shares of a domestic corporation may be acquired
33 by another domestic or foreign corporation or other entity,
34 in exchange for shares or other securities, interests,
35 obligations, rights to acquire shares or other securities,
36 cash, other property, or any combination of the foregoing,
37 pursuant to a plan of share exchange.

38
39 (b) The plan of exchange shall ~~set forth~~ include:

40
41 (i) The name of ~~the each~~ corporation or other
42 entity whose shares or interests will be acquired and the
43 name of the ~~acquiring~~ corporation or other entity that will
44 acquire those shares or interests;

45
46 (ii) The terms and conditions of the share
47 exchange; ~~and~~

1
2 (iii) The manner and basis of exchanging the
3 shares ~~to~~ of a corporation or interests in any other entity
4 whose shares or interests will be acquired ~~for~~ under the
5 share exchange into shares or other securities, interests,
6 obligations, ~~or~~ rights to acquire shares, other securities
7 ~~of the acquiring or any other corporation or for cash or~~
8 ~~other property in whole or part.~~ or interests, cash, other
9 property or any combination of the foregoing; and

10
11 (iv) Any other provisions required by the laws
12 under which any party to the share exchange is organized or
13 by the articles of incorporation or organic document of any
14 such party.

15
16 (c) ~~The Terms of a~~ plan of share exchange may ~~set~~
17 ~~forth other provisions relating to the exchange~~ be made
18 dependent on facts objectively ascertainable outside the
19 plan.

20
21 (d) This section does not limit the power of a
22 domestic corporation to acquire ~~all or part of the~~ shares
23 ~~of one (1) or more classes or series of~~ another corporation
24 ~~through a voluntary exchange or otherwise~~ or interests in
25 another entity in a transaction other than a share
26 exchange.

27
28 (e) A foreign corporation or eligible entity, may be
29 a party to a share exchange only if the share exchange is
30 permitted by the organic law under which the corporation or
31 other entity is organized or by which it is governed. If
32 the organic law of a domestic other entity does not provide
33 procedures for the approval of a share exchange, a plan of
34 share exchange may be adopted and approved, and the share
35 exchange effectuated, in accordance with the procedures, if
36 any, for a merger. If the organic law of a domestic other
37 entity does not provide procedures for the approval of
38 either a share exchange or a merger, a plan of share exchange
39 may be adopted and approved, the share exchange effectuated,
40 and appraisal rights exercised, in accordance with the
41 procedures in this article and article 13 of this chapter.
42 For the purposes of applying this article and article 13 of
43 this chapter:

44
45 (i) The other entity, its interest holders,
46 interests and organic documents taken together shall be
47 deemed to be a domestic business corporation, shareholders,

1 shares and articles of incorporation, respectively and vice
2 versa as the context may require; and

3
4 (ii) If the business and affairs of the other
5 entity are managed by a group of persons that is not
6 identical to the interest holders, that group shall be
7 deemed to be the board of directors.

8
9 (f) The plan of share exchange may also include a
10 provision that the plan may be amended prior to filing
11 articles of share exchange, but if the shareholders of a
12 domestic corporation that is a party to the share exchange
13 are required or permitted to vote on the plan, the plan
14 shall provide that subsequent to approval of the plan by such
15 shareholders the plan may not be amended to change:

16
17 (i) The amount or kind of shares or other
18 securities, interests, obligations, rights to acquire
19 shares, other securities or interests, cash, or other
20 property to be issued by the corporation or to be received
21 under the plan by the shareholders of or owners of
22 interests in any party to the share exchange; or

23
24 (ii) Any of the other terms or conditions of the
25 plan if the change would adversely affect such shareholders
26 in any material respect.

27
28 **17-16-1103. Action on plan of merger or share**
29 **exchange.**

30
31 (a) In the case of a domestic corporation that is a
32 party to a merger or share exchange, the plan of merger or
33 share exchange shall be adopted by the board of directors.
34 After adopting a plan of merger or share exchange, the
35 board of directors ~~of each corporation party to the merger,~~
36 ~~and the board of directors of the corporation whose shares~~
37 ~~will be acquired in the share exchange, shall submit the~~
38 ~~plan of merger,~~ except as provided in subsection (g) of
39 this section and W.S. 17-16-1105, ~~or share exchange for~~
40 ~~approval by its~~ shall submit the plan to the shareholders
41 for their approval. The board of directors shall also
42 transmit to the shareholders a recommendation that the
43 shareholders approve the plan, unless the board of directors
44 makes a determination that because of conflicts of interest
45 or other special circumstances it should not make such a
46 recommendation, in which case the board of directors shall

1 transmit to the shareholders the basis for that
2 determination.

3
4 (c) The board of directors may condition its
5 submission of the proposed merger or share exchange to the
6 shareholders on any basis.

7
8 (d) If the plan of merger or share exchange is
9 required to be approved by the shareholders and if the
10 approval is to be given at a meeting, the corporation shall
11 notify each shareholder, whether or not entitled to vote,
12 of the ~~proposed~~ shareholders' meeting ~~in accordance with~~
13 ~~W.S. 17-16-705~~ at which the plan is to be submitted for
14 approval. The notice shall ~~also~~ state that the purpose, or
15 one (1) of the purposes, of the meeting is to consider the
16 plan ~~of merger or share exchange~~ and contain or be
17 accompanied by a copy or summary of the plan. If the
18 corporation is to be merged into an existing corporation or
19 other entity, the notice shall also include or be
20 accompanied by a copy or summary of the articles of
21 incorporation or organizational documents of that
22 corporation or other entity. If the corporation is to be
23 merged into a corporation or other entity that is to be
24 created pursuant to the merger, the notice shall include or
25 be accompanied by a copy or a summary of the articles of
26 incorporation or organizational documents of the new
27 corporation or other entity.

28
29 (e) Unless ~~this act,~~ the articles of incorporation or
30 the board of directors acting pursuant to subsection (c) of
31 this section require a greater vote or a ~~vote by voting~~
32 ~~groups~~ greater number of votes to be present, approval of
33 the plan of merger or share exchange to be authorized shall
34 be approved by each voting group entitled to vote
35 separately on the plan by a majority of all the votes
36 entitled to be cast on the plan by that voting group
37 requires the approval of the shareholders at a meeting at
38 which a quorum exists, and, if any class or series of
39 shares is entitled to vote as a separate group on the plan
40 of merger or share exchange, the approval of each such
41 separate voting group at a meeting at which a quorum of the
42 voting group is present.

43
44 (f) Separate voting by voting groups is required:

45
46 (i) On a plan of merger ~~if the plan contains a~~
47 ~~provision that, if contained in a proposed amendment to~~

1 ~~articles of incorporation, would require action by one (1)~~
2 ~~or more separate voting groups on the proposed amendment~~
3 ~~under W.S. 17-16-1004; or by each class or series of shares~~
4 that:

5
6 (A) Are to be converted under the plan of
7 merger into other securities, interests, obligations, rights
8 to acquire shares, other securities or interests, cash, other
9 property, or any combination of the foregoing; or

10
11 (B) Would be entitled to vote as a separate
12 group on a provision in the plan that, if contained in a
13 proposed amendment to articles of incorporation, would
14 require action by separate voting groups under W.S.
15 17-16-1004;

16
17 (ii) On a plan of share exchange by each class or
18 series of shares included in the exchange, with each class
19 or series constituting a separate voting group; ~~and~~ and

20
21 (iii) On a plan of merger or share exchange, if
22 the voting group is entitled under the articles of
23 incorporation to vote as a voting group to approve a plan
24 of merger or share exchange.

25
26 (g) ~~Action by the~~ Unless the articles of incorporation
27 otherwise provide, approval by the corporation's
28 shareholders of the surviving corporation on of a plan of
29 merger or share exchange is not required if:

30
31 (v) The corporation will survive the merger or
32 is the acquiring corporation in a share exchange;

33
34 (vi) Except for amendments permitted by W.S.
35 17-16-1002, its articles of incorporation will not be
36 changed;

37
38 (vii) Each shareholder of the corporation whose
39 shares were outstanding immediately before the effective
40 date of the merger or share exchange will hold the same
41 number of shares, with identical preferences, limitations,
42 and relative rights, immediately after the effective date of
43 change; and

44
45 (viii) The issuance in the merger or share
46 exchange of shares or other securities convertible into or

1 rights exercisable for shares does not require a vote under
2 W.S. 17-16-621(f).

3
4 (k) If as a result of a merger or share exchange one
5 (1) or more shareholders of a domestic corporation would
6 become subject to owner liability for the debts,
7 obligations or liabilities of any other person or entity,
8 approval of the plan of merger or share exchange shall
9 require the execution, by each such shareholder, of a
10 separate written consent to become subject to such owner
11 liability.

12
13 **17-16-1104. Merger between parent and subsidiary.**

14
15 (a) A domestic parent corporation ~~owning~~that owns
16 shares of a domestic or foreign subsidiary corporation that
17 carry at least eighty percent (80%) of the ~~outstanding~~
18 ~~shares~~voting power of each class and series of the
19 outstanding shares of a subsidiary ~~corporation~~that have
20 voting power may merge the subsidiary into itself or into
21 another such subsidiary, or merge itself into the
22 subsidiary, without approval of the board of directors or
23 shareholders of the ~~parent or~~subsidiary, unless the
24 articles of incorporation of any of the corporations
25 otherwise provide, and unless, in the case of a foreign
26 subsidiary, approval by the subsidiary's board of directors
27 or shareholders is required by the laws under which the
28 subsidiary is organized.

29
30 (f) If under subsection (a) of this section approval
31 of a merger by the subsidiary's shareholders is not
32 required, the parent corporation shall, within ten (10)
33 days after the effective date of the merger, notify each of
34 the subsidiary's shareholders that the merger has become
35 effective.

36
37 (g) Except as provided in subsections (a) and (b) of
38 this section, a merger between a parent and a subsidiary
39 shall be governed by the provisions of this article
40 applicable to mergers generally.

41
42 **17-16-1105. Articles of merger or share exchange.**

43
44 (a) After a plan of merger or share exchange ~~is~~
45 ~~approved by the shareholders, or adopted by the board of~~
46 ~~directors if shareholder approval is not required, the~~
47 ~~surviving or acquiring corporation shall deliver to the~~

1 ~~secretary of state for filing articles of merger or share~~
2 ~~exchange setting has been adopted and approved as required~~
3 ~~by this act, articles of merger or share exchange shall be~~
4 ~~executed on behalf of the surviving or acquiring~~
5 ~~corporation by any officer or other duly authorized~~
6 ~~representative. The articles shall set forth:~~

7
8 (iv) The names of the parties to the merger or
9 share exchange;

10
11 (v) If the articles of incorporation of the
12 survivor of a merger are amended, or if a new corporation
13 is created as a result of a merger, the amendments to the
14 survivor's articles of incorporation or the articles of
15 incorporation of the new corporation;

16
17 (vi) If the plan of merger or share exchange
18 required approval by the shareholders of a domestic
19 corporation that was a party to the merger or share
20 exchange, a statement that the plan was duly approved by
21 the shareholders and, if voting by any separate voting
22 group was required, by each such separate voting group, in
23 the manner required by this act and the articles of
24 incorporation;

25
26 (vii) If the plan of merger or share exchange did
27 not require approval by the shareholders of a domestic
28 corporation that was a party to the merger or share
29 exchange, a statement to that effect; and

30
31 (viii) As to each foreign corporation or
32 eligible entity that was a party to the merger or share
33 exchange, a statement that the participation of the foreign
34 corporation or eligible entity was duly authorized as
35 required by the organic law of the corporation or eligible
36 entity.

37
38 (b) ~~A~~ Articles of merger or share exchange ~~takes~~ shall
39 be delivered to the secretary of state for filing by the
40 survivor of the merger or the acquiring corporation in a
41 share exchange, and shall take effect upon the effective
42 date of the articles of merger or share exchange time
43 provided in W.S. 17-16-123. Articles of merger or share
44 exchange filed under this section may be combined with any
45 filing required under the organic law of any domestic
46 eligible entity involved in the transaction if the combined

1 filing satisfies the requirements of both this section and
2 the other organic law.

3
4 **17-16-1106. Effect of merger or share exchange.**

5
6 (a) When a merger ~~takes effect~~ becomes effective:

7
8 (i) ~~Every other corporation party to the merger~~
9 ~~merges into the surviving corporation and the separate~~
10 ~~existence of every corporation except the surviving~~
11 ~~corporation~~ The corporation or eligible entity that is
12 designated in the plan of merger as the survivor continues
13 or comes into existence, as the case may be and the
14 separate existence of every corporation or eligible entity
15 that is merged into the survivor ceases;

16
17 (ii) ~~The title to all real estate and other~~ All
18 property owned by, and every contract right possessed by,
19 each corporation party to the merger or eligible entity that
20 merges into the survivor is vested in the surviving
21 corporation-survivor without reversion or impairment;

22
23 (iii) ~~The surviving corporation has~~ All
24 liabilities of each corporation party to the merger or
25 eligible entity that is merged into the survivor are vested
26 in the survivor;

27
28 (iv) ~~A proceeding pending against any corporation~~
29 ~~party to the merger may be continued as if the merger did~~
30 ~~not occur or the surviving corporation~~ The name of the
31 survivor may, but need not be, substituted in the any
32 pending proceeding for the corporation-name of any party to
33 the merger whose separate existence ceased in the merger;

34
35 (v) The articles of incorporation or organic
36 documents of the ~~surviving corporation-survivor~~ are amended
37 to the extent provided in the plan of merger; ~~and~~

38
39 (vi) The shares of each corporation that is a
40 party to the merger, and the interests in an eligible
41 entity that is a party to a merger, that are to be
42 converted under the plan of merger into shares, eligible
43 interests, obligations, or other securities of the
44 surviving or any other corporation or into cash or other
45 property rights to acquire securities, other securities, or
46 eligible interests, cash, other property, or any
47 combination of the foregoing, are converted, and the former

1 holders of the shares or eligible interests are entitled
2 only to the rights provided in the articles-plan of merger
3 or to their-any rights they may have under article 13- of
4 this chapter or the organic law of the eligible entity; and
5

6 (vii) The articles of incorporation or organic
7 documents of a survivor that is created by the merger become
8 effective.
9

10 (b) When a share exchange takes-effect-becomes
11 effective, the shares of each acquired-domestic corporation
12 that are to be exchanged as provided in the plan, and the
13 former holders of the shares for shares or other securities,
14 interests, obligations, rights to acquire shares or other
15 securities, cash, other property, or any combination of the
16 foregoing, are entitled only to the exchange-rights
17 provided to them in the articles-plan of share exchange or
18 to their-any rights they may have under article 13 of this
19 chapter.
20

21 (c) A person who becomes subject to owner liability
22 for some or all of the debts, obligations or liabilities of
23 any entity as a result of a merger or share exchange shall
24 have owner liability only to the extent provided in the
25 organic law of the entity and only for those debts,
26 obligations and liabilities that arise after the effective
27 time of the articles of merger or share exchange.
28

29 (d) Upon a merger becoming effective, a foreign
30 corporation, or a foreign eligible entity, that is the
31 survivor of the merger is deemed to:
32

33 (i) Appoint the secretary of state as its agent
34 for service of process in a proceeding to enforce the rights
35 of shareholders of each domestic corporation that is a party
36 to the merger who exercise appraisal rights; and
37

38 (ii) Agree that it will promptly pay the amount,
39 if any, to which such shareholders are entitled under
40 article 13.
41

42 (e) The effect of a merger or share exchange on the
43 owner liability of a person who had owner liability for
44 some or all of the debts, obligations or liabilities of a
45 party to the merger or share exchange shall be as follows:
46

1 (i) The merger or share exchange does not
2 discharge any owner liability under the organic law of the
3 entity in which the person was a shareholder or interest
4 holder to the extent any such owner liability arose before
5 the effective time of the articles of merger or share
6 exchange;

7
8 (ii) The person shall not have owner liability
9 under the organic law of the entity in which the person was
10 a shareholder or interest holder prior to the merger or
11 share exchange for any debt, obligation or liability that
12 arises after the effective time of the articles of merger or
13 share exchange;

14
15 (iii) The provisions of the organic law of any
16 entity for which the person had owner liability before the
17 merger or share exchange shall continue to apply to the
18 collection or discharge of any owner liability preserved by
19 paragraph (i) of this subsection, as if the merger or share
20 exchange had not occurred;

21
22 (iv) The person shall have whatever rights of
23 contribution from other persons are provided by the organic
24 law of the entity for which the person had owner liability
25 with respect to any owner liability preserved by paragraph
26 (i) of this subsection, as if the merger or share exchange
27 had not occurred.

28
29 **17-16-1115. Conversion of corporation to limited**
30 **liability company.**

31
32 (a) A domestic corporation may be converted to a
33 domestic limited liability company pursuant to ~~this section~~
34 chapter 26 of this title.

35
36 (b) A foreign corporation may be converted to a
37 domestic limited liability company pursuant to ~~this section~~
38 chapter 26 of this title.

39
40 **17-16-1201. Disposition of assets not requiring**
41 **shareholder approval.**

42
43 (a) No approval of the shareholders of a corporation
44 may, on the terms and conditions and for the consideration
45 determined by the board of directors is required unless the
46 articles of incorporation otherwise provide:

47

1 (i) To sell, lease, exchange, or otherwise
 2 dispose of any or all, ~~or substantially all,~~ of its
 3 ~~property~~ the corporation's assets in the usual and regular
 4 course of business;

5
 6 (ii) To mortgage, pledge, dedicate to the
 7 repayment of indebtedness, whether with or without
 8 recourse, or otherwise encumber any or all of its ~~property~~
 9 ~~the corporation's assets~~ whether or not in the usual and
 10 regular course of business; or

11
 12 (iii) To transfer any or all of its ~~property~~ the
 13 ~~corporation's assets~~ to a ~~corporation~~ one (1) or more
 14 ~~corporations or other entities~~ all of the shares or
 15 ~~interests~~ of which are owned by the corporation; ~~or~~

16
 17 (iv) To distribute assets pro rata to the
 18 holders of one (1) or more classes or series of the
 19 corporation's shares.

20
 21 **17-16-1202. Shareholder approval of certain**
 22 **dispositions.**

23
 24 (a) A ~~corporation may sell~~ sale, lease, exchange, or
 25 ~~otherwise dispose of all, or substantially all, of its~~
 26 ~~property, with or without the good will, otherwise than in~~
 27 ~~the usual and regular course of business, on the terms and~~
 28 ~~conditions and for the consideration determined by the~~
 29 ~~corporation's board of directors, if the board of directors~~
 30 ~~proposes and its shareholders approve the proposed~~
 31 ~~transaction~~ other disposition of assets, other than a
 32 disposition described in W.S. 17-16-1201, requires approval
 33 of the corporation's shareholders if the disposition would
 34 leave the corporation without a significant continuing
 35 business activity. If a significant business activity of
 36 the corporation prior to any such disposition of assets was
 37 the active or passive holding, maintenance or management of
 38 investments, then such holding, maintenance or management
 39 of investments shall be considered a significant continuing
 40 business activity. If a corporation retains a business
 41 activity that represented at least twenty-five percent
 42 (25%) of total assets at the end of the most recently
 43 completed fiscal year, and twenty-five percent (25%) of
 44 either income from continuing operations before taxes or
 45 revenues from continuing operations for that fiscal year,
 46 in each case of the corporation and its subsidiaries on a
 47 consolidated basis, the corporation will conclusively be

1 deemed to have retained a significant continuing business
2 activity.

3
4 (b) ~~For A transaction to be authorized:~~ disposition
5 that requires approval of the shareholders under subsection
6 (a) of this section shall be initiated by a resolution by
7 the board of directors authorizing the disposition. After
8 adoption of such a resolution, the board of directors shall
9 submit the proposed disposition to the shareholders for
10 their approval. The board of directors shall also transmit
11 to the shareholders a recommendation that the shareholders
12 approve the proposed disposition, unless the board of
13 directors makes a determination that because of conflicts
14 of interest or other special circumstances it should not
15 make such a recommendation, in which case the board of
16 directors shall transmit to the shareholders the basis for
17 that determination.

18
19 (c) The board of directors may condition its
20 submission of ~~the proposed transaction~~ a disposition to the
21 shareholders under subsection (b) of this section on any
22 basis.

23
24 (d) If a disposition is required to be approved by the
25 shareholders under subsection (a) of this section and if
26 the approval is to be given at a meeting, the corporation
27 shall notify each shareholder, whether or not entitled to
28 vote, of the ~~proposed shareholders'~~ meeting ~~in accordance~~
29 ~~with W.S. 17-16-705~~ of shareholders at which the
30 disposition is to be submitted for approval. The notice
31 shall ~~also~~ state that the purpose, or one (1) of the
32 purposes, of the meeting is to consider the ~~sale, lease,~~
33 ~~exchange, or other~~ disposition of all, or substantially
34 all, the property of the corporation and shall contain ~~or~~
35 ~~be accompanied by~~ a description of the ~~transaction~~
36 disposition, including the terms and conditions thereof and
37 the consideration to be received by the corporation.

38
39 (e) Unless the articles of incorporation or the board
40 of directors, acting pursuant to subsection (c) of this
41 section, require a greater vote or a ~~vote by voting groups,~~
42 ~~the transaction to be authorized shall be approved by a~~
43 ~~majority of all the votes entitled to be cast on the~~
44 ~~transaction~~ greater number of votes to be present, the
45 approval of a disposition by the shareholders shall require
46 the approval of the shareholders at a meeting at which a
47 quorum exists.

1
2 (f) After a ~~sale, lease, exchange or other disposition~~
3 ~~of property is authorized, the transaction disposition has~~
4 ~~been approved by the shareholders under subsection (b) of~~
5 ~~this section and at any time before the disposition has~~
6 ~~been consummated, it~~ may be abandoned, ~~subject to any~~
7 ~~contractual rights, by the corporation~~ without ~~further~~
8 ~~shareholder~~ action by the shareholders, subject to any
9 contractual rights of other parties to the disposition.

10
11 (g) A ~~transaction that constitutes a distribution~~
12 ~~disposition of assets in the course of dissolution under~~
13 ~~article 14~~ is not governed by ~~W.S. 17-16-640 and not by~~
14 this section.

15
16 (h) For purposes of this section, the ownership
17 interests of a parent corporation in its subsidiaries,
18 whether owned directly by the parent corporation or
19 indirectly through other subsidiaries shall be valued at
20 the net asset values of such subsidiaries, without
21 application of any discount to the valuation of such
22 ownership interests because of a lack of marketability or
23 otherwise.

24
25 ARTICLE 13
26 APPRAISAL RIGHTS

27
28 **17-16-1301. Definitions.**

29
30 (a) As used in this article:

31
32 (i) "Beneficial shareholder" means the person who
33 is ~~a~~ the beneficial owner of shares held in a voting trust
34 or by a nominee ~~as the record shareholder on the beneficial~~
35 owner's behalf;

36
37 (ii) "Corporation" means the issuer of the shares
38 held by a ~~dissenter before the corporate action, or the~~
39 ~~surviving, new, or acquiring corporation by merger,~~
40 ~~consolidation, or share exchange of that issuer~~ shareholder
41 demanding appraisal and, for matters covered in W.S.
42 17-16-1322 through 17-16-1331, includes the surviving
43 entity in a merger;

44
45 (iv) "Fair value," ~~with respect to a dissenter's~~
46 ~~shares,~~ means the value of the corporation's shares
47 determined:

1
2 (A) Immediately before the effectuation of
3 the corporate action to which the ~~dissenter~~ shareholder
4 objects; ~~excluding any appreciation or depreciation in~~
5 ~~anticipation of the corporate action unless exclusion would~~
6 ~~be inequitable;~~

7
8 (B) Using customary and current valuation
9 concepts and techniques generally employed for similar
10 businesses in the context of the transaction requiring
11 appraisal; and

12
13 (C) Without discounting for lack of
14 marketability or minority status except, if appropriate,
15 for amendments to the articles pursuant to W.S.
16 17-16-1302(a)(vi).

17
18 (viii) "Affiliate" means a person that directly or
19 indirectly through one (1) or more intermediaries controls,
20 is controlled by, or is under common control with another
21 person or is a senior executive thereof;

22
23 (ix) "Beneficial owner" means any person who,
24 directly or indirectly, through any contract, arrangement,
25 or understanding, other than a revocable proxy, has or
26 shares the power to vote, or to direct the voting of,
27 shares; except that a member of a national securities
28 exchange is not deemed to be a beneficial owner of
29 securities held directly or indirectly by it on behalf of
30 another person solely because the member is the record
31 holder of the securities if the member is precluded by the
32 rules of the exchange from voting without instruction on
33 contested matters or matters that may affect substantially
34 the rights or privileges of the holders of the securities
35 to be voted. When two (2) or more persons agree to act
36 together for the purpose of voting their shares of the
37 corporation, each member of the group formed thereby is
38 deemed to have acquired beneficial ownership, as of the
39 date of the agreement, of all voting shares of the
40 corporation beneficially owned by any member of the group;

41
42 (x) "Preferred shares" means a class or series of
43 shares whose holders have preference over any other class or
44 series with respect to distributions.

45
46 **17-16-1302. Right to appraisal.**

47

1 (a) A shareholder is entitled to ~~dissent from~~
2 appraisal rights, and to obtain payment of the fair value
3 of his shares in the event of, any of the following
4 corporate actions:

5
6 (i) Consummation of a plan of merger or
7 consolidation to which the corporation is a party if:

8
9 (A) Shareholder approval is required for the
10 merger or the consolidation by W.S. 17-16-1103 or
11 17-16-1111 ~~or the articles of incorporation~~ and the
12 shareholder is entitled to vote on the merger or
13 consolidation, except that appraisal rights shall not be
14 available to any shareholder of the corporation with respect
15 to shares of any class or series that remain outstanding
16 after consummation of the merger; or

17
18 (ii) Consummation of a ~~plan of~~ share exchange to
19 which the corporation is a party as the corporation whose
20 shares will be acquired, if the shareholder is entitled to
21 vote on the ~~plan exchange~~, except that appraisal rights
22 shall not be available to any shareholder of the
23 corporation with respect to any class or series of shares
24 of the corporation that is not exchanged;

25
26 (iii) Consummation of a ~~sale or exchange of all,~~
27 ~~or substantially all, of the property of the corporation~~
28 ~~other than in the usual and regular course of business,~~
29 disposition of assets pursuant to W.S. 17-16-1202 if the
30 shareholder is entitled to vote on the ~~sale or exchange,~~
31 ~~including a sale in dissolution, but not including a sale~~
32 ~~pursuant to court order or a sale for cash pursuant to a~~
33 ~~plan by which all or substantially all of the net proceeds~~
34 ~~of the sale will be distributed to the shareholders within~~
35 ~~one (1) year after the date of sale~~ disposition;

36
37 (iv) An amendment of the articles of
38 incorporation ~~that materially and adversely affects rights~~
39 ~~in respect of a dissenter's shares because it~~ with respect
40 to a class or series of shares that:

41
42 (E) Reduces the number of shares of a class
43 or series owned by the shareholder to a fraction of a share
44 if the corporation has the obligation or right to
45 repurchase the fractional share so created. ~~is to be~~
46 ~~acquired for cash under W.S. 17-16-604.~~

47

1 (vi) Any other amendment to the articles of
2 incorporation, merger, share exchange or disposition of
3 assets to the extent provided by the articles of
4 incorporation, bylaws or a resolution of the board of
5 directors;

6
7 (vii) Consummation of a domestication if the
8 shareholder does not receive shares in the foreign
9 corporation resulting from the domestication that have terms
10 as favorable to the shareholder in all material respects, and
11 represent at least the same percentage interest of the
12 total voting rights of the outstanding shares of the
13 corporation, as the shares held by the shareholder before
14 the domestication;

15
16 (viii) Consummation of a conversion of the
17 corporation to nonprofit status; or

18
19 (ix) Consummation of a conversion of the
20 corporation to an unincorporated entity.

21
22 (c) Notwithstanding subsection (a) of this section,
23 the availability of appraisal rights under paragraphs
24 (a)(i), (ii), (iii), (iv), (vii) and (ix) of this section
25 shall be limited in accordance with the following
26 provisions:

27
28 (i) Appraisal rights shall not be available for
29 the holders of shares of any class or series of shares which
30 is:

31
32 (A) A covered security under section
33 18(b)(1)(A) or (B) of the Securities Act of 1933, as
34 amended; or

35
36 (B) Traded in an organized market and has
37 at least two thousand (2,000) shareholders and a market
38 value of at least twenty million dollars (\$20,000,000.00),
39 exclusive of the value of such shares held by the
40 corporation's subsidiaries, senior executives, directors
41 and beneficial shareholders owning more than ten percent
42 (10%) of such shares; or

43
44 (C) Issued by an open end management
45 investment company registered with the Securities and
46 Exchange Commission under the Investment Company Act of

1 1940 and may be redeemed at the option of the holder at net
 2 asset value.

3
 4 (ii) The applicability of paragraph (i) of this
 5 subsection shall be determined as of:

6
 7 (A) The record date fixed to determine the
 8 shareholders entitled to receive notice of, and to vote at,
 9 the meeting of shareholders to act upon the corporate action
 10 requiring appraisal rights; or

11
 12 (B) The day before the effective date of
 13 such corporate action if there is no meeting of
 14 shareholders.

15
 16 (iii) Paragraph (i) of this subsection shall not
 17 be applicable and appraisal rights shall be available
 18 pursuant to subsection (a) of this section for the holders
 19 of any class or series of shares who are required by the
 20 terms of the corporate action requiring appraisal rights to
 21 accept for such shares anything other than cash or shares
 22 of any class or any series of shares of any corporation, or
 23 any other proprietary interest of any other entity, that
 24 satisfies the standards set forth in paragraph (i) of this
 25 subsection at the time the corporate action becomes
 26 effective.

27
 28 **17-16-1303. Assertion of rights by nominees and**
 29 **beneficial owners.**

30
 31 (a) A record shareholder may assert ~~dissenters'~~
 32 appraisal rights as to fewer than all the shares registered
 33 in ~~his—the record shareholder's~~ name but owned by a
 34 beneficial shareholder only if ~~he dissents—the record~~
 35 shareholder objects with respect to all shares beneficially
 36 owned by any one (1) person asserted of the class or series
 37 owned by the beneficial shareholder and notifies the
 38 corporation in writing of the name and address of each
 39 ~~person—beneficial shareholder~~ on whose behalf ~~he asserts~~
 40 dissenters' rights—appraisal rights are being asserted.
 41 The rights of a ~~partial dissenter under this subsection are~~
 42 record shareholder who asserts appraisal rights for only
 43 part of the shares held of record in the record
 44 shareholder's name under this subsection shall be
 45 determined as if the shares as to which ~~he dissents—the~~
 46 record shareholder objects and ~~his—the record shareholder's~~

1 other shares were registered in the names of different
2 record shareholders.

3
4 (b) A beneficial shareholder may assert ~~dissenters'~~
5 appraisal rights as to shares of any class or series held
6 on ~~his~~ behalf of the shareholder only if the shareholder:

7
8 (i) ~~He~~ Submits to the corporation the record
9 shareholder's written consent to the ~~dissent~~ assertion of
10 those rights not later than the ~~time the beneficial~~
11 ~~shareholder asserts dissenters' rights~~ date provided in
12 W.S. 17-16-1322(b)(ii)(B); and

13
14 (ii) ~~He~~ Does so with respect to all shares of
15 ~~which he is~~ the class or series that are beneficially owned
16 by the beneficial shareholder. ~~or over which he has power~~
17 ~~to direct the vote.~~

18
19 **17-16-1320. Notice of appraisal rights.**

20
21 (a) If proposed corporate action ~~creating dissenters'~~
22 ~~rights under~~ described in W.S. 17-16-1302 is to be
23 submitted to a vote at a shareholders' meeting, the meeting
24 notice shall state that corporation has concluded that
25 shareholders are, are not or may be entitled to assert
26 ~~dissenters'~~ appraisal rights under this article. ~~and be~~
27 ~~accompanied by a copy of this article~~ If the corporation
28 concludes that appraisal rights are or may be available, a
29 copy of this article shall accompany the meeting notice sent
30 to those record shareholders entitled to exercise appraisal
31 rights.

32
33 (b) ~~If corporate action creating dissenters' rights~~
34 ~~under W.S. 17 16 1302 is taken without a vote of~~
35 ~~shareholders~~ In a merger pursuant to W.S. 17-16-1105, the
36 parent corporation shall notify in writing all record
37 shareholders of the subsidiary who are entitled to assert
38 ~~dissenters'~~ appraisal rights that the corporate action ~~was~~
39 ~~taken and send them the dissenters' notice described in~~
40 ~~W.S. 17 16 1322~~ became effective. The notice shall be sent
41 within ten (10) days after the corporate action became
42 effective and include the materials described in W.S.
43 17-16-1322.

44
45 (c) Where any corporate action specified in W.S.
46 17-16-1302(a) is to be approved by written consent of the
47 shareholders pursuant to W.S. 17-16-704:

1
2 (i) Written notice that appraisal rights are,
3 are not or may be available shall be given to each record
4 shareholder from whom a consent is solicited at the time
5 consent of such shareholder is first solicited and, if the
6 corporation has concluded that appraisal rights are or may be
7 available, shall be accompanied by a copy of this article;
8 and

9
10 (ii) Written notice that appraisal rights are,
11 are not or may be available shall be delivered together
12 with the notice to nonconsenting and nonvoting shareholders
13 required by W.S. 17-16-704(e) and (f), may include the
14 materials described in W.S. 17-16-1322 and, if the
15 corporation has concluded that appraisal rights are or may be
16 available, shall be accompanied by a copy of this article.

17
18 (d) Where corporate action described in W.S.
19 17-16-1302(a) is proposed, or a merger pursuant to W.S.
20 17-16-1105 is effected, the notice referred to in
21 subsection (a) or (c) of this section, if the corporation
22 concludes that appraisal rights are or may be available, and
23 in subsection (b) of this section shall be accompanied by:

24
25 (i) The annual financial statements specified in
26 W.S. 17-16-1620(a) of the corporation that issued the shares
27 that may be subject to appraisal, which shall be as of a
28 date ending not more than sixteen (16) months before the
29 date of the notice and shall comply with W.S. 17-16-1620(b);
30 provided that, if such annual financial statements are not
31 reasonably available, the corporation shall provide
32 reasonably equivalent financial information; and

33
34 (ii) The latest available quarterly financial
35 statements of such corporation, if any.

36
37 (e) The right to receive the information described
38 in subsection (d) of this section may be waived in writing
39 by a shareholder before or after the corporate action.

40
41 **17-16-1321. Notice of intent to demand payment.**

42
43 (a) If proposed corporate action ~~creating dissenters'~~
44 ~~rights~~ requiring appraisal under W.S. 17-16-1302 is
45 submitted to a vote at a shareholders' meeting, a
46 shareholder who wishes to assert ~~dissenters'~~ appraisal
47 rights with respect to any class or series of shares:

1
2 (i) Shall deliver to the corporation before the
3 vote is taken written notice of ~~his~~the shareholder's
4 intent to demand payment ~~for his shares~~ if the proposed
5 action is effectuated; and

6
7 (ii) Shall not vote ~~his~~or cause or permit to be
8 voted any shares of the class or series in favor of the
9 proposed action.

10
11 (b) A shareholder who does not satisfy the
12 requirements of subsection (a) or (c) of this section is
13 not entitled to payment for his shares under this article.

14
15 (c) If a corporate action specified in W.S.
16 17-16-1302(a) is to be approved by less than unanimous
17 written consent, a shareholder who wishes to assert
18 appraisal rights with respect to any class or series of
19 shares shall not execute a consent in favor of the proposed
20 action with respect to that class or series of shares.

21
22 **17-16-1322. Appraisal notice and form.**

23
24 (a) If ~~proposed~~ corporate action ~~creating dissenters'~~
25 ~~rights under W.S. 17 16 1302 is authorized at a~~
26 ~~shareholders' meeting~~ requiring appraisal under W.S.
27 17-16-1302(a) becomes effective, the corporation shall
28 deliver a written ~~dissenters'~~ appraisal notice to all
29 shareholders who satisfied the requirements of W.S.
30 ~~17-16-1321~~ 17-16-1321(a) or (b). In the case of a merger
31 under W.S. 17-16-1105, the parent shall deliver a written
32 appraisal notice and form to all record shareholders who
33 may be entitled to assert appraisal rights.

34
35 (b) The ~~dissenters'~~ appraisal notice shall be sent no
36 later than ten (10) days after the corporate action ~~was~~
37 ~~taken~~ specified in W.S. 17-16-1302(a) became effective, and
38 shall:

39
40 (iii) Supply a form ~~for demanding payment~~ that:
41 includes

42
43 (A) Specifies the first date of ~~the first~~
44 any announcement ~~to news media or~~ to shareholders made
45 prior to the date the corporate action became effective of
46 the principal terms of the proposed corporate action; and
47

1 (B) If such announcement was made, requires
2 that the person-shareholder asserting dissenters'-appraisal
3 rights certify whether or not he acquired beneficial
4 ownership of the shares for which appraisal rights are
5 asserted was acquired before that date; and

6
7 (C) Requires the shareholder asserting
8 appraisal rights to certify that such shareholder did not
9 vote for or consent to the transaction.

10
11 (v) Be accompanied by a copy of this article;
12 and

13
14 (vi) State:

15
16 (A) Where the form shall be sent and where
17 certificates for certificated shares shall be deposited and
18 the date by which those certificates shall be deposited,
19 which date may not be earlier than the date for receiving the
20 required form under subparagraph (B) of this paragraph;

21
22 (B) Date by which the corporation shall
23 receive the form, which date may not be fewer than forty
24 (40) nor more than sixty (60) days after the date the
25 appraisal notice and form are sent pursuant to subsection
26 (a) of this section, and state that the shareholder shall
27 have waived the right to demand appraisal with respect to
28 the shares unless the form is received by the corporation by
29 such specified date;

30
31 (C) The corporation's estimate of the fair
32 value of the shares;

33
34 (D) That, if requested in writing, the
35 corporation will provide, to the shareholder so requesting,
36 within ten (10) days after the date specified in
37 subparagraph (B) of this paragraph the number of
38 shareholders who return the forms by the specified date and
39 the total number of shares owned by them; and

40
41 (E) The date by which the notice to withdraw
42 under W.S. 17-16-1323 must be received, which date shall be
43 within twenty (20) days after the date specified in
44 subparagraph (B) of this paragraph.

45
46 **17-16-1323. Duty to demand payment.**

47

1 (a) A shareholder ~~sent a dissenters' who receives~~
2 notice ~~described in pursuant to~~ W.S. 17-16-1322 ~~shall~~
3 ~~demand payment, certify whether he acquired beneficial~~
4 ~~ownership of the shares before the date required to be set~~
5 ~~forth in the dissenters' notice pursuant to W.S.~~
6 ~~17-16-1322(b)(iii), and who wishes to exercise appraisal~~
7 ~~rights shall sign and return the form sent by the~~
8 ~~corporation and, in the case of certificated shares,~~
9 deposit his certificates in accordance with the terms of
10 the notice by the date referred to in the notice pursuant to
11 W.S. 17-16-1322(b)(ii)(B). In addition, if applicable, the
12 shareholder shall certify on the form whether the beneficial
13 owner of such shares acquired beneficial ownership of the
14 shares before the date required to be set forth in the
15 notice pursuant to W.S. 17-16-1322(b)(i). If a shareholder
16 fails to make this certification, the corporation may elect
17 to treat the shareholder's shares as after acquired shares
18 under W.S. 17-16-1325. Once a shareholder deposits that
19 shareholder's certificates or, in the case of uncertificated
20 shares, returns the signed forms, that shareholder loses
21 all rights as a shareholder, unless the shareholder
22 withdraws pursuant to subsection (b) of this section.
23

24 (b) The shareholder who ~~demands payment and deposits~~
25 ~~his share certificates under subsection (a) of this section~~
26 ~~retains all other rights of a shareholder until these~~
27 ~~rights are cancelled or modified by the taking of the~~
28 ~~proposed corporate action has complied with subsection (a)~~
29 ~~of this section may nevertheless decline to exercise~~
30 ~~appraisal rights and withdraw from the appraisal process by~~
31 ~~so notifying the corporation in writing by the date set~~
32 ~~forth in the appraisal notice pursuant to W.S.~~
33 ~~17-16-1322(b)(ii)(E).~~ A shareholder who fails to so
34 withdraw from the appraisal process may not thereafter
35 withdraw without the corporation's written consent.
36

37 (c) A shareholder who does not ~~demand payment or sign~~
38 ~~and return the form and, in the case of certificated~~
39 ~~shares,~~ deposit his share certificates where required, each
40 by the date set forth in the ~~dissenters'~~ notice described
41 in W.S. 17-16-1322(b), is not entitled to payment ~~for his~~
42 ~~shares~~ under this article.
43

44 **17-16-1325. Payment.**
45

46 (a) Except as provided in W.S. 17-16-1327, ~~as soon as~~
47 ~~the proposed corporate action is taken, or upon receipt of~~

1 ~~a payment demand~~ within one hundred twenty (120) days after
2 the form required by W.S. 17-16-1322(b)(ii)(B) is due, the
3 corporation shall pay ~~each dissenter in cash or other~~
4 agreed upon consideration to those shareholders who
5 complied with W.S. 17-16-1323 the amount the corporation
6 estimates to be the fair value of his shares, plus ~~accrued~~
7 interest.

8
9 (b) The payment to each shareholder pursuant to
10 subsection (a) of this section shall be accompanied by:

11
12 (i) The ~~corporation's balance sheet as of the end~~
13 of a fiscal year annual financial statements specified in
14 W.S. 17-16-1620(a) of the corporation that issued the
15 shares to be appraised, which shall be of a date ending not
16 more than sixteen (16) months before the date of payment
17 and shall comply with W.S. 17-16-1620(b), an income
18 statement for that year, a statement of changes in
19 shareholders' equity for that year, and provided that if
20 such annual financial statements are not reasonably
21 available, the corporation shall provide reasonably
22 equivalent financial information. The corporation shall
23 also provide the latest available ~~interim~~ quarterly
24 financial statements, if any;

25
26 (ii) A statement of the corporation's estimate of
27 the fair value of the shares which estimate shall equal or
28 exceed the corporation's estimate given pursuant to W.S.
29 17-16-1322(b)(ii)(C);

30
31 (iv) A statement ~~of the dissenter's~~ that
32 shareholders described in subsection (a) of this section
33 have the right to demand further payment under W.S.
34 17-16-1328+ and that if any shareholder does not do so
35 within the time period specified therein, the shareholder
36 shall be deemed to have accepted such payment in full
37 satisfaction of the corporation's obligations under this
38 article.

39
40 **17-16-1327. After acquired shares.**

41
42 (a) A corporation may elect to withhold payment
43 required by W.S. 17-16-1325 from ~~a dissenter unless he was~~
44 the beneficial owner of the shares before the date set
45 forth in the dissenters' notice as the date of the first
46 announcement to news media or to shareholders of the terms
47 of the proposed corporate action any shareholder who was

1 required to, but did not certify that beneficial ownership
2 of all of the shareholder's shares for which appraisal
3 rights are asserted was acquired before the date set forth
4 in the appraisal notice sent pursuant to W.S.
5 17-16-1322(b)(i).

6
7 (b) ~~To the extent~~ If the corporation ~~elects~~ elected
8 to withhold payment under subsection (a) of this section,
9 ~~after taking the proposed corporate action, it shall~~
10 ~~estimate the fair value of the shares, plus accrued~~
11 ~~interest, and shall pay this amount to each dissenter who~~
12 ~~agrees to accept it in full satisfaction of his demand.~~
13 ~~The corporation shall send with its offer a statement of~~
14 ~~its estimate of the fair value of the shares, an~~
15 ~~explanation of how the interest was calculated, and a~~
16 ~~statement of the dissenter's right to demand payment under~~
17 W.S. 17-16-1328. it shall, within thirty (30) days after
18 the form required by W.S. 17-16-1322(b)(ii)(B) is due,
19 notify all shareholders described in subsection (a) of this
20 section:

21
22 (i) Of the information required by W.S.
23 17-16-1325(b)(i);

24
25 (ii) Of the corporation's estimate of fair
26 value pursuant to W.S. 17-16-1325(b)(ii);

27
28 (iii) That they may accept the corporation's
29 estimate of fair value, plus interest, in full satisfaction
30 of their demands or demand appraisal under W.S. 17-16-1328;

31
32 (iv) That those shareholders who wish to accept
33 the offer shall so notify the corporation of their
34 acceptance of the corporation's offer within thirty (30)
35 days after receiving the offer; and

36
37 (v) That those shareholders who do not satisfy
38 the requirements for demanding appraisal under W.S.
39 17-16-1328 shall be deemed to have accepted the
40 corporation's offer.

41
42 (c) Within ten (10) days after receiving the
43 shareholder's acceptance pursuant to subsection (b) of
44 this section, the corporation shall pay in cash or other
45 agreed upon consideration the amount it offered under
46 paragraph (b)(ii) of this section to each shareholder who

1 agreed to accept the corporation's offer in full
2 satisfaction of the shareholder's demand.
3

4 (d) Within one hundred thirty (130) days after
5 sending the notice described in subsection (b) of this
6 section, the corporation shall pay in cash the amount it
7 offered to pay under paragraph (b)(ii) of this section to
8 each shareholder described in paragraph (b)(v) of this
9 section.

10
11 **17-16-1328. Procedure if shareholder dissatisfied with**
12 **payment or offer.**
13

14 (a) A ~~dissenter~~ shareholder paid pursuant to W.S.
15 17-16-1325 who is dissatisfied with the amount of the
16 payment may notify the corporation in writing of ~~his own~~
17 that shareholder's estimate of the fair value of his shares
18 ~~and amount of interest due,~~ and demand payment of his
19 estimate plus interest, less any payment under W.S.
20 17-16-1325. ~~, or reject the corporation's offer under W.S.~~
21 ~~17-16-1327 and demand payment of the fair value of his~~
22 ~~shares and interest due, if:~~ A shareholder offered payment
23 under W.S. 17-16-1327 who is dissatisfied with that offer
24 shall reject the offer and demand payment of the
25 shareholder's stated estimate of the fair value of the
26 shares plus interest.
27

28 (b) ~~A dissenter waives his right to demand payment~~
29 ~~under this section unless he notifies~~ A shareholder who
30 fails to notify the corporation ~~of his demand~~ in writing of
31 that shareholder's demand to be paid the shareholder's
32 stated estimate of the fair value plus interest under
33 subsection (a) of this section within thirty (30) days
34 after ~~the corporation made or offered payment for his~~
35 ~~shares~~ receiving the corporation's payment or offer of
36 payment under W.S. 17-16-1325 or 17-16-1327, respectively,
37 waives the right to demand payment under this section and
38 shall be entitled only to the payment made or offered
39 pursuant to those respective sections.
40

41 **17-16-1330. Court action.**
42

43 (a) If a shareholder makes a demand for payment under
44 W.S. 17-16-1328 which remains unsettled, the corporation
45 shall commence a proceeding within sixty (60) days after
46 receiving the payment demand and petition the court to
47 determine the fair value of the shares and accrued

1 interest. If the corporation does not commence the
2 proceeding within the sixty (60) day period, it shall pay
3 each dissenter whose demand remains unsettled the amount
4 demanded pursuant to W.S. 17-16-1328 plus interest.
5

6 (b) The corporation shall commence the proceeding in
7 the district court of the county where a corporation's
8 principal office, or if none in this state, its registered
9 office, is located. If the corporation is a foreign
10 corporation without a registered office in this state, it
11 shall commence the proceeding in the county in this state
12 where the principal office or registered office of the
13 domestic corporation merged with or whose shares were
14 acquired by the foreign corporation was located at the time
15 of the transaction.
16

17 (c) The corporation shall make all dissenters
18 shareholders, whether or not residents of this state, whose
19 demands remain unsettled parties to the proceeding as in an
20 action against their shares and all parties shall be served
21 with a copy of the petition. Nonresidents may be served by
22 registered or certified mail or by publication as provided
23 by law.
24

25 (d) The jurisdiction of the court in which the
26 proceeding is commenced under subsection (b) of this
27 section is plenary and exclusive. The court may appoint
28 one (1) or more persons as appraisers to receive evidence
29 and recommend decision on the question of fair value. The
30 appraisers have the powers described in the order
31 appointing them, or in the amendment to it. The dissenters
32 shareholders demanding appraisal rights are entitled to the
33 same discovery rights as parties in other civil
34 proceedings.
35

36 (e) Each dissenter—shareholder made a party to the
37 proceeding is entitled to judgment for:
38

39 (i) The amount, if any, by which the court finds
40 the fair value of his shares, plus interest, exceeds the
41 amount paid by the corporation to the shareholder for those
42 shares; or
43

44 **17-16-1331. Court costs and counsel fees.**
45

46 (a) The court in an appraisal proceeding commenced
47 under W.S. 17-16-1330 shall determine all costs of the

1 proceeding, including the reasonable compensation and
2 expenses of appraisers appointed by the court. The court
3 shall assess the costs against the corporation, except that
4 the court may assess costs against all or some of the
5 ~~dissenters—shareholders demanding appraisal~~, in amounts the
6 court finds equitable, to the extent the court finds the
7 dissenters acted arbitrarily, vexatiously, or not in good
8 faith ~~in demanding payment under W.S. 17-16-1328~~ with
9 respect to the rights provided by this article.

10
11 (b) The court in an appraisal proceeding may also
12 assess the fees and expenses of counsel and experts for the
13 respective parties, in amounts the court finds equitable:
14

15 (i) Against the corporation and in favor of any
16 or all ~~dissenters—shareholders demanding appraisal~~ if the
17 court finds the corporation did not substantially comply
18 with the requirements of W.S. 17-16-1320 through
19 17-16-1328; or
20

21 (ii) Against either the corporation or a
22 ~~dissenter—shareholder demanding appraisal~~, in favor of any
23 other party, if the court finds that the party against whom
24 the fees and expenses are assessed acted arbitrarily,
25 vexatiously, or not in good faith with respect to the
26 rights provided by this article.
27

28 (c) If the court in an appraisal proceeding finds that
29 the services of counsel and any other expenses incurred for
30 any ~~dissenter—shareholder demanding appraisal~~ were of
31 substantial benefit to other ~~dissenters—shareholders~~
32 similarly situated, and that the fees for those services
33 and other expenses should not be assessed against the
34 corporation, the court may ~~award to these counsel~~
35 reasonable fees to direct that those fees and expenses be
36 paid out of the amounts awarded the ~~dissenters—shareholders~~
37 who were benefited.
38

39 (d) To the extent the corporation fails to make a
40 required payment pursuant to W.S. 17-16-1325, 17-16-1327 or
41 17-16-1328, the shareholder may sue directly for the amount
42 owed, and to the extent successful, shall be entitled to
43 recover from the corporation all expenses of the suit.
44

45 **17-16-1402. Dissolution by board of directors and**
46 **shareholders.**
47

1 (e) Unless the articles of incorporation or the board
 2 of directors, acting pursuant to subsection (c) of this
 3 section, require a greater vote or a vote by voting groups,
 4 adoption of the proposal to dissolve ~~to be adopted~~ shall ~~be~~
 5 ~~approved by~~ require the approval of the shareholders at a
 6 meeting at which a quorum consisting of at least a majority
 7 of ~~all~~ the votes entitled to be cast ~~on that proposal~~
 8 exists.

9
 10 **17-16-1403. Articles of dissolution.**

11
 12 (a) At any time after dissolution is authorized, the
 13 corporation may dissolve by delivering to the secretary of
 14 state for filing articles of dissolution setting forth:

15
 16 (iii) If dissolution was approved by the
 17 shareholders+ a statement that the proposal to dissolve was
 18 duly approved by the shareholders in the manner required by
 19 this act and by the articles of incorporation.

20
 21 (c) For purposes of this article, "dissolved
 22 corporation" means a corporation whose articles of
 23 dissolution have become effective and includes a successor
 24 entity to which the remaining assets of the corporation are
 25 transferred subject to its liabilities for purposes of
 26 liquidation.

27
 28 **17-16-1404. Revocation of dissolution.**

29
 30 (c) After the revocation of dissolution is authorized,
 31 the corporation may revoke the dissolution by delivering to
 32 the secretary of state for filing articles of revocation of
 33 dissolution, together with a copy of its articles of
 34 dissolution, that set forth:

35
 36 (vi) If shareholder action was required to revoke
 37 the dissolution, the information required by W.S.
 38 17-16-1403(a)(iii) ~~or (iv).~~

39
 40 **17-16-1406. Known claims against dissolved**
 41 **corporation.**

42
 43 (a) A dissolved corporation may dispose of the known
 44 claims against it by ~~following the procedure described in~~
 45 ~~this section~~ notifying its known claimants in writing of
 46 the dissolution at any time after its effective date.
 47

1 (b) ~~The dissolved corporation shall notify its known~~
 2 ~~claimants in writing, by mail or private carrier or by~~
 3 ~~personal delivery, of the dissolution at any time after its~~
 4 ~~effective date.~~ The written notice shall:

5
 6 **17-16-1407. Unknown claims against dissolved**
 7 **corporation.**

8
 9 (b) The notice shall:

10
 11 (iii) State that a claim against the corporation
 12 will be barred unless a proceeding to enforce the claim is
 13 commenced within ~~four (4)~~ three (3) years or the applicable
 14 statute of limitations, whichever is less, after the
 15 publication of the notice.

16
 17 (c) If the dissolved corporation publishes a newspaper
 18 notice in accordance with subsection (b) of this section,
 19 the claim of each of the following claimants is barred
 20 unless the claimant commences a proceeding to enforce the
 21 claim against the dissolved corporation within ~~four (4)~~
 22 three (3) years after the publication date of the newspaper
 23 notice:

24
 25 (d) A claim that is not barred by W.S. 17-16-1406(c)
 26 or subsection (c) of this section may be enforced: ~~under~~
 27 ~~this section.~~

28
 29 (ii) Except as provided in W.S. 17-16-1408(d), if
 30 the assets have been distributed in liquidation, against a
 31 shareholder of the dissolved corporation to the extent of
 32 his pro rata share of the claim or the corporate assets
 33 distributed to him in liquidation, whichever is less, but a
 34 shareholder's total liability for all claims under this
 35 section may not exceed the total amount of assets
 36 distributed to ~~him~~ the shareholder.

37
 38 **17-16-1420. Grounds for administrative dissolution.**

39
 40 (a) The secretary of state may commence a proceeding
 41 under W.S. 17-16-1421 to administratively dissolve a
 42 corporation if:

43
 44 (vi) An incorporator, director, officer or agent
 45 of the corporation signed a document he knew was false in
 46 any material respect with intent that the document be
 47 delivered to the secretary of state for filing; ~~or~~

1
2 (vii) The corporation has failed to respond to a
3 valid and enforceable subpoena; or

4
5 (viii) The corporation is in violation of W.S.
6 17-16-401(d)(v) or 17-16-1506(d)(v).

7
8 **17-16-1422. Reinstatement following administrative**
9 **dissolution.**

10
11 (a) An officer or other person with proper authority
12 at the time a corporation was administratively dissolved
13 under W.S. 17-16-1421 may apply to the secretary of state
14 for reinstatement within two (2) years after the effective
15 date of dissolution. Reinstatement may be denied by the
16 secretary of state if the corporation has been the subject
17 of secretary of state and law enforcement investigation
18 pertaining to fraud or any other violation of state or
19 federal law, or if there is other reason to believe the
20 corporation was engaged in illegal operations. The
21 application shall:

22
23 (e) A person who files any document under this
24 section without proper corporate authority to do so is in
25 violation of W.S. 6-5-308.

26
27 **17-16-1430. Grounds for judicial dissolution.**

28
29 (a) The district court may dissolve a corporation:

30
31 (v) In a proceeding by a shareholder, if the
32 corporation has abandoned its business and has failed
33 within a reasonable time to liquidate and distribute its
34 assets and dissolve.

35
36 **17-16-1503. Application for certificate of authority.**

37
38 (a) A foreign corporation may apply for a certificate
39 of authority to transact business in this state by
40 delivering an application to the secretary of state for
41 filing. The application shall set forth:

42
43 (vi) The names and usual business addresses of
44 its current directors and officers; and

45
46 (viii) A statement that the corporation accepts
47 the constitution of the state of Wyoming in compliance with

1 the requirement of article 10, section 5 of the Wyoming
2 constitution. ~~;~~ ~~and~~

3
4 **17-16-1506. Corporate name of foreign corporation.**

5
6 (c) A foreign corporation may apply to the secretary
7 of state for authorization to use ~~a~~ in this state the name
8 of another corporation, incorporated or authorized to do
9 business in this state, that is not distinguishable in
10 accordance with the provisions of W.S. 17-16-401(c).

11
12 (d) A foreign corporation may use in this state the
13 name, including the fictitious name, of another domestic or
14 foreign corporation that is used in this state if the other
15 corporation is incorporated or authorized to transact
16 business in this state and the foreign corporation has:

17
18 (iii) Acquired all or substantially all of the
19 assets, including the corporate name, of the other
20 corporation; ~~;~~ or

21
22 (v) Has received the written consent of the
23 other corporation, which written consent also sets forth a
24 description of a proposed merger, consolidation,
25 dissolution, amendment to articles of incorporation or
26 other intended corporate action which establishes to the
27 reasonable satisfaction of the secretary of state that the
28 coexistence of two (2) corporations using the same name
29 will not continue for more than one hundred twenty (120)
30 days.

31
32 **17-16-1602. Inspection of records by shareholders.**

33
34 (a) A shareholder of a corporation is entitled to
35 inspect and copy, during regular business hours at the
36 corporation's principal office, any of the records of the
37 corporation described in W.S. 17-16-1601(e) if ~~he~~ the
38 shareholder gives the corporation written notice of ~~his~~ the
39 shareholder's demand at least five (5) business days before
40 the date on which ~~he~~ the shareholder wishes to inspect and
41 copy.

42
43 (b) A shareholder who has been of record for at least
44 six (6) months immediately preceding his demand and who
45 shall be the holder of record of at least five percent (5%)
46 of all the outstanding shares of a corporation is entitled
47 to inspect and copy, during regular business hours at a

1 reasonable location specified by the corporation, any of
2 the following records of the corporation if the shareholder
3 meets the requirements of subsection (c) of this section
4 and gives the corporation written notice of ~~his—the~~
5 shareholder's demand at least five (5) business days before
6 the date on which ~~he—the shareholder~~ wishes to inspect and
7 copy:

8
9 (c) A shareholder may inspect and copy the records
10 described in subsection (b) of this section only if:

11
12 (i) ~~His—The shareholder's~~ demand is made in good
13 faith and for a proper purpose;

14
15 (ii) ~~He—The shareholder~~ describes with reasonable
16 particularity his purpose and the records he desires to
17 inspect; and

18
19 (iii) The records are directly connected with ~~his~~
20 the shareholder's purpose.

21
22 **17-16-1603. Scope of inspection right.**

23
24 (b) The right to copy records under W.S. 17-16-1602
25 includes, if reasonable, the right to receive copies ~~made~~
26 by ~~photographic, xerographic,~~ or other means, including
27 copies through an electronic transmission if available and
28 so requested by the shareholder.

29
30 (c) The corporation may impose a reasonable charge,
31 covering the costs of labor and material, for copies of any
32 documents provided to the shareholder. The charge may not
33 exceed the estimated cost of production, ~~or reproduction~~ or
34 transmission of the records.

35
36 (d) The corporation may comply with a shareholder's
37 demand to inspect the record of shareholders under W.S.
38 17-16-1602(b)(iii) by providing ~~him—the shareholder~~ with a
39 list of its shareholders that was compiled no earlier than
40 the date of the shareholder's demand.

41
42 **17-16-1604. Court ordered inspection.**

43
44 (c) If the court orders inspection and copying of the
45 records demanded, it shall also order the corporation to
46 pay the shareholder's ~~costs—expenses~~, including reasonable
47 counsel fees, incurred to obtain the order unless the

1 corporation proves that it refused inspection in good faith
2 because it had a reasonable basis for doubt about the right
3 of the shareholder to inspect the records demanded.

4
5 **17-16-1620. Financial statements for shareholders.**

6
7 (c) A corporation shall mail, upon request, the annual
8 financial statements to each shareholder within one hundred
9 twenty (120) days after the close of each fiscal year.
10 Thereafter, on written request from a shareholder who was
11 not mailed the statements, the corporation shall mail him
12 the shareholder the latest financial statements.

13
14 **17-16-1720. Transfer of a Wyoming corporation to**
15 **another jurisdiction.**

16
17 (a) A corporation incorporated, domesticated or
18 continued under this act may, if authorized by resolution
19 duly adopted ~~by a vote of two thirds (2/3) of the holders~~
20 ~~of the issued shares of each class of stock of the~~
21 ~~corporation, whether or not entitled to vote on any other~~
22 ~~issue as set forth in subsection (g) of this section,~~ and
23 by the laws of any other jurisdiction, within or without
24 the United States, apply to the proper officer of the other
25 jurisdiction for a certificate of registration, and to the
26 secretary of state of this state for a certificate of
27 transfer. The application for certificate of transfer
28 shall set forth the following:

29
30 (i) The name of the corporation immediately
31 prior to the transfer, and if that name is unavailable for
32 use in the foreign jurisdiction or the corporation desires
33 to change its name in connection with the transfer, the
34 name by which the corporation will be known in the foreign
35 jurisdiction;

36
37 (ii) A statement of the jurisdiction to which
38 the corporation is to be transferred;

39
40 (iii) A statement that the corporation shall
41 surrender its certificate of incorporation under this act
42 upon the effectiveness of the transfer;

43
44 (iv) A statement that the transfer was duly
45 approved by the directors and the shareholders in the
46 manner required under subsection (g) of this section; and
47

1 (v) Any other terms and conditions of the
2 transfer, including any desired amendments to the articles
3 of incorporation of the corporation following its transfer.
4

5 (g) A resolution to transfer the corporation to
6 another jurisdiction shall be adopted by the board of
7 directors, and shall thereafter be submitted to the
8 shareholders for their approval. The board of directors
9 shall also transmit to the shareholders a recommendation
10 that the shareholders approve the resolution, unless the
11 board of directors makes a determination that because of
12 conflicts of interest or other special circumstances it
13 should not make such a recommendation, in which case the
14 board of directors shall transmit to the shareholders the
15 basis for that determination. The board of directors may
16 condition its submission of the resolution to the
17 shareholders on any basis. If the approval of the
18 shareholders is to be given at a meeting, the corporation
19 shall notify each shareholder, whether or not entitled to
20 vote, of the meeting of shareholders at which the resolution
21 for transfer is to be submitted for approval. The notice
22 shall contain or be accompanied by a copy or summary of the
23 resolution and of the articles of incorporation of the
24 corporation as they will be in effect in the new
25 jurisdiction immediately after the transfer. Unless the
26 articles of incorporation or the board of directors requires
27 a greater vote or a greater number of votes to be present,
28 approval of the resolution requires the affirmative vote of
29 a majority of the shareholders at a meeting at which a
30 quorum, consisting of a majority of the votes entitled to be
31 cast, is present, and, if any class or series of shares is
32 entitled to vote as a separate group on the resolution, the
33 approval of each such separate voting group at a meeting at
34 which a quorum of the voting group consisting of at least a
35 majority of the votes entitled to be cast on the resolution
36 by that voting group exists. Separate voting by voting
37 groups is required to the extent the same would be required
38 for a proposed amendment to the articles of incorporation.
39

40 (h) The corporation may represent to the proper
41 officer of the jurisdiction to which the corporation is
42 transferred that the laws of the state of Wyoming permit
43 such transfer, and may describe the permission extended by
44 this section as authorizing the domestication, continuance
45 or other transfer of domicile as may be required by the laws
46 of the foreign jurisdiction in order for the corporation to
47 be accepted in that jurisdiction, provided that the

1 corporation may not misrepresent the requirements or effects
 2 of the provisions of this section.

3
 4 **17-18-102. Definitions.**

5
 6 (b) As used in this act:

7
 8 (xiii) "Stockholder" means "shareholder" as
 9 defined by W.S. ~~17-16-140(a)(xxii)~~ 17-16-140(a)(xxxix);

10
 11 **26-24-102. Applicability of general corporation**
 12 **statutes; exceptions.**

13
 14 (b) Domestic stock insurers and domestic mutual
 15 insurers are exempt from the provisions of W.S. 17-16-1630
 16 and 17-16-1720(e) ~~and (f).~~

17
 18 **Section 3.** W.S. 17-16-120(j)(i) through (iii),
 19 17-16-602(a)(i) and (ii), (c) and (d)(i) through (iv),
 20 17-16-631(c)(i) through (iii), 17-16-825(e)(iv) and (vi)
 21 through (viii), 17-16-830(a)(ii), (c) and (d), 17-16-831,
 22 17-16-832, 17-16-842(c), 17-16-850(a)(iii) and (iv),
 23 17-16-1003(a) through (e), 17-16-1004(a)(i), 17-16-1007(c),
 24 (d)(i) and (ii), 17-16-1008(c), 17-16-1021,
 25 17-16-1101(c)(i) and (ii), 17-16-1103(b), (g)(i) through
 26 (iv) and (h), 17-16-1104(b) through (e), 17-16-1105(a)(i)
 27 through (iii), 17-16-1107, 17-16-1115(c), 17-16-1201(b),
 28 17-16-1202(b)(i) and (ii), 17-16-1301(a)(iii),
 29 17-16-1302(a)(v) and (b), 17-16-1322(b)(i), (ii) and (iv),
 30 17-16-1324, 17-16-1325(b)(iii) and (v), 17-16-1326,
 31 17-16-1328(a)(i) through (iii), 17-16-1403(a)(iii)(A) and
 32 (B) and (iv), 17-16-1503(a)(vii) and (ix) and
 33 17-16-1720(e)(i) through (x) and (f) are repealed.

34
 35 **Section 4.** This act is effective July 1, 2009.

36
 37 (END)