/* We follow with the Model Business Corporation Act. This is split into 8 sections. This act represents the best of thinking of modern corporations law. */
REVISED MODEL BUSINESS CORPORATION ACT 1.20

Chapter 1

GENERAL PROVISIONS
Subchapter A

Short Title and Reservation of Power

1.01 Short Title

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

1.02 Reservation of Power to Amend or Repeal

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

Subchapter B

Filing Documents

1.20 Filing Requirements

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

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

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

(d) The document must be typewritten or printed.

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

(f) The document must be executed:

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

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

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

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

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

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

1.21 Forms

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

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

1.23 Effective Time and Date of Document

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

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

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

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.
/* From time to time tax considerations may result in persons wanting a delayed date. */

1.24 Correcting Filed Document

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

(b) A document is corrected:

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

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

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

1.25 Filing Duty of Secretary of State

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

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

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

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

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

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

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

1.27 Evidentiary Effect of Copy of Filed Document

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

Subchapter D

Definitions

1.40 Act Definitions

/* As "modern" law are prone to do, this act contains a lot of definitions. Therefore the dictionary definition of words does not control in the rest of the code. This can result in mis-interpreting the law if the definitions are not considered when

the statute is read. */

In this Act:

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

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

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

/* The same definition is in the Uniform Commercial Code. */

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

(5) "Deliver" includes mail.

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

/* Note that if a corporation incurs indebtedness for the "benefit" of shareholders that this is considered a distribution. */

(7) "Effective date of notice" is defined in section 1.41.

(8) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee.

(9) "Entity" includes corporation and foreign corporation; not-for- profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Governmental subdivision" includes authority, county, district, and municipality.

(12) "Includes" denotes a partial definition.

/* Well- definitions within the definitions. */

(13) "Individual" includes the estate of an incompetent or deceased individual.

(14) "Means" denotes an exhaustive definition.

(15) "Notice" is defined in section 1.41.

(16) "Person" includes individual and entity.

(17) "Principal office" means the office (in or out of this state) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(18) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(19) "Record date" means the date established under chapter 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this Act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section 8.40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(21) "Shares" means the units into which the proprietary interests in a corporation are divided.

(22) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(23) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies

and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.

(24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(25) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

(26) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this Act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this Act to vote generally on the matter are for that purpose a single voting group.

Official Comment- Distribution

The term "distribution" defined in section 1.40(6) is a fundamental element of the financial provisions of the Model Act as amended in 1980. Section 6.40 sets forth a single, unitary test for the validity of any "distribution." Section 1.40(6) in turn defines "distribution" to include all transfers of money or other property made by a corporation to any shareholder in respect of the corporation's shares, except mere changes in the unit of interest such as share dividends and share splits. Thus. a "distribution" includes the declaration or payment of a dividend, a purchase by a corporation of its own shares, a distribution of evidences of indebtedness or promissory notes of the corporation, and a distribution in voluntary or involuntary liquidation. If a corporation incurs indebtedness in connection with a distribution (as in the case of a distribution of a debt instrument or an installment purchase of shares), the creation, incurrence, or distribution of the indebtedness is the event which constitutes the distribution rather than the subsequent payment of the debt by the corporation.

The term "indirect" in the definition of "distribution" is intended to include transactions like the repurchase of parent company shares by a subsidiary whose actions are controlled by the parent. It also is intended to include any other transaction in which the substance is clearly the same as a typical dividend or share repurchase, no matter how structured or labeled. . . .

9. Voting Group

Section 1.40(26) defines "voting group" for purposes of the Act as a matter of convenient reference. A "voting group" consists of all shares of one or more classes or series that under the articles of incorporation or the revised Model Act are entitled to vote and be counted together collectively on a matter. Shares entitled to vote "generally" on a matter under the articles of incorporation or this Act are for that purpose a single voting group. The word "generally" signifies all shares entitled to vote on the matter by the articles of incorporation or this Act that do not expressly have the right to be counted or tabulated separately. "Voting groups" are thus the basic units of collective voting at a shareholders' meeting, and voting by voting groups may provide essential protection to one or more classes or series of shares against actions that are detrimental to the rights or interests of that class or series.

The determination of which shares form part of a single voting group must be made from the provisions of the articles of incorporation and of this Act. In a few instances under the Model Act, the board of directors may establish the right to vote by voting groups. On most matters coming before shareholders' meetings, only a single voting group~ consisting of a class of voting or common shares, will be involved, and action on such a matter is effective when approved by that voting group pursuant to section 7.25. See section 7.26(a). If a second class of shares is also entitled to vote on the matter, then a further determination must be made as to whether that class is to vote as a separate voting group or whether it is to vote along with the other voting shares as part of a single voting group.

Members of the board of directors are usually elected by the single voting group of shares entitled to vote generally; in some circumstances, however, some members of the board may be selected by one voting group and other members by one or more different voting groups. See section 8.03.

The definition of a voting group permits the establishment by statute of quorum and voting requirements for a variety of matters considered at shareholders' meetings in corporations with multiple classes of shares. See sections 7.25 and 7.26. Depending on the circumstances, two classes or series of shares may vote together collectively on a matter as a single voting group, they may be entitled to vote on the matter separately as two voting groups, or one or both of them may not be entitled to vote on the matter at all.

1.41 Notice

(a) Notice under this Act must be in writing unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.

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

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this state) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) when received:

(2) five days after its deposit in the United States Mail, as evidenced by the postmark, if mailed postpaid and correctly addressed;

/* Interestingly enough, the same time lag allowed for mailing under the federal rules of civil procedure. */

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

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

(g) If this Act prescribes notice requirements for

particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this Act, those requirements govern.

1.42 Number of Shareholders

(a) For purposes of this Act, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

(1) three or fewer coowners;

(2) a corporation, partnership, trust, estate, or other entity;

(3) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this Act, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

Chapter 2

INCORPORATION

2.01 Incorporators

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

2.02 Articles of Incorporation

(a) The articles of incorporation must set forth:

(1) a corporate name for the corporation that satisfies the requirements of section 4.01;

(2) the number of shares the corporation is authorized to issue;

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

(4) the name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) the names and addresses of the individuals who are to serve as the initial directors;

(2) provisions not inconsistent with law regarding:

(i) the purpose or purposes for which the corporation is organized;

(ii) managing the business and regulating the affairs of the corporation;

(iii) defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) a par value for authorized shares or classes of shares;

(v) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions; and

/* A provision that should not be present in many articles of incorporation. */

(3) any provision that under this Act is required or permitted to be set forth in the bylaws.

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

Official Comment

1. Introduction

Section 2.02(a) sets forth the minimum mandatory requirements for all articles of incorporation while section 2.02(b) describes optional provisions that may be included. A corporation that is formed solely pursuant to the mandatory requirements will generally have the broadest powers and least restrictions on activities permitted by the Model Act. The Model Act thus permits the creation of a "standard" corporation by a simple and easily prepared one-page document.

No reference is made in section 2.02(a) either to the period of duration of the corporation or to its purposes. A corporation formed under these provisions will automatically have perpetual duration under section 3.02(1) unless a special provision is included providing a shorter period. Similarly, a

corporation formed without reference to a purpose clause will automatically have the purpose of engaging in any lawful business under section 3.01(a). The option of providing a narrower purpose clause is also preserved in sections 2.02(b)(2) and 3.01, with the effect described in the Official Comment to section 3.01.

e. Shareholder liability

The basic tenet of modern corporation law is that shareholders are not liable for the corporation's debts by reason of their status as shareholders. Section 2.02(b)(2)(v) nevertheless permits a corporation to impose that liability under specified circumstances if that is desirable. If no provision of this type is included shareholders have no liability for corporate debts except to the extent they become liable by reason of their own conduct or acts. See section 6.22(b).

/* The last part of the sentence refers to piercing the corporate veil. */

2.03 Incorporation

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

(b) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Official Comment

5. Conclusiveness of Secretary of State's Action on Question of Individual Liability for Corporate Actions

Under section 2.03(b) the filing of the articles of incorporation as evidenced by return of the stamped copy of the articles with the fee receipt is conclusive proof that all conditions precedent to incorporation have been met, except in proceedings brought by the state. Thus the filing of the articles of incorporation is conclusive as to the existence of limited liability for persons who enter into transactions on behalf of the corporation. If articles of incorporation have not been filed, section 2.04 generally imposes personal liability on all persons who prematurely act as or on behalf of a "corporation" knowing that articles have not been filed.

Section 2.04 may protect some of these persons to a limited extent, however; see the Official Comment to that section.

2.04 Liability for Preincorporation Transactions

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

Official Comment

Earlier versions of the Model Act, and the statutes of many states, have long provided that corporate existence begins only with the acceptance of articles of incorporation by the secretary of state. Many states also have statutes that provide expressly that those who prematurely act as or on behalf of a corporation are personally liable on all transactions entered into or liabilities incurred before incorporation. A review of recent case law indicates, however, that even in states with such statutes courts have continued to rely on common law concepts of de facto corporations, de jure corporations, and corporations by estoppel that provide uncertain protection against liability for preincorporation transactions. These cases caused a review of the underlying policies represented in earlier versions of the Model Act and the adoption of a slightly more flexible or relaxed standard.

Incorporation under modern statutes is so simple and inexpensive that a strong argument may be made that nothing short of filing articles of incorporation should create the privilege of limited liability. A number of situations have arisen, however, in which the protection of limited liability arguably should be recognized even though the simple incorporation process established by modern statutes has not been completed.

(1) The strongest factual pattern for immunizing participants from personal liability occurs in cases in which the participant honestly and reasonably but erroneously believed the articles had been filed. In Cranson v. International Business Machines Corp., 234 Md. 477, 200 A.2d 33 (1964), for example, the defendant had been shown executed articles of incorporation some months earlier before he invested in the corporation and became an officer and director. He was also told by the corporation's attorney that the articles had been filed, but in fact they had not been filed because of a mix-up in the attorney's office. The defendant was held not liable on the

"corporate" obligation.

(2) Another class of cases, which is less compelling but in which the participants sometimes have escaped personal liability, involves the defendant who mails in articles of incorporation and then enters into a transaction in the corporate name; the letter is either delayed or the secretary of state's office refuses to file the articles after receiving them or returns them for correction. E.g., Cantor v. Sunshine Greenery, Inc., 165 N.J.Super. 411, 398 A.2d 571(1979). Many state filing agencies adopt the practice of treating the date of receipt as the date of issuance of the certificate even though delays and the review process may result in the certificate being backdated. The finding of nonliability in cases of this second type can be considered an extension of this principle by treating the date of original mailing or original filing as the date of incorporation.

(3) A third class of cases in which the participants sometimes have escaped personal liability involves situations where the third person has urged immediate execution of the contract in the corporate name even though he knows that the other party has not taken any steps toward incorporating. E.g., Quaker Hill v. Parr, 148 Colo. 45, 364 P.2d 1056 (1961).

(4) In another class of cases the defendant has represented that a corporation exists and entered into a contract in the corporate name when he knows that no corporation has been formed, either because no attempt has been made to file articles of incorporation or because he has already received rejected articles of incorporation from the filing agency. In these cases, the third person has dealt solely with the "corporation" and has not relied on the personal assets of the defendant. The imposition of personal liability in this class of case, it has sometimes been argued, gives the plaintiff more than he originally bargained for. On the other hand, to recognize limited liability in this situation threatens to undermine the incorporation process, since one then may obtain limited liability by consistently conducting business in the corporate name. Most courts have imposed personal liability in this situation. E.g., Robertson v. Levy, 197 A.2d 443 (D.C.App.1964).

(5) A final class of cases involves inactive investors who provide funds to a promoter with the instruction, "Don't start doing business until you incorporate." After the promoter does start business without incorporating, attempts have been made, sometimes unsuccessfully, to hold the investors liable as

partners. E.g., Frontier Refining Co. v. Kunkels, Inc., 407 P.2d 880 (Wyo.1965). One case held that the language of section 146 of the 1969 Model Act ["persons who assume to act as a corporation are liable for preincorporation transactions"] creates a distinction between active and inactive participants, makes only the former liable as partners, and therefore relieves the latter of personal liability. Nevertheless, "active" participation was defined to include all investors who actively participate in the policy and operational decisions of the organization and is, therefore, a larger group than merely the persons who incurred the obligation in question on behalf of the "corporation." Timberline Equipment Co. v. Davenport, 267 Or. 64, 72-76, 514 P.2d 1109, 1113-14 (1973).

After a review of these situations, it seemed appropriate to impose liability only on persons who act as or on behalf of corporations "knowing" that no corporation exists. Analogous protection has long been accorded under the uniform limited partnership acts to limited partners who contribute capital to a partnership in the erroneous belief that a limited partnership certificate has been filed. Uniform Limited Partnership Act 12 (1916); Revised Uniform Limited Partnership Act 3.04 (1976). Persons protected under 3.04 of the latter are persons who "erroneously but in good faith" believe that a limited partnership certificate has been filed. The language of section 2.04 has essentially the same meaning.

While no special provision is made in section 2.04, the section does not foreclose the possibility that persons who urge defendants to execute contracts in the corporate name knowing that no steps to incorporate have been taken may be estopped to impose personal liability on individual defendants. This estoppel may be based on the inequity perceived when persons, unwilling or reluctant to enter into a commitment under their own name, are persuaded to use the name of a nonexistent corporation, and then are sought to be held personally liable under section 2.04 by the party advocating that form of execution. By contrast, persons who knowingly participate in a business under a corporate name are jointly and severally liable on "corporate" obligations under section 2.04 and may not argue that plaintiffs are "estopped" from holding them personally liable because all transactions were conducted on a corporate basis.

2.05 Organization of Corporation

(a) After incorporation:
(1) if initial directors are named in the articles of

incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(2) if initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) to elect directors and complete the organization of the corporation; or

(ii) to elect a board of directors who shall complete the organization of the corporation.

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

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

2.06 Bylaws

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

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

Chapter 3

PURPOSES AND POWERS

3.01 Purposes

(a) Every corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate

under this Act only if permitted by, and subject to all limitations of, the other statute.

3.02 General Powers

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

(1) to sue and be sued, complain and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(7) to make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by this Act within or without this state;

(11) to elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) to transact any lawful business that will aid governmental policy;

(15) to make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

/* This gives corporation "default" and sufficient powers to transact business, so that it is no longer necessary to state then in articles of incorporation. */

Official Comment

Section 3.02(15) permits payments or donations or other acts "that further the business and affairs of the corporation." This clause, which is in addition to and independent of the power to make charitable and similar donations under section 3.02(13), permits contributions for purposes that may not be charitable, such as for political purposes or to influence elections. This power exists only to the extent consistent with law other than the Model Act. It is the purpose of this section to authorize all corporate actions that are lawful or not against public policy

3.04 Ultra Vires

/* "Ultra Vires means beyond the power of the corporation. No, not a translation of the Latin, but what lawyers use it to mean. */

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

(b) A corporation's power to act may be challenged:

(1) in a proceeding by a shareholder against the corporation to enjoin the act;

(2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) in a proceeding by the Attorney General under section 14.30.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

Official Comment

The basic purpose of section 3.04 -as has been the purpose of all similar statutes during the 20th century -is to eliminate all vestiges of the doctrine of inherent incapacity of corporations . . . . Under this section it is unnecessary for persons dealing with a corporation to inquire into limitations on its purposes or powers that may appear in its articles of incorporation. A person who is unaware of these limitations when dealing with the corporation is not bound by them. The phrase in section 3.04(a) that the "validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act" applies equally to the use of the doctrine as a sword or as a shield: a third person may no more avoid an undesired contract with a corporation on the ground the corporation was without authority to make the contract than a corporation may defend a suit on a contract on the ground that the contract is ultra vires.

The language of section 3.04 extends beyond contracts and conveyances of property; "corporate action" of any kind cannot be challenged on the ground of ultra vires. For this reason it makes no difference whether a limitation in articles of incorporation is considered to be a limitation on a purpose or a limitation on a power; both are equally subject to section 3.04. Corporate action also includes inaction or refusal to act. The common law of ultra vires distinguished between executory

contracts, partially executed contracts, and fully executed ones; sect ion 3.04 treats all corporate action the same except to the extent described in section 3.04(b#and the same rules apply to all contracts no matter at what stage of performance.

Section 3.04, however, does not validate corporate conduct that is made illegal or unlawful by statute or common law decision. This conduct is subject to whatever sanction, criminal or civil, that is provided by the statute or decision. Whether or not illegal corporate conduct is voidable or rescindable depends on the applicable statute or substantive law and is not affected by section 3.04.

. . . [Under subsection (c)] an ultra vires act may be enjoined only if all "affected parties" are parties to the suit. The requirement that the action be "equitable" generally means that only third persons dealing with a corporation while specifically aware that the corporation's action was ultra vires will be enjoined. The general phrase "if equitable" was retained because of the possibility that other circumstances may exist in which it may be equitable to refuse to enforce an ultra vires contract. . . .

Chapter 4

NAME
4.01 Corporate Name

(a) A corporate name:

(1) must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or words or abbreviations of like import in another language, and

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 3.01 and its articles of incorporation . . .

/* Thus unless authorized to act as a bank or insurance company the words "bank" or "insurance" company cannot appear so as to mislead. */

Chapter 5

OFFICE AND AGENT

5.01 Registered Office and Registered Agent

Each corporation must continuously maintain in this state:

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

(2) a registered agent, who may be:

(i) an individual who resides in this state and whose business office is identical with the registered office;

(ii) a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) a foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

Chapter 6

SHARES AND DISTRIBUTIONS

Subchapter A

Shares

6.01 Authorized Shares

(a) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 6.02.

(b) The articles of incorporation must authorize (1) one or more classes of shares that together have unlimited voting rights, and (2) one or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

/* A codification of the requirement that equity be inherent in the shareholders, but that all other expenses be paid first. */

(c) The articles of incorporation may authorize one or more classes of shares that:

(1) have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this Act;

(2) are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the share-holder, or another person or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(3) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative;

(4) have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(d) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (c) is not exhaustive.

Official Comment

Section 6.01 adopts a new terminology from that traditionally used in corporation statutes to describe classes of shares that may be created, but makes only limited substantive changes from earlier versions of the Model Act. Traditional corporation statutes work from a perceived inheritance of concepts of "common shares" and "preferred shares" that at one time may have had considerable meaning but that today often do not involve significant distinctions. It is possible under modern corporation statutes to create classes of "common" shares that have important preferential rights and classes of "preferred" shares that are subordinate in all important economic aspects or that are indistinguishable from common shares in either voting rights or entitlement to participate in the assets of the corporation upon dissolution. The revised Model Act breaks away from the inherited concepts of "common" and "preferred" shares and develops more general language to reflect the actual

flexibility in the creation of classes of shares that exists in modern corporate practice. The words "common shares" or preferred shares" are no longer used in the revised Model Act, though the words appear in a few instances in examples appearing in the Official Comment . . .

Section 6.01(a) requires that the articles of incorporation prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If the articles authorize the issue of only one class of shares, no designation or description of the shares is required, it being understood that these shares have both the power to vote and the power to receive the net assets of the corporation upon dissolution. See section 6.01(b). Shares with both of these characteristics are usually referred to as "common shares" or "common stock," but no specific designation is required by the Model Act.

If more than one class of shares is authorized, the preferences, limitations, and relative rights of each class of shares must be described in the articles of incorporation before any shares of that class are issued, or the board of directors may be given authority to establish them under section 6.02. These descriptions constitute the "contract" of the holders of those classes of shares with respect to their interest in the corporation and must be set forth in sufficient detail reasonably to define their interest. The designations, preferences, limitations, and relative rights of shares with one or more special or preferential rights which may be authorized are further described in section 6.01(c).

6.02 Terms of Class or Series Determined by Board of Directors

(a) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights (within the limits set forth in section 6.01) of (1) any class of shares before the issuance of any shares of that class or (2) one or more series within a class before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.

(c) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(d) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:

(1) the name of the corporation;

(2) the text of the amendment determining the terms of the class or series of shares;

(3) the date it was adopted; and

(4) a statement that the amendment was duly adopted by the board of directors.

6.03 Issued and Outstanding Shares

(a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) of this section and to section 6.40.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

/* A codification of the bankruptcy "absolute priority rule." */

6.04 Fractional Shares

(a) A corporation may:

(1) issue fractions of a share or pay in money the value of fractions of a share;

(2) arrange for disposition of fractional shares by the shareholders;

(3) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to

equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 6.25(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(1) that the scrip will become void if not exchanged for full shares before a specified date; and

(2) that the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Subchapter B

Issuance of Shares

6.20 Subscription for Shares Before Incorporation

(a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

/* For example many corporations find that it is easier to raise funds by taking a subscription that requires payment of less than the entire subscription amount with a provision for a later call. */