



State of Tennessee

PUBLIC CHAPTER NO. 899

SENATE BILL NO. 1505

By Johnson

Substituted for: House Bill No. 1442

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 48, relative to corporations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-51-201(10), is amended by deleting the subdivision in its entirety and substituting instead the following:

(10) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, or electronic transmission, except that delivery to the attorney general means actual receipt by the attorney general;

SECTION 2. Tennessee Code Annotated, Section 48-51-201(11), is amended by adding "or appointed" between "elected" and "by the incorporators".

SECTION 3. Tennessee Code Annotated, Section 48-51-201(12), is amended by deleting the subdivision in its entirety and substituting instead the following:

(12) "Distribution" means the direct or indirect transfer of assets or any part of the income or profit of a corporation, to its members, directors or officers. "Distribution" does not include:

(A) The payment of compensation in a reasonable amount and the reimbursement of reasonable expenses to its members, directors, or officers for services rendered;

(B) Conferring benefits on its members in conformity with its purposes;

(C) Repayment of debt obligations in the normal and ordinary course of conducting activities;

(D) The incurrence of indebtedness, whether directly or indirectly, including through a guaranty, for or on behalf of a member, director or officer;

(E) A sale on credit in the ordinary course of business or a life insurance policy loan; or

(F) Any item in § 48-58-303(c);

SECTION 4. Tennessee Code Annotated, Section 48-51-201(16), is amended by deleting the subdivision in its entirety and substituting instead the following:

(16) "Entity" includes domestic and foreign business corporation; domestic and foreign nonprofit corporation; estate; trust; business trust, partnership, and two (2) or more persons having a joint or common economic interest; domestic and foreign unincorporated entity; and this state, United States and foreign government;

SECTION 5. Tennessee Code Annotated, Section 48-51-201(22), is amended by deleting the subdivision in its entirety and substituting instead the following:

(22)(A) "Member" means, without regard to what a person is called in the charter or bylaws, any person who on more than one (1) occasion, pursuant to a provision of a

corporation's charter or bylaws, has the right to vote for the election or appointment of a director or directors;

(B) A person is not a member by virtue of any of the following:

- (i) Any rights such person has as a delegate;
- (ii) Any rights such person has to designate a director or directors;
- (iii) Any rights such person has to appoint a director or directors of a public benefit corporation; or
- (iv) Any rights such person has as a director;

SECTION 6. Tennessee Code Annotated, Section 48-51-201(23), is amended by deleting the subdivision in its entirety and substituting instead the following:

(23) "Membership" means the rights and obligations a member has pursuant to a corporation's charter, bylaws and chapters 51-68 of this title;

SECTION 7. Tennessee Code Annotated, Section 48-51-201, is amended by adding the following language as new, appropriately designated subdivisions:

() "Charitable Purpose" means a purpose that:

- (A) Would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
- (B) Is for the public benefit; or
- (C) Is considered charitable under law in this state other than in this act;

() "Document" means:

- (A) Any tangible medium on which information is inscribed, and includes any writing or written instrument; or
- (B) An electronic record;

() "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

() "Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with § 48-51-202;

() "Electronic transmission" or "electronically transmitted" means any form or process of communication not directly involving physical transfer of paper or another tangible medium that is:

- (A) Suitable for the retention, retrieval, and reproduction of information by the recipient; and
- (B) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with § 48-51-202(l);

() "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

- (A) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or
- (B) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs;

() "Interest holder" means a person who holds of record an interest;

() "Organic document" means a public organic document or a private organic document;

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

() "Private organic document" means any document, other than the public organic document, if any, that determines the internal governance of an unincorporated entity; where a private organic document has been amended or restated, "private organic document" means the private organic document as last amended or restated;

() "Public organic document" means the document, if any, that is filed of public record to create an unincorporated entity; where a public organic document has been amended or restated, "public organic document" means the public organic document as last amended or stated;

() "Share" means the unit into which the proprietary interests in a corporation are divided;

() "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government; "unincorporated entity" includes a general partnership, limited liability company, limited partnership, business trust, joint stock association, and unincorporated nonprofit association;

SECTION 8. Tennessee Code Annotated, Section 48-51-202, is amended by deleting the section in its entirety and substituting the following:

48-51-202.

(a) Notice under chapters 51-68 of this title shall be in writing unless oral notice is reasonable in circumstances and not prohibited by the charter or bylaws, and written notice is not expressly required by chapters 51-68 of this title. Unless otherwise agreed to between sender and the recipient, words in a notice or other communication under chapters 51-68 of this title shall be in English.

(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions shall be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication 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) Notice in the form of a document by a corporation having members is effective:

(1) Upon deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the member's address shown in the corporation's current record of member; or

(2) When given, if the notice is delivered in any other manner that the member has authorized.

(d) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current record of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current record of members, if addressed or delivered to one (1) of such members, at the address appearing on the current list of members.

(e) Notice or other communication to a domestic or foreign corporation (authorized to transact business in this state) may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report (or to a designated mailing address such as a post office box if the United States Postal Service does not deliver to the corporation's principal office) or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(f) Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (l).

(g)(1) Any consent under subsection (f) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if:

(A) The corporation is unable to deliver two (2) consecutive electronic transmissions given by the corporation in accordance with the consent; and

(B) Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communication.

(2) The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(h) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and

(2) It is in a form capable of being processed by that system.

(i) Receipt of an electronic acknowledgement from an information processing system described in subdivision (h)(1) establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

(j) An electronic transmission is received under this section even if no individual is aware of its receipt.

(k) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

(1) If in a physical form, the earliest of when it is actually received, or when it is left at:

(A) A member's address shown on the corporation's record of members maintained by the corporation under § 48-66-101(c);

(B) A director's residence or usual place of business; or

(C) The corporation's principal place of business;

(2) If mailed first class postage prepaid and correctly addressed to a member, upon deposit in the United States mail;

(3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a member, the earliest of when it is actually received; or

(A) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or

(B) Five (5) days after it is deposited in the United States mail;

(4) If an electronic transmission, when it is received as provided in subsection (h); or

(5) If oral, when communicated, if communicated in a comprehensible manner.

(l) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

(1) The electronic transmission is otherwise retrievable in perceivable form; and

(2) The sender and the recipient have consented in writing to the use of such form of electronic transmission.

(m) If chapters 51-68 of this title prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If the charter or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of chapters 51-68 of this title, those requirements govern. The charter or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

SECTION 9. Tennessee Code Annotated, Section 48-51-301, is amended by deleting the section in its entirety and substituting the following:

48-51-301.

(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) Chapters 51-68 of this title must require or permit filing the document in the office of the secretary of state.

(c) The document must contain the information required by chapters 51-68 of this title. It may contain other information as well.

(d) The document must be typewritten or printed in ink in a clear and legible fashion on one (1) side of letter size paper.

(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 chair of the board of directors of a domestic or foreign corporation, by its president, or by another of its authorized 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 such person's signature such person's name and the capacity in which such person 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; or

(4) The date the document is signed, except that such date shall be required for the annual report for the secretary of state.

(h) If the secretary of state has prescribed a mandatory form for the document under § 48-51-302, 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 the correct filing fee, and any corporate tax, license fee, interest or penalty required by chapters 51-68 of this title.

(j) Whenever this title permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following apply:

(1) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;

(2) The facts may include, but are not limited to:

(A) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data;

(B) A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or

(C) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;

(3) As used in this subsection (j):

(A) "Filed document" means a document filed with the secretary of state under any provision of chapters 51-68 of this title, except chapter 65 or § 48-66-203; and

(B) "Plan" means a plan of domestication, for-profit conversion, entity conversion, merger, or membership exchange;

(4) None of the following provisions of a plan or filed document shall be made dependent on facts outside the plan or filed document:

(A) The name and address of any person required in a filed document;

(B) The registered office of any entity required in a filed document;

(C) The registered agent of any entity required in a filed document;

(D) The number of authorized shares and designation of each class or series of shares or the number of authorized memberships and designation of each class or series of memberships;

(E) The effective date of a filed document; and

(F) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subdivision (j)(2)(A) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subdivision (j)(5) are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

(k) The secretary of state has the power to promulgate appropriate rules and regulations establishing acceptable methods for execution of any document to be filed with the secretary of state.

(l) All documents submitted to the secretary of state for filing should contain a statement which makes it clear that they are being filed pursuant to the Tennessee Nonprofit Corporation Act, compiled in chapters 51-68 of this title.

(m) The secretary of state has the power to establish procedures for the filing of documents with the secretary of state by means of electronic transmission.

(n) Notwithstanding any other law to the contrary, whenever this title requires that an application or other document submitted to the secretary of state for filing be accompanied by a confirmation of good standing, tax clearance for termination or withdrawal, or other similar communication of taxpayer status by the commissioner of revenue, then such requirement shall be met, and a paper certificate need not accompany the application or other document, if the commissioner provides to the secretary of state electronic verification of the required information. Upon request of the person seeking certificate information, the commissioner shall provide to the secretary of state electronic verification in lieu of a paper certificate.

SECTION 10. Tennessee Code Annotated, Section 48-51-302, is amended by deleting subsection (b) in its entirety and substituting the following:

(b) The secretary of state may prescribe and shall furnish upon request forms for other documents required or permitted to be filed by chapters 51-68 of this title. If the secretary of state has prescribed a mandatory form for the document, the document must be in or on the prescribed form or a conformed copy thereof.

SECTION 11. Tennessee Code Annotated, Section 48-51-303(a)(14), is amended by deleting "Articles of merger" and substituting instead "Articles of merger or membership exchange".

SECTION 12. Tennessee Code Annotated, Section 48-51-303(a), is amended by adding the following new subdivisions (14), (15), and (16) and redesignating existing subdivisions accordingly:

(14) Articles of entity conversion	\$ 100.00
(15) Articles of charter surrender	\$ 20.00
(16) Statement of abandonment of merger, conversion, or membership exchange	\$ 20.00

SECTION 13. Tennessee Code Annotated, Section 48-51-304(b), is amended by deleting "§ 48-51-303(a)(3)-(7), (17), (18), (22), (28), (30) and (31)" and substituting instead "§ 48-51-303(a)(3)-(7), (16), (20), (21), (25), (31), (33), (34)".

SECTION 14. Tennessee Code Annotated, Section 48-51-306(c), is amended by deleting "delivered" and substituting instead "received for filing".

SECTION 15. Tennessee Code Annotated, Section 48-51-306(d)(4), is amended by deleting "pursuant to § 48-51-301(i)".

SECTION 16. Tennessee Code Annotated, Section 48-52-102(a), is amended by deleting subdivision (4) in its entirety and substituting instead the following:

(4) The street address and zip code of the corporation's initial registered office, the county in which the office is located, and the name of its initial registered agent at that office;

SECTION 17. Tennessee Code Annotated, Section 48-52-102(a), is amended by deleting subdivision (6) in its entirety and substituting instead the following:

(6) The street address and zip code of the initial principal office, and a mailing address if the United States Postal Service does not deliver to the principal office, of the corporation;

SECTION 18. Tennessee Code Annotated, Section 48-52-102(b)(3)(A)(iii), is amended by deleting language "48-58-304" and substituting instead the following "48-58-302".

SECTION 19. Tennessee Code Annotated, Section 48-52-102(b), is amended by adding the following new subdivisions:

(5)(A) A provision permitting or making obligatory indemnification of a director for liability to any person for any action taken, or any failure to take any action, as a director, except liability for:

- (i) Receipt of a financial benefit to which the director is not entitled;
- (ii) An intentional infliction of harm;
- (iii) A violation of § 48-58-302; or
- (iv) An intentional violation of criminal law; and

(B) For purposes of this subdivision (b)(5)(A):

- (i) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including excise tax assessed with respect to an employee benefit plan, as reasonable expenses incurred with respect to a proceeding; and
- (ii) "Proceeding" includes a threatened, pending or completed proceeding.

(6) That the liability of a director of a corporation that is not a public benefit corporation may be eliminated or limited by a provision of the charter that a director shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

- (A) The amount of a financial benefit received by the director to which the director is not entitled;
- (B) An intentional infliction of harm;
- (C) A violation of § 48-58-302; or
- (D) An intentional violation of criminal law.

SECTION 20. Tennessee Code Annotated, Section 48-52-106, is amended by adding the following language as new subdivisions:

(c)(1) The bylaws may contain a provision permitting or requiring indemnification of a director for liability to any person for any action taken, or any failure to take any action, as a director, except liability for:

- (A) Receipt of a financial benefit to which the director is not entitled;
- (B) An intentional infliction of harm;
- (C) A violation of § 48-58-302 (Unlawful Distribution); or
- (D) An intentional violation of criminal law; and

(2) For purposes of this subsection:

- (A) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including excise tax assessed with respect to an employee benefit plan, as reasonable expenses incurred with respect to a proceeding; and
- (B) "Proceeding" includes a threatened, pending or completed proceeding.

(d) The liability of a director of a nonprofit corporation that is not a public benefit corporation may be eliminated or limited by a provision of the bylaws that a director shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:

- (1) The amount of a financial benefit received by the director to which the director is not entitled;
- (2) An intentional infliction of harm;
- (3) A violation of § 48-58-302; or
- (4) An intentional violation of criminal law.

SECTION 21. Tennessee Code Annotated, Section 48-57-104, is amended by adding the following new subsection (b) and redesignating existing subsections accordingly:

(b) The charter may provide that any action required or permitted by chapters 51-68 of this title to be taken at a members' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the members having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all memberships entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the member who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

SECTION 22. Tennessee Code Annotated, Section 48-57-104, is amended by adding the following new subsections:

(d) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. Unless the charter, bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient members to take the action are delivered to the corporation.

(e) If chapters 51-68 of this title or the charter requires that notice of proposed action be given to nonvoting members and the action is to be taken by consent of the voting members, then the corporation must give its nonvoting members written notice of the proposed action at least ten (10) days before the action is taken. The notice must contain or be accompanied by the same material that under chapters 51-68 of this title would have been required to be sent to nonvoting members in a notice of meeting at which the proposed action would have been submitted to the members for action.

(f)(1) If action is taken by less than unanimous written consent of the voting members, the corporation must give its non-consenting voting members written notice of the action not more than ten (10) days after:

(A) Written consents sufficient to take the action have been delivered to the corporation; or

(B) Such later date that tabulation of consents is completed pursuant to an authorization under subsection (d).

(2) The notice must reasonably describe the action taken and contain or be accompanied by the same material of this title, as would have been required to be sent to voting members in a notice of a meeting at which the action would have been submitted to the members for action.

(g) The notice requirements in subsections (e) and (f) shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent; provided, that this subsection (g) shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a member adversely affected by a failure to give such notice within the required time period.

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

(i) Delivery of a written consent to the corporation under this section is delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office (or to a designated mailing address such as a post office box if the United States Postal Service does not deliver to the corporation's principal office).

SECTION 23. Tennessee Code Annotated, Section 48-57-108, is amended by deleting the section in its entirety and substituting the following:

48-57-108.

(a) Except as otherwise restricted by the charter or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken

without a meeting if the corporation having members delivers a ballot to every member entitled to vote on the matter.

(b) A ballot must:

- (1) Be in the form of a document;
- (2) Set forth each proposed action;
- (3) Provide an opportunity to vote for, or withhold a vote for, each candidate for election as a director; and
- (4) Provide an opportunity to vote for or against or abstain from each proposed action.

(c) Approval by ballot pursuant to this section of action, unless the charter, bylaws, or chapters 51-68 of this title require a greater number of affirmative votes, is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by ballot must:

- (1) Indicate the number of responses needed to meet the quorum requirements;
- (2) State the percentage of approvals necessary to approve each matter other than election of directors; and
- (3) Specify the time by which a ballot must be received by the corporation having members in order to be counted.

(e) Except as otherwise permitted by the charter, bylaws or ballot, a ballot may not be revoked.

SECTION 24. Tennessee Code Annotated, Section 48-57-203, is amended by deleting "charter" wherever it may appear and substituting instead "charter or bylaws".

SECTION 25. Tennessee Code Annotated, Section 48-57-203(b), is amended by deleting "quorum requirement" and substituting instead "quorum requirement in subsection (a)".

SECTION 26. Tennessee Code Annotated, Section 48-57-204, is amended by deleting "charter" and substituting instead "charter, bylaws".

SECTION 27. Tennessee Code Annotated, Section 48-57-205, is amended by deleting the section in its entirety and substituting the following:

48-57-205.

(a) Unless the charter or bylaws prohibit or limit proxy voting, a member may vote in person or by proxy.

(b) Without limiting the manner in which a member may authorize another person or persons to act for the member as proxy pursuant to this section, the following shall constitute a valid means by which a member may grant such authority:

(1) A member may execute a writing authorizing another person or persons to act for the member as proxy. Execution may be accomplished by the member personally signing such writing or by an attorney-in-fact in the case of an individual member or by an authorized officer, director, employee, agent or attorney-in-fact in the case of any other member signing such writing or causing the member's signature to be affixed to such writing by any reasonable means, including, but not limited to, facsimile signature;

(2) A member may authorize another person or persons to act for the member as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service

organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission; provided, that any such telegram, cablegram, or electronic transmission shall either set forth or be submitted with information from which it can be determined that the telegram, cablegram, or electronic transmission was authorized by the member. If it is determined that such telegrams, cablegrams, or electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making such determination shall specify the information upon which they relied;

(3) Any copy, electronic transmission or other reliable reproduction of such writing or transmission may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided, that such copy, electronic transmission or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven (11) months unless another period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the member unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(1) A pledgee;

(2) A person who purchased or agreed to purchase the membership;

(3) A creditor of the corporation who extended its credit under terms requiring the appointment;

(4) An employee of the corporation whose employment contract requires the appointment; or

(5) A party to a voting agreement created under § 48-57-301.

(e) In the case of a proxy not made irrevocable under subsection (d), the death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(f) An appointment made irrevocable under subsection (d) becomes revocable when the interest with which it is coupled is extinguished.

(g) A transferee for value of the membership subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when such transferee acquired the membership, and the existence of the irrevocable appointment was not noted conspicuously on the document or documents representing the membership or the right to transfer the membership.

(h) Subject to § 48-57-208 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

(i) Each fiduciary, including such acting as executor, administrator, guardian, committee, agent, or trustee, owning memberships registered in such person's name as fiduciary, or in the name of another for the convenience of the fiduciary, whether the corporation issuing such memberships is foreign or domestic, may, in addition to exercising the voting rights vested in such fiduciary, execute and deliver, or cause to be executed and delivered, a proxy or proxies in accordance with this section to others for the voting of such memberships, but subject always to the following limitations:

(1) If there are two (2) or more fiduciaries acting, the proxy shall be executed by, and voting instructions shall be issued by, agreement of all fiduciaries or a majority of them, and in the event of failure to obtain a majority,

each of the fiduciaries shall vote the number of memberships held by the fiduciaries divided by the number of fiduciaries; and

(2) In the event the rights, manner or method of voting or the purpose to be accomplished is fixed by the instrument or instruments appointing the fiduciaries, the directions therein shall govern.

SECTION 28. Tennessee Code Annotated, Title 48, Chapter 57, Part 2, is amended by adding the following language as a new section:

48-57-209.

(a) A corporation with members may appoint one (1) or more inspectors to act at a meeting of members and make a report in the form of a document of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.

(b) The inspectors shall:

- (1) Ascertain the number of members and their voting power;
- (2) Determine the members present at a meeting;
- (3) Determine the validity of proxies and ballots;
- (4) Count all votes; and
- (5) Determine the result.

(c) An inspector may, but need not, be a director, member, officer, or employee of the membership corporation. A person who is a candidate for office to be filled at the meeting shall not be an inspector.

SECTION 29. Tennessee Code Annotated, Section 48-57-301, is amended by deleting subsection (f) in its entirety and substituting the following:

(f) A voting agreement created under this section is specifically enforceable, except that a voting agreement is not enforceable to the extent that enforcement of the agreement would violate the purposes of the corporation with members.

SECTION 30. Tennessee Code Annotated, Section 48-58-101(c), is amended by deleting "The charter" and substituting instead "The charter of a mutual benefit corporation".

SECTION 31. Tennessee Code Annotated, Section 48-58-101, is amended by adding the following new subsection:

(d) The charter of a public benefit corporation may authorize no less than three (3) individuals to exercise some or all of the powers which would otherwise be exercised by a board. If individuals are authorized to exercise powers pursuant to this subsection (d), any and all such individuals shall have the duties and responsibilities of the directors, and the directors shall be relieved from such duties and responsibilities; provided, however, if the charter of a public benefit corporation that is in existence and not administratively dissolved on July 1, 2014, contains a provision on or before July 1, 2014, that authorizes less than three (3) individuals or an entity or entities to exercise some or all of the powers that would otherwise be exercised by a board, that provision shall remain valid and effective until the first occurrence of one of the following:

- (1) The provision is amended or modified to conform with this section;
- (2) All individuals authorized to exercise powers of the board cease to serve in such a capacity; or
- (3) The dissolution, resignation or removal of all of the entities authorized to exercise powers of the board.

SECTION 32. Tennessee Code Annotated, Section 48-58-108(a), is amended by adding the following sentence after the period: "The charter or bylaws may specify what constitutes cause for removal."

SECTION 33. Tennessee Code Annotated, Section 48-58-204(a), is amended by deleting "must be in writing" and substituting instead "must be in the form of a document".

SECTION 34. Tennessee Code Annotated, Section 48-58-205(c)(3), is amended by deleting "delivers written notice" and substituting instead "delivers notice in the form of a document".

SECTION 35. Tennessee Code Annotated, Section 48-58-206(a), is amended by deleting "§ 48-58-302" and substituting instead "§ 48-58-703".

SECTION 36. Tennessee Code Annotated, Section 48-58-206, is amended by adding the following language as new subsections (g) and (h):

(g) The board of directors may appoint one (1) or more directors as alternate members of any committee to replace any absent or disqualified committee member during the member's absence or disqualification.

(h) The corporation may create or authorize the creation of one (1) or more advisory committees whose members need not be directors. An advisory committee is not a committee of the board and may not exercise any of the powers of the board.

SECTION 37. Tennessee Code Annotated, Section 48-58-301(b), is amended by deleting the word "or" at the end of subdivision (2); by deleting the period at the end of subdivision (3) and substituting instead a semicolon and the word "or"; and by adding the following language as a new subdivision to be designated as follows:

(4) One (1) or more volunteers of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

SECTION 38. Tennessee Code Annotated, Section 48-58-301, is amended by adding the following language as new subsections (f) and (g):

(f) In discharging board or committee duties a director must disclose, or cause to be disclosed, to the other board or committee members information not already known by the other board or committee members but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed by law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

(g) A director may rely, in the case of a corporation engaged in religious activity, on religious authorities, religious leaders or other persons whose positions or duties the director reasonably believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

SECTION 39. Tennessee Code Annotated, Section 48-58-302, is amended by deleting the section in its entirety and substituting the following:

48-58-302.

(a) Unless the director complies with the applicable standards of conduct described in § 48-58-301, a director who votes for or assents to a distribution made in violation of chapters 51-68 of this title or the charter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating chapters 51-68 of this title or the charter.

(b) A director held liable for an unlawful distribution under subsection (a) is entitled to contribution from:

(1) Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in § 48-58-301; and

(2) Each person who received an unlawful distribution for the amount of the distribution, whether or not the person receiving the distribution knew it was made in violation of chapters 51-68 of this title or the charter.

(c) A proceeding to enforce:

(1) The liability of a director under subsection (a) is barred unless it is commenced within two (2) years after the liability of such director has been finally adjudicated; and

(2) Contribution or recoupment under subsection (b) is barred unless it is commenced within one (1) year after the liability of the claimant has been finally adjudicated.

(d) Commencement of actions described in § 48-58-601 shall be governed by such section.

SECTION 40. Tennessee Code Annotated, Section 48-58-303, is amended by deleting the section in its entirety and substituting the following:

48-58-303.

(a) A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation.

(b) This section does not apply to loans and guarantees authorized or permitted by any other statute that regulates any special class of corporation.

(c) This section does not apply to:

(1) Advances to pay reimbursable expenses reasonably expected to be incurred by a director or officer;

(2) Advances to pay premiums on life insurance if the advance is secured by the cash value of the policy;

(3) Advances pursuant to part 5 of this chapter;

(4) Loans or advances pursuant to employee benefit plans; or

(5) Loans to pay relocation expenses.

(d) Neither a sale on credit in the ordinary course of business nor a life insurance policy loan shall be subject to the restrictions of this section.

(e) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

SECTION 41. Tennessee Code Annotated, Section 48-58-304, is amended by deleting the section in its entirety.

SECTION 42. Tennessee Code Annotated, Section 48-58-403, is amended by adding the following new subsection:

(c) The duty of an officer includes the obligation to inform:

(1) The superior officer to whom, or the board of directors or the committee thereof to which, the officer reports, of information about the affairs of the nonprofit corporation known to the officer, within the scope of the officer's functions and known to the officer to be material to the superior officer, board or committee; and

(2) The officer's superior officer, or another appropriate person within the nonprofit corporation, or the board of directors, or a committee thereof, of any action or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.

SECTION 43. Tennessee Code Annotated, Section 48-58-405, is amended by adding the following language as a new subsection (c):

(c) Except as provided in the charter or bylaws, an officer may be removed at any time with or without cause by the appointing officer unless the board provides otherwise. In this section, "appointing officer" means the officer (including any successor to that officer) who appointed the officer resigning or being removed.

SECTION 44. Tennessee Code Annotated, Section 48-58-501, is amended by deleting subdivision (2) and substituting instead the following:

(2) "Director" means an individual who is or was a director of a corporation, is or was a member of a committee of the board, or an individual who, while a director of a corporation

or an individual serving on a committee of the board, is or was serving at the corporation's request as a director, member of a committee of the board, officer, partner, trustee, employee, or agent of another foreign or domestic for-profit or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on or otherwise involve services by the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the contract requires otherwise, the estate or personal representative of a director;

SECTION 45. Tennessee Code Annotated, Section 48-58-501(5)(B), is amended by deleting "not for profit" and substituting instead "nonprofit".

SECTION 46. Tennessee Code Annotated, Section 48-58-502(d), is amended by adding the following new subdivisions:

(3) For any breach of the director's duty of loyalty to the corporation or its members;

(4) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(5) Under § 48-58-302.

SECTION 47. Tennessee Code Annotated, Section 48-58-503, is amended by deleting "who is wholly" and substituting instead "to the extent the director was".

SECTION 48. Tennessee Code Annotated, Section 48-58-504(a), is amended by deleting "written affirmation" and substituting instead "document" and further amend by deleting "written undertaking" and substituting instead "document".

SECTION 49. Tennessee Code Annotated, Section 48-58-506, is amended by deleting subsection (a) and substituting the following:

(a) A corporation may not indemnify a director who is not a qualified director under § 48-58-502 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in § 48-58-502.

SECTION 50. Tennessee Code Annotated, Section 48-58-506(b), is amended by deleting subdivision (1) and substituting the following:

(1) The board of directors by majority vote of a quorum consisting of directors whether or not at the time are parties to the proceeding;

SECTION 51. Tennessee Code Annotated, Section 48-58-506(b), is amended by deleting subdivision (4) and substituting the following:

(4) The members, but directors who are at the time parties to the proceeding may not vote on the determination; or

(5) Qualified directors as provided in § 48-58-703.

SECTION 52. Tennessee Code Annotated, Section 48-58-509(a)(1), is amended by deleting subdivisions (B) and (C) and substituting the following:

(B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(C) For a director's or officer's conflicting interest transaction under part 7 of this chapter; or

(D) Under § 48-58-302.

SECTION 53. Tennessee Code Annotated, Section 48-58-509, is amended by adding the following language as a new subsection (c):

(c) This part does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee, agent, or volunteer.

SECTION 54. Tennessee Code Annotated, Title 48, Chapter 58, is amended by adding the following language as a new part:

48-58-701. As used in this part:

(1) "Control" or "controlled by" means:

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

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

(2) "Director's or officer's conflicting interest transaction" means a transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation):

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

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

(C) Respecting which, at the relevant time, the director or officer knew that a related person was a party or had a material financial interest;

(3) "Fair to the corporation" means, for purposes of § 48-58-702(b)(3), that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was:

(A) Fair in terms of the director's or officer's dealings with the corporation; and

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

(4) "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's or officer's judgment when participating in action on the authorization of the transaction;

(5) "Material relationship" means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken;

(6)(A) "Qualified director" means a director who, at the time action is to be taken under § 48-58-703, is not a director:

(i) As to whom the transaction is a director's or officer's conflicting interest transaction; or

(ii) Who has a material relationship with another director as to whom the transaction is a director's or officer's conflicting interest transaction;

(B) The presence of one (1) or more of the following circumstances shall not automatically prevent a director from being a qualified director:

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

(ii) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter (or any individual who has a material relationship with that director), is or was also a director;

(7) "Related person" means:

(A) The director's or officer's spouse;

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

(C) An individual living in the same home as the director or officer;

(D) An entity (other than the corporation or an entity controlled by the corporation) controlled by the director or officer or any person specified in subdivisions (7)(A)-(C);

(E) A domestic or foreign:

(i) Business or nonprofit corporation (other than the corporation or an entity controlled by the corporation) of which the director or officer is a director but only with respect to a transaction or proposed transaction to which the corporation and the other business or nonprofit corporation are parties or proposed parties and that is a transaction or proposed transaction that is or should be considered by the board of directors of the corporation;

(ii) Unincorporated entity of which the director or officer is a general partner or a member of the governing body; or

(iii) Individual, trust or estate for whom or of which the director or officer is a trustee, guardian, personal representative or like fiduciary; or

(F) A person that is or an entity that is controlled by an employer of the director or officer;

(8) "Relevant time" means:

(A) The time at which directors' action respecting the transaction is taken in compliance with § 48-58-703; or

(B) If the transaction is not brought before the board of directors of the corporation (or its committee) for action under § 48-58-703, at the time the corporation (or an entity controlled by the corporation) becomes legally obligated to consummate the transaction; and

(9) "Required disclosure" means disclosure of:

(A) The existence and nature of the director's or officer's conflicting interest; and

(B) All facts known to the director or officer respecting the subject matter of the transaction that a director or officer free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

48-58-702.

(a) A transaction effected or proposed to be effected by the corporation (or by an entity controlled by the corporation) may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director or officer of the corporation, in a proceeding by a member or by or in the right of the corporation, on the ground that the director or officer has an interest respecting the transaction, if it is not a director's or officer's conflicting interest transaction.

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

(1) Directors' action respecting the transaction was taken in compliance with § 48-58-703 at any time;

(2) Member's action respecting the transaction was taken in compliance with § 48-58-704 at any time;

(3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation; or

(4) Approval of the transaction is obtained from:

(A) The attorney general and reporter; or

(B) A court of record having equity jurisdiction in an action in which the attorney general and reporter is joined as party.

48-58-703.

(a) Directors' action respecting a director's or officer's conflicting interest transaction is effective for purposes of § 48-58-702 if the transaction has been authorized by the affirmative vote of a majority (but no fewer than two (2)) of the qualified directors who voted on the transaction, after required disclosure by the conflicted director or officer of information not already known by such qualified directors, or after modified disclosure in compliance with subsection (b); provided, that:

(1) The qualified directors have deliberated and voted without the participation by any other director; and

(2) Where the action has been taken by a committee, all members of the committee were qualified directors, and either:

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

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

(b) Notwithstanding subsection (a), when a transaction is a director's or officer's conflicting interest transaction only because a related person described in § 48-58-701(7)(E) or (7)(F) is a part to or has a material financial interest in the transaction, the conflicted director or officer is not obligated to make required disclosure to the extent that the director or officer reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule; provided, that the conflicted director or officer discloses to the qualified directors voting on the transaction:

(1) All the information required to be disclosed that is not so violative;

(2) The existence and nature of the director's or officer's conflicting interest; and

(3) The nature of the conflicted director's or officer's duty not to disclose the confidential information.

(c)(1) A majority (but no fewer than two (2)) of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section.

(2) Where directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the charter, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

48-58-704.

(a) Members' action respecting a director's or officer's conflicting interest transaction is effective for purposes of § 48-58-702(b)(2) if a majority of the votes cast by the holders of all qualified memberships are in favor of the transaction after:

(1) Notice to members describing the action to be taken respecting the transaction;

(2) Provision to the corporation of the information referred to in subsection (b); and

(3) Communication to the members entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

(b) A director or officer who has conflicting interest respecting the transaction shall, before the members' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of memberships that the director or officer knows are not qualified memberships under subsection (c), and the identity of the holders of those memberships.

(c) For purposes of this section:

(1) "Beneficial member" means the person who is a beneficial owner of a membership interest held by a nominee as the record member;

(2) "Holder" means, and "held by" refers to, memberships held by both a record member and a beneficial member;

(3) "Qualified memberships" means all memberships entitled to be voted with respect to the transaction except for memberships that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) is notified, are held by:

(A) A director or officer who has a conflicting interest respecting the transaction; or

(B) A related person of the director or officer (excluding a person described in § 48-58-701(7)(F)); and

(4) "Record member" means the person in whose name a membership interest is registered in the records of a corporation or the beneficial owner of the membership interest to the extent of the rights granted by a nominee certificate or other document on file with the corporation.

(d) A majority of the votes entitled to be cast by the holders of all qualified memberships constitutes a quorum for purposes of compliance with this section. Subject to subsection (e), members' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of memberships that are not qualified memberships.

(e) If a member's vote does not comply with subsection (a) solely because of a director's or officer's failure to comply with subsection (b), and if the director or officer establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director or officer, and may give such effect, if any, to the members' vote, as the court considers appropriate in the circumstances.

(f) Where members' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the charter, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the members, in which action memberships that are not qualified memberships may participate.

SECTION 55. Tennessee Code Annotated, Section 48-60-102(a), is amended by deleting subdivision (3) and substituting the following:

(3) Designate or change the address of the principal office of the corporation and a mailing address if the United States Postal Service does not deliver to the principal office;

SECTION 56. Tennessee Code Annotated, Section 48-60-102(a), is amended by deleting the word "or" at the end of subdivision (6); by deleting the period at the end of subdivision (7) and substituting instead a semicolon; and by adding the following language as new subdivisions to be designated as follows:

(8) Restate without change all of the then operative provisions of the charter; or

(9) Extend the duration of the corporation, including perpetual duration, if it was incorporated at a time when limited duration was required by law.

SECTION 57. Tennessee Code Annotated, Section 48-60-103, is amended by adding the following language as a new subsection:

(f) The board must transmit to the members a recommendation that the members approve the amendment, unless the board makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board must transmit to the members the basis for that determination.

SECTION 58. Tennessee Code Annotated, Section 48-60-104(a), is amended by deleting subdivision (5) in its entirety and substituting the following:

(5) Effect an exchange or reclassification, or create the right of exchange, of all or part of the memberships of another class into memberships of the class; or

SECTION 59. Tennessee Code Annotated, Section 48-60-104(a), is amended by adding the following new, appropriately designated subdivision:

() Effect a termination of the memberships of that class.

SECTION 60. Tennessee Code Annotated, Section 48-60-107, is amended by deleting subsection (a) in its entirety and substituting the following:

(a) A corporation's charter may be amended without action by the board of directors, members or any other person pursuant to § 48-60-301 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States if the charter after amendment contains only provisions required or permitted by § 48-52-102.

SECTION 61. Tennessee Code Annotated, Section 48-60-108, is amended by deleting the section in its entirety and substituting the following:

48-60-108.

(a) Except as provided in subsections (b), (c), and (d), an amendment to the charter does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than members of the corporation or persons referred to in the charter. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

(b) Property held in trust by a corporation or otherwise dedicated to a charitable purpose may not be diverted from its purpose by an amendment of its charter unless the corporation obtains an appropriate order of a court of competent jurisdiction to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.

(c) Unless a corporation obtains an appropriate order of a court of competent jurisdiction under the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets, an amendment of its charter may not affect:

(1) Any restriction imposed upon property held by the corporation by virtue of any trust under which it holds that property; or

(2) The existing rights of persons other than its members.

(d) A person who is a member or otherwise affiliated with a public benefit corporation may not receive a direct or indirect financial benefit in connection with an amendment of the charter unless the person is itself a public benefit corporation or an unincorporated entity with a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.

SECTION 62. Tennessee Code Annotated, Section 48-60-203, is amended by adding the following language as a new, appropriately designated subsection (c):

(c) Except as provided in the charter or bylaws, the board of directors of a corporation that has one (1) or more members at the time may not adopt or amend a bylaw under:

- (1) Section 48-56-201 providing differences in rights and obligations of members;
- (2) Section 48-56-204 addressing member's liability for dues, assessments and fees;
- (3) Section 48-56-302 relating to termination;
- (4) Section 48-56-303 authorizing the purchase of memberships;
- (5) Section 48-58-108(a) requiring cause to remove a director;
- (6) Section 48-58-108(a) specifying what constitutes cause to remove a director;
- (7) Section 48-58-109 relating removal of designated or appointed directors;
or
- (8) Section 48-58-101(c) authorizing persons to exercise powers otherwise exercised by the board.

SECTION 63. Tennessee Code Annotated, Title 48, Chapter 60, Part 2, is amended by adding the following language as a new section:

48-60-206.

(a) Property held in trust by a corporation or otherwise dedicated to a charitable purpose may not be diverted from its purpose by an amendment of its charter unless the corporation obtains an appropriate order of a court of competent jurisdiction to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.

(b) Unless a corporation, after notifying the attorney general and reporter obtains an appropriate order of a court of competent jurisdiction under the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets, an amendment of its charter may not affect:

- (1) Any restriction imposed upon property held by the corporation by virtue of any trust under which it holds that property; or
- (2) The existing rights of persons other than its members.

(c) A person who is a member or otherwise affiliated with a public benefit corporation may not receive a direct or indirect financial benefit in connection with an amendment of the charter unless the person is itself a public benefit corporation or an unincorporated entity with a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.

SECTION 64. Tennessee Code Annotated, Section 48-60-301, is amended by deleting the section in its entirety and substituting the following:

48-60-301. The charter may require an amendment to the charter or bylaws to be approved in writing by a specified person or persons other than the board or members. Such a charter provision may only be amended with the approval of such person or persons in the form of a document.

SECTION 65. Tennessee Code Annotated, Section 48-61-101, is amended by deleting the section in its entirety and substituting the following:

48-61-101. As used in this chapter, unless the context otherwise requires:

- (1) "Converted entity" means the domestic corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic corporation;
- (2) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign business corporation;
- (3) "Eligible interests" means interests or shares;

(4) "Filing entity" means an unincorporated entity that is of a type that is created by filing a public organic document;

(5) "Foreign business corporation" means a corporation for-profit incorporated under an organic law other than the laws of this state;

(6) "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law other than the laws of this state;

(7) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:

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

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

(8) "Interest holder" means a person who holds of record an interest;

(9) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation and includes the rights and obligations a member has pursuant to a corporation's charter, bylaws and chapters 51-68 of this title;

(10) "Party to a merger or membership exchange" means any domestic or foreign nonprofit corporation, or eligible entity that will:

(A) Merge in a plan of merger;

(B) Acquire memberships or eligible interests of another domestic or foreign corporation, or an eligible entity in a membership exchange; or

(C) Have all of its memberships or eligible interests of one (1) or more classes or series acquired in membership exchange;

(11) "Survivor" means the corporation or unincorporated entity that is in existence immediately after consummation of a merger or entity conversion pursuant to this chapter; and

(12) "Voting memberships" means memberships that entitle their holders to vote unconditionally in the election of directors.

SECTION 66. Tennessee Code Annotated, Section 48-61-102, is amended by deleting the section in its entirety and substituting the following:

48-61-102.

(a) Subject to the limitations on public benefit corporations in § 48-61-122, one (1) or more domestic nonprofit corporations may merge with one (1) or more domestic or foreign nonprofit corporations or eligible entities pursuant to a plan of merger, or two (2) or more foreign nonprofit corporations or domestic or foreign eligible entities may merge into a new domestic nonprofit corporation to be created in the merger in the manner provided in this chapter. The merger shall result in a single survivor.

(b) A foreign nonprofit corporation, or a foreign eligible entity, may be a party to a merger with a domestic nonprofit corporation, or may be created by the terms of the plan of merger, only if the merger is permitted by the organic law of the foreign nonprofit corporation or eligible entity. If the organic law of a domestic eligible entity does not prohibit a merger with a domestic nonprofit corporation but does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, and the merger effectuated, in accordance with the procedures in this chapter. For the purposes of applying this chapter:

(1) The eligible entity, its members or interest holders, eligible interests, and organic documents, taken together shall be deemed to be a domestic nonprofit corporation, members, memberships, charter and bylaws, respectively and vice versa, as the context may require; and

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

(c) The plan of merger must be in the form of an organic document and set forth:

(1) The name of each domestic or foreign nonprofit corporation or eligible entity planning to merge and the name of each domestic or foreign nonprofit corporation or eligible entity that shall survive the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the memberships of each merging domestic or foreign nonprofit corporation and eligible interests of each merging domestic or foreign eligible entity into memberships or other securities, eligible interests, obligations, rights to acquire memberships, other securities or eligible interests, cash, other property, or any combination of the foregoing;

(4) The charter of any domestic or foreign business corporation or nonprofit corporation, or the organic documents of any domestic or foreign unincorporated entity, to be created by the merger, or if a new domestic or foreign nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's charter and bylaws or organic documents; and

(5) Any other provision required or permitted by the organic law under which any party to the merger is organized or by which it is governed, or by the charter or organic documents of any such party.

(d) The plan of merger may set forth any other provisions relating to the merger.

(e) Terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with § 48-51-301(j).

(f) The plan of merger may also include a provision that the plan may be amended prior to filing articles of merger, but if the members of a domestic nonprofit corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such members the plan may not be amended to change the following:

(1) The amount or kind of memberships or other securities, eligible interests, obligations, rights to acquire memberships, other securities, or eligible interests, cash, or other property to be received under the plan by the members of or owners of eligible interests in any party to the merger;

(2) The charter of any corporation, or the organic documents of any unincorporated entity, that will survive or be created as a result of the merger, except for changes permitted by § 48-60-102 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign unincorporated entity; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect such members in any material respect.

(g) Property held in trust or for charitable purposes under the laws of this state by a domestic or foreign eligible entity shall not be diverted by a merger from the objects for which it was donated, granted, or devised, unless and until the eligible entity obtains a court order specifying the disposition of the property to the extent required by and pursuant to § 35-15-413 or enters into a nonjudicial settlement agreement pursuant to § 35-15-111.

SECTION 67. Tennessee Code Annotated, Section 48-61-103, is amended by deleting the section in its entirety and substituting the following:

48-61-103.

(a) Subject to the limitations on public benefit corporations in § 48-61-122, through a membership exchange:

(1) A domestic nonprofit corporation may acquire all of the memberships of one (1) or more classes or series of memberships of another domestic or foreign nonprofit corporation or all of the interests of one (1) or more classes or series of interests of a domestic or foreign other entity, in exchange for memberships, other securities, interests, obligations, rights to acquire memberships, other securities, or interests, cash, other property, or any combination of the foregoing, pursuant to a plan of membership exchange; or

(2) All of the memberships of one (1) or more classes or series of memberships of a domestic nonprofit corporation may be acquired by another domestic or foreign nonprofit corporation or other entity, in exchange for memberships, other securities, interests, obligations, rights to acquire memberships, other securities or interests, cash, other property, or any combination of the foregoing, pursuant to a plan of membership exchange.

(b) A foreign nonprofit corporation or eligible entity may be a party to a membership exchange only if the membership exchange is permitted by the organic law under which the corporation or other entity is organized or by which it is governed. If the organic law of a domestic other entity does not prohibit a membership exchange with a domestic nonprofit corporation but does not provide procedures for the approval of a membership exchange, a plan of membership exchange may be adopted and approved and the membership exchange effectuated in accordance with the procedures, if any, for a merger. If the organic law of a domestic other entity does not provide procedures for the approval of either a membership exchange or an exchange of interests similar to a membership exchange or a merger, a plan of membership exchange may be adopted and approved and the membership exchange effectuated in accordance with the procedures in this chapter. For the purposes of applying this chapter:

(1) The other entity, its interest holders, interests, and organic documents taken together shall be deemed to be a domestic nonprofit corporation, members, memberships, charter and bylaws, respectively and vice versa, as the context may require; and

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

(c) The plan of membership exchange must be in the form of an organic document and set forth:

(1) The name of each corporation or other entity whose memberships or interests will be acquired and the name of the acquiring corporation or other entity;

(2) The terms and conditions of the membership exchange;

(3) The manner and basis of exchanging memberships of each corporation or interests in another entity whose memberships or interests will be acquired under the membership exchange into memberships, other securities, interests, obligations, rights to acquire memberships, other securities or interests, cash, other property, or any combination of the foregoing; and

(4) Any other provisions required by the organic law under which any party to the membership exchange is organized or by which it is governed, or by the charter or organic document of any such party.

(d) The plan of membership exchange may set forth other provisions relating to the membership exchange.

(e) This section does not limit the power of a domestic nonprofit corporation to acquire all or part of the memberships of one (1) or more classes or series of another corporation or interests of another entity through a voluntary exchange or otherwise.

SECTION 68. Tennessee Code Annotated, Section 48-61-104, is amended by deleting the section in its entirety and substituting instead the following:

48-61-104. In the case of a domestic nonprofit corporation that is a party to a merger or membership exchange:

(a) The plan of merger or membership exchange shall be adopted by the board of directors of each party to the merger or membership exchange and approved by the members, if any, of each party;

(b) Except as provided in subdivision (g) and in § 48-61-105, after adopting the plan of merger or membership exchange, the board of directors shall submit the plan of merger or membership exchange for approval to the members if there are members entitled to vote on the plan. The board of directors must also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination;

(c) The board of directors may condition its submission of the plan of merger or membership exchange to its members on any basis;

(d) If the plan of merger or membership exchange is required to be approved by the members, and if the approval is to be given at a meeting, the corporation shall notify each member, whether or not entitled to vote, of the members' meeting at which the plan is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger or membership exchange and shall contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the charter or organic documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the charter or organizational documents of the new corporation or other entity;

(e) Unless chapters 51-68 of this title, the charter, the organic documents or the board of directors acting pursuant to subdivision (c) requires a greater vote or a vote by voting groups, the plan of merger or membership exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting groups;

(f) Separate voting by voting groups is required:

(1) On a plan of merger, by each class or series of memberships that:

(A) Are to be converted under the plan of merger into memberships, other securities, eligible interests, obligations, rights to acquire memberships, other securities or eligible interests, cash, other property, or any combination of the foregoing; or

(B) Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the charter, would require action by separate voting groups under § 48-60-104;

(2) On a plan of membership exchange, by each class or series of memberships included in the exchange, with each class or series constituting a separate voting group; or

(3) On a plan of merger or membership exchange, if the voting group is entitled under the charter or by agreement to vote as a voting group to approve a plan of merger or membership exchange;

(g) Unless the charter otherwise provides, approval by the members of a domestic corporation of a plan of merger or membership exchange shall not be required if:

(1) The corporation will survive the merger or is the acquiring corporation in a membership exchange;

(2) Except for amendments enumerated in § 48-60-102, its charter will not differ from the charter before the merger;

(3) Each member of the corporation whose memberships were outstanding immediately before the effective date of the merger or exchange will hold the same number of memberships, with identical designations, preferences, limitations and relative rights, immediately after the effective date of the merger or exchange;

(4) The voting power of the members and memberships outstanding immediately after the merger or exchanging, plus the voting power of the memberships issuable as a result of the merger or exchange (either by the conversion of memberships, rights or eligible interests issued pursuant to the merger or exchange or by the exercise of rights or contracts issued pursuant to the merger or exchange), will not exceed by more than twenty percent (20%) the voting power of the total memberships of the corporation immediately before the merger or exchange; and

(5) The number of participating memberships immediately after the merger or exchange, plus the number of participating memberships issuable as a result of the merger or exchange (either by the conversion of memberships, rights or eligible interests issued pursuant to the merger or exchange by the exercise of rights or options issued pursuant to the merger or exchange), will not exceed by more than twenty percent (20%) the total number of participating memberships immediately before the merger or exchange; and

(h) If as a result of a merger or membership exchange, one (1) or more members of a domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of merger or membership exchange shall require the execution, by each member, of a separate written consent to become subject to such owner liability.

SECTION 69. Tennessee Code Annotated, Section 48-61-105, is amended by deleting the section in its entirety and substituting the following:

48-61-105.

(a) Subject to the limitations on public benefit corporations in § 48-61-122, a domestic parent corporation owning at least ninety percent (90%) of the voting memberships or eligible interests of each class and series of a domestic or foreign subsidiary corporation or eligible interests of another controlled eligible entity may either:

(1) Merge the subsidiary corporation or other entity into the parent corporation;

(2) Merge the parent corporation into the subsidiary corporation or other eligible entity; or

(3) Merge two (2) or more subsidiary or controlled corporations or other controlled eligible entities with and into each other.

(b) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(1) The name of the parent corporation owning at least ninety percent (90%) of the outstanding voting memberships of the subsidiary or controlled corporation or eligible interests of the other controlled eligible entity and the name of the subsidiary corporation(s) or other controlled eligible entity or entities to be a party to the merger, and the name of the corporation or other entity that is to survive the merger;

(2) The terms and conditions of the merger;

(3) The manner and basis of converting the memberships of each corporation or eligible interests of the controlled other entity into memberships, eligible interests, obligations or other securities of the survivor or of any other corporation or other entity or into cash or other property or any combination of the foregoing; and

(4) Such other provisions with respect to the proposed merger as the board considers necessary or desirable.

(c) No vote of the members of a subsidiary corporation or approval of interest holders of a subsidiary or controlled other entity shall be required with respect to such a merger. If the parent corporation will be the survivor, no vote of its members shall be required. If the subsidiary corporation or other controlled eligible entity will be the survivor, the approval of the members of the parent corporation shall be obtained in the manner provided in § 48-61-104.

(d) If under subsection (c) approval of a merger by the subsidiary's or eligible entity's members or interest holders is not required, the parent corporation shall, within ten (10) days after the effective date of the merger, notify each of the subsidiary's or eligible entity's members or interest holders that the merger has become effective.

(e) Except as provided in subsections (a)-(d), a merger between a parent and a subsidiary shall be governed by the provisions of this chapter applicable to mergers generally.

SECTION 70. Tennessee Code Annotated, Section 48-61-106, is amended by deleting the section in its entirety and substituting the following:

48-61-106.

(a) After a plan of merger or membership exchange has been adopted and approved as required by chapters 51-68 of this title, and at any time before the merger or membership exchange has become effective, the merger or membership exchange may be abandoned (subject to any contractual rights) by any corporation or other entity that is a party to the merger or membership exchange, without action by the members or interest holders of such party, in accordance with the procedures set forth in the plan of merger or membership exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of such corporation or the managers of such other entity subject to any contractual rights of other parties to the merger or membership exchange.

(b) If the merger or membership exchange is abandoned after articles of merger or membership exchange have been filed with the secretary of state but before the merger or membership exchange has become effective, a statement, executed on behalf of each party to the merger or membership exchange by an officer or other duly authorized representative, stating that the merger or membership exchange has been abandoned in accordance with the plan and this section, shall be filed with the secretary of state prior to the effectiveness of the merger or membership exchange.

(c) The secretary of state shall, when all fees have been paid as required by law:

(1) Endorse on the original and each copy the word "filed" and the month, day, and year of the filing thereof;

(2) File the original in the office of the secretary of state; and

(3) Issue a certificate of abandonment to each party to the merger or membership exchange.

(d) Upon the filing of such statement by the secretary of state, the merger or membership exchange shall be deemed abandoned and shall not become effective.

SECTION 71. Tennessee Code Annotated, Section 48-61-107, is amended by deleting the section in its entirety and substituting the following:

48-61-107.

(a) After a plan of merger or membership exchange has been adopted and approved as required by this chapter, articles of merger or membership exchange shall be executed on behalf of each party to the merger or membership exchange by an officer or other duly authorized representative and shall set forth:

(1) The names of the parties to the merger or membership exchange and the date on which the merger or membership exchange occurred or is to be effective;

(2) If the charter or organic documents of the survivor of a merger are amended, or if a new corporation is created as a result of a merger, the amendments to the survivor's charter or organic documents or the charter of the new corporation;

(3) If approval by the members of a domestic corporation that is a party to the merger or membership exchange is not required by this chapter, a statement to that effect and the date on which the plan was adopted by the board of directors;

(4) If approval by the members of a domestic corporation that is a party to the merger or membership exchange is required by this chapter, a statement to that effect and a statement that the plan was approved by the affirmative vote of the required percentage of all of:

(A) The votes entitled to be cast if there is no voting by voting groups; or

(B) The votes entitled to be cast by each voting group having the right to vote separately on the plan and the votes cast by the outstanding memberships otherwise entitled to vote on the plan;

(5) If the corporation is a public benefit corporation, a statement that notice of the plan of merger or membership exchange was given to the attorney general and reporter in the manner required by § 48-61-123 and that either:

(A) The plan of merger or membership exchange was approved by order of a court of record of this state; or

(B) The corporation received a written statement of no enforcement intent with respect to the plan from the attorney general and reporter; and

(6) As to each foreign corporation and each other entity that was a party to the merger or membership exchange, a statement that the plan and performance of its terms were duly authorized by all action required by the laws under which it was organized and by its charter or organic documents.

(b) The original of the articles of merger or membership exchange shall be delivered to the secretary of state for filing together with the required filing fee. A merger or membership exchange takes effect upon the effective date of the articles of merger or membership exchange.

SECTION 72. Tennessee Code Annotated, Title 48, Chapter 61, Part 1, is amended by adding the following language as new sections:

48-61-108.

(a) When a merger becomes effective:

(1) The corporation or eligible entity that is designated in the plan of merger as an entity surviving the merger shall survive, and the separate existence of every other corporation or eligible entity that is a party to the merger shall cease;

(2) All property owned by, and every contract right possessed by, each corporation or eligible entity that is merged into the survivor shall be vested in the survivor without reversion or impairment;

(3) All liabilities of each corporation or eligible entity that is merged into the survivor shall be vested in the survivor;

(4) A proceeding pending against any corporation or eligible entity that is a party to the merger may be continued as if the merger did not occur or the

name of the survivor may be substituted in the proceeding for any corporation or eligible entity whose existence ceased in the merger;

(5) The charter or organic document of the survivor shall be amended to the extent provided in the plan of merger;

(6) The charter or organic documents of a survivor created by the plan of merger shall become effective; and

(7) The memberships of each corporation and the interests of each eligible entity that are to be converted into memberships, other securities, interests, obligations, rights to acquire memberships, other securities or eligible interests, cash, other property, or any combination of the foregoing in the merger shall be converted or exchanged, and the former holders of such memberships or eligible interests shall be entitled only to the rights provided to them in the plan of merger or to their rights under the organic law of the eligible entity.

(b) When a membership exchange takes effect, the memberships of each corporation that are to be exchanged for memberships, other securities, interests, obligations, rights to acquire memberships, other securities or eligible interests, cash, other property or any combination of the foregoing in the membership exchange shall be exchanged, and the former holders of such memberships shall be entitled only to the rights provided in the plan of membership exchange.

(c) Upon a merger becoming effective, a foreign corporation, or a foreign eligible entity, that is the survivor of the merger is deemed to:

(1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of members of each domestic corporation that is a party to the merger; and

(2) Agree that it will promptly pay the amount, if any, to which such members are entitled under the plan of merger.

(d) The effect of a merger or membership exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations or liabilities of a party to the merger or membership exchange shall be as follows:

(1) The merger or membership exchange does not discharge any owner liability under the organic law of the entity in which the person was a member or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or membership exchange;

(2) The person shall not have owner liability under the organic law of the entity in which the person was member or eligible interest holder prior to the merger or membership exchange for any debt, obligation or liability that arises after the effective time of the articles of merger or membership exchange;

(3) The provisions of the organic law of any entity for which the person had owner liability before the merger or membership exchange shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (d)(1), as if the merger or membership exchange had not occurred; and

(4) The person shall have whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by subdivision (d)(1), as if the merger or membership exchange had not occurred.

(e) A merger or membership exchange shall take effect upon the date the articles of merger or membership exchange are filed as provided in § 48-61-107(b) or on such later date as may be specified in the plan of merger or share exchange.

48-61-109.

(a) Subject to the limitations on public benefit corporations in § 48-61-122, a domestic nonprofit corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion.

(b) Subject to the limitations on public benefit corporations in § 48-61-122, a domestic nonprofit corporation may become a foreign unincorporated entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

(c) A domestic unincorporated entity may become a domestic nonprofit corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, and the entity conversion effectuated, in accordance with the procedures in this chapter. Without limiting the provisions of this subsection (c), a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to subsection (e) and § 48-61-111(7). For purposes of applying this chapter:

(1) The unincorporated entity, its interest holders, interests, and organic documents taken together, shall be deemed to be a domestic nonprofit corporation, members, memberships and charters, respectively, and vice versa, as the context may require; and

(2) If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group shall be deemed to be the board of directors.

(d) A foreign unincorporated entity may become a domestic nonprofit corporation if the organic law of the foreign unincorporated entity authorizes it to become a nonprofit corporation in another jurisdiction.

(e) If any provision of a debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic nonprofit corporation before January 1, 2015, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is amended on or subsequent to January 1, 2015.

(f) If a plan of entity conversion includes a for-profit conversion of the corporation, the corporation must also comply with the provisions of § 48-61-116 through § 48-61-121.

48-61-110.

(a) A plan of entity conversion must include:

(1) A statement of the type of other entity the survivor will be and, if it will be a foreign other entity, its jurisdiction of organization;

(2) The terms and conditions of the conversion;

(3) The manner and basis of converting the memberships of the domestic nonprofit corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination of the foregoing; and

(4) The full text, as they will be in effect immediately after consummation of the conversion, of the organic documents of the survivor.

(b) The plan of entity conversion may also include a provision that the plan may be amended prior to filing articles of entity conversion, except that subsequent to approval of the plan by the members, the plan may not be amended to change:

(1) The amount or kind of memberships or other securities, interests, obligations, rights to acquire memberships, other securities or interests, cash or other property to be received under the plan by the members;

(2) The organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the survivor comparable to § 48-60-102; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(c) Terms of a plan of entity conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with § 48-51-301.

48-61-111. In the case of an entity conversion of a domestic nonprofit corporation to a domestic or foreign unincorporated entity:

(a) The plan of entity conversion must be adopted by the board of directors;

(b) After adopting the plan of entity conversion, the board of directors must submit the plan to the members for their approval if there are members entitled to vote on the plan. The board of directors must also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination;

(c) The board of directors may condition its submission of the plan of entity conversion to the members on any basis;

(d) If the approval of the members is to be given at a meeting, the corporation must notify each member, whether or not entitled to vote, of the meeting of members at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a full text copy of the organic documents as they will be in effect immediately after the entity conversion;

(e) Unless chapters 51-67 of this title, the charter, or the board of directors acting pursuant to subdivision (c) requires a greater vote or a vote by voting groups, the plan of conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group;

(f) If any provision of the charter, bylaws or an agreement to which any of the directors or members are parties, adopted or entered into before January 1, 2015, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision shall be deemed to apply to an entity conversion of the corporation until such time as the provision is subsequently amended; and

(g) If as a result of the conversion one (1) or more members of the corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall require the execution, by each such member, of a separate written consent to become subject to such owner liability.

48-61-112.

(a) After the conversion of a domestic nonprofit corporation to a domestic unincorporated entity has been adopted and approved as required by this chapter, articles of entity conversion shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which shall be a name that satisfies the organic law of the survivor;

(2) State the type of unincorporated entity that the survivor will be;

(3) Set forth a statement that the plan of entity conversion was duly approved by the members in the manner required by this chapter and the charter;

(4) If the survivor is a filing entity, have attached the applicable public organic document; except that provisions that would not be required to be included in a restated public organic document may be omitted; and

(5) If the corporation is a public benefit corporation, a statement that notice of the plan of entity conversion was given to the attorney general and reporter in the manner required by § 48-61-123 and that either:

(A) The plan of entity conversion was approved by order of a court of record of this state; or

(B) The corporation received a written statement of no enforcement intent with respect to the plan from the attorney general and reporter.

(b) After the conversion of a domestic unincorporated entity to a domestic nonprofit corporation has been adopted and approved as required by the organic law of the unincorporated entity, articles of entity conversion shall be executed on behalf of the unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which shall be a name that satisfies the requirements of § 48-54-101;

(2) Set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the unincorporated entity; and

(3) Have attached a charter; except that provisions that would not be required to be included in a restated charter of a domestic nonprofit corporation may be omitted.

(c) After the conversion of a foreign unincorporated entity to a domestic nonprofit corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion shall be executed on behalf of the foreign unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which shall be a name that satisfies the requirements of § 48-54-101;

(2) Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

(3) Set forth a statement that the conversion of the unincorporated entity was duly approved in the manner required by its organic law; and

(4) Have attached a charter; except that provisions that would not be required to be included in a restated charter of a domestic nonprofit corporation may be omitted.

(d) The articles of entity conversion shall be delivered to the secretary of state for filing, together with the required filing fee, and shall take effect at the effective time provided in § 48-51-304. Articles of entity conversion filed under subsection (a) or (b) may be combined with any required conversion filing under the organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law. The public organic document required by subsection (a) to be attached shall be delivered to the secretary of state for filing, and shall take effect at the effective time of the articles of entity conversion. A filing fee for the public organic document shall be paid to the secretary of state in the amount specified for such public organic document by the applicable law governing the formation of such domestic unincorporated entity. The charter required by subsection (b) or (c) to be attached shall be delivered to the secretary of state for filing, and shall take effect at the effective time of the articles of entity conversion. A filing fee for the charter shall be paid in accordance with § 48-51-303.

(e) If the converting entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to chapter 65 of this

title, its certificate of authority or other type of foreign qualification shall be cancelled automatically on the effective date of its conversion.

48-61-113.

(a) Whenever a domestic nonprofit corporation has adopted and approved, in the manner required by this chapter, a plan of entity conversion providing for the corporation to be converted to a foreign unincorporated entity, articles of charter surrender shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign unincorporated entity;

(3) A statement that the conversion was duly approved by the members or the board of directors or otherwise in the manner required by this chapter and the charter;

(4) The jurisdiction under the laws of which the survivor will be organized; and

(5) If the survivor will be a nonfiling entity, the address of its executive office immediately after the conversion.

(b) The articles of charter surrender shall be delivered by the corporation to the secretary of state for filing together with the required filing fee. The articles of charter surrender shall take effect on the effective time provided in § 48-51-304.

48-61-114.

(a) When a conversion under § 48-61-111 takes effect:

(1) All title to real and personal property, both tangible and intangible, of the converting entity remains in the survivor without reversion or impairment;

(2) All obligations and liabilities of the converting entity continue as obligations and liabilities of the survivor;

(3) An action or proceeding pending against the converting entity continues against the survivor as if the conversion had not occurred;

(4) In the case of a survivor that is a filing entity, its charter or public organic documents and its private organic documents become effective;

(5) In the case of a survivor that is a nonfiling entity, its private organic documents become effective;

(6) The memberships or interests of the converting entity are reclassified into memberships, interests, other securities, obligations, rights to acquire memberships, interests, or other securities, or into cash or other property in accordance with the plan of conversion; and the members or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the applicable organic law of the converting entity if it is other than a corporation; and

(7) The survivor is deemed to:

(A) Be incorporated or organized under and subject to the organic law of the converting entity for all purposes;

(B) Be the same corporation or unincorporated entity without interruption as the converting entity; and

(C) Have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

(b) When a conversion of a domestic nonprofit corporation to a foreign other entity becomes effective, the surviving entity is deemed to:

(1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of members or interest holders who exercise appraisal rights that they may have under the applicable organic law of the converting entity if it is other than a corporation in connection with the conversion; and

(2) Agree that it will promptly pay the amount, if any, to which such members are entitled under the applicable law of the converting entity if it is other than a corporation.

(c) A member who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the survivor shall be personally liable only for those debts, obligations, or liabilities of the survivor that arise after the effective time of the articles of entity conversion.

(d) The owner liability of an interest holder in an unincorporated entity that converts to a domestic nonprofit corporation shall be as follows:

(1) The conversion does not discharge any owner liability under the organic law of the unincorporated entity to the extent any such owner liability arose before the effective time of the articles of entity conversion;

(2) The interest holder shall not have owner liability under the organic law of the unincorporated entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion;

(3) The provisions of the organic law of the unincorporated entity shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (d)(1), as if the conversion had not occurred; and

(4) The interest holder shall have whatever rights of contribution from other interest holders are provided by the organic law of the unincorporated entity with respect to any owner liability preserved by subdivision (d)(1), as if the conversion had not occurred.

(e) The converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and such conversion shall not be deemed to constitute a dissolution of such entity.

(f) The interests of the interest holders of the converting entity, unless otherwise agreed, shall be cancelled and become of no effect whatsoever, with respect to the survivor, and the former holders of such interests shall be entitled only to the rights provided in the plan of conversion or the organic documents for the conversion of memberships into interests in the survivor.

(g) A conversion shall take effect upon the date the articles of conversion are filed, as provided in § 48-61-112, or on such later date as may be specified in the plan of conversion.

(h) Notwithstanding any other law to the contrary, this section and § 48-61-109 shall have no effect on the application of title 67 and other state and federal tax statutes. Any tax consequences of the conversion as referenced herein shall continue to be controlled by applicable state and federal tax statutes as they may be amended from time to time.

48-61-115.

(a) Unless otherwise provided in a plan of entity conversion of a domestic nonprofit corporation, after the plan has been adopted and approved as required by § 48-61-111, and at any time before the entity conversion has become effective, it may be abandoned by the board of directors without action by the members.

(b) If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the secretary of state but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, executed by an officer or other duly

authorized representative, shall be delivered to the secretary of state for filing, together with the required filing fee, prior to the effective date of the entity conversion. Upon filing, the statement shall take effect and the entity conversion shall be deemed abandoned and shall not become effective.

48-61-116.

(a) Subject to the limitations on public benefit corporations in § 48-61-122, a domestic nonprofit corporation may become a domestic business corporation pursuant to a plan of for-profit conversion.

(b) Subject to the limitations on public benefit corporations in § 48-61-122, a domestic nonprofit corporation may become a foreign business corporation if the for-profit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of for-profit conversion, the foreign for-profit conversion shall be approved by the adoption by the domestic nonprofit corporation of a plan of for-profit conversion in the manner provided in this section.

(c) The plan of for-profit conversion must include:

(1) The terms and conditions of the conversion;

(2) The manner and basis of:

(A) Issuing at least one (1) share in the corporation following its conversion, and

(B) Reclassifying the memberships of the corporation following its conversion into shares, if any, or securities, obligations, rights to acquire shares or securities, cash, other property, or any combination of the foregoing;

(3) Any desired amendments to or restatements of the charter or organic documents of the corporation following its conversion; and

(4) If the domestic nonprofit corporation is to be converted to a foreign for-profit corporation, a statement of the jurisdiction in which the corporation will be incorporated after the conversion.

(d) The plan of for-profit conversion may also include a provision that the plan may be amended prior to filing articles of for-profit conversion, except that subsequent to approval of the plan by the members the plan may not be amended to change:

(1) The amount or kind of shares or securities, obligations, rights to acquire shares or securities, cash, or other property to be received by the members under the plan;

(2) The charter as it will be in effect immediately following the conversion, except for changes permitted by § 48-60-102; or

(3) Any of the other terms or conditions of the plan if the change would adversely affect any of the members in any material respect.

(e) Terms of a plan of for-profit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with § 48-51-301.

(f) If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred or executed by a domestic nonprofit corporation before January 1, 2015, contains a provision applying to a merger of the corporation and the document does not refer to a for-profit conversion of the corporation, the provision shall be deemed to apply to a for-profit conversion of the corporation until such time as the provision is amended on or subsequent to January 1, 2015.

48-61-117. In the case of a conversion of a domestic nonprofit corporation to a domestic or foreign for-profit corporation:

(a) The plan of for-profit conversion must be adopted by the board of directors;

(b) After adopting the plan of nonprofit conversion, the board of directors must submit the plan to the members for their approval if there are members entitled to vote on the plan. The board of directors must also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination;

(c) The board of directors may condition its submission of the plan of for-profit conversion to the members on any basis;

(d) If the approval of the members is to be given at a meeting, the corporation must notify each member of the meeting of members at which the plan of for-profit conversion is to be submitted for approval. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice shall include or be accompanied by a copy of the charter as it will be in effect immediately after the for-profit conversion and full text copy of the bylaws and other organic documents as they will be in effect immediately after the for-profit conversion;

(e) Unless chapters 51-68 of this title, the charter, or the board of directors acting pursuant to subdivision (c) requires a greater vote or a vote by voting groups, the plan of for-profit conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group; and

(f) If any provision of the charter, bylaws, or an agreement to which any of the directors or members are parties, adopted or entered into before January 1, 2015, applies to a merger of the corporation and the document does not refer to a for-profit conversion of the corporation, the provision shall be deemed to apply to a for-profit conversion of the corporation until such time as the provision is amended on or subsequent to January 1, 2015.

48-61-118.

(a) After a plan of for-profit conversion providing for the conversion of a domestic nonprofit corporation to a domestic business corporation has been adopted and approved as required by this chapter, articles of for-profit conversion shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of for-profit conversion and if that name does not satisfy the requirements of § 48-14-101, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of § 48-14-101;

(2) A statement that the plan of for-profit conversion was duly approved by the members in the manner required by this chapter and the charter if there are members entitled to vote on the plan or, if there are no members entitled to vote on the plan, by the board of directors in the manner required by this chapter and the charter; and

(3) If the corporation is a public benefit corporation, a statement that notice of the plan of for-profit conversion was given to the attorney general and reporter in the manner required by § 48-61-123 and that either:

(A) The plan of for-profit conversion was approved by order of a court of record of this state; or

(B) The corporation received a written statement of no enforcement intent with respect to the plan from the attorney general and reporter.

(b) The articles of for-profit conversion shall have attached a charter that satisfies the requirements of § 48-12-102. Provisions that would not be required to be included in a charter of a domestic business corporation may be omitted.

(c) The articles of for-profit conversion shall be delivered to the secretary of state for filing, together with the required filing fee, and shall take effect at the

effective time provided in § 48-51-304. The attached charter shall be delivered to the secretary of state for filing and a fee therefor shall be paid in accordance with § 48-11-303.

48-61-119.

(a) Whenever a domestic nonprofit corporation has adopted and approved, in the manner required by this chapter, a plan of for-profit conversion providing for the corporation to be converted to a foreign for-profit corporation, articles of charter surrender shall be executed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign for-profit corporation;

(3) A statement that the foreign for-profit conversion was duly approved by the members in the manner required by this section and the charter; and

(4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the secretary of state for filing together with the required filing fee in accordance with § 48-51-303. The articles of charter surrender shall take effect on the effective time provided in § 48-51-304.

48-61-120.

(a) When a conversion of a domestic nonprofit corporation to a domestic business corporation becomes effective:

(1) The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

(2) The liabilities of the corporation remain the liabilities of the corporation;

(3) An action or proceeding pending against the corporation continues against the corporation as if the conversion had not occurred;

(4) The charter of the domestic or foreign for-profit corporation becomes effective;

(5) The memberships of the corporation are reclassified into shares, interests, securities, obligations, rights to acquire shares or securities, or into cash or other property in accordance with the plan of for-profit conversion, and the members are entitled only to the rights provided in the plan of for-profit conversion or to any rights they may have under charter or organic documents of the corporation; and

(6) The corporation is deemed to:

(A) Be a domestic business corporation for all purposes;

(B) Be the same corporation without interruption as the corporation that existed prior to the conversion; and

(C) Have been incorporated on the date it was originally incorporated as a domestic nonprofit corporation.

(b) When a conversion of a domestic nonprofit corporation to a foreign for-profit corporation becomes effective, the foreign for-profit corporation is deemed to:

(1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of members who exercise appraisal rights in connection with the conversion; and

(2) Agree that it will promptly pay the amount, if any, to which such members are entitled under the charter or organic documents of the corporation.

(c) The owner liability of a member in a domestic nonprofit corporation that converts to a domestic business corporation shall be as follows:

(1) The conversion does not discharge any owner liability of the member as a member of the nonprofit corporation to the extent any such owner liability arose before the effective time of the articles of for-profit conversion;

(2) The member shall not have owner liability for any debt, obligation, or liability of the for-profit corporation that arises after the effective time of the articles of for-profit conversion;

(3) The laws of this state shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (c)(1), as if the conversion had not occurred and the business corporation were still a nonprofit corporation; and

(4) The member shall have whatever rights of contribution from other members are provided by the laws of this state with respect to any owner liability preserved by subdivision (c)(1), as if the conversion had not occurred and the business corporation was still a nonprofit corporation.

(d) A member who becomes subject to owner liability for some or all of the debts, obligations, or liabilities of the business corporation shall have owner liability only for those debts, obligations, or liabilities of the business corporation that arise after the effective time of the articles of for-profit conversion.

48-61-121.

(a) Unless otherwise provided in a plan of for-profit conversion of a domestic nonprofit corporation, after the plan has been adopted and approved as required by this section, and at any time before the for-profit conversion has become effective, it may be abandoned by the board of directors without action by the members.

(b) If a for-profit conversion is abandoned under subsection (a) after articles of for-profit conversion or articles of charter surrender have been filed with the secretary of state but before the for-profit conversion has become effective, a statement that the for-profit conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing, together with the required filing fee, prior to the effective date of the for-profit conversion. The statement shall take effect upon filing, and the for-profit conversion shall be deemed abandoned and shall not become effective.

48-61-122.

(a)(1) Without the prior approval of a court of record of this state having equity jurisdiction in a proceeding of which the attorney general and reporter has been given written notice of a plan of merger or membership exchange, a plan of entity conversion, or a plan of for-profit conversion in accordance with § 48-61-123 or (2) unless the attorney general and reporter, after receiving written notice to the attorney general in accordance with § 48-61-123, has issued a written statement of no enforcement intent with respect to the plan, a public benefit corporation may be a party to a merger, membership exchange, entity conversion or for-profit conversion transaction described in this chapter only with:

(A) A domestic nonprofit public benefit corporation;

(B) A foreign nonprofit corporation which would qualify under chapters 51-68 of this title as a public benefit corporation;

(C) A foreign or domestic corporation for profit; provided, that the public benefit corporation is the surviving corporation and continues to be a public benefit corporation after the transaction; or

(D) A foreign or domestic corporation for profit that is the surviving corporation; provided that:

(i) On or prior to the effective date of the transaction, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including good will) of the public benefit corporation, or the fair market value of the public benefit corporation if it were to be operated as a business concern, are transferred or conveyed to one (1) or more persons who would have received its assets under § 48-64-106(a)(5) and (a)(6) had it dissolved;

(ii) It shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the transaction, in accordance with such condition;

(iii) The transaction is approved by a majority of directors of the public benefit corporation who are not and will not become shareholders in or officers, employees, agents or consultants of the for-profit corporation; and

(iv) A copy of the plan of transaction is submitted to the attorney general and reporter not less than forty-five (45) days prior to the effective date of the transaction.

(b) A public benefit corporation must give written notice to the attorney general and reporter in accordance with § 48-61-123.

(c) In a transaction to which subdivisions (a)(1), (2) or (3) applies, when a public benefit corporation with members consummates the transaction, each member of the public benefit corporation may only receive or keep a membership or membership interest in the surviving public benefit corporation if the surviving public benefit corporation has memberships or membership interests in accordance with the plan.

(d) Unless a public benefit corporation that is a party to a transaction under this chapter has obtained an order of a court of record in this state having equity jurisdiction to the extent required by the law of this state regarding cy pres or otherwise dealing with the nondiversion of charitable assets, the transaction may not alter, amend, or change the following:

(1) Any restriction or limitation imposed on the public benefit corporation by its documents that may not be altered, amended or changed by its officers, board of directors, members or interest holders;

(2) Any restriction imposed on any assets or property held by the public benefit corporation by virtue of any trust under which it holds the assets or property; or

(3) The existing rights and interests of persons other than members or interest holders in the public benefit corporation.

(e) In any transaction in which a public corporation is a party to a merger, membership exchange, entity conversion or for-profit conversion transaction under this chapter, the public benefit corporation must comply with the provisions of § 48-62-103(a) with respect to the corporation's assets and property.

(f) A person who is a member, interest holder or is otherwise affiliated with a public benefit corporation or an unincorporated entity with a charitable purpose may not receive a direct or indirect financial benefit in connection with a transaction under this chapter to which the public benefit corporation is a party unless the party is itself a public benefit corporation or a charitable corporation or unincorporated entity with a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.

48-61-123.

(a) A public benefit corporation shall give the attorney general and reporter written notice that it intends to consummate any merger, membership exchange or

conversions. The notice shall include a copy or summary of the plan of merger, membership exchange or conversion.

(b) No merger, membership exchange or conversion shall be consummated, including any transfer of assets until forty-five (45) days after it has given the written notice required by subsection (a) to the attorney general and reporter or until the attorney general and reporter has consented in writing to, or indicated in writing that the attorney general and reporter will take no action in respect to, the transfer or conveyance, whichever is earlier.

48-61-124. Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a corporation that is a party to a transaction under chapter 61 and which takes effect or remains payable after the transaction, inures to the surviving entity with a charitable purpose unless the will or other instrument otherwise specifically provides.

SECTION 73. Tennessee Code Annotated, Section 48-62-101, is amended by deleting the section in its entirety and substituting the following:

48-62-101.

(a) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(1) Sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of its activities;

(2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business its activities; or

(3) Transfer any or all of the corporation's assets to one (1) or more corporations or other entities all of the memberships or interests of which are owned by the corporation.

(b) Unless the charter or bylaws requires, approval of the members or any other person of a transaction described in subsection (a) is not required.

SECTION 74. Tennessee Code Annotated, Section 48-62-102(g), is amended by deleting "twenty (20)" and substituting instead "forty-five (45)".

SECTION 75. Tennessee Code Annotated, Title 48, Chapter 62, Part 1, is amended by adding the following language as a new section:

48-62-103.

(a) Property held in trust or otherwise dedicated to a charitable purpose may not be diverted from its purpose by a transaction described in § 48-62-101 or § 48-62-102 unless the corporation complies with subsection (c) to the extent required by and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.

(b) A person who is a member or otherwise affiliated with a public benefit corporation may not receive a direct or indirect financial benefit in connection with a disposition of assets unless the person is a public benefit corporation or an unincorporated entity that has a charitable purpose. This subsection does not apply to the receipt of reasonable compensation for services rendered.

(c) A public benefit corporation must give written notice to the attorney general and reporter at least forty-five (45) days before it sells, leases, exchanges or otherwise disposes of all, or substantially all, of its property in a transaction not in the usual and regular course of its activities unless the corporation obtains an appropriate order from the court of competent jurisdiction.

SECTION 76. Tennessee Code Annotated, Section 48-63-102, is amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) A public benefit corporation may make distributions to its members who are public benefit corporations if the distributions are in conformity with its charitable purposes.

SECTION 77. Tennessee Code Annotated, Section 48-64-103(b), is amended by deleting "twenty (20)" and substituting instead "forty-five (45)".

SECTION 78. Tennessee Code Annotated, Title 48, Chapter 64, Part 1, is amended by adding the following language as a new section:

48-64-110.

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

(b) Directors of a dissolved corporation which has disposed of claims under sections 48-64-107 or 48-64-108 shall not be liable for breach of section 48-64-110(a) with respect to claims against the dissolved corporation that are barred or satisfied under sections 48-64-107 or 48-64-108.

SECTION 79. Tennessee Code Annotated, Section 48-65-103(a), is amended by deleting subdivisions (4) and (5) and substituting the following:

(4) The street address, including the zip code, of its principal office (and a mailing address such as a post office box if the United States Postal Service does not deliver to the principal office);

(5) The street address, including the zip code, of its registered office in this state, the county in which the office is located, and the name of its registered agent at that office;

SECTION 80. Tennessee Code Annotated, Section 48-65-108(a), is amended by deleting subdivision (2) in its entirety and substituting the following:

(2) If the current registered office is to be changed, the street address, including the zip code, of its new registered office and the county in which the office is located;

SECTION 81. Tennessee Code Annotated, Section 48-66-102(a), is amended by deleting "at a reasonable time and" and substituting instead "during regular business hours and at a reasonable".

SECTION 82. Tennessee Code Annotated, Section 48-66-102(b), is amended by deleting "at a reasonable time" and substituting instead "during regular business hours".

SECTION 83. Tennessee Code Annotated, Section 48-66-103(c), is amended by deleting the subsection in its entirety and substituting the following:

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production, reproduction or transmission of the records.

SECTION 84. Tennessee Code Annotated, Section 48-66-103, is amended by adding the following language as a new, appropriately designated subsection (e):

(e) Copies may be provided through an electronic transmission if available and requested by the member.

SECTION 85. Tennessee Code Annotated, Title 48, Chapter 66, Part 1, is amended by adding the following language as new sections:

48-66-106.

(a) Whenever notice would otherwise be required to be given under any provision of chapters 51-68 of this title to a member, the notice need not be given if notice of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings have been returned undeliverable or could not be delivered.

(b) If a member delivers to the nonprofit corporation a notice setting forth the member's then-current address, the requirement that notice be given to that member is reinstated.

48-66-107.

(a) Without the consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;

(2) Used for any commercial purpose; or

(3) Given or sold to or purchased by any person.

(b) Instead of making a membership list available for inspection and copying pursuant to § 48-66-105, a mutual benefit corporation may elect to proceed under the procedures set forth in § 48-57-201(f).

SECTION 86. Tennessee Code Annotated, Title 48, Chapter 66, Part 1, is amended by adding the following language as a new section:

48-66-108.

(a) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time but not for any purpose or in any manner that would violate any duty to the corporation.

(b) The chancery court of the county where the corporation's principal office (or if none in this state, its registered officer) is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection (b) on an expedited basis.

(c) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's expenses incurred in connection with the application.

SECTION 87. Tennessee Code Annotated, Section 48-66-201(a), is amended by deleting the subsection in its entirety and substituting the following:

(a) A corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If the financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis. On demand in the form of a document from a member, a corporation must furnish that member with its latest annual financial statements as set out in subsection (c).

SECTION 88. Tennessee Code Annotated, Section 48-66-201(c), is amended by deleting the subsection in its entirety and substituting the following:

(c) A corporation shall deliver in the form of a document the annual financial statements to each requesting member within one (1) month after notice of the demand; provided, that with respect to the financial statements for the most recently completed fiscal year, the statements shall be delivered in the form of a document to the member within four (4) months after the close of the fiscal year.

SECTION 89. Tennessee Code Annotated, Section 48-66-203(a), is amended by deleting subdivisions (2) and (3) in their entireties and substituting the following:

(2) The street address, including the zip code, of its registered office, the county in which the office is located, and the name of its registered agent at that office in this state;

(3) The street address, including the zip code, of its principal office (and a mailing address such as a post office box if the United States Postal Service does not deliver to the principal office);

SECTION 90. Tennessee Code Annotated, Section 48-66-203(b), is amended by deleting the subsection in its entirety and substituting the following:

(b) The information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation. An annual report of a domestic corporation that sets forth a change of the principal office of the domestic corporation shall be deemed to be an amendment to the charter of the domestic corporation, and the domestic corporation shall not be required to take any further action to amend the charter of the domestic corporation under chapter 60 of this title with respect to such amendment. An annual report of a foreign corporation that sets forth a change of the principal executive office of the foreign corporation shall be deemed to be an amendment to the certificate of authority of the foreign corporation, and the foreign corporation shall not be required to take any further action to amend the certificate of authority of the foreign corporation under § 48-65-104 with respect to such amendment. An annual report of a domestic or foreign corporation that sets forth a change of the registered office or registered agent of the domestic or foreign corporation shall be deemed to be a statement of change for purposes of §§ 48-55-102 and 48-65-108, respectively, and the domestic or foreign corporation shall not be required to take any further action under §§ 48-55-102 and 48-65-108, respectively, with respect to such change.

SECTION 91. Tennessee Code Annotated, Section 48-66-203(e), is amended by deleting the subsection in its entirety and substituting the following:

(e) The secretary of state shall furnish the commissioner of revenue, by the fifteenth day of each month, a list of all corporations that have surrendered their charters, have had their charters revoked, or have ceased to do business in the state during the preceding month.

SECTION 92. Tennessee Code Annotated, Section 48-67-102, is amended by deleting subsection (b) in its entirety and substituting the following:

(b) If religious doctrine or canon law governing the affairs of a religious corporation is inconsistent with chapters 51-68 of this title on the same subject, the religious doctrine or canon law shall control to the extent, and only to the extent, required by the constitution of the United States or the constitution of this state, or both.

SECTION 93. Tennessee Code Annotated, Section 48-69-122(a), is amended by deleting "48-58-304" and substituting instead "48-58-302".

SECTION 94. Tennessee Code Annotated, Section 48-101-806(a), is amended by deleting "48-58-304" and substituting instead "48-58-302".

SECTION 95. Tennessee Code Annotated, Section 48-101-705(a), is amended by deleting "48-58-304".

SECTION 96. Tennessee Code Annotated, Section 48-58-601(a), is amended by deleting the language "§ 48-58-302" and substituting instead the language "§§ 48-58-701 through 48-58-704,".

SECTION 97. For the purpose of the secretary of state taking necessary actions for the implementation of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2015, the public welfare requiring it.

SENATE BILL NO. 1505

PASSED: April 14, 2014

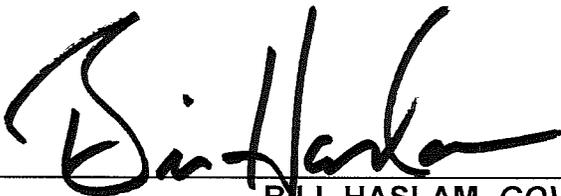


RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 9th day of May 2014



BILL HASLAM, GOVERNOR