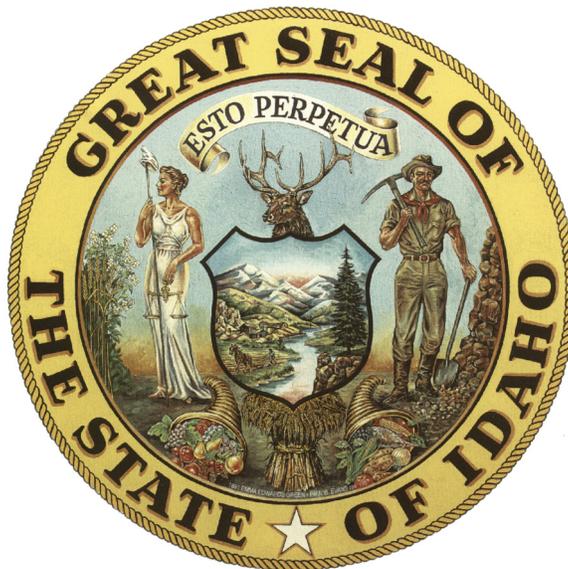


**IDAHO UNIFORM BUSINESS  
ORGANIZATIONS CODE  
(IUBOC)**

**PRELIMINARY PROVISIONS  
AND  
IDAHO BUSINESS CORPORATION ACT**



**Compiled under the authority of  
Lawrence Denney  
Secretary of State**

**July 1, 2015**

TABLE OF CONTENTS

TITLE 30, CHAPTER 21  
PRELIMINARY PROVISIONS

**PART 1. DEFINITIONS, DELIVERY, AND ADMINISTRATIVE RULES**

30-21-101. Short titles..... 1  
30-21-102. Definitions..... 1  
30-21-103. Applicability of part..... 4  
30-21-104. Delivery of record..... 4  
30-21-105. Rules and Procedures..... 4

**PART 2. FILING REQUIREMENTS AND FEES**

30-21-201. Entity filing requirements..... 4  
30-21-202. Forms ..... 5  
30-21-203. Effective dates and times..... 5  
30-21-204. Withdrawal of filed record before effectiveness..... 5  
30-21-205. Correcting filed record..... 5  
30-21-206. Duty of secretary of state to file - review of refusal to file..... 6  
30-21-207. Evidentiary effect of copy of filed record..... 6  
30-21-208. Certificate of good standing..... 6  
30-21-209. Signing of entity filing..... 6  
30-21-210. Signing and filing pursuant to judicial order ..... 6  
30-21-211. Liability for innacurate information in filed record..... 7  
30-21-212. Delivery by secretary of state ..... 7  
30-21-213. Annual report for secretary of state ..... 7  
30-21-214. Fees ..... 7

**PART 3. ENTITY NAMES**

30-21-301. Permitted names ..... 9  
30-21-302. Name requirements for certain types of entities ..... 9  
30-21-303. Reservation of name..... 10  
30-21-304. Registration of name ..... 10

**PART 4. IDAHO REGISTERED AGENT OF ENTITY ACT**

30-21-401. Definitions..... 10  
30-21-402. Entities required to designate and maintain registered agent ..... 11  
30-21-403. Addresses in filing ..... 11  
30-21-404. Designation of registered agent ..... 11  
30-21-405. Listing of commercial registered agent..... 11  
30-21-406. Termination of listing of commercial registered agent..... 12  
30-21-407. Change of registered agent by entity ..... 12  
30-21-408. Change of name or address by noncommercial registered agent..... 12  
30-21-409. Change of name, address, type of entity, or jurisdiction of formation by commercial registered agent . 12  
30-21-410. Resignation of registered agent..... 13  
30-21-411. Designation of registered agent by nonregistered foreign entity or nonfiling domestic entity..... 13  
30-21-412. Service of process, notice or demand on entity..... 14  
30-21-413. Duties of registered agent ..... 14  
30-21-414. Jurisdiction and venue ..... 14

**PART 5. FOREIGN ENTITIES**

30-21-501. Governing law..... 14  
30-21-502. Registration to do business in this state ..... 15  
30-21-503. Foreign registration statement ..... 15  
30-21-504. Amendment of foreign registration statement ..... 15  
30-21-505. Activities not constituting doing business..... 16  
30-21-506. Noncomplying name of foreign entity..... 16

**TABLE OF CONTENTS (continued)**

30-21-507. Withdrawal of registration of registered foreign entity ..... 16  
30-21-508. Withdrawal deemed on conversion or domestication to domestic filing entity or domestic limited liability company ..... 17  
30-21-509. Withdrawal on dissolution or conversion to nonfiling entity other than limited liability partnership.. 17  
30-21-510. Transfer of registration ..... 17  
30-21-511. Termination of registration ..... 18  
30-21-512. Action by attorney general ..... 18

**PART 6. ADMINISTRATIVE DISSOLUTION AND REINSTATEMENT**

30-21-601. Grounds ..... 18  
30-21-602. Procedure and effect..... 18  
30-21-603. Reinstatement ..... 18  
30-21-604. Judicial review of denial of reinstatement ..... 19

**PART 7. TRANSITION PROVISIONS**

30-21-701. Reservation of power to amend or repeal ..... 19  
30-21-702. Supplemental principles of law ..... 19  
30-21-703. Uniformity or consistency of application and construction ..... 19  
30-21-704. Relation to Electronic Signatures In Global And National Commerce Act ..... 19  
30-21-705. Savings clause ..... 19  
30-21-706. Severability clause..... 19  
30-21-708. Effective date ..... 19

**TITLE 30, CHAPTER 29  
IDAHO BUSINESS CORPORATION ACT**

**PART 1. GENERAL PROVISIONS**

30-29-101. Short title ..... 20  
30-29-120. Requirements for documents – extrinsic facts ..... 20  
30-29-121 through 30-29-139 – RESERVED  
30-29-140. Chapter definitions..... 20  
30-29-141. Notice ..... 22

**PART 2. INCORPORATION**

30-29-201. Incorporators ..... 22  
30-29-202. Articles of incorporation ..... 22  
30-29-203. Incorporation ..... 23  
30-29-204. Liability for preincorporation transactions..... 23  
30-29-205. Organization of corporation ..... 23  
30-29-206. Bylaws..... 23  
30-29-207. Emergency Bylaws..... 24

**PART 3. PURPOSES AND POWERS**

30-29-301. Purposes..... 24  
30-29-302. General powers ..... 24  
30-29-303. Emergency powers ..... 25  
30-29-304. Ultra vires ..... 25

**PART 4. RESERVED**

**PART 5. RESERVED**

**PART 6. SHARES AND DISTRIBUTIONS**

30-29-601. Authorized shares ..... 25  
30-29-602. Terms of class or series determined by board of directors..... 26  
30-29-603. Issued and outstanding shares ..... 26  
30-29-604. Fractional shares ..... 26

30-29-605 through 30-29-619 – RESERVED	
30-29-620. Subscription for shares before incorporation .....	26
30-29-621. Issuance of shares .....	27
30-29-622. Liability to shareholders .....	27
30-29-623. Share dividends.....	28
30-29-624. Share options.....	28
30-29-625. Form and content of certificates .....	28
30-29-626. Shares without certificates .....	28
30-29-627. Restriction on transfer of shares and other securities .....	29
30-29-628. Expense of issue .....	29
30-29-629. RESERVED	
30-29-630. Shareholders’ preemptive rights .....	29
30-29-631. Corporation’s acquisition of its own shares.....	30
30-29-632 through 30-29-639 – RESERVED	
30-29-640. Distributions to shareholders.....	30

**PART 7. SHAREHOLDERS**

30-29-701. Annual meeting .....	31
30-29-702. Special meeting.....	31
30-29-703. Court-ordered meeting.....	31
30-29-704. Action without meeting.....	31
30-29-705. Notice of meeting .....	32
30-29-706. Waiver of notice .....	32
30-29-707. Record date.....	32
30-29-708. Conduct of the meeting .....	33
30-29-709 through 30-29-719 – RESERVED	
30-29-720. Shareholders’ list for meeting.....	33
30-29-721. Voting entitlement of shares .....	33
30-29-722. Proxies.....	33
30-29-723. Shares held by nominees.....	34
30-29-724. Corporation’s acceptance of votes .....	34
30-29-725. Quorum and voting requirements for voting groups .....	35
30-29-726. Action by single and multiple voting groups .....	35
30-29-727. Greater quorum or voting requirements.....	35
30-29-728. Voting for directors – cumulative voting .....	35
30-29-729. Inspectors of election .....	36
30-29-730. Voting trusts .....	36
30-29-731. Voting agreements.....	36
30-29-732. Shareholder agreements.....	36
30-29-733 through 30-29-739 – RESERVED	
30-29-740. Definitions .....	37
30-29-741. Standing .....	35
30-29-742. Demand .....	35
30-29-743. Stay of proceedings.....	35
30-29-744. Dismissal.....	35
30-29-745. Discontinuance or settlement .....	35
30-29-746. Payment of expenses .....	39
30-29-747. Applicability to foreign corporations.....	39

**PART 8. DIRECTORS AND OFFICERS**

30-29-801. Requirement for and duties of board of directors.....	39
30-29-802. Qualifications of directors .....	39
30-29-803. Number and election of directors.....	39
30-29-804. Election of directors by certain classes of shareholders .....	39
30-29-805. Terms of directors generally.....	39
30-29-806. Staggered terms for directors .....	39
30-29-807. Resignation of directors.....	40

30-29-808. Removal of directors by shareholders.....	40
30-29-809. Removal of directors by judicial proceeding .....	40
30-29-810. Vacancy in board .....	40
30-29-811. Compensation of directors.....	40
30-29-812 through 30-29-819 – RESERVED	
30-29-820. Meetings.....	41
30-29-821. Action without meeting.....	41
30-29-822. Notice of meeting .....	41
30-29-823. Waiver of notice .....	41
30-29-824. Quorum and voting.....	41
30-29-825. Committees .....	42
30-29-826 through 30-29-829 – RESERVED	
30-29-830. Standards for directors.....	42
30-29-831. Standards of liability for directors .....	42
30-29-832 – RESERVED	
30-29-833. Directors’ liability for unlawful distributions .....	43
30-29-834 through 30-29-839 – RESERVED	
30-29-840. Required officers .....	44
30-29-841. Duties of officers .....	44
30-29-842. Standards of conduct for officers.....	44
30-29-843. Resignation and removal of officers.....	44
30-29-844. Contract rights of officers.....	45
30-29-845 through 30-29-850 – RESERVED	
30-29-851. Permissible indemnification .....	45
30-29-852. Mandatory indemnification .....	46
30-29-853. Advance for expenses.....	46
30-29-854. Court-ordered indemnification and advance for expenses .....	46
30-29-855. Determination and authorization of indemnification .....	47
30-29-856. Officers.....	47
30-29-857. Insurance .....	47
30-29-858. Variation by corporate action – application of indemnification provisions .....	48
30-29-859. Exclusivity.....	48
30-29-860. Definitions.....	48
30-29-861. Judicial action.....	49
30-29-862. Directors’ action.....	49
30-29-863. Shareholders’ action .....	50

**PART 9. RESERVED**

**PART 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS**

30-29-1001. Authority to amend articles of incorporation.....	50
30-29-1002. Amendment before issuance of shares .....	50
30-29-1003. Amendment by board of directors and shareholders.....	50
30-29-1004. Voting on amendments by voting groups .....	51
30-29-1005. Amendment by board of directors.....	51
30-29-1006. Articles of amendment .....	52
30-29-1007. Restated articles of incorporation .....	52
30-29-1008. Amendment pursuant to reorganization.....	53
30-29-1009. Effect of amendment.....	53
30-29-1010 through 30-29-1019 – RESERVED	
30-29-1020. Amendment by board of directors or shareholders.....	53
30-29-1021. Bylaw increasing quorum or voting requirement for directors.....	53

**PART 11. MERGER AND SHARE EXCHANGE**

30-29-1101 through 30-29-1103 – RESERVED	
30-29-1104. Action on a plan of merger or share exchange .....	53
30-29-1105. Merger between parent and subsidiary or between subsidiaries .....	54

## **PART 12. DISPOSITION OF ASSETS**

30-29-1201. Disposition of assets not requiring shareholder approval.....	55
30-29-1202. Shareholder approval of certain dispositions.....	55

## **PART 13. APPRAISAL RIGHTS**

30-29-1301. Definitions.....	56
30-29-1302. Right to appraisal.....	56
30-29-1303. Assertion of rights by nominees and beneficial owners.....	58
30-29-1304 through 30-29-1319 – RESERVED	
30-29-1320. Notice of appraisal rights.....	58
30-29-1321. Notice of intent to demand payment.....	58
30-29-1322. Appraisal notice and form.....	58
30-29-1323. Perfection of rights – right to withdraw.....	59
30-29-1324. Payment.....	59
30-29-1325. After acquired shares.....	60
30-29-1326. Procedure if shareholder dissatisfied with payment or offer.....	60
30-29-1327 through 30-29-1329 – RESERVED	
30-29-1330. Court action.....	60
30-29-1331. Court costs and counsel fees.....	61

## **PART 14. DISSOLUTION**

30-29-1401. Dissolution by incorporators or initial directors.....	61
30-29-1402. Dissolution by board of directors and shareholders.....	61
30-29-1403. Articles of dissolution.....	62
30-29-1404. Revocation of dissolution.....	62
30-29-1405. Effect of dissolution.....	62
30-29-1406. Known claims against dissolved corporation.....	63
30-29-1407. Other claims against dissolved corporation.....	63
30-29-1408. Court proceeding.....	63
30-29-1409. Director duties.....	64
30-29-1410 through 30-29-1429 – RESERVED	
30-29-1430. Grounds for judicial dissolution.....	64
30-29-1431. Procedure for judicial dissolution.....	64
30-29-1432. Receivership or custodianship.....	65
30-29-1433. Decree of dissolution.....	65
30-29-1434. Election to purchase in lieu of dissolution.....	65
30-29-1435 through 30-29-1439 – RESERVED	
30-29-1440. Deposit with state treasurer.....	66

## **PART 15. RESERVED**

## **PART 16. RECORDS AND REPORTS**

30-29-1601. Corporate records.....	66
30-29-1602. Inspection of records by shareholders.....	67
30-29-1603. Scope of inspection right.....	68
30-29-1604. Court-ordered inspection.....	68
30-29-1605. Inspection of records by directors.....	68
30-29-1606. Exception to notice requirement.....	69
30-29-1607 through 30-29-1619 – RESERVED	
30-29-1620. Financial statements for shareholders.....	69
30-29-1621. Other reports to shareholders.....	69

## **PART 17. TRANSITION PROVISIONS**

30-29-1701. Application of chapter to existing domestic corporations.....	69
30-29-1702. Application to qualified foreign corporation.....	70
30-29-1703. Saving provisions.....	70
30-29-1704. Severability.....	70

## PART 1. DEFINITIONS, DELIVERY, AND ADMINISTRATIVE RULES

30-21-101.SHORT TITLES. (a) This act may be cited as the “Idaho Uniform Business Organizations Code.”

(b) This chapter may be cited as the “Idaho Uniform Business Organizations Code -- Preliminary Provisions.”

(c) Part 4 of this chapter may be cited as the “Idaho Registered Agent of Entity Act.”

(d) Part 8 of this chapter may be cited as the “Idaho Assumed Business Names Act.”

30-21-102.DEFINITIONS. In this act, except as otherwise provided in definitions of the same terms in other articles of this act:

(1) “Act” means the Idaho uniform business organizations code.

(2) “Annual report” means the report required by section 30-21-213, Idaho Code.

(3) “Business corporation” means a domestic business corporation incorporated under or subject to chapter 29, title 30, Idaho Code, or a foreign business corporation.

(4) “Business trust” means a trust formed under the statutory law of another state that is not a foreign statutory trust and does not have a predominately donative purpose.

(5) “Commercial registered agent” means a person listed under section 30-21-405, Idaho Code.

(6) “Common-law business trust” means a common-law trust that does not have a predominately donative purpose.

(7) “Debtor in bankruptcy” means a person that is the subject of:

(A) An order for relief under 11 U.S.C. or a comparable order under a successor statute of general application; or

(B) A comparable order under federal, state or foreign law governing insolvency.

(8) “Distributional interest” means the right under an unincorporated entity’s organic law and organic rules to receive distributions from the entity.

(9) “Domestic,” with respect to an entity, means governed as to its internal affairs by the law of this state.

(10) “Effective date,” when referring to a record filed by the secretary of state, means the time and date determined in accordance with section 30-21-203, Idaho Code.

(11) “Entity”:

(A) Means:

(i) A business corporation;

(ii) A nonprofit corporation;

(iii) A general partnership, including a limited liability partnership;

(iv) A limited partnership, including a limited liability limited partnership;

(v) A limited liability company;

(vi) A general cooperative association;

(vii) A limited cooperative association;

(viii) An unincorporated nonprofit association;

(ix) A statutory trust, business trust, or common-law business trust; or

(x) Any other person that has:

(I) A legal existence separate from any interest holder of that person; or

(II) The power to acquire an interest in real property in its own name; and

(B) Does not include:

(i) An individual;

(ii) A trust with a predominately donative purpose or a charitable trust;

(iii) An association or relationship that is not listed in paragraph (A) of this subsection and is not a partnership under the rules stated in section 30-23-202(c), Idaho Code, or a similar provision of the law of another jurisdiction;

(iv) A decedent’s estate; or

(v) A government or a governmental subdivision, agency or instrumentality.

(12) “Entity filing” means a record delivered to the secretary of state for filing pursuant to this act.

(13) “Filed record” means a record filed by the secretary of state pursuant to this act.

(14) “Filing entity” means an entity whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.

(15) “Foreign,” with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other

than this state.

(16) "General cooperative association" means a foreign general cooperative association.

(17) "General partnership" means a domestic general partnership formed under or subject to chapter 23 of this act or a foreign general partnership. The term includes a limited liability partnership.

(18) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee or proxy, to:

(A) Receive or demand access to information concerning, or the books and records of, the entity;

(B) Vote for or consent to the election of the governors of the entity; or

(C) Receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(19) "Governor" means:

(A) A director of a business corporation;

(B) A director or trustee of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A manager of a manager-managed limited liability company;

(F) A member of a member-managed limited liability company;

(G) A director of a general cooperative association;

(H) A director of a limited cooperative association;

(I) A manager of an unincorporated nonprofit association;

(J) A trustee of a statutory trust, business trust or common-law business trust; or

(K) Any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(20) "Interest" means:

(A) A share in a business corporation;

(B) A membership in a nonprofit corporation;

(C) A governance interest in a general partnership;

(D) A governance interest in a limited partnership;

(E) A governance interest in a limited liability company;

(F) A share in a general cooperative association;

(G) A member's interest in a limited cooperative association;

(H) A membership in an unincorporated nonprofit association;

(I) A beneficial interest in a statutory trust, business trust or common-law business trust; or

(J) A governance interest or distributional interest in any other type of unincorporated entity.

(21) "Interest holder" means:

(A) A shareholder of a business corporation;

(B) A member of a nonprofit corporation;

(C) A general partner of a general partnership;

(D) A general partner of a limited partnership;

(E) A limited partner of a limited partnership;

(F) A member of a limited liability company;

(G) A shareholder of a general cooperative association;

(H) A member of a limited cooperative association;

(I) A member of an unincorporated nonprofit association;

(J) A beneficiary or beneficial owner of a statutory trust, business trust or common-law business trust; or

(K) Any other direct holder of an interest.

(22) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(23) "Jurisdiction of formation" means the jurisdiction whose law includes the organic law of an entity.

(24) "Limited cooperative association" means a foreign limited cooperative association.

(25) "Limited liability company" means a domestic limited liability company formed under or subject to chapter 25, title 30, Idaho Code, or a foreign limited liability company.

(26) "Limited liability limited partnership" means a domestic limited liability limited partnership formed under or subject to chapter 24, title 30, Idaho Code, or a foreign limited liability limited partnership.

- (27) "Limited liability partnership" means a domestic limited liability partnership registered under or subject to chapter 23, title 30, Idaho Code, or a foreign limited liability partnership.
- (28) "Limited partnership" means a domestic limited partnership formed under or subject to chapter 24, title 30, Idaho Code, or a foreign limited partnership. The term includes a limited liability limited partnership.
- (29) "Noncommercial registered agent" means a person that is not a commercial registered agent and is:
- (A) An individual or domestic or foreign entity that serves in this state as the registered agent of an entity; or
  - (B) An individual who holds the office or other position in an entity which is designated as the registered agent pursuant to section 30-21-404(a)(2)(B), Idaho Code.
- (30) "Nonfiling entity" means an entity whose foundation does not require the filing of a public organic record.
- (31) "Nonprofit corporation" means a domestic nonprofit corporation incorporated under or subject to chapter 30, title 30, Idaho Code, or a foreign nonprofit corporation.
- (32) "Nonregistered foreign entity" means a foreign entity that is not registered to do business in this state pursuant to a statement of registration filed by the secretary of state.
- (33) "Organic law" means the law of an entity's jurisdiction of formation governing the internal affairs of the entity.
- (34) "Organic rules" means the public organic record and private organic rules of an entity.
- (35) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, general cooperative association, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (36) "Principal office" means the principal executive office of an entity, whether or not the office is located in this state.
- (37) "Private organic rules" means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:
- (A) The bylaws of a business corporation;
  - (B) The bylaws of a nonprofit corporation;
  - (C) The partnership agreement of a general partnership;
  - (D) The partnership agreement of a limited partnership;
  - (E) The operating agreement of a limited liability company;
  - (F) The bylaws of a general cooperative association;
  - (G) The bylaws of a limited cooperative association;
  - (H) The governing principles of an unincorporated nonprofit association; and
  - (I) The trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.
- (38) "Proceeding" includes a civil action, arbitration, mediation, administrative proceeding, criminal prosecution and investigatory action.
- (39) "Professional entity" means an entity formed for the sole and specific purpose of rendering professional services, allied professional services, and services ancillary to the professional services and that has as its interest holders only:
- (A) Natural persons who themselves are duly licensed or otherwise legally authorized to render one (1) or more of the same professional services as the professional entity; and
  - (B) Other professional entities.
- (40) "Professional service" means any type of service to the public that can be rendered by a member of any profession within the purview of the member's profession.
- (41) "Property" means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.
- (42) "Public organic record" means the record, the filing of which by the secretary of state is required to form an entity, and any amendment to or restatement of that record. The term includes:
- (A) The articles of incorporation of a business corporation;
  - (B) The articles of incorporation of a nonprofit corporation;
  - (C) The certificate of limited partnership of a limited partnership;
  - (D) The certificate of organization of a limited liability company;
  - (E) The articles of incorporation of a general cooperative association;

- (F) The articles of organization of a limited cooperative association; and
- (G) The certificate of trust of a statutory trust or similar record of a business trust.
- (43) “Receipt,” as used in this chapter, means actual receipt. “Receive” has a corresponding meaning.
- (44) “Record,” used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (45) “Registered agent” means an agent of an entity that is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.
- (46) “Registered foreign entity” means a foreign entity that is registered to do business in this state pursuant to a statement of registration filed by the secretary of state.
- (47) “Sign” means with present intent to authenticate or adopt a record:
  - (A) To execute or adopt a tangible symbol; or
  - (B) To attach to or logically associate with the record an electronic symbol, sound or process.
- (48) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (49) “Statutory trust” means a trust formed under the statutory law of a jurisdiction other than this state.
- (50) “Transfer” includes:
  - (A) An assignment;
  - (B) A conveyance;
  - (C) A sale;
  - (D) A lease;
  - (E) An encumbrance, including a mortgage or security interest;
  - (F) A gift; and
  - (G) A transfer by operation of law.
- (51) “Type of entity” means a generic form of entity:
  - (A) Recognized at common law; or
  - (B) Formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.
- (52) “Unincorporated nonprofit association” means a domestic unincorporated nonprofit association formed under or subject to chapter 27, title 30, Idaho Code, or a nonprofit association formed under or subject to the law of a jurisdiction other than this state that would be an unincorporated nonprofit association if formed under or subject to the law of this state.
- (53) “Written” means inscribed on a tangible medium. “Writing” has a corresponding meaning.

30-21-103.APPLICABILITY OF PART. This part applies to an entity formed under or subject to this act.

- 30-21-104.DELIVERY OF RECORD. (a) Except as otherwise provided in this act, permissible means of delivery of a record includes delivery by hand, mail, conventional commercial practice, and electronic transmission.
- (b) Delivery to the secretary of state is effective only when a record is received by the secretary of state.

30-21-105.RULES AND PROCEDURES. The secretary of state may:

- (1) Adopt rules to administer this act in accordance with the administrative procedure act; and
- (2) Prescribe procedures that are reasonably necessary to perform the duties required of the secretary of state under this act and are not required by the administrative procedure act to be adopted as rules.

## **PART 2. FILING REQUIREMENTS AND FEES**

30-21-201.ENTITY FILING REQUIREMENTS. (a) To be filed by the secretary of state pursuant to this act, an entity filing must be received by the secretary of state, comply with this act, and satisfy the following:

- (1) The entity filing must be required or permitted by this act.
- (2) The entity filing must be physically delivered in written form unless and to the extent the secretary of state permits electronic delivery of entity filings.
- (3) The words in the entity filing must be in English, and numbers must be in Arabic or Roman numerals, but the name of the entity need not be in English if written in English letters or Arabic or Roman numerals.

- (4) The entity filing must be signed by or on behalf of a person authorized or required under this chapter to sign the filing.
- (5) The entity filing must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the filing, but need not contain a seal, attestation, acknowledgment or verification.
- (b) If law other than this chapter prohibits the disclosure by the secretary of state of information contained in an entity filing, the secretary of state shall file the entity filing if the filing otherwise complies with this chapter but may redact the information.
- (c) When an entity filing is delivered to the secretary of state for filing, any fee required under this part and any fee, tax, interest, or penalty required to be paid under this part or law other than this act must be paid in a manner permitted by the secretary of state.
- (d) The secretary of state may require that an entity filing delivered in written form be accompanied by an identical or conformed copy.

30-21-202.FORMS. (a) The secretary of state may provide forms for entity filings required or permitted to be made by this act, but, except as otherwise provided in subsection (b) of this section, their use is not required.

(b) The secretary of state may require that a cover sheet for an entity filing and an annual report be on forms prescribed by the secretary of state.

30-21-203.EFFECTIVE DATES AND TIMES. Except as otherwise provided in this act and subject to section 30-21-205(d), Idaho Code, an entity filing is effective:

- (1) On the date and at the time of its filing by the secretary of state as provided in section 30-21-206, Idaho Code;
- (2) On the date of filing and at the time specified in the entity filing as its effective time, if later than the time under subsection (1) of this section;
- (3) If permitted by this act, at a specified delayed effective date and time, which may not be more than ninety (90) days after the date of filing; or
- (4) If a delayed effective date as permitted by this act is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than ninety (90) days after the date of filing.

30-21-204.WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS. (a) Except as otherwise provided in this act, a record delivered to the secretary of state for filing may be withdrawn before it takes effect by delivering to the secretary of state for filing a statement of withdrawal.

(b) A statement of withdrawal must:

- (1) Be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;
- (2) Identify the record to be withdrawn; and
- (3) If signed by fewer than all the persons that signed the record being withdrawn, state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(c) On filing by the secretary of state of a statement of withdrawal, the action or transaction evidenced by the original filed record does not take effect.

30-21-205.CORRECTING FILED RECORD. (a) A person on whose behalf a filed record was delivered to the secretary of state for filing may correct the record if:

- (1) The record at the time of filing was inaccurate;
- (2) The record was defectively signed; or
- (3) The electronic transmission of the record to the secretary of state was defective.

(b) To correct a filed record, a person on whose behalf the record was delivered to the secretary of state must deliver to the secretary of state for filing a statement of correction.

(c) A statement of correction:

- (1) May not state a delayed effective date;
- (2) Must be signed by the person correcting the filed record;
- (3) Must identify the filed record to be corrected;
- (4) Must specify the inaccuracy or defect to be corrected; and
- (5) Must correct the inaccuracy or defect.

(d) A statement of correction is effective as of the effective date of the filed record that it corrects except as to persons relying on the uncorrected filed record and adversely affected by the correction. As to those persons, the statement of correction is effective when filed.

30-21-206.DUTY OF SECRETARY OF STATE TO FILE -- REVIEW OF REFUSAL TO FILE. (a) The secretary of state shall file an entity filing delivered to the secretary of state for filing that satisfies this act. The duty of the secretary of state under this section is ministerial.

(b) When the secretary of state files an entity filing, the secretary of state shall record it as filed on the date and at the time of its delivery. After filing an entity filing, the secretary of state shall deliver to the person that submitted the filing a copy of the filing with an acknowledgment of the date and time of filing.

(c) If the secretary of state refuses to file an entity filing, the secretary of state, not later than five (5) business days after the filing is delivered, shall:

(1) Return the entity filing or notify the person that submitted the filing of the refusal; and

(2) Provide a brief explanation in a record of the reason for the refusal.

(d) If the secretary of state refuses to file an entity filing, the person that submitted the filing may petition the district court to compel its filing. The filing and the explanation of the secretary of state of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(e) The filing of or refusal to file an entity filing does not:

(1) Affect the validity or invalidity of the filing in whole or in part; or

(2) Create a presumption that the information contained in the filing is correct or incorrect.

30-21-207.EVIDENTIARY EFFECT OF COPY OF FILED RECORD. A certification from the secretary of state accompanying a copy of a filed record is conclusive evidence that the copy is an accurate representation of the original record on file with the secretary of state.

30-21-208.CERTIFICATE OF GOOD STANDING OR REGISTRATION. (a) On request of any person, the secretary of state shall issue a certificate of good standing for a domestic filing entity or a certificate of registration for a registered foreign entity.

(b) A certificate under subsection (a) of this section must state:

(1) The domestic filing entity's name or the registered foreign entity's name used in this state;

(2) In the case of a domestic filing entity:

(A) That its public organic record has been filed and has taken effect;

(B) The date the public organic record became effective;

(C) That the records of the secretary of state do not reflect that the entity has been dissolved;

(3) In the case of a registered foreign entity, that it is registered to do business in this state.

(c) Subject to any qualification stated in the certificate, a certificate issued by the secretary of state under subsection (a) of this section may be relied upon as conclusive evidence of the facts stated in the certificate.

30-21-209.SIGNING OF ENTITY FILING. (a) Signing an entity filing is an affirmation under the penalties of perjury that the facts stated in the filing are true in all material respects.

(b) A record filed under this act may be signed by an agent. Whenever this act requires a particular individual to sign an entity filing and the individual is deceased or incompetent, the filing may be signed by a legal representative of the individual.

(c) A person that signs a record as an agent or legal representative affirms as a fact that the person is authorized to sign the record.

30-21-210.SIGNING AND FILING PURSUANT TO JUDICIAL ORDER. (a) If a person required by this act to sign or deliver a record to the secretary of state for filing under this act does not do so, any other person that is aggrieved may petition the district court to order:

(1) The person to sign the record;

(2) The person to deliver the record to the secretary of state for filing; or

(3) The secretary of state to file the record unsigned.

(b) If the petitioner under subsection (a) of this section is not the entity to which the record pertains, the

petitioner shall make the entity a party to the action.

(c) A record filed under subsection (a)(3) of this section is effective without being signed.

30-21-211.LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD. If a record delivered to the secretary of state for filing under this act and filed by the secretary of state contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the record or caused another to sign it on the person's behalf and knew at the time the record was signed that the information was inaccurate.

30-21-212.DELIVERY BY SECRETARY OF STATE. Except as otherwise provided by section 30-21-412, Idaho Code, or by law of this state other than this chapter, the secretary of state may deliver a record to a person by delivering it:

- (1) In person to the person that submitted it for filing;
- (2) To the principal office address of the person;
- (3) To another address the person provides to the secretary of state for delivery; or
- (4) To the address of the person's registered agent.

30-21-213.ANNUAL REPORT FOR SECRETARY OF STATE. (a) A domestic filing entity, domestic limited liability partnership, or registered foreign entity shall deliver to the secretary of state for filing an annual report that states:

- (1) The name of the entity and its jurisdiction of formation;
  - (2) The information required by section 30-21-404(a), Idaho Code;
  - (3) The street and mailing addresses of the entity's principal office; and
  - (4) The name of at least one (1) governor.
- (b) Information in an annual report must be current as of the date the report is signed by the entity.
- (c) The annual report must be delivered to the secretary of state for filing each year before the end of the month during which the public organic record of a domestic filing entity became effective, the statement of qualification of a domestic limited liability partnership became effective, or a foreign filing entity registered to do business in this state. Beginning one (1) year after the public organic record of a domestic filing entity became effective, the statement of qualification of a domestic limited liability partnership became effective, or a foreign filing entity registered to do business in this state, and each year thereafter, the annual report must be received in the office of the secretary of state not later than the close of business on the final day of the applicable month. If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same.
- (d) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting entity in a record and return the report for correction.
- (e) If an annual report contains the name or address of a registered agent that differs from the information shown in the records of the secretary of state immediately before the report becomes effective, the differing information is considered a statement of change under section 30-21-407, Idaho Code.

30-21-214.FEES. (a) The secretary of state shall collect the following fees for copying and certifying the copy of any filed record:

- (1) Twenty-five cents (25¢) per page for copying; and
  - (2) Ten dollars (\$10.00) for the certification.
- (b) The secretary of state shall collect the following fees when an entity filing is delivered for filing:
- (1) Statement of merger \$30.00
  - (2) Statement of withdrawal \$30.00
  - (3) Statement of interest exchange \$30.00
  - (4) Statement of abandonment \$30.00
  - (5) Statement of conversion \$30.00
  - (6) Statement of domestication \$30.00
  - (7) Annual report No fee
  - (8) Articles of incorporation of a business corporation \$100.00
  - (9) Articles of incorporation of a nonprofit corporation \$30.00

- (10) Statement of qualification of a limited liability partnership  
\$100.00
- (11) Certificate of amendment to certificate of assumed business name  
\$10.00
- (12) Certificate of amendment to certificate of assumed business name with only an address change No fee
- (13) Certificate of assumed business name \$25.00
- (14) Certificate of cancellation of a certificate of assumed business name No fee
- (15) Certificate of limited partnership of a limited partnership  
\$100.00
- (16) Certificate of organization of a limited liability company  
\$100.00
- (17) Other public organic documents or a statement not otherwise specified herein \$30.00
- (18) Commercial registered agent listing statement \$100.00
- (19) Commercial registered agent termination statement \$20.00
- (20) Commercial registered agent statement of change \$30.00
- (21) Registered agent statement of resignation No fee
- (22) Statement designating a registered agent \$20.00
- (23) Foreign entity registration statement \$100.00
- (24) Amendment of foreign entity registration statement \$30.00
- (25) Notice of cancellation of foreign entity registration statement  
No fee
- (26) Statement of withdrawal of foreign entity registration statement  
\$20.00
- (27) Statement of correction \$30.00
- (28) Application for reinstatement following administrative dissolution \$30.00
- (29) Statement of dissolution of a limited liability company No fee
- (30) Statement of authority \$100.00
- (31) Combined statement of partnership authority and qualification of limited liability partnership \$100.00
- (32) Certificate of existence \$10.00
- (33) Application for use of deceptively similar name \$20.00
- (34) Application for reserved name \$20.00
- (35) Notice of transfer of reserved name \$20.00
- (36) Application for registered name \$60.00
- (37) Application for renewal of registered name \$60.00
- (38) Amendment of articles of incorporation \$30.00
- (39) Restatement of articles of incorporation with amendment of articles \$30.00
- (40) Articles of dissolution \$30.00
- (41) Articles of revocation of dissolution \$30.00
- (42) Certificate of administrative dissolution No fee
- (43) Certificate of reinstatement No fee
- (44) Certificate of judicial dissolution No fee
- (45) Statement of termination \$30.00
- (c) The withdrawal under section 30-21-204, Idaho Code, of a filed record before it is effective or the correction of a filed record under section 30-21-205, Idaho Code, does not entitle the person on whose behalf the record was filed to a refund of the filing fee.
- (d) The secretary of state shall collect a surcharge of twenty dollars (\$20.00) for providing evidence of filing an entity filing within eight (8) working hours after the entity filing is delivered for filing.
- (e) The secretary of state shall collect a surcharge of twenty dollars (\$20.00) for filing any non-typed record or any record that is not on a standard form proscribed by the secretary of state, except no surcharge will be collected for a non-typed certificate of assumed business name or a certificate of amendment to certificate of assumed business name.

### PART 3. ENTITY NAMES

30-21-301.PERMITTED NAMES. (a) Except as otherwise provided in subsection (d) or (f) of this section, the name of a domestic filing entity or domestic limited liability partnership, and the name under which a foreign entity may register to do business in this state, must be distinguishable on the records of the secretary of state from any:

- (1) Name of an existing domestic filing entity which at the time is not administratively dissolved for more than six (6) months;
- (2) Name of a limited liability partnership whose statement of qualification is in effect;
- (3) Name under which a foreign entity registered to do business in this state under part 5 of this chapter;
- (4) Name reserved under section 30-21-303, Idaho Code; or
- (5) Name registered under section 30-21-304, Idaho Code.

(b) If an entity consents in a record to the use of its name and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable on the records of the secretary of state from any name in any category of names in subsection (a) of this section, the name of the consenting entity may be used by the person to which the consent was given.

(c) Except as otherwise provided in subsection (d) of this section, in determining whether a name is the same as or not distinguishable on the records of the secretary of state from the name of another entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation," "corp.," "incorporated," "Inc.," "professional corporation," "PC," "P.C.," "professional association," "PA," "P.A.," "limited," "Ltd.," "limited partnership," "LP," "L.P.," "limited liability partnership," "LLP," "L.L.P.," "registered limited liability partnership," "RLLP," "R.L.L.P.," "limited liability limited partnership," "LLL," "L.L.L.P.," "registered limited liability limited partnership," "RLLL," "R.L.L.L.P.," "limited liability company," "LLC" or "L.L.C." may not be taken into account.

(d) An entity may consent in a record to the use of a name that is not distinguishable on the records of the secretary of state from its name except for the addition of a word, phrase, or abbreviation indicating the type of entity or as provided in subsection (c) of this section. In such a case, the entity need not change its name pursuant to subsection (b) of this section.

(e) An entity name may not contain language falsely stating or implying government affiliation or stating or implying that the entity is organized for a purpose other than that permitted by this act.

(f) An entity may use a name that is not distinguishable from a name described in subsection (a)(1) through (5) of this section if the entity delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the entity to use the name in this state.

(g) Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practice in the use of trade names, nor derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names.

(h) The use of a name in violation of this part shall not affect or vitiate the entity existence, but the courts of this state, having equity jurisdiction, may, upon the application of the state, or of any person interested or affected, enjoin such entity in violation from doing business under any name assumed in violation of this part.

30-21-302.NAME REQUIREMENTS FOR CERTAIN TYPES OF ENTITIES. (a) The name of a business corporation must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd.," or words or abbreviations of similar import in another language; provided however, that if the word "company" or its abbreviation is used it shall not be immediately preceded by the word "and" or by an abbreviation of or symbol representing the word "and." If the business corporation is a professional entity, the name may alternatively contain the word "chartered," "professional association," or "professional corporation," or the abbreviation "P.A.," "P.C.," or "CHTD" or words or abbreviations of similar import in another language.

(b) The name of a limited partnership may contain the name of any partner. The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and may not contain the phrase "limited liability limited partnership" or "registered limited liability limited partnership" or the abbreviation "L.L.L.P.," "LLL," "R.L.L.L.P.," or "RLLL." If the limited partnership is a limited liability limited partnership, the name must contain the phrase "limited liability limited partnership" or the abbreviation "L.L.L.P.," "LLL," "R.L.L.L.P.," or "RLLL" and may not contain the abbreviation "L.P." or "LP."

If the limited partnership is a professional entity, the name may include the word “professional” before the word “limited” or the letter “P” at the beginning of any of the permitted abbreviations.

(c) The name of a limited liability partnership must contain the words “limited liability partnership” or “registered limited liability partnership” or the abbreviation “L.L.P.,” “R.L.L.P.,” “LLP,” or “RLLP.” If the limited liability partnership is a professional entity, the name may include the word “professional” before the word “limited” or the letter “P” at the beginning of any of the permitted abbreviations.

(d) The name of a limited liability company must contain the phrase “limited liability company” or “limited company” or the abbreviation “L.L.C.,” “LLC,” “L.C.,” or “LC.” “Limited” may be abbreviated as “Ltd.,” and “company” may be abbreviated as “Co.” If the limited liability company is a professional entity, the name may include the word “professional” before the word “limited” or the letter “P” at the beginning of any of the permitted abbreviations.

(e) The name of a limited cooperative association must contain the words “limited cooperative association” or “limited cooperative” or the abbreviation “L.C.A.” or “LCA.” “Limited” may be abbreviated as “Ltd.” “Cooperative” may be abbreviated as “Co-op.,” “Coop.,” “Co op.,” or “Coop.” “Association” may be abbreviated as “Assoc.,” “Assoc.,” “Assn.,” or “Assn.”

(f) The name of a statutory trust may contain the words “company,” “association,” “club,” “foundation,” “fund,” “institute,” “society,” “union,” “syndicate,” “limited,” or “trust,” or words or abbreviations of similar import, and may contain the name of a beneficial owner, a trustee, or any other person.

30-21-303.RESERVATION OF NAME. (a) A person may reserve the exclusive use of an entity name by delivering an application to the secretary of state for filing. The application must state the name and address of the applicant and the name to be reserved. If the secretary of state finds that the entity name is available, the secretary of state shall reserve the name for the applicant’s exclusive use for one hundred twenty (120) days.

(b) The owner of a reserved entity name may transfer the reservation to another person by delivering to the secretary of state a signed notice in a record of the transfer that states the name and address of the transferee.

30-21-304.REGISTRATION OF NAME. (a) A foreign filing entity or foreign limited liability partnership not registered to do business in this state under part 5 of this chapter may register its name, or an alternate name adopted pursuant to section 30-21-506, Idaho Code, if the name is distinguishable on the records of the secretary of state from the names that are not available under section 30-21-301, Idaho Code.

(b) To register its name or an alternate name adopted pursuant to section 30-21-506, Idaho Code, a foreign filing entity or foreign limited liability partnership must deliver to the secretary of state for filing an application stating the entity’s name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to section 30-21-506, Idaho Code. If the secretary of state finds that the name applied for is available, the secretary of state shall register the name for the applicant’s exclusive use.

(c) The registration of a name under this section is effective for one (1) year after the date of registration.

(d) A foreign filing entity or foreign limited liability partnership whose name registration is effective may renew the registration for successive one (1) year periods by delivering, not earlier than three (3) months before the expiration of the registration, to the secretary of state for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding one (1) year period.

(e) A foreign filing entity or foreign limited liability partnership whose name registration is effective may register as a foreign filing entity or foreign limited liability partnership under the registered name or consent in a signed record to the use of that name by another entity.

#### **PART 4. IDAHO REGISTERED AGENT OF ENTITY ACT**

30-21-401.DEFINITIONS. In this part:

(1) “Designation of agent” means a statement designating a registered agent delivered to the secretary of state for filing under:

- (A) Section 30-27-129, Idaho Code, the “Uniform Unincorporated Nonprofit Association Act”; or
- (B) Section 30-21-411, Idaho Code, by a nonregistered foreign entity or domestic nonfiling entity.

(2) “Registered agent filing” means:

- (A) The public organic record of a domestic filing entity;

- (B) A statement of qualification of a domestic limited liability partnership;
- (C) A registration statement filed pursuant to section 30-21-503, Idaho Code; or
- (D) A designation of agent.

(3) "Represented entity" means:

- (A) A domestic filing entity;
- (B) A domestic limited liability partnership;
- (C) A registered foreign entity;
- (D) A domestic or foreign unincorporated nonprofit association for which a designation of agent is in effect;
- (E) A domestic nonfiling entity for which a designation of agent is in effect; or
- (F) A nonregistered foreign entity for which a designation of agent is in effect.

30-21-402.ENTITIES REQUIRED TO DESIGNATE AND MAINTAIN REGISTERED AGENT. The following shall designate and maintain a registered agent in this state:

- (1) A domestic filing entity;
- (2) A domestic limited liability partnership; and
- (3) A registered foreign entity.

30-21-403.ADDRESSES IN FILING. If a provision of this part other than section 30-21-410(a)(4), Idaho Code, requires that a record state an address, the record must state:

- (1) A street address in this state; and
- (2) A mailing address in this state if different from the address described in subsection (1) of this section.

30-21-404.DESIGNATION OF REGISTERED AGENT. (a) A registered agent filing must be signed by the represented entity and state:

- (1) The name of the entity's commercial registered agent; or
- (2) If the entity does not have a commercial registered agent:
  - (A) The name and address of the entity's noncommercial registered agent; or
  - (B) The title of an office or other position with the entity, if service of process, notices, and demands are to be sent to whichever individual is holding that office or position, and the address to which process, notices or demands are to be sent.
- (b) The designation of a registered agent pursuant to subsection (a)(1) or (2)(A) of this section is an affirmation of fact by the represented entity that the agent has consented to serve.
- (c) The secretary of state shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:
  - (1) Be available for at least fourteen (14) calendar days;
  - (2) List in alphabetical order the names of the registered agents; and
  - (3) State the type of filing and name of the represented entity making the filing.

30-21-405.LISTING OF COMMERCIAL REGISTERED AGENT. (a) A person may become listed as a commercial registered agent by delivering to the secretary of state for filing a commercial registered agent listing statement signed by the person which states:

- (1) The name of the individual or the name of the entity, type of entity, and jurisdiction of formation of the entity;
- (2) That the person is in the business of serving as a commercial registered agent in this state; and
- (3) The address of a place of business of the person in this state to which service of process, notices, and demands being served on or sent to entities represented by the person may be delivered.
- (b) A commercial registered agent listing statement may include the information regarding acceptance by the agent of service of process, notices, and demands in a form other than a written record as provided in section 30-21-412(d), Idaho Code.
- (c) If the name of a person delivering to the secretary of state for filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.
- (d) The secretary of state shall note the filing of a commercial registered agent listing statement in the index of

filings maintained by the secretary of state for each entity represented by the agent at the time of the filing. The statement has the effect of amending the registered agent filing for each of those entities to:

- (1) Designate the person becoming listed as a commercial registered agent as the commercial registered agent of each of those entities; and
- (2) Delete the name and address of the former agent from the registered agent filing of each of those entities.

30-21-406.TERMINATION OF LISTING OF COMMERCIAL REGISTERED AGENT. (a) A commercial registered agent may terminate its listing as a commercial registered agent by delivering to the secretary of state for filing a commercial registered agent termination statement signed by the agent that states:

- (1) The name of the agent as listed under section 30-21-405, Idaho Code; and
  - (2) That the agent is no longer in the business of serving as a commercial registered agent in this state.
- (b) A commercial registered agent termination statement takes effect at 12:01 a.m. on the thirty-first day after the day on which it is filed by the secretary of state.
- (c) The commercial registered agent promptly shall furnish each entity represented by the agent notice in a record of the filing of the commercial registered agent termination statement.
- (d) When a commercial registered agent termination statement takes effect, the commercial registered agent ceases to be the registered agent for each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered agent designates a new registered agent, service of process may be made on the entity pursuant to section 30-21-412, Idaho Code. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity has against the agent or that the agent has against the entity.

30-21-407.CHANGE OF REGISTERED AGENT BY ENTITY. (a) A represented entity may change the information on file under section 30-21-404(a), Idaho Code, by delivering to the secretary of state for filing a statement of change signed by the entity which states:

- (1) The name of the entity; and
  - (2) The information that is to be in effect as a result of the filing of the statement of change.
- (b) The interest holders or governors of a domestic entity need not approve the filing of:
- (1) A statement of change under this section; or
  - (2) A similar filing changing the registered agent or registered office, if any, of the entity in any other jurisdiction.
- (c) A statement of change under this section designating a new registered agent is an affirmation of fact by the represented entity that the agent has consented to serve.
- (d) As an alternative to using the procedure in this section, a represented entity may change the information on file under section 30-21-404(a), Idaho Code, by amending its most recent registered agent filing in a manner provided by the law of this state other than this act for amending the filing.

30-21-408.CHANGE OF NAME OR ADDRESS BY NONCOMMERCIAL REGISTERED AGENT. (a) If a noncommercial registered agent changes its name or its address in effect with respect to a represented entity under section 30-21-404(a), Idaho Code, the agent shall deliver to the secretary of state for filing, with respect to each entity represented by the agent, a statement of change signed by the agent which states:

- (1) The name of the entity;
  - (2) The name and address of the agent in effect with respect to the entity;
  - (3) If the name of the agent has changed, the new name;
  - (4) If the address of the agent has changed, the new address; and
- (b) A noncommercial registered agent promptly shall furnish the represented entity with notice in a record of the delivery to the secretary of state for filing of a statement of change and the changes made in the statement.

30-21-409.CHANGE OF NAME, ADDRESS, TYPE OF ENTITY, OR JURISDICTION OF FORMATION BY COMMERCIAL REGISTERED AGENT. (a) If a commercial registered agent changes its name, its address as listed under section 30-21-405(a), Idaho Code, its type of entity, or its jurisdiction of formation, the agent shall deliver to the secretary of state for filing a statement of change signed by the agent which states:

- (1) The name of the agent as listed under section 30-21-405(a), Idaho Code;
- (2) If the name of the agent has changed, the new name;

- (3) If the address of the agent has changed, the new address; and
- (4) If the agent is an entity:
  - (i) If the type of entity of the agent has changed, the new type of entity; and
  - (ii) If the jurisdiction of formation of the agent has changed, the new jurisdiction of formation.
- (b) The filing by the secretary of state of a statement of change under subsection (a) of this section is effective to change the information regarding the agent with respect to each entity represented by the agent.
- (c) A commercial registered agent shall promptly furnish to each entity represented by it a notice in a record of the filing by the secretary of state of a statement of change relating to the name or address of the agent and the changes made in the statement.
- (d) If a commercial registered agent changes its address without delivering for filing a statement of change as required by this section, the secretary of state may cancel the listing of the agent under section 30-21-405, Idaho Code. A cancellation under this subsection has the same effect as a termination under section 30-21-406, Idaho Code. Promptly after canceling the listing of an agent, the secretary of state shall serve notice in a record in the manner provided in section 30-21-412(b) or (c), Idaho Code, on:
  - (1) Each entity represented by the agent, stating that the agent has ceased to be the registered agent for the entity and that, until the entity designates a new registered agent, service of process may be made on the entity as provided in section 30-21-412, Idaho Code; and
  - (2) The agent stating that the listing of the agent has been canceled under this section.

30-21-410.RESIGNATION OF REGISTERED AGENT. (a) A registered agent may resign as agent for a represented entity by delivering to the secretary of state for filing a statement of resignation signed by the agent which states:

- (1) The name of the entity;
- (2) The name of the agent;
- (3) That the agent resigns from serving as registered agent for the entity; and
- (4) The address of the entity to which the agent will send the notice required by subsection (c) of this section.
- (b) A statement of resignation takes effect on the earlier of:
  - (1) 12:01 a.m. on the thirty-first day after the day on which it is filed by the secretary of state; or
  - (2) The designation of a new registered agent for the represented entity.
- (c) A registered agent shall promptly furnish to the represented entity notice in a record of the date on which a statement of resignation was filed.
- (d) When a statement of resignation takes effect, the person that resigned ceases to have responsibility under this part for any matter thereafter tendered to it as agent for the represented entity. The resignation does not affect any contractual rights the entity has against the agent or that the agent has against the entity.
- (e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

30-21-411.DESIGNATION OF REGISTERED AGENT BY NONREGISTERED FOREIGN ENTITY OR NONFILING DOMESTIC ENTITY. (a) A nonregistered foreign entity or domestic nonfiling entity may deliver to the secretary of state for filing a statement designating a registered agent signed by the entity that states:

- (1) The name, type of entity, and jurisdiction of formation of the entity; and
- (2) The information required by section 30-21-404(a), Idaho Code.
- (b) A statement under subsection (a) of this section is effective for five (5) years after the date of filing unless canceled or terminated earlier.
- (c) A statement under subsection (a) of this section must be signed by a person authorized to manage the affairs of the nonregistered foreign entity or domestic nonfiling entity. The signing of the statement is an affirmation of fact that the person is authorized to manage the affairs of the entity and that the agent has consented to serve.
- (d) Designation of a registered agent under subsection (a) of this section does not register a nonregistered foreign entity to do business in this state.
- (e) A statement under subsection (a) of this section may not be rejected for filing because the name of the entity signing the statement is not distinguishable on the records of the secretary of state from the name of another entity appearing on those records. The filing of such a statement does not make the name of the entity signing the statement unavailable for use by another entity.
- (f) An entity that delivers to the secretary of state for filing a statement under subsection (a) of this section designating a registered agent may cancel the statement by delivering to the secretary of state for filing a statement

of cancellation that states the name of the entity and that the entity is canceling its designation of a registered agent in this state.

(g) A statement under subsection (a) of this section for a nonregistered foreign entity terminates on the date the entity becomes a registered foreign entity.

30-21-412.SERVICE OF PROCESS, NOTICE OR DEMAND ON ENTITY. (a) A represented entity may be served with any process, notice or demand required or permitted by law by serving its registered agent.

(b) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office of a domestic filing entity, domestic limited liability partnership, or registered foreign entity must be as shown in the entity's most recent annual report filed by the secretary of state. Service is effected under this subsection on the earliest of:

(1) The date the entity receives the mail or delivery by the commercial delivery service;

(2) The date shown on the return receipt, if signed by the entity; or

(3) Five (5) days after its deposit with the United States postal service or commercial delivery service, if correctly addressed and with sufficient postage or payment.

(c) If process, notice or demand cannot be served on an entity pursuant to subsection (a) or (b) of this section, service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in a written record, but service may be made on a commercial registered agent in other forms and subject to such requirements as the agent has stated in its listing under section 30-21-405, Idaho Code, that it will accept.

(e) Service of process, notice or demand may be made by other means under law other than this act.

30-21-413.DUTIES OF REGISTERED AGENT. The only duties under this part of a registered agent that has complied with this part are:

(1) To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice or demand pertaining to the entity which is served on or received by the agent;

(2) To provide the notices required by this act to the entity at the address most recently supplied to the agent by the entity;

(3) If the agent is a noncommercial registered agent, to keep current the information required by section 30-21-404(a), Idaho Code, in the most recent registered agent filing for the entity; and

(4) If the agent is a commercial registered agent, to keep current the information listed for it under section 30-21-405(a), Idaho Code.

30-21-414.JURISDICTION AND VENUE. The designation or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or a proceeding involving the entity.

## **PART 5. FOREIGN ENTITIES**

30-21-501.GOVERNING LAW. (a) The law of the jurisdiction of formation of an entity governs:

(1) The internal affairs of the entity;

(2) The liability that a person has as an interest holder or governor for a debt, obligation, or other liability of the entity;

(3) The liability of a series of a limited liability company, a statutory trust, or any other unincorporated entity.

(b) A foreign entity is not precluded from registering to do business in this state because of any difference between the law of the entity's jurisdiction of formation and the law of this state.

(c) Registration of a foreign entity to do business in this state does not authorize the foreign entity to engage in any activities or affairs or exercise any power that the domestic entity of the type to which it most closely corresponds may not engage in or exercise in this state.

(d) A foreign professional entity rendering services in this state shall be subject to the laws of this state and the

code of ethics or professional responsibility that are applicable to the profession in which such professional entity is rendering services in this state.

30-21-502.REGISTRATION TO DO BUSINESS IN THIS STATE. (a) A foreign filing entity or foreign limited liability partnership may not do business in this state until it registers with the secretary of state under this chapter.

(b) A foreign filing entity or foreign limited liability partnership doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.

(c) The failure of a foreign filing entity or foreign limited liability partnership to register to do business in this state does not impair the validity of a contract or act of the foreign filing entity or foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(d) A limitation on the liability of a series of foreign unincorporated entity or an interest holder or governor of a foreign filing entity or of a partner of a foreign limited liability partnership is not waived solely because the foreign unincorporated entity or any series thereof, foreign filing entity or foreign limited liability partnership does business in this state without registering.

(e) Section 30-21-501(a) and (b), Idaho Code, applies even if a foreign entity fails to register under this chapter.

30-21-503.FOREIGN REGISTRATION STATEMENT. (a) To register to do business in this state, a foreign filing entity or foreign limited liability partnership must deliver a foreign registration statement to the secretary of state for filing. The statement must be signed by the entity and state:

(1) The name of the foreign filing entity or foreign limited liability partnership and, if the name does not comply with section 30-21-301, Idaho Code, an alternate name adopted pursuant to section 30-21-506(a), Idaho Code;

(2) The type of entity and, if it is a foreign limited partnership, whether it is a foreign limited liability limited partnership;

(3) The entity's jurisdiction of formation;

(4) The street and mailing addresses of the entity's principal office and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of the office;

(5) The information required by section 30-21-404(a), Idaho Code; and

(6) The name and mailing address of at least one (1) governor.

(b) A foreign filing entity or foreign limited liability partnership must deliver to the secretary of state with a foreign registration statement a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the entity's public organic record in the entity's jurisdiction of formation.

30-21-504.AMENDMENT OF FOREIGN REGISTRATION STATEMENT. (a) A registered foreign entity shall sign and deliver to the secretary of state for filing an amendment to its foreign registration statement if there is a change in:

(1) The name of the entity;

(2) The type of entity, including, if it is a foreign limited partnership, whether the entity became or ceased to be a foreign limited liability limited partnership;

(3) The entity's jurisdiction of formation;

(4) An address required by section 30-21-503(4), Idaho Code; or

(5) The information required by section 30-21-404(a), Idaho Code.

(b) A registered foreign entity must deliver to the secretary of state with an amendment to its foreign registration statement for a change under subsection (a)(1), (2) or (3) of this section, a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the entity's public organic record in the entity's jurisdiction of formation.

30-21-505.ACTIVITIES NOT CONSTITUTING DOING BUSINESS. (a) Activities of a foreign filing entity or foreign limited liability partnership that do not constitute doing business in this state under this chapter include:

(1) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

(2) Carrying on any activity concerning its internal affairs, including holding meetings of its interest holders or governors;

(3) Maintaining accounts in financial institutions;

- (4) Maintaining offices or agencies for the transfer, exchange and registration of securities of the entity or maintaining trustees or depositories with respect to those securities;
  - (5) Selling through independent contractors;
  - (6) Soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;
  - (7) Creating or acquiring indebtedness, mortgages or security interests in property;
  - (8) Securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting or maintaining property so acquired;
  - (9) Conducting an isolated transaction that is not in the course of similar transactions;
  - (10) Owning, without more, property; and
  - (11) Doing business in interstate commerce.
- (b) A person does not do business in this state solely by being an interest holder or governor of a foreign entity that does business in this state.
- (c) This section does not apply in determining the contacts or activities that may subject a foreign filing entity or foreign limited liability partnership to service of process, taxation or regulation under the law of this state other than this act.

30-21-506. NONCOMPLYING NAME OF FOREIGN ENTITY. (a) A foreign filing entity or foreign limited liability partnership whose name does not comply with section 30-21-301, Idaho Code, for an entity of its type may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with section 30-21-301, Idaho Code. A foreign entity that registers under an alternate name under this subsection need not comply with this state's assumed or fictitious name statute. After registering to do business in this state with an alternate name, a foreign entity shall do business in this state under:

- (1) The alternate name;
  - (2) The foreign entity's name with the addition of its jurisdiction of formation; or
  - (3) Name the foreign entity is authorized to use under this state's assumed or fictitious name statute.
- (b) If a registered foreign entity changes its name to one that does not comply with section 30-21-301, Idaho Code, it may not do business in this state until it complies with subsection (a) of this section by amending its registration to adopt an alternate name that complies with section 30-21-301, Idaho Code.

30-21-507. WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN ENTITY. (a) A registered foreign entity may withdraw its registration by delivering a statement of withdrawal to the secretary of state for filing. The statement of withdrawal must be signed by the entity and state:

- (1) The name of the entity and its jurisdiction of formation;
  - (2) That the entity is not doing business in this state and that it withdraws its registration to do business in this state;
  - (3) That the entity revokes the authority of its registered agent to accept service on its behalf in this state; and
  - (4) An address to which service of process may be made under subsection (b) of this section.
- (b) After the withdrawal of the registration of an entity, service of process in any action or proceeding based on a cause of action arising during the time the entity was registered to do business in this state may be made pursuant to section 30-21-412, Idaho Code.

30-21-508. WITHDRAWAL DEEMED ON CONVERSION OR DOMESTICATION TO DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP. A registered foreign entity that converts or domesticates to any type of domestic filing entity or to a domestic limited liability partnership is deemed to have withdrawn its registration on the effective date of the conversion or domestication.

30-21-509. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP. (a) A registered foreign entity that has dissolved and completed winding up or has converted to a domestic or foreign nonfiling entity other than a limited liability partnership shall deliver a statement of withdrawal to the secretary of state for filing. The statement must be signed by the dissolved or converted entity and state:

- (1) In the case of a foreign entity that has completed winding up:

- (A) Its name and jurisdiction of formation; and
- (B) That the foreign entity surrenders its registration to do business in this state; and
- (2) In the case of a foreign entity that has converted to a domestic or foreign nonfiling entity other than a limited liability partnership:
  - (A) The name of the converting foreign entity and its jurisdiction of formation;
  - (B) The type of nonfiling entity to which it has converted and its jurisdiction of formation;
  - (C) That it withdraws its registration to do business in this state and revokes the authority of its registered agent to accept service on its behalf; and
  - (D) A mailing address to which service of process may be made under subsection (b) of this section.
- (b) After a withdrawal under this section is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign filing entity was registered to do business in this state may be made pursuant to section 30-21-412, Idaho Code.

30-21-510. TRANSFER OF REGISTRATION. (a) If a registered foreign entity merges into a nonregistered foreign entity or converts to a foreign entity required to register with the secretary of state to do business in this state, the foreign entity shall deliver to the secretary of state for filing an application for transfer of registration. The application must be signed by the surviving or converted entity and state:

- (1) The name of the registered foreign entity before the merger or conversion;
- (2) The type of entity it was before the merger or conversion;
- (3) The name of the applicant entity and, if the name does not comply with section 30-21-301, Idaho Code, an alternate name adopted pursuant to section 30-21-506(a), Idaho Code;
- (4) The type of entity of the applicant entity and its jurisdiction of formation; and
- (5) The following information regarding the applicant entity, if different than the information for the foreign entity before the merger or conversion:
  - (A) The street and mailing addresses of the principal office of the entity and, if the law of the entity's jurisdiction of formation requires it to maintain an office in that jurisdiction, the street and mailing addresses of that office; and
  - (B) The information required pursuant to section 30-21-404(a), Idaho Code.
- (b) When an application for transfer of registration takes effect, the registration of the registered foreign entity to do business in this state is transferred without interruption to the entity into which it has merged or to which it has been converted.

30-21-511. TERMINATION OF REGISTRATION. (a) The secretary of state may terminate the registration of a registered foreign entity in the manner provided in subsections (b) and (c) of this section if the entity does not:

- (1) Deliver its annual report to the secretary of state for filing not later than the date it is due;
- (2) Have a registered agent as required by section 30-21-402, Idaho Code; or
- (3) Deliver to the secretary of state for filing a statement of change under section 30-21-407, Idaho Code, not later than thirty (30) days after a change occurs in the name or address of the entity's registered agent.
- (b) The secretary of state may terminate the registration of a registered foreign entity by:
  - (1) Filing a notice of termination or noting the termination in the records of the secretary of state; and
  - (2) Delivering a copy of the notice or the information in the notation to the entity's registered agent or, if the entity does not have a registered agent, to the entity's principal office.
- (c) The notice must state or the information in the notation under subsection (b) of this section must include:
  - (1) The effective date of the termination, which must be at least sixty (60) days after the date the secretary of state delivers the copy; and
  - (2) The grounds for termination under subsection (a) of this section.
- (d) The registration of a registered foreign entity to do business in this state ceases on the effective date of the notice of termination or notation under subsection (b) of this section, unless before that date the entity cures each ground for termination stated in the notice or notation. If the entity cures each ground, the secretary of state shall file a record so stating.

30-21-512. ACTION BY ATTORNEY GENERAL. The attorney general may maintain an action to enjoin a foreign filing entity or foreign limited liability partnership from doing business in this state in violation of this act.

## **PART 6. ADMINISTRATIVE DISSOLUTION AND REINSTATEMENT**

30-21-601.GROUNDS. The secretary of state may commence a proceeding under section 30-21-602, Idaho Code, to dissolve a domestic filing entity administratively if the entity does not:

- (1) Deliver an annual report to the secretary of state by the date it is due;
- (2) Have a registered agent in this state for sixty (60) consecutive days; or
- (3) The secretary of state has credible information that the domestic filing entity has failed to notify the secretary of state within sixty (60) days after the occurrence that its registered agent has been changed or that its registered agent has resigned.

30-21-602.PROCEDURE AND EFFECT. (a) If the secretary of state determines that one (1) or more grounds exist under section 30-21-601, Idaho Code, for administratively dissolving a domestic filing entity, the secretary of state shall serve the entity pursuant to section 30-21-212, Idaho Code, with notice in a record of the secretary of state's determination.

(b) If a domestic filing entity, not later than sixty (60) days after service of the notice required by subsection (a) of this section, does not cure or demonstrate to the satisfaction of the secretary of state the nonexistence of each ground determined by the secretary of state, the secretary of state shall administratively dissolve the entity by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The secretary of state shall file the statement and serve a copy on the entity pursuant to section 30-21-212, Idaho Code.

(c) A domestic filing entity that is dissolved administratively continues its existence as the same type of entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets in the manner provided in its organic law or to apply for reinstatement under section 30-21-603, Idaho Code.

(d) The administrative dissolution of a domestic filing entity does not terminate the authority of its registered agent.

30-21-603.REINSTATEMENT. (a) A domestic filing entity that is dissolved administratively under section 30-21-602, Idaho Code, may apply to the secretary of state for reinstatement not later than ten (10) years after the effective date of dissolution. The application must be signed by the entity and state:

- (1) The name of the entity at the time of its administrative dissolution and, if needed, a different name that satisfies section 30-21-301, Idaho Code;
- (2) The address of the principal office of the entity and the information required by section 30-21-404(a), Idaho Code;
- (3) The effective date of the entity's administrative dissolution; and
- (4) That the grounds for dissolution did not exist or have been cured.

(b) To be reinstated, an entity must pay all fees, taxes, interest, and penalties that were due to the secretary of state at the time of the entity's administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the secretary of state while the entity was dissolved administratively.

(c) If the secretary of state determines that an application under subsection (a) of this section contains the required information, is satisfied that the information is correct, and determines that all payments required to be made to the secretary of state by subsection (b) of this section have been made, the secretary of state shall:

- (1) Cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the secretary of state's determination and the effective date of reinstatement;
- (2) File the statement of reinstatement; and
- (3) Serve a copy on the entity.

(d) When reinstatement under this section is effective the following rules apply:

- (1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.
- (2) The domestic filing entity resumes carrying on its activities and affairs as if the administrative dissolution had never occurred.
- (3) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

30-21-604.JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT. (a) If the secretary of state denies a domestic filing entity's application for reinstatement following administrative dissolution, the secretary of state shall serve the entity with a notice in a record that explains the reasons for denial.

(b) Within thirty (30) days after service of a notice of denial of reinstatement under subsection (a) of this section, an entity may appeal from the denial by petitioning the district court of Ada county to set aside the dissolution. The petition must be served on the secretary of state and contain a copy of the secretary of state's notice of dissolution, the company's application for reinstatement, and the secretary of state's notice of denial.

(c) The district court may, if grounds exist, order the secretary of state to reinstate a dissolved entity or take other action the court considers appropriate.

## **PART 7. TRANSITION PROVISIONS**

30-21-701.RESERVATION OF POWER TO AMEND OR REPEAL. The legislature of this state has power to amend or repeal all or part of this act at any time, and all domestic and foreign entities subject to this act are governed by the amendment or repeal.

30-21-702.SUPPLEMENTAL PRINCIPLES OF LAW. Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.

30-21-703.UNIFORMITY OR CONSISTENCY OF APPLICATION AND CONSTRUCTION. In applying and construing the chapters of this act based on uniform or model acts, consideration must be given to the need to promote uniformity or consistency of the law with respect to its subject matter among states that enact it.

30-21-704.RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, and supersedes the electronic signatures in global and national commerce act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

30-21-705.SAVINGS CLAUSE. The repeal of a statute by this act does not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
- (2) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;
- (3) Any violation of the statute or any penalty, forfeiture or punishment incurred because of the violation before its repeal; or
- (4) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

30-21-706.SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

30-21-708.EFFECTIVE DATE. This act takes effect July 1, 2015, except as otherwise provided.

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END OF PRELIMINARY PROVISIONS

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## CHAPTER 29. IDAHO BUSINESS CORPORATION ACT

### PART 1. GENERAL PROVISIONS

30-29-101.SHORT TITLE. This chapter shall be known and may be cited as the “Idaho Business Corporation Act.”

30-29-120.REQUIREMENTS FOR DOCUMENTS -- EXTRINSIC FACTS. (1) Except as otherwise permitted by subsection (3) of this section, a record delivered to the secretary of state for filing pursuant to this chapter must be signed as follows:

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

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

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

(2) Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent upon facts objectively ascertainable outside the plan or filed document, the following provisions apply:

(a) 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.

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

(i) Any of the following that are 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;

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

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

(c) As used in this subsection:

(i) “Filed document” means a document filed with the secretary of state under any provision of this chapter except section 30-21-213, Idaho Code, or part 5, chapter 21, title 30, Idaho Code; and

(ii) “Plan” means a plan of domestication, merger or share exchange.

(d) The following provisions of a plan or filed document may not be made dependent upon facts outside the plan or filed document:

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

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

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

(iv) The number of authorized shares and designation of each class or series of shares;

(v) The effective date of a filed document;

(vi) 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.

(e) If a provision of a filed document is made dependent upon a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subsection (2)(b)(i) of this section 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 subsection 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.

(3) The annual report delivered to the secretary of state for filing under section 30-21-213, Idaho Code, shall be executed by one (1) of the persons identified in subsection (1) of this section or by another person who is authorized by the board of directors to execute the report.

30-29-140.CHAPTER DEFINITIONS. As used in this chapter:

(1) “Articles of incorporation” means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the secretary of state under

- any provision of this chapter. If an amendment of the articles or any document filed under this chapter restates the articles in their entirety, thenceforth the “articles” shall not include any prior documents.
- (2) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.
- (3) “Conspicuous” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.
- (4) “Corporation,” “domestic corporation” or “domestic business corporation” means a corporation for profit that is not a foreign corporation, incorporated under or subject to the provisions of this chapter.
- (5) “Distribution” means a direct or indirect transfer of money or other property, except its own shares, or incurrance of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.
- (6) “Domestic unincorporated entity” means an unincorporated entity whose internal affairs are governed by the laws of this state.
- (7) “Electronic transmission” or “electronically transmitted” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction in written form of information by the recipient.
- (8) “Eligible entity” means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.
- (9) “Eligible interests” means interests or memberships.
- (10) “Employee” includes an officer but not a director. A director may accept duties that make him also an employee.
- (11) The phrase “facts objectively ascertainable outside the plan or filed document” is as set forth in section 30-29-120(2), Idaho Code.
- (12) “Foreign corporation” means a corporation incorporated under a law other than the law of this state which would be a business corporation if incorporated under the laws of this state.
- (13) “Foreign nonprofit corporation” means a corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if incorporated under the laws of this state.
- (14) “Foreign unincorporated entity” means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.
- (15) “Governmental subdivision” includes authority, county, district and municipality.
- (16) “Membership” means the right of a member in a domestic or foreign nonprofit corporation.
- (17) “Notice” is defined in section 30-29-141, Idaho Code.
- (18) “Organic document” means a public organic document or a private organic document.
- (19) “Owner liability” means personal liability for a debt, obligation or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:
- (a) Solely by reason of the person’s status as a shareholder, member or interest holder; or
  - (b) By the articles of incorporation, bylaws or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws or an organic document to make one (1) or more specified shareholders, members or interest holders liable in their capacity as shareholders, members or interest holders for all or specified debts, obligations or liabilities of the entity.
- (20) “Record date” means the date established under part 6 or 7 of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.
- (21) “Secretary” means the corporate officer to whom the board of directors has delegated responsibility under section 30-29-840(3), Idaho Code, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.
- (22) “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (23) “Shares” means the units into which the proprietary interests in a corporation are divided.
- (24) “Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

(25) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.

(26) "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes, without limitation, a general partnership, limited liability company, limited partnership, business trust, joint stock association and incorporated nonprofit association.

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

(28) "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

(29) "Voting power" means the current power to vote in the election of directors.

30-29-141.NOTICE. (1) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective:

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

(b) When electronically transmitted to the shareholder in a manner authorized by the shareholders.

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

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) When received;

(b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed;

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

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

(7) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

## **PART 2. INCORPORATION**

30-29-201.INCORPORATORS. One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing.

30-29-202.ARTICLES OF INCORPORATION. (1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of sections 30-21-301 and 30-21-302(a), Idaho Code;

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

(c) The information required by section 30-21-404(a), Idaho Code; and

(d) The name and address of each incorporator.

- (2) The articles of incorporation may set forth:
  - (a) The names and addresses of the individuals who are to serve as the initial directors;
  - (b) Provisions not inconsistent with law regarding:
    - (i) The purpose or purposes for which the corporation is organized;
    - (ii) Managing the business and regulating the affairs of the corporation;
    - (iii) Defining, limiting and regulating the powers of the corporation, its board of directors, and shareholders;
    - (iv) A par value for authorized shares or classes of shares;
    - (v) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
  - (c) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
  - (d) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for:
    - (i) The amount of a financial benefit received by a director to which he is not entitled;
    - (ii) An intentional infliction of harm on the corporation or the shareholders;
    - (iii) A violation of section 30-29-833, Idaho Code; or
    - (iv) An intentional violation of criminal law; and
  - (e) A provision permitting or making obligatory indemnification of a director for liability, as defined in section 30-29-850(5), Idaho Code, 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 he is not entitled;
    - (ii) An intentional infliction of harm on the corporation or its shareholders;
    - (iii) A violation of section 30-29-833, Idaho Code; or
    - (iv) An intentional violation of criminal law.
- (3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.
- (4) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 30-29-120(2), Idaho Code.

30-29-203.INCORPORATION. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

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

30-29-204.LIABILITY FOR PREINCORPORATION TRANSACTIONS. All persons purporting to act as or on behalf of a corporation, when there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

30-29-205.ORGANIZATION OF CORPORATION. (1) After incorporation:

- (a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting and shall hold an organizational meeting at the call of a majority of the incorporators:
  - (i) To elect directors and complete the organization of the corporation; or
  - (ii) To elect a board of directors, who shall complete the organization of the corporation.
- (2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.
- (3) An organizational meeting may be held in or out of this state.

30-29-206.BYLAWS. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

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

30-29-207.EMERGENCY BYLAWS. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- (a) Procedures for calling a meeting of the board of directors;
- (b) Quorum requirements for the meeting; and
- (c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

- (a) Binds the corporation; and
- (b) May not be used to impose liability on a corporate director, officer, employee or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

### **PART 3. PURPOSES AND POWERS**

30-29-301.PURPOSES. (1) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

30-29-302.GENERAL POWERS. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power:

- (1) To sue and be sued, complain and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;
- (3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property wherever located;
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;
- (7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;
- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (9) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;
- (10) To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state;
- (11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;
- (12) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees and agents;
- (13) To make donations for the public welfare or for charitable, scientific, or educational purposes;
- (14) To transact any lawful business that will aid governmental policy;
- (15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

30-29-303.EMERGENCY POWERS. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

- (a) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and
- (b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

- (a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
- (b) One (1) or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

- (a) Binds the corporation; and
- (b) May not be used to impose liability on a corporate director, officer, employee or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

30-29-304.ULTRA VIRES. (1) Except as provided in subsection (2) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

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

- (a) In a proceeding by a shareholder against the corporation to enjoin the act;
- (b) In a proceeding by the corporation, directly, derivatively or through a receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the corporation; or
- (c) In a proceeding by the attorney general under section 30-29-1430, Idaho Code.

(3) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

## **PART 6. SHARES AND DISTRIBUTIONS**

30-29-601.AUTHORIZED SHARES. (1) The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one (1) class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights and limitations of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights and limitations, that are identical with those of other shares of the same class or series.

(2) The articles of incorporation must authorize:

- (a) One (1) or more classes or series of shares that together have unlimited voting rights; and
- (b) One (1) or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one (1) or more classes or series of shares that:

(a) Have special, conditional or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;

(b) Are redeemable or convertible as specified in the articles of incorporation:

(i) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event;

(ii) For cash, indebtedness, securities or other property; and

(iii) At prices and in amounts specified or determined in accordance with a formula;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, non-cumulative or partially cumulative; or

- (d) Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.
- (4) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 30-29-120(2), Idaho Code.
- (5) Any of the terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.
- (6) The description of the preferences, rights and limitations of classes or series of shares in subsection (3) of this section is not exhaustive.

30-29-602.TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF DIRECTORS. (1) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to:

- (a) Classify any unissued shares into one (1) or more classes or into one (1) or more series within a class;
  - (b) Reclassify any unissued shares of any class into one (1) or more classes or into one (1) or more series within one (1) or more classes; or
  - (c) Reclassify any unissued shares of any series of any class into one (1) or more classes or into one (1) or more series within a class.
- (2) If the board of directors acts pursuant to subsection (1) of this section, it must determine the terms, including the preferences, rights and limitations, to the same extent permitted under section 30-29-601, Idaho Code, of:
- (a) Any class of shares before the issuance of any shares of that class; or
  - (b) Any series within a class before the issuance of any shares of that series.
- (3) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment setting forth the terms determined under subsection (1) of this section.

30-29-603.ISSUED AND OUTSTANDING SHARES. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted or canceled.

- (2) The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of subsection (3) of this section and to section 30-29-640, Idaho Code.
- (3) At all times that shares of the corporation are outstanding, one (1) or more shares that together have unlimited voting rights and one (1) or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

30-29-604.FRACTIONAL SHARES. (1) A corporation may:

- (a) Issue fractions of a share or pay in money the value of fractions of a share;
  - (b) Arrange for disposition of fractional shares by the shareholders;
  - (c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.
- (2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 30-29-625(2), Idaho Code.
- (3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.
- (4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:
- (a) That the scrip will become void if not exchanged for full shares before a specified date; and
  - (b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

30-29-620.SUBSCRIPTION FOR SHARES BEFORE INCORPORATION. (1) A subscription for shares entered into before incorporation must be in writing and is irrevocable for six (6) months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

- (2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors

must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement, provided that such consideration meets the requirements of section 30-29-621(2), Idaho Code.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than twenty (20) days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 30-29-621, Idaho Code.

(6) A subscription for stock of a corporation, whether made before or after the formation of a corporation, shall not be enforceable against the subscriber or the corporation, unless in writing and signed by the party to be bound.

30-29-621.ISSUANCE OF SHARES. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property, including cash, promissory notes, services performed, or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the note is paid. If the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(6) (a) An issuance of shares or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders, at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the matter exists, if:

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

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

(b) In this subsection:

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

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

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

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

30-29-622.LIABILITY OF SHAREHOLDERS. (1) A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued as provided in section 30-29-621, Idaho Code, or specified in the subscription agreement as provided in section 30-29-620, Idaho Code.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

30-29-623.SHARE DIVIDENDS. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one (1) or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one (1) class or series may not be issued as a share dividend in respect of shares of another class or series unless:

- (a) The articles of incorporation so authorize;
  - (b) A majority of the votes entitled to be cast by the class or series to be issued approve the issue; or
  - (c) There are not outstanding shares of the class or series to be issued.
- (3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

30-29-624.SHARE OPTIONS. (1) A corporation may issue rights, options or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine:

- (a) The terms upon which the rights, options or warrants are issued; and
- (b) The terms, including the consideration for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercisable.

(2) The terms and conditions of such rights, options or warrants, including those outstanding on July 1, 2004, may include, without limitation, restrictions or conditions that:

- (a) Preclude or limit the exercise, transfer or receipt of such rights, options or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee or transferees of any such person or persons; or
- (b) Invalidate or void such rights, options or warrants held by any such person or persons or any such transferee or transferees.

30-29-625.FORM AND CONTENT OF CERTIFICATES. (1) Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum each share certificate must state on its face:

- (a) The name of the issuing corporation and that it is organized under the law of this state;
- (b) The name of the person to whom issued; and
- (c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate:

- (a) Must be signed, either manually or in facsimile, by two (2) officers designated in the bylaws or by the board of directors; and
- (b) May bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

30-29-626.SHARES WITHOUT CERTIFICATES. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 30-29-625(2) and (3), Idaho Code, and, if applicable, section 30-29-627, Idaho Code.

30-29-627.RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES. (1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 30-29-626(2), Idaho Code. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

- (a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;
- (b) To preserve exemptions under federal or state securities law;
- (c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

- (a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;
- (b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;
- (c) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable;
- (d) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

30-29-628.EXPENSE OF ISSUE. A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

30-29-630.SHAREHOLDERS' PREEMPTIVE RIGHTS. (1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

- (a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.
- (b) A shareholder may waive his preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(c) There is no preemptive right with respect to:

- (i) Shares issued as compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;
- (ii) Shares issued to satisfy conversion rights or option rights created to provide compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;
- (iii) Shares authorized in articles of incorporation that are issued within six (6) months from the effective date of incorporation;
- (iv) Shares sold otherwise than for money.

(d) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(f) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one (1) year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one (1) year is subject to the shareholders' preemptive rights.

(3) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

30-29-631.CORPORATION'S ACQUISITION OF ITS OWN SHARES. (1) A corporation may acquire its own shares. Unless a resolution of the board of directors or the corporation's articles of incorporation provide otherwise, shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation pursuant to section 30-29-1005(6), Idaho Code.

(3) A corporation has authority to use, hold, acquire, cancel and dispose of treasury shares.

(4) Unless the board of directors adopts an amendment to the corporation's articles of incorporation to reduce the number of authorized shares, treasury shares of the corporation that are canceled shall be treated as authorized but unissued shares.

30-29-640.DISTRIBUTIONS TO SHAREHOLDERS. (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (3) of this section.

(2) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in subsection (7) of this section, the effect of a distribution under subsection (3) of this section is measured:

(a) In the case of distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of:

(i) The date money or other property is transferred or debt incurred by the corporation; or

(ii) The date the shareholder ceases to be a shareholder with respect to the acquired shares;

(b) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(c) In all other cases, as of:

(i) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or

(ii) The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

## **PART 7. SHAREHOLDERS**

30-29-701.ANNUAL MEETING. (1) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(2) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(3) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

30-29-702.SPECIAL MEETING. (1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) If the holders of at least twenty percent (20%) of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding thirty-three and one-third percent (33 1/3%) of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(2) If not otherwise fixed under section 30-29-703 or 30-29-707, Idaho Code, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(3) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(4) Only business within the purpose or purposes described in the meeting notice required by section 30-29-705(3), Idaho Code, may be conducted at a special shareholders' meeting.

30-29-703.COURT-ORDERED MEETING. (1) The Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, may summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within fifteen (15) months after its last annual meeting; or

(b) On application of a shareholder who signed a demand for a special meeting valid under section 30-29-702, Idaho Code, if:

(i) Notice of the special meeting was not given within thirty (30) days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

30-29-704.ACTION WITHOUT MEETING. (1) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one (1) or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise fixed under section 30-29-703 or 30-29-707, Idaho Code, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1) of this section. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest date appearing on a consent delivered to the corporation in the manner required by this section, written consents signed by all shareholders entitled to vote on the action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(4) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders 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 this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

30-29-705.NOTICE OF MEETING. (1) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten (10) nor more than sixty (60) days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) If not otherwise fixed under section 30-29-703 or 30-29-707, Idaho Code, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(5) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 30-29-707, Idaho Code, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

30-29-706.WAIVER OF NOTICE. (1) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

30-29-707.RECORD DATE. (1) The bylaws may fix or provide the manner of fixing the record date for one (1) or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) A record date fixed under this section may not be more than seventy (70) days before the meeting or action requiring a determination of shareholders.

(3) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

(4) If a court orders a meeting adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

30-29-708.CONDUCT OF THE MEETING. (1) At each meeting of shareholders, a chair shall preside. The chair shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.

(2) The chair, unless the bylaws provide otherwise, shall determine the order of business and shall establish rules for the conduct of the meeting.

(3) The rules adopted for, and the conduct of, the meeting shall be fair to shareholders.

(4) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes thereto may be accepted.

30-29-720.SHAREHOLDERS' LIST FOR MEETING. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, at least ten (10) days before the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, his agent or attorney is entitled on written demand to inspect and, subject to the requirements of section 30-29-1602(3), Idaho Code, to copy the list, during regular business hours and at his expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, his agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, his agent or attorney to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection (2) of this section, the Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

30-29-721.VOTING ENTITLEMENT OF SHARES. (1) Except as provided in subsections (2) and (4) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) A corporation is not entitled to vote treasury shares. Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

30-29-722.PROXIES. (1) A shareholder may vote his shares in person or by proxy.

(2) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which one can reasonably verify that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission.

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

(4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (a) A pledgee;
- (b) A person who purchased or agreed to purchase the shares;
- (c) A creditor of the corporation who extended it credit under terms requiring the appointment;
- (d) An employee of the corporation whose employment contract requires the appointment; or
- (e) A party to a voting agreement created under section 30-29-731, Idaho Code.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes before the proxy exercises his authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he did not know of its existence when he acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to section 30-29-724, Idaho Code, and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

30-29-723.SHARES HELD BY NOMINEES. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth:

- (a) The types of nominees to which it applies;
- (b) The rights or privileges that the corporation recognizes in a beneficial owner;
- (c) The manner in which the procedure is selected by the nominee;
- (d) The information that must be provided when the procedure is selected;
- (e) The period for which selection of the procedure is effective; and
- (f) Other aspects of the rights and duties created.

30-29-724.CORPORATION'S ACCEPTANCE OF VOTES. (1) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if:

- (a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
- (b) The name signed purports to be that of an administrator, executor, guardian or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;
- (c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;
- (d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver or proxy appointment;

(e) Two (2) or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name or at least one (1) of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, consent, waiver or proxy appointment if the inspector of election or the officer or agent of the corporation authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section or section 30-29-722(2), Idaho Code, are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section or section 30-29-722(2), Idaho Code, is valid unless a court of competent jurisdiction determines otherwise.

30-29-725. QUORUM AND VOTING REQUIREMENTS FOR VOTING GROUPS. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater than specified in subsection (1) or (3) of this section is governed by section 30-29-727, Idaho Code.

(5) The election of directors is governed by section 30-29-728, Idaho Code.

30-29-726. ACTION BY SINGLE AND MULTIPLE VOTING GROUPS. (1) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 30-29-725, Idaho Code.

(2) If the articles of incorporation or this chapter provide for voting by two (2) or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 30-29-725, Idaho Code. Action may be taken by one (1) voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

30-29-727. GREATER QUORUM OR VOTING REQUIREMENTS. (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.

(2) An amendment to the articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

30-29-728. VOTING FOR DIRECTORS -- CUMULATIVE VOTING. (1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

(3) A statement included in the articles of incorporation that “[all] [a designated voting group of shareholders] are entitled to cumulate their votes for directors,” or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two (2) or more candidates.

30-29-729.INSPECTORS OF ELECTION. (1) A corporation having any shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association shall, and any other corporation may, appoint one (1) or more inspectors to act at a meeting of shareholders and make a written report of the inspectors’ determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector’s ability.

(2) The inspectors shall:

- (a) Ascertain the number of shares outstanding and the voting power of each;
  - (b) Determine the shares represented at a meeting;
  - (c) Determine the validity of proxies and ballots;
  - (d) Count all votes; and
  - (e) Determine the result.
- (3) An inspector may be an officer or employee of the corporation.

30-29-730.VOTING TRUSTS. (1) One (1) or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation’s principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee’s name. A voting trust is valid for not more than ten (10) years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten (10) years each by signing written consent to the extension. An extension is valid for ten (10) years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation’s principal office. An extension agreement binds only those parties signing it.

30-29-731.VOTING AGREEMENTS. (1) Two (2) or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section 30-29-730, Idaho Code.

(2) A voting agreement created under this section is specifically enforceable.

30-29-732.SHAREHOLDER AGREEMENTS. (1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one (1) or more other provisions of this chapter in that it:

- (a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;
- (b) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to limitations in section 30-29-640, Idaho Code;
- (c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
- (d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;
- (e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

(f) Transfers to one (1) or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(g) Requires dissolution of the corporation at the request of one (1) or more of the shareholders or upon the occurrence of a specified event or contingency; or

(h) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

(2) An agreement authorized by this section shall be:

(a) Set forth:

(i) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(ii) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) Valid for ten (10) years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by section 30-29-626(2), Idaho Code. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase.

A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of purchase of the shares.

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

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

30-29-740.DEFINITIONS. As used in sections 30-29-741 through 30-29-747, Idaho Code, "derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in section 30-29-747, Idaho Code, in the right of a foreign corporation.

30-29-741.STANDING. A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

- (1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one (1) who was a shareholder at that time; and
- (2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

30-29-742.DEMAND. No shareholder may commence a derivative proceeding until:

- (1) A written demand has been made upon the corporation to take suitable action; and
- (2) Ninety (90) days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety (90) day period.

30-29-743.STAY OF PROCEEDINGS. If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

30-29-744.DISMISSAL. (1) A derivative proceeding shall be dismissed by the court on motion by the corporation if one (1) of the groups specified in subsection (2) or (6) of this section has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed pursuant to subsection (6) of this section, the determination in subsection (1) of this section shall be made by:

(a) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum;

(b) A majority vote of a committee consisting of two (2) or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not such independent directors constituted a quorum.

(3) None of the following shall by itself cause a director to be considered not independent for purposes of this section:

(a) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(b) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(c) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

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

(a) That a majority of the board of directors did not consist of independent directors at the time the determination was made; or

(b) That the requirements of subsection (1) of this section have not been met.

(5) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden of proving that the requirements of subsection (1) of this section have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

(6) The court may appoint a panel of one (1) or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In such case, the plaintiff shall have the burden of proving that the requirements of subsection (1) of this section have not been met.

30-29-745.DISCONTINUANCE OR SETTLEMENT. A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantial-

ly affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

30-29-746.PAYMENT OF EXPENSES. On termination of the derivative proceeding the court may:

- (1) Order the corporation to pay the plaintiff's reasonable expenses, including counsel fees, incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;
- (2) Order the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or
- (3) Order a party to pay an opposing party's reasonable expenses, including counsel fees, incurred because of the filing of a pleading, motion or other paper, if it finds that the pleading, motion or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

30-29-747.APPLICABILITY TO FOREIGN CORPORATIONS. In any derivative proceeding in the right of a foreign corporation, the matters covered by sections 30-29-740 through 30-29-746, Idaho Code, shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections 30-29-743, 30-29-745 and 30-29-746, Idaho Code.

## **PART 8. DIRECTORS AND OFFICERS**

30-29-801.REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS. (1) Except as provided in section 30-29-732, Idaho Code, each corporation must have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed by or under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section 30-29-732, Idaho Code.

30-29-802.QUALIFICATIONS OF DIRECTORS. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

30-29-803.NUMBER AND ELECTION OF DIRECTORS. (1) A board of directors must consist of one (1) or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(3) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 30-29-806, Idaho Code.

30-29-804.ELECTION OF DIRECTORS BY CERTAIN CLASSES OF SHAREHOLDERS. If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one (1) or more authorized classes of shares. A class, or classes, of shares entitled to elect one (1) or more directors is a separate voting group for purposes of the election of directors.

30-29-805.TERMS OF DIRECTORS GENERALLY. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 30-29-806, Idaho Code.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

(5) Despite the expiration of a director's term, he continues to serve until his successor is elected and qualifies or until there is a decrease in the number of directors.

30-29-806.STAGGERED TERMS FOR DIRECTORS. The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two (2) or three (3) groups, with each group containing one-half (1/2) or one-third (1/3) of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two (2) or three (3) years, as the case may be, to succeed those whose terms expire.

30-29-807.RESIGNATION OF DIRECTORS. (1) A director may resign at any time by delivering written notice to the board of directors, its chairman, or the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specifies a future effective date.

30-29-808.REMOVAL OF DIRECTORS BY SHAREHOLDERS. (1) The shareholders may remove one (1) or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(3) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing him and the meeting notice must state that the purpose, or one (1) of the purposes, of the meeting is removal of the director.

30-29-809.REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING. (1) The Idaho district court of the county where a corporation's principal office is located, or, if none in this state, Ada county, may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) The director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(b) Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

(2) A shareholder proceeding on behalf of the corporation under subsection (1) of this section shall comply with all the requirements of sections 30-29-741 through 30-29-747, Idaho Code, except section 30-29-741(1), Idaho Code.

(3) The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

(4) Nothing in this section limits the equitable powers of the court to order other relief.

30-29-810.VACANCY ON BOARD. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 30-29-807(2), Idaho Code, or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

30-29-811.COMPENSATION OF DIRECTORS. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

30-29-820.MEETINGS. (1) The board of directors may hold regular or special meetings in or out of this state. (2) Unless the articles of incorporation or bylaws provide otherwise, any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

30-29-821.ACTION WITHOUT MEETING. (1) Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by this act to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

(2) Action taken under this section is the act of the board of directors when one (1) or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken thereunder is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

(3) A consent signed under this section has the effect of action taken at a meeting of the board of directors and may be described as such in any document.

30-29-822.NOTICE OF MEETING. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two (2) days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

30-29-823.WAIVER OF NOTICE. (1) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (2) of this section, the waiver must be filed in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting, or promptly upon his arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

30-29-824.QUORUM AND VOTING. (1) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

(a) A majority of the fixed number of directors if the corporation has a fixed board size; or

(b) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(2) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors determined under subsection (1) of this section.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(a) He objects at the beginning of the meeting, or promptly upon his arrival, to holding it or transacting business at the meeting;

(b) His dissent or abstention from the action taken is entered in the minutes of the meeting; or

(c) He delivers written notice of his dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

30-29-825.COMMITTEES. (1) Unless this chapter, the articles of incorporation or the bylaws provide otherwise, a board of directors may create one (1) or more committees and appoint one (1) or more members of the board of directors to serve on any such committee.

(2) Unless this chapter otherwise provides, the creation of a committee and appointment of members to it must be approved by the greater of:

- (a) A majority of all the directors in office when the action is taken; or
- (b) The number of directors required by the articles of incorporation or bylaws to take action under section 30-29-824, Idaho Code.

(3) Sections 30-29-820 through 30-29-824, Idaho Code, apply both to committees of the board and to their members.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the powers of the board of directors under section 30-29-801, Idaho Code.

(5) A committee may not, however:

- (a) Authorize or approve distributions, except according to a formula or method, or within limits, prescribed by the board of directors;
- (b) Approve or propose to shareholders action that this chapter requires be approved by shareholders;
- (c) Fill vacancies on the board of directors or, subject to subsection (7) of this section, on any of its committees; or
- (d) Adopt, amend or repeal bylaws.

(6) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 30-29-830, Idaho Code.

(7) The board of directors may appoint one (1) or more directors as alternate members of any committee to replace any absent or disqualified member during the member's absence or disqualification. Unless the articles of incorporation or the bylaws or the resolution creating the committee provide otherwise, in the event of the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, unanimously, may appoint another director to act in place of the absent or disqualified member.

30-29-830.STANDARDS FOR DIRECTORS. (1) Each member of the board of directors, when discharging the duties of a director, shall act:

- (a) In good faith; and
- (b) In a manner the director reasonably believes to be in the best interests of the corporation.

(2) The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

(3) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on the performance by any of the persons specified in subsection (5)(a) or (c) of this section to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one (1) or more of the board's functions that are delegable under applicable law.

(4) In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data prepared or presented by any of the persons specified in subsection (5) of this section.

(5) A director is entitled to rely, in accordance with subsection (3) or (4) of this section, on:

- (a) One (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinion, reports or statements provided;
- (b) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters:
  - (i) Within the particular person's professional or expert competence; or
  - (ii) As to which the particular person merits confidence; or
- (c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

30-29-831.STANDARDS OF LIABILITY FOR DIRECTORS. (1) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

- (a) Any provision in the articles of incorporation authorized by section 30-29-202(2)(d), Idaho Code, or the protection afforded by section 30-29-861, Idaho Code, for action taken in compliance with section 30-29-862 or 30-29-863, Idaho Code, if interposed as a bar to the proceeding by the director, does not preclude liability; and
- (b) The challenged conduct consisted or was the result of:
  - (i) Action not in good faith; or
  - (ii) A decision:
    - (A) That the director did not reasonably believe to be in the best interests of the corporation; or
    - (B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances; or
  - (iii) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:
    - (A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and
    - (B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation; or
  - (iv) A sustained failure of the director to be informed about the business and affairs of the corporation, or other material failure of the director to discharge the oversight function; or
  - (v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.
- (2) The party seeking to hold the director liable:
  - (a) For money damages, shall also have the burden of establishing that:
    - (i) Harm to the corporation or its shareholders has been suffered; and
    - (ii) The harm suffered was proximately caused by the director's challenged conduct; or
  - (b) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or
  - (c) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.
- (3) Nothing contained in this section shall:
  - (a) In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 30-29-861(2)(c), Idaho Code, alter the burden of proving the fact or lack of fairness otherwise applicable;
  - (b) Alter the fact or lack of liability of a director under another section of this chapter, such as the provisions governing the consequences of an unlawful distribution under section 30-29-833, Idaho Code, or a transactional interest under section 30-29-861, Idaho Code; or
  - (c) Affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

**30-29-833.DIRECTORS' LIABILITY FOR UNLAWFUL DISTRIBUTIONS.** (1) A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to section 30-29-640(1) or 30-29-1409(1), Idaho Code, is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 30-29-640(1) or 30-29-1409(1), Idaho Code, if the party asserting liability establishes that when taking the action the director did not comply with section 30-29-830, Idaho Code.

- (2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to:
  - (a) Contribution from every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and
  - (b) Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted knowing the distribution was made in violation of section 30-29-640(1) or 30-29-1409(1), Idaho Code.

(3) A proceeding to enforce:

(a) The liability of a director under subsection (1) of this section is barred unless it is commenced within two (2) years after the date:

(i) On which the effect of the distribution was measured under section 30-29-640(5) or (7), Idaho Code; or

(ii) As of which the violation of section 30-29-640(1), Idaho Code, occurred as the consequence of disregard of a restriction in the articles of incorporation; or

(iii) On which the distribution of assets to shareholders under section 30-29-1409(1), Idaho Code, was made; or

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

30-29-840.REQUIRED OFFICERS. (1) A corporation has the offices described in its bylaws or designated by the board of directors in accordance with the bylaws.

(2) The board of directors may elect individuals to fill one (1) or more offices of the corporation. An officer may appoint one (1) or more officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall assign to one (1) of the officers responsibility for preparing the minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under section 30-29-1601(1) and (2), Idaho Code.

(4) The same individual may simultaneously hold more than one (1) office in a corporation.

30-29-841.DUTIES OF OFFICERS. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

30-29-842.STANDARDS OF CONDUCT FOR OFFICERS. (1) An officer, when performing in such capacity, shall act:

(a) In good faith;

(b) With the care that a person in a like position would reasonably exercise under similar circumstances; and

(c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging those duties an officer, who does not have knowledge that makes reliance unwarranted, is entitled to rely on:

(a) The performance of properly delegated responsibilities by one (1) or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(b) Information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one (1) or more employees of the corporation whom the officer reasonably believes to be competent in the matters presented or by legal counsel, public accountants or other persons retained by the corporation as to matters involving skill or expertise the officer reasonably believes are matters:

(i) Within the particular person's professional or expert competence; or

(ii) As to which the particular person merits confidence.

(3) An officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action or any failure to take action, as an officer, if the duties of the office are performed in compliance with this section.

Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of section 30-29-831, Idaho Code, that have relevance.

30-29-843.RESIGNATION AND REMOVAL OF OFFICERS. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time and the board or the appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or the appointing officer provides that the successor does not take office until the effective time.

(2) An officer may be removed at any time with or without cause by:

(a) The board of directors;

(b) The officer who appointed such officer, unless the bylaws or the board of directors provide otherwise; or

(c) Any other officer if authorized by the bylaws or the board of directors.

(3) In this section “appointing officer” means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

30-29-844.CONTRACT RIGHTS OF OFFICERS. (1) The appointment of an officer does not itself create contract rights.

(2) An officer’s removal does not affect the officer’s contract rights, if any, with the corporation. An officer’s resignation does not affect the corporation’s contract rights, if any, with the officer.

30-29-850.DEFINITIONS. For purposes of this section and sections 30-29-851 through 30-29-859, Idaho Code:

(1) “Corporation” includes any domestic or foreign predecessor entity of a corporation in a merger.

(2) “Director” or “officer” means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation’s request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation’s request if his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. “Director” or “officer” includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) “Disinterested director” means a director who, at the time of a vote referred to in section 30-29-853(3), Idaho Code, or a vote or selection referred to in section 30-29-855(2) or (3), Idaho Code, is not:

(a) A party to the proceeding; or

(b) An individual having a familial, financial, professional or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director’s judgment when voting on the decision being made.

(4) “Expenses” includes counsel fees.

(5) “Liability” means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(6) “Official capacity” means:

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

(b) When used with respect to an officer, as contemplated in section 30-29-856, Idaho Code, the office in a corporation held by the officer.

“Official capacity” does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

(7) “Party” means an individual who was, is or is threatened to be made, a defendant or respondent in a proceeding.

(8) “Proceeding” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative and whether formal or informal.

30-29-851.PERMISSIBLE INDEMNIFICATION. (1) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because he is a director against liability incurred in the proceeding if:

(a) (i) He conducted himself in good faith; and

(ii) He reasonably believed:

(A) In the case of conduct in his official capacity, that his conduct was in the best interests of the corporation; and

(B) In all cases, that his conduct was at least not opposed to the best interests of the corporation; and

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

(b) He engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation, as authorized by section 30-29-202(2)(e), Idaho Code.

(2) A director’s conduct with respect to an employee plan for a purpose he reasonably believed to be in the best interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subsection (1)(a)(ii)(B) of this section.

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

(4) Unless ordered by a court under section 30-29-854(1)(c), Idaho Code, a corporation may not indemnify a director:

(a) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (1) of this section; or

(b) In connection with any proceeding with respect to conduct for which he was adjudged liable on the basis that he received a financial benefit to which he was not entitled, whether or not involving action in his official capacity.

30-29-852.MANDATORY INDEMNIFICATION. A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

30-29-853.ADVANCE FOR EXPENSES. (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because he is a director if he delivers to the corporation:

(a) A written affirmation of his good faith belief that he has met the relevant standard of conduct described in section 30-29-851, Idaho Code, or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by section 30-29-202(2)(d), Idaho Code; and

(b) His written undertaking to repay any funds advanced if he is not entitled to mandatory indemnification under section 30-29-852, Idaho Code, and it is ultimately determined under section 30-29-854 or 30-29-855, Idaho Code, that he has not met the relevant standard of conduct described in section 30-29-851, Idaho Code.

(2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(3) Authorizations under this section shall be made:

(a) By the board of directors:

(i) If there are two (2) or more disinterested directors, by a majority vote of all the disinterested directors, a majority of whom shall for such purposes constitute a quorum, or by a majority of the members of a committee of two (2) or more disinterested directors appointed by such a vote; or

(ii) If there are fewer than two (2) disinterested directors, by the vote necessary for action by the board in accordance with section 30-29-824(3), Idaho Code, in which authorization directors who do not qualify as disinterested directors may participate; or

(b) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

30-29-854.COURT-ORDERED INDEMNIFICATION AND ADVANCE FOR EXPENSES. (1) A director who is a party to a proceeding because he is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(a) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 30-29-852, Idaho Code;

(b) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section 30-29-858(1), Idaho Code; or

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

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if he has not met the relevant standard of conduct set forth in section 30-29-851(1), Idaho Code, failed to comply with section 30-29-853, Idaho Code, or was adjudged liable in a proceeding referred to in section 30-29-851(4)(a) or (b), Idaho Code, but if he was adjudged so liable his indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(2) If the court determines that the director is entitled to indemnification under subsection (1)(a) of this section or to indemnification or advance for expenses under subsection (1)(b) of this section, it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (1)(c) of this section, it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

30-29-855.DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION. (1) A corporation may not indemnify a director under section 30-29-851, Idaho Code, unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because he has met the relevant standard of conduct set forth in section 30-29-851, Idaho Code.

(2) The determination shall be made:

(a) If there are two (2) or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two (2) or more disinterested directors appointed by such a vote;

(b) By special legal counsel:

(i) Selected in the manner prescribed in paragraph (a) of this subsection; or

(ii) If there are fewer than two (2) disinterested directors, selected by the board of directors, in which selection directors who do not qualify as disinterested directors may participate; or

(c) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

(3) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two (2) disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subsection (2)(b)(ii) of this section to select special legal counsel.

30-29-856.OFFICERS. (1) A corporation may indemnify and advance expenses under this part to an officer of the corporation who is a party to a proceeding because he is an officer of the corporation:

(a) To the same extent as a director; and

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

(i) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(ii) Liability arising out of conduct that constitutes:

(A) Receipt by him of a financial benefit to which he is not entitled;

(B) An intentional infliction of harm on the corporation or the shareholders; or

(C) An intentional violation of criminal law.

(2) The provisions of subsection (1)(b) of this section shall apply to an officer who is also a director if the basis on which he is made a party to the proceeding is an act or omission solely as an officer.

(3) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 30-29-852, Idaho Code, and may apply to a court under section 30-29-854, Idaho Code, for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

30-29-857.INSURANCE. A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by him in that capacity or arising from his status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to him against the same liability under this part; provided that banks, savings and loan associations and credit unions chartered under the laws of the state of Idaho may provide indemnification only by insurance.

30-29-858.VARIATION BY CORPORATE ACTION -- APPLICATION OF INDEMNIFICATION PROVISIONS.

(1) A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 30-29-851, Idaho Code, or advance funds to pay for or reimburse expenses in accordance with section 30-29-853, Idaho Code. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 30-29-853(3), Idaho Code, and in section 30-29-855(3), Idaho Code. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 30-29-853, Idaho Code, to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(2) Any provision pursuant to subsection (1) of this section shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 30-22-206, Idaho Code.

(3) A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part, other than the rights to mandatory indemnification under section 30-29-852, Idaho Code, and to court-ordered indemnification and advance for expenses under section 30-29-854, Idaho Code.

(4) Sections 30-29-850 through 30-29-859, Idaho Code, do not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with his appearance as a witness in a proceeding at a time when he is not a party.

(5) Sections 30-29-850 through 30-29-859, Idaho Code, do not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

30-29-859.EXCLUSIVITY. A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by sections 30-29-850 through 30-29-859, Idaho Code.

30-29-860.DEFINITIONS. For purposes of this section and sections 30-29-861 through 30-29-863, Idaho Code:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that he or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if he were called upon to vote on the transaction:

(i) An entity, other than the corporation, of which the director is a director, general partner, agent or employee;

(ii) A person that controls one (1) or more of the entities specified in subparagraph (i) of this paragraph or an entity that is controlled by, or is under common control with, one (1) or more of the entities specified in subparagraph (i) of this paragraph; or

(iii) An individual who is a general partner, principal or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting that a director of the corporation has a conflicting interest.

(3) “Related person” of a director means:

(a) The spouse, or a parent or sibling thereof, of the director, or a child, grandchild, sibling, parent, or spouse of any thereof, of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified in this paragraph (a) is a substantial beneficiary; or

(b) A trust, estate, incompetent, conservatee or minor of which the director is a fiduciary.

(4) “Required disclosure” means disclosure by the director who has a conflicting interest of:

(a) The existence and nature of his conflicting interest; and

(b) All facts known to him respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) “Time of commitment” respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

30-29-861.JUDICIAL ACTION. (1) A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation, or any other entity in which the corporation has a controlling interest, that is not a director’s conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which he has a personal, economic, or other association, has an interest in the transaction.

(2) A director’s conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or which he has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors’ action respecting the transaction was at any time taken in compliance with section 30-29-862, Idaho Code;

(b) Shareholders’ action respecting the transaction was at any time taken in compliance with section 30-29-863, Idaho Code; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

30-29-862.DIRECTORS’ ACTION. (1) Directors’ action respecting a transaction is effective for purposes of section 30-29-861(2)(a), Idaho Code, if the transaction received the affirmative vote of a majority, but no fewer than two (2), of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section; provided that action by a committee is so effective only if:

(a) All of its members are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither he nor a related person of the director specified in section 30-29-860(3)(a), Idaho Code, is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in section 30-29-860(4)(b), Idaho Code, then disclosure is sufficient for purposes of subsection (1) of this section if the director:

(a) Discloses to the directors voting on the transaction the existence and nature of his conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction; and

(b) Plays no part, directly or indirectly, in their deliberations or vote.

(3) 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. Directors’ action that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section, “qualified director” means, with respect to a director’s conflicting interest transaction, any director who does not have either:

- (a) A conflicting interest respecting the transaction; or
- (b) A familial, financial, professional or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director’s judgment when voting on the transaction.

30-29-863.SHAREHOLDERS’ ACTION. (1) Shareholders’ action respecting a transaction is effective for purposes of section 30-29-861(2)(b), Idaho Code, if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after:

- (a) Notice to shareholders describing the director’s conflicting interest transaction;
- (b) Provision of the information referred to in subsection (4) of this section; and
- (c) Required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) For purposes of this section, “qualified shares” means any shares entitled to vote with respect to the director’s conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary, or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders’ action that otherwise complies with this section is not affected by the presence of holders, or the voting of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders’ vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number, and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned, or the voting of which is controlled, by the director or by a related person of the director, or both.

(5) If a shareholders’ vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that his failure did not determine and was not intended by him to influence the outcome of the vote, the court may, with or without further proceedings respecting section 30-29-861(2)(c), Idaho Code, take such action respecting the transaction and the director, and give such effect, if any, to the shareholders’ vote, as it considers appropriate in the circumstances.

## **PART 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS**

30-29-1001.AUTHORITY TO AMEND ARTICLES OF INCORPORATION. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation as of the effective date of the amendment or to delete a provision that is not required to be contained in the articles of incorporation.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend, entitlement, or purpose or duration of the corporation.

30-29-1002.AMENDMENT BEFORE ISSUANCE OF SHARES. If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one (1) or more amendments to the corporation’s articles of incorporation.

30-29-1003.AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS. If a corporation has issued shares, an amendment to the articles of incorporation shall be adopted in the following manner:

- (1) The proposed amendment must be adopted by the board of directors.

(2) Except as provided in sections 30-29-1005, 30-29-1007 and 30-29-1008, Idaho Code, after adopting the proposed amendment, the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, 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 shareholders the basis for that determination.

(3) The board of directors may condition its submission of the amendment to the shareholders on any basis.

(4) If the amendment is required to be approved by the shareholders, and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment 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 amendment and must contain or be accompanied by a copy of the amendment.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3) of this section, require a greater vote or a greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in section 30-29-1004(3), Idaho Code, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group exists.

30-29-1004.VOTING ON AMENDMENTS BY VOTING GROUPS. Except as otherwise provided in the articles of incorporation:

(1) If a corporation has more than one (1) class of shares outstanding, the holders of the outstanding shares of a class, whether voting or nonvoting in whole or in part, are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment to the articles of incorporation if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class;

(b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

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

(d) Change the rights, preferences or limitations of all or part of the shares of the class;

(e) Change the shares of all or part of the class into a different number of shares of the same class;

(f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior or substantially equal to the shares of the class;

(g) Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior or substantially equal to the shares of the class;

(h) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(i) Cancel or otherwise affect rights to distributions that have accumulated but not yet been authorized on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one (1) or more of the ways described in subsection (1) of this section, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

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

30-29-1005.AMENDMENT BY BOARD OF DIRECTORS. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

- (1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (2) To delete the names and addresses of the initial directors;
- (3) To change the information required by section 30-405, Idaho Code, on its registered agent;
- (4) If the corporation has only one (1) class of shares outstanding:
  - (a) To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or
  - (b) To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;
- (5) To change the corporate name by substituting the word “corporation,” “incorporated,” “company,” “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution for the name;
- (6) To reflect a reduction in authorized shares, as a result of the operation of section 30-29-631(2), Idaho Code, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;
- (7) To delete a class of shares from the articles of incorporation, as a result of the operation of section 30-29-631(2), Idaho Code, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or
- (8) To make any change expressly permitted by section 30-29-602(1) or (2), Idaho Code, to be made without shareholder approval.

30-29-1006.ARTICLES OF AMENDMENT. After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the corporation shall deliver to the secretary of state for filing articles of amendment, which shall set forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;
- (4) The date of each amendment’s adoption; and
- (5) If an amendment:
  - (a) Was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required;
  - (b) Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation; or
  - (c) Is being filed pursuant to section 30-29-120(2)(e), Idaho Code, a statement to that effect.

30-29-1007.RESTATED ARTICLES OF INCORPORATION. (1) A corporation’s board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document.

- (2) If the restated articles include one (1) or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in section 30-29-1003, Idaho Code.
- (3) A corporation that restates its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate that states the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, which also includes the statements required under section 30-29-1006, Idaho Code.
- (4) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.
- (5) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (3) of this section.

30-29-1008.AMENDMENT PURSUANT TO REORGANIZATION. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

- (a) The name of the corporation;
- (b) The text of each amendment approved by the court;
- (c) The date of the court's order or decree approving the articles of amendment;
- (d) The title of the reorganization proceeding in which the order or decree was entered; and
- (e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

30-29-1009.EFFECT OF AMENDMENT. An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

30-29-1020.AMENDMENT BY BOARD OF DIRECTORS OR SHAREHOLDERS. (1) A corporation's shareholders may amend or repeal the corporation's bylaws.

(2) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

- (a) The articles of incorporation or section 30-29-1021, Idaho Code, reserve that power exclusively to the shareholders in whole or in part; or
- (b) The shareholders in amending, repealing, or adopting a bylaw expressly provide that the board of directors may not amend, repeal, or reinstate that bylaw.

30-29-1021.BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR DIRECTORS. (1) A bylaw that increases a quorum or voting requirement for the board of directors may be amended or repealed:

- (a) If originally adopted by the shareholders, only by the shareholders unless the bylaws otherwise provide;
- (b) If adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1) of this section to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

## **PART 11. MERGER AND SHARE EXCHANGE**

30-29-1104.ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE. In the case of a domestic corporation that is a party to a merger or share exchange:

- (1) The plan of merger or share exchange must be adopted by the board of directors.
- (2) Except as provided in subsection (7) of this section and in section 30-29-1105, Idaho Code, after adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.
- (3) The board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis.

(4) If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan 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. If the corporation is to be merged into an existing corporation or eligible entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or eligible entity. If the corporation is to be merged into a corporation or eligible entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or eligible entity.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3) of this section, requires a greater vote or a greater number of votes to be present, approval of the plan of merger or share exchange require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the plan exists, and, if any class or series of shares is entitled to vote as a separate group on the plan of merger or share exchange, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least a majority of the votes entitled to be cast on the merger or share exchange by that voting group is present.

(6) Separate voting by voting groups is required:

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

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

(ii) Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under section 30-29-1004, Idaho Code;

(b) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

(c) On a plan of merger or share exchange, if the voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange.

(7) Unless the articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

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

(b) Except for amendments permitted by section 30-29-1005, Idaho Code, its articles of incorporation will not be changed;

(c) Each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations, and relative rights, immediately after the effective date of change; and

(d) The issuance in the merger or share exchange of shares or other securities convertible into or rights exercisable for shares does not require a vote under section 30-29-621(6), Idaho Code.

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

30-29-1105.MERGER BETWEEN PARENT AND SUBSIDIARY OR BETWEEN SUBSIDIARIES. (1) A domestic parent corporation that owns shares of a domestic or foreign corporation that carry at least ninety percent (90%) of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into itself or into another such subsidiary, without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide, and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

(2) If under subsection (1) of this section approval of a merger by the subsidiary's shareholders is not required, the parent corporation shall, within ten (10) days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

(3) Except as provided in subsections (1) and (2) of this section, a merger between a parent and a subsidiary shall be governed by the provisions of this part applicable to mergers generally.

## **PART 12. DISPOSITION OF ASSETS**

30-29-1201.DISPOSITION OF ASSETS NOT REQUIRING SHAREHOLDER APPROVAL. No approval of the shareholders of a corporation is required, unless the articles of incorporation otherwise provide:

- (1) To sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;
- (2) To mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business; or
- (3) To transfer any or all of the corporation's assets to one (1) or more corporations or eligible entities all the shares or interests of which are owned by the corporation; or
- (4) To distribute assets pro rata to the holders of one (1) or more classes or series of the corporation's shares.

30-29-1202.SHAREHOLDER APPROVAL OF CERTAIN DISPOSITIONS. (1) A sale, lease, exchange or other disposition of assets, other than a disposition described in section 30-29-1201, Idaho Code, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year, and twenty-five percent (25%) of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity.

(2) A disposition that requires approval of the shareholders under subsection (1) of this section shall be initiated by a resolution by the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

(3) The board of directors may condition its submission of a disposition to the shareholders under subsection (1) of this section on any basis.

(4) If a disposition is required to be approved by the shareholders under subsection (1) of this section, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the disposition and shall contain a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the disposition exists.

(6) After a disposition has been approved by the shareholders under subsection (2) of this section, and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

(7) A disposition of assets in the course of dissolution under part 14 of this chapter is not governed by this section.

(8) The assets of a direct or indirect consolidated subsidiary shall be deemed the assets of the parent corporation for the purposes of this section.

### **PART 13. APPRAISAL RIGHTS**

30-29-1301.DEFINITIONS. In this part:

- (1) "Affiliate" means a person that directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of section 30-29-1302(2)(d), Idaho Code, a person is deemed to be an affiliate of its senior executives.
- (2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.
- (3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 30-29-1322 through 30-29-1331, Idaho Code, includes the surviving entity in a merger.
- (4) "Fair value" means the value of the corporation's shares determined:
  - (a) Immediately before the effectuation of the corporate action to which the shareholder objects;
  - (b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and
  - (c) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to section 30-29-1302(1)(e), Idaho Code.
- (5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.
- (6) "Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.
- (7) "Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.
- (8) "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.
- (9) "Shareholder" means both a record shareholder and a beneficial shareholder.

30-29-1302.RIGHT TO APPRAISAL. (1) A shareholder is entitled to appraisal rights, and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

- (a) Consummation of a merger to which the corporation is a party:
    - (i) If shareholder approval is required for the merger by section 30-29-1104, Idaho Code, and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or
    - (ii) If the corporation is a subsidiary and the merger is governed by section 30-29-1105, Idaho Code;
  - (b) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;
  - (c) Consummation of a disposition of assets pursuant to section 30-29-1202, Idaho Code, if the shareholder is entitled to vote on the disposition;
  - (d) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created; or
  - (e) Any other amendment to the articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the board of directors.
- (2) Notwithstanding subsection (1) of this section, the availability of appraisal rights under subsection (1)(a), (b), (c) and (d) of this section shall be limited in accordance with the following provisions:
- (a) Appraisal rights shall not be available for the holders of shares of any class or series of shares that are:
    - (i) Listed on the New York stock exchange or the American stock exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, inc.; or
    - (ii) Not so listed or designated, but have at least two thousand (2,000) shareholders and the outstanding shares of such class or series have a market value of at least twenty million dollars (\$20,000,000), exclusive of the value of such shares held by its subsidiaries, senior executives, directors and beneficial shareholders owning more than ten percent (10%) of such shares.

- (b) The applicability of paragraph (a) of this subsection shall be determined as of:
- (i) The record date fixed to determine the shareholders entitled to receive notice of, and vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or
  - (ii) The day before the effective date of such corporate action if there is no meeting of shareholders.
- (c) Paragraph (a) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (1) of this section for the holders of any class or series of shares who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph (a) of this subsection at the time the corporate action becomes effective.
- (d) Paragraph (a) of this subsection shall not be applicable and appraisal rights shall be available pursuant to subsection (1) of this section for the holders of any class or series of shares where:
- (i) Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:
    - (A) Is, or at any time in the one (1) year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of twenty percent (20%) or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one (1) year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or
    - (B) Directly or indirectly has, or at any time in the one (1) year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of twenty-five percent (25%) or more of the directors to the board of directors of the corporation; or
  - (ii) Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the one (1) year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:
    - (A) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action; or
    - (B) Employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 30-29-862, Idaho Code; or
    - (C) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one (1) of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.
- (e) For the purposes of paragraph (d) of this subsection only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two (2) or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.
- (3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange or other right existing immediately before the effective date of such amendment shall not apply to any corporate

action that becomes effective within one (1) year of that date if such action would otherwise afford appraisal rights.

(4) A shareholder entitled to appraisal rights under this part may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:

- (a) Was not effectuated in accordance with the applicable provisions of part 10, 11 or 12 of this chapter or the corporation's articles of incorporation, bylaws or board of directors' resolution authorizing the corporate action; or
- (b) Was procured as a result of fraud or material misrepresentation.

30-29-1303.ASSERTION OF RIGHTS BY NOMINEES AND BENEFICIAL OWNERS. (1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder may assert appraisal rights as to shares held on behalf of the shareholder only if such shareholder:

- (a) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in section 30-29-1322(2)(b)(ii), Idaho Code; and
- (b) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

30-29-1320.NOTICE OF APPRAISAL RIGHTS. (1) If proposed corporate action described in section 30-29-1302(1), Idaho Code, is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not or may be entitled to assert appraisal rights under this part. If the corporation concludes that appraisal rights are or may be available, a copy of this part must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

(2) In a merger pursuant to section 30-29-1105, Idaho Code, the parent corporation must notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within ten (10) days after the corporate action became effective and include the materials described in section 30-29-1322, Idaho Code.

30-29-1321.NOTICE OF INTENT TO DEMAND PAYMENT. (1) If proposed corporate action requiring appraisal rights under section 30-29-1302, Idaho Code, is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

- (a) Must deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and
  - (b) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.
- (2) A shareholder who does not satisfy the requirements of subsection (1) of this section is not entitled to payment under this part.

30-29-1322.APPRAISAL NOTICE AND FORM. (1) If proposed corporate action requiring appraisal rights under section 30-29-1302, Idaho Code, becomes effective, the corporation must deliver a written appraisal notice and form required by subsection (2)(a) of this section to all shareholders who satisfied the requirements of section 30-29-1321, Idaho Code. In the case of a merger under section 30-29-1105, Idaho Code, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be sent no earlier than the date the corporate action became effective and no later than ten (10) days after such date and must:

- (a) Supply a form that specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action and requires the shareholder asserting appraisal rights to certify:
  - (i) Whether or not beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

- (ii) That the shareholder did not vote for the transaction;
- (b) State:
  - (i) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subsection (2)(b)(ii) of this section;
  - (ii) A date by which the corporation must receive the form, which date may not be fewer than forty (40) days nor more than sixty (60) days after the date the appraisal notice and form in subsection (1) of this section are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date;
  - (iii) The corporation's estimate of the fair value of the shares;
  - (iv) That, if requested in writing, the corporation will provide, to the shareholders so requesting, within ten (10) days after the date specified in subparagraph (ii) of this paragraph the number of shareholders who return the forms by the specified date and the total number of shares owned by them; and
  - (v) The date by which the notice to withdraw under section 30-29-1323, Idaho Code, must be received, which date must be within twenty (20) days after the date specified in subparagraph (ii) of this paragraph; and
- (c) Be accompanied by a copy of this part.

30-29-1323.PERFECTION OF RIGHTS -- RIGHT TO WITHDRAW. (1) A shareholder who receives notice pursuant to section 30-29-1322, Idaho Code, and who wishes to exercise appraisal rights must certify on the form sent by the corporation whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to section 30-29-1322(2)(a), Idaho Code. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 30-29-1325, Idaho Code. In addition, a shareholder who wishes to exercise appraisal rights must execute and return the form and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 30-29-1322(2)(b)(ii), Idaho Code. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (2) of this section.

(2) A shareholder who has complied with subsection (1) of this section may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to section 30-29-1322(2)(b)(v), Idaho Code. A shareholder who fails to so withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

(3) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in section 30-29-1322(2), Idaho Code, shall not be entitled to payment under this part.

30-29-1324.PAYMENT. (1) Except as provided in section 30-29-1325, Idaho Code, within thirty (30) days after the form required by section 30-29-1322(2)(b)(ii), Idaho Code, is due, the corporation shall pay in cash to those shareholders who complied with section 30-29-1323(1), Idaho Code, the amount the corporation estimates to be the fair value of their shares, plus interest.

(2) The payment to each shareholder pursuant to subsection (1) of this section must be accompanied by:

- (a) Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;
- (b) A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to section 30-29-1322(2)(b)(iii), Idaho Code; and
- (c) A statement that shareholders described in subsection (1) of this section have the right to demand further payment under section 30-29-1326, Idaho Code, and that if any shareholder does not do so within the time period specified therein, such shareholder shall be deemed to have accepted such payment in full satisfaction of the corporation's obligations under this part.

30-29-1325.AFTER ACQUIRED SHARES. (1) A corporation may elect to withhold payment required by section 30-29-1324, Idaho Code, from any shareholder who did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to section 30-29-1322(2)(a), Idaho Code.

(2) If the corporation elected to withhold payment under subsection (1) of this section, it must, within thirty (30) days after the form required by section 30-29-1322(2)(b)(ii), Idaho Code, is due, notify all shareholders who are described in subsection (1) of this section:

(a) Of the information required by section 30-29-1324(2)(a), Idaho Code;

(b) Of the corporation's estimate of fair value pursuant to section 30-29-1324(2)(b), Idaho Code;

(c) That they may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 30-29-1326, Idaho Code;

(d) That those shareholders who wish to accept such offer must so notify the corporation of their acceptance of the corporation's offer within thirty (30) days after receiving the offer; and

(e) That those shareholders who do not satisfy the requirements for demanding appraisal under section 30-29-1326, Idaho Code, shall be deemed to have accepted the corporation's offer.

(3) Within ten (10) days after receiving the shareholder's acceptance pursuant to subsection (2) of this section, the corporation must pay in cash the amount it offered under subsection (2)(b) of this section to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

(4) Within forty (40) days after sending the notice described in subsection (2) of this section, the corporation must pay in cash the amount it offered to pay under subsection (2)(b) of this section to each shareholder described in subsection (2)(e) of this section.

30-29-1326.PROCEDURE IF SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER. (1) A shareholder paid pursuant to section 30-29-1324, Idaho Code, who is dissatisfied with the amount of the payment must notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest, less any payment under section 30-29-1324, Idaho Code. A shareholder offered payment under section 30-29-1325, Idaho Code, who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) of this section within thirty (30) days after receiving the corporation's payment or offer of payment under section 30-29-1324 or 30-29-1325, Idaho Code, respectively, waives the right to demand payment under this section and shall be entitled only to the payment made or offered pursuant to those respective sections.

30-29-1330.COURT ACTION. (1) If a shareholder makes demand for payment under section 30-29-1326, Idaho Code, that remains unsettled, the corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty (60) day period, it shall pay in cash to each shareholder the amount demanded pursuant to section 30-29-1326, Idaho Code, plus interest.

(2) The corporation shall commence the proceeding in the appropriate court of the county where the corporation's principal office is located, or, if none in this state, Ada county. If the corporation is a foreign corporation, it shall commence the proceeding in the county in this state where the principal office of the domestic corporation merged with the foreign corporation was located or, if the domestic corporation did not have its principal office in this state at the time of the transaction, in Ada county.

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

(4) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one (1) or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have the powers described in the order appointing them or in any amendment to it. The shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

(5) Each shareholder made a party to the proceeding is entitled to judgment:

- (a) For the amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares; or
- (b) For the fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under section 30-29-1325, Idaho Code.

30-29-1331.COURT COSTS AND COUNSEL FEES. (1) The court in an appraisal proceeding commenced under section 30-29-1330, Idaho Code, shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this part.

(2) The court in an appraisal proceeding may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of section 30-29-1320, 30-29-1322, 30-29-1324 or 30-29-1325, Idaho Code; or

(b) Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this part.

(3) If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded to shareholders who were benefited.

(4) To the extent the corporation fails to make a required payment pursuant to section 30-29-1324, 30-29-1325 or 30-29-1326, Idaho Code, the shareholder may sue directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including counsel fees.

## **PART 14. DISSOLUTION**

30-29-1401.DISSOLUTION BY INCORPORATORS OR INITIAL DIRECTORS. A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth:

(1) The name of the corporation;

(2) The date of its incorporation;

(3) Either:

(a) That none of the corporation's shares has been issued; or

(b) That the corporation has not commenced business;

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(6) That a majority of the incorporators or initial directors authorized the dissolution.

30-29-1402.DISSOLUTION BY BOARD OF DIRECTORS AND SHAREHOLDERS. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflicts of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

30-29-1403.ARTICLES OF DISSOLUTION. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth:

- (a) The name of the corporation;
  - (b) The date dissolution was authorized; and
  - (c) If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.
- (2) A corporation is dissolved upon the effective date of its articles of dissolution.
- (3) For purposes of this part, "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

30-29-1404.REVOCATION OF DISSOLUTION. (1) A corporation may revoke its dissolution within one hundred twenty (120) days of its effective date.

- (2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.
- (3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:
  - (a) The name of the corporation;
  - (b) The effective date of the dissolution that was revoked;
  - (c) The date that the revocation of dissolution was authorized;
  - (d) If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;
  - (e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
  - (f) If shareholder action was required to revoke the dissolution, the information required by section 30-29-1403(1)(c), Idaho Code.
- (4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.
- (5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

30-29-1405.EFFECT OF DISSOLUTION. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

- (a) Collecting its assets;
  - (b) Disposing of its properties that will not be distributed in kind to its shareholders;
  - (c) Discharging or making provision for discharging its liabilities;
  - (d) Distributing its remaining property among its shareholders according to their interests; and
  - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (2) Dissolution of a corporation does not:
- (a) Transfer title to the corporation's property;
  - (b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
  - (c) Subject its directors or officers to standards of conduct different from those prescribed in part 8 of this chapter;
  - (d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

- (e) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (g) Terminate the authority of the registered agent of the corporation.

30-29-1406.KNOWN CLAIMS AGAINST DISSOLVED CORPORATION. (1) A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

(2) The written notice must:

- (a) Describe information that must be included in a claim;
- (b) Provide a mailing address where a claim may be sent;
- (c) State the deadline, which may not be fewer than one hundred twenty (120) days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

- (a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or
- (b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety (90) days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

30-29-1407.OTHER CLAIMS AGAINST DISSOLVED CORPORATION. (1) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

(2) The notice must:

- (a) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located or, if none in this state, in Ada county;
- (b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (c) State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two (2) years after the publication date of the newspaper notice:

- (a) A claimant who was not given written notice under section 30-29-1406, Idaho Code;
- (b) A claimant whose claim was timely sent to the dissolved corporation but not acted on;
- (c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim that is not barred by section 30-29-1406(3), Idaho Code, or subsection (3) of this section may be enforced:

- (a) Against the dissolved corporation, to the extent of its undistributed assets; or
- (b) Except as provided in section 30-29-1408(4), Idaho Code, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

30-29-1408.COURT PROCEEDING. (1) A dissolved corporation that has published a notice under section 30-29-1407, Idaho Code, may file an application with the district court of the county where the dissolved corporation's principal office is located, or, if none in this state, Ada county, for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 30-29-1407(3), Idaho Code.

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

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

(4) Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection (1) of this section shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

30-29-1409.DIRECTOR DUTIES. (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment or provision for claims.

(2) Directors of a dissolved corporation that has been disposed of claims under section 30-29-1406, 30-29-1407 or 30-29-1408, Idaho Code, shall not be liable for breach of subsection (1) of this section, with respect to claims against the dissolved corporation that are barred or satisfied under section 30-29-1406, 30-29-1407 or 30-29-1408, Idaho Code.

30-29-1430.GROUNDS FOR JUDICIAL DISSOLUTION. The Idaho district court designated in section 30-29-1431(1), Idaho Code, may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:

- (a) The corporation obtained its articles of incorporation through fraud; or
- (b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

- (a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered because of the deadlock;
- (b) The directors or those in control of the corporation have acted or are acting in a manner that is illegal, oppressive or fraudulent, and irreparable injury to the corporation is threatened or being suffered by reason thereof; or
- (c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive annual meeting dates to elect successors to directors whose terms have expired;

(3) In a proceeding by a creditor if it is established that:

- (a) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
  - (b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or
- (4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

30-29-1431.PROCEDURE FOR JUDICIAL DISSOLUTION. (1) Venue for a proceeding by the attorney general to dissolve a corporation lies in Ada county. Venue for a proceeding brought by any other party named in section 30-29-1430, Idaho Code, lies in the county where a corporation's principal office is or was located or, if none in this state, in Ada county.

(2) It is not necessary to make shareholders parties to the proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(4) Within ten (10) days of the commencement of a proceeding under section 30-29-1430(2), Idaho Code, to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders may be entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section 30-29-1434, Idaho

Code, and accompanied by a copy of section 30-29-1434, Idaho Code.

30-29-1432.RECEIVERSHIP OR CUSTODIANSHIP. (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one (1) or more receivers to wind up and liquidate, or one (1) or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property, wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

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

(a) The receiver:

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

(ii) May sue and defend in his own name as receiver of the corporation in all courts of this state;

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court during a receivership, may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his counsel from the assets of the corporation or proceeds from the sale of the assets.

30-29-1433.DECREE OF DISSOLUTION. (1) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in section 30-29-1430, Idaho Code, exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 30-29-1405, Idaho Code, and the notification of claimants in accordance with sections 30-29-1406 and 30-29-1407, Idaho Code.

30-29-1434.ELECTION TO PURCHASE IN LIEU OF DISSOLUTION. (1) In a proceeding under section 30-29-1430(2), Idaho Code, to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one (1) or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. In a proceeding under section 30-29-1430(2), Idaho Code, to dissolve a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one (1) or more members of a national or affiliated securities association, the corporation may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within ninety (90) days after the filing of the petition under section 30-29-1430(2), Idaho Code, or at such later time as the court in its discretion may allow. If the election to purchase is filed by one (1) or more shareholders, the corporation shall, within ten (10) days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty (30) days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and

shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one (1) or more shareholders, the proceeding under section 30-29-1430(2), Idaho Code, may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(3) If, within sixty (60) days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3) of this section, the court, upon application of any party, shall stay the section 30-29-1430(2), Idaho Code, proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under section 30-29-1430(2), Idaho Code, was filed or as of such other date as the court deems appropriate under the circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under section 30-29-1430(2)(b), Idaho Code, it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by him.

(6) Upon entry of an order under subsection (3) or (5) of this section, the court shall dismiss the petition to dissolve the corporation under section 30-29-1430, Idaho Code, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to him by the order of the court that shall be enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) of this section shall be made within ten (10) days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 30-29-1402 and 30-29-1403, Idaho Code, which articles must then be adopted and filed within fifty (50) days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of sections 30-29-1405 through 30-29-1407, Idaho Code, and the order entered pursuant to subsection (5) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accordance with the provisions of the last sentence of subsection (5) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under subsection (3) or (5) of this section, other than an award of fees and expenses pursuant to subsection (5) of this section, is subject to the provisions of section 30-29-640, Idaho Code.

30-29-1440.DEPOSIT WITH STATE TREASURER. Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the state.

## **PART 16. RECORDS AND REPORTS**

30-29-1601.CORPORATE RECORDS. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

- (3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.
- (4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (5) A corporation shall keep a copy of the following records at its principal office:
  - (a) Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in section 30-29-120(2)(e), Idaho Code, regarding facts on which a filed document is dependent;
  - (b) Its bylaws or restated bylaws and all amendments to them currently in effect;
  - (c) Resolutions adopted by its board of directors creating one (1) or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
  - (d) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;
  - (e) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under section 30-29-1620, Idaho Code;
  - (f) A list of the names and business addresses of its current directors and officers; and
  - (g) Its most recent annual report delivered to the secretary of state under section 30-29-1622, Idaho Code.

30-29-1602.INSPECTION OF RECORDS BY SHAREHOLDERS. (1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 30-29-1601(5), Idaho Code, if he gives the corporation written notice of his demand at least five (5) business days before the date on which he wishes to inspect and copy.

- (2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written notice of his demand at least five (5) days before the date on which he wishes to inspect and copy:
  - (a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under section 30-29-1602(1), Idaho Code;
  - (b) Accounting records of the corporation; and
  - (c) The record of shareholders.
- (3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:
  - (a) He has been a holder of record of shares or of voting trust certificates for at least six (6) months immediately preceding his demand or shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent (5%) of all the outstanding shares of the corporation;
  - (b) His demand is made in good faith and for a proper purpose;
  - (c) He describes with reasonable particularity his purpose and the records he desires to inspect; and
  - (d) The records are directly connected with his purpose.
- (4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) The right of a shareholder to inspect records under section 30-29-720, Idaho Code, or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on his behalf.

30-29-1603.SCOPE OF INSPECTION RIGHT. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

(2) The right to copy records under section 30-29-1602, Idaho Code, includes, if reasonable, the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

(3) The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under section 30-29-1602(2)(c), Idaho Code, by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

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

30-29-1604.COURT-ORDERED INSPECTION. (1) If a corporation does not allow a shareholder who complies with section 30-29-1602(1), Idaho Code, to inspect and copy any records required by that subsection to be available for inspection, the Idaho district court of the county where the corporation's principal office is located or, if none in this state, Ada county, may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with section 30-29-1602(2) and (3), Idaho Code, may apply to the Idaho district court of the county where the corporation's principal office is located or, if none in this state, Ada county, for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

30-29-1605.INSPECTION OF RECORDS BY DIRECTORS. (1) A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The district court of the county where the corporation's principal office is located, or if none in this state, Ada county, 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 on an expedited basis.

(3) 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 costs, including reasonable counsel fees, incurred in connection with the application.

30-29-1606.EXCEPTION TO NOTICE REQUIREMENT. (1) Whenever notice is required to be given under any provision of this chapter to any shareholder, such notice shall not be required to be given if: (a) Notice of two (2) consecutive annual meetings, and all notices of meetings during the period between such two (2) consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable; or (b) All, but not less than two (2), payments of dividends on securities during a twelve (12) month period, or two (2) consecutive payments of dividends on securities during a period of more than twelve (12) months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable. (2) If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then-current address, the requirement that notice be given to such shareholder shall be reinstated.

30-29-1620.FINANCIAL STATEMENTS FOR SHAREHOLDERS. (1) A corporation upon written shareholder request shall furnish its shareholders annual financial statements or, if annual financial statements are not available, other appropriate accounting records, which may be consolidated or combined statements of the corporation and one (1) or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis. (2) If any annual financial statements furnished pursuant to subsection (1) of this section are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records: (a) Stating his reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and (b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

30-29-1621.OTHER REPORTS TO SHAREHOLDERS. (1) If a corporation indemnifies or advances expenses to a director under section 30-29-851, 30-29-852, 30-29-853 or 30-29-854, Idaho Code, in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting. (2) If a corporation issues or authorizes the issuance of shares for promissory notes, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

## **PART 17. TRANSITION PROVISIONS**

30-29-1701.APPLICATION OF CHAPTER TO EXISTING DOMESTIC CORPORATIONS. This chapter applies to all domestic corporations in existence on the effective date of this chapter that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

30-29-1702.APPLICATION TO QUALIFIED FOREIGN CORPORATIONS. A foreign corporation authorized to transact business in this state on the effective date of this chapter is subject to this chapter, but is not required to obtain a new certificate of authority to transact business under this chapter.

30-29-1703.SAVING PROVISIONS. (1) Except as provided in subsection (2) of this section, the repeal of a statute by this chapter does not affect:

- (a) The operation of the statute or any action taken under it before its repeal;
- (b) Any ratification, right, remedy, privilege, obligation or liability acquired, accrued, or incurred under the statute before its repeal;
- (c) Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal; or
- (d) Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

30-29-1704.SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable.