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CHAPTER 2.

INCORPORATION

**SECTION 33‑2‑101.** Incorporators.

Any person may act as the incorporator of a corporation by delivering articles of incorporation to the Secretary of State for filing.

**SECTION 33‑2‑102.** Articles of incorporation.

(a) The articles of incorporation must set forth:

(1) a corporate name for the corporation that satisfies the requirements of Section 33‑4‑101;

(2) the number of shares the corporation is authorized to issue, itemized by classes;

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

(4) the name and address of each incorporator;

(5) the signature of each incorporator; and

(6) a certificate, signed by an attorney licensed to practice in this State, that all of the requirements of this section have been complied with.

(b) The articles of incorporation may set forth:

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

(2) Provisions not inconsistent with the law regarding:

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

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

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

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

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

(3) any provision that under Chapters 1 through 20 of this Title is required or permitted to be set forth in the bylaws.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in Chapters 1 through 20 of this Title.

(d) To be filed, the articles of incorporation must additionally be accompanied by the initial annual report of the corporation as specified in Section 12‑20‑40.

(e) The articles of incorporation of any corporation that either has a class of voting shares registered with the Securities and Exchange Commission or another federal agency under Section 12 of the Securities Exchange Act of 1934, has gross assets at the end of its most recent fiscal year totalling twenty‑five million dollars or more or having five hundred or more shareholders of any class of stock, may also contain a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision shall not eliminate or limit the liability of a director (i) for any breach of the director’s duty of loyalty to the corporation or its stockholders; (ii) for acts or omissions not in good faith or which involve gross negligence, intentional misconduct, or a knowing violation of law; (iii) imposed under Section 33‑8‑330; or (iv) for any transaction from which the director derived an improper personal benefit. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective. If any provision of this subsection or its application to any person is held invalid, unenforceable, or unconstitutional, this invalidity, unenforceability, or unconstitutionality shall negate the other provisions or applications of this subsection, and to this end, the provisions of this subsection are not severable.

a. Options with respect to directors.

(1) Board of directors may be dispensed with entirely in limited circumstances or its functions may be restricted, section 8.01 (Section 33‑8‑101).

(2) Power to compensate directors may be restricted or eliminated, section 8.11 (Section 33‑8‑111).

(3) Election of directors by cumulative voting may be authorized, section 7.28 (Section 33‑7‑280).

(4) Election of directors by greater than plurality of vote may be authorized, section 7.28 (Section 33‑7‑280).

(5) Directors may be elected by classes of shares, section 8.04 (Section 33‑8‑104).

(6) Power to remove directors without cause may be restricted or eliminated, section 8.08 (Section 33‑8‑108).

(7) Terms of directors may be staggered so that all directors are not elected in the same year, section 8.06 (Section 33‑8‑106).

(8) Power to fill vacancies may be limited to the shareholders, section 8.10 (Section 33‑8‑110).

(9) Power to indemnify directors, officers, and employees may be limited, sections 8.50‑‑8.58 (Sections 33‑8‑500‑‑33‑8‑580).

b. Options with respect to shareholders.

(1) Special voting groups of shareholders may be authorized, section 7.25 (Section 33‑7‑250).

(2) Quorum for voting groups of shareholders may be increased or reduced, sections 7.25, 7.60 and 7.27 (Sections 33‑7‑250, 33‑7‑260, and 33‑7‑270).

(3) Quorum for voting by voting groups of shareholders may be prescribed, section 7.26 (Section 33‑7‑260).

(4) Greater than majority vote may be required for action by voting groups of shareholders, section 7.27 (Section 33‑7‑270), see also section 10.21 (Section 33‑10‑210).

c. Options with respect to shares.

(1) Shares may be divided into classes and classes into series, sections 6.01 and 6.02 (Sections 33‑6‑101 and 33‑6‑102).

(2) Cumulative voting for directors may be permitted, section 7.28 (Section 33‑7‑280).

(3) Distributions may be restricted, section 6.40 (Section 33‑6‑400).

(4) Share dividends may be restricted, section 6.23 (Section 33‑6‑230).

(5) Voting rights of classes of shares may be limited or denied, section 6.01 (Section 33‑6‑101). (6) Classes of shares may be given more or less than one vote per share, section 7.21 (Section 33‑7‑210).

(6) Classes of shares may be given more or less than one vote per share, section 7.21 (Section 33‑7‑210).

(7) Shares may be redeemed at the option of the corporation or the shareholder, section 6.01 (Section 33‑6‑101).

(8) Reissue of redeemed shares may be prohibited, section 6.31 (Section 33‑6‑310).

(9) Shareholders may be given preemptive rights to acquire unissued shares, section 6.30 (Section 33‑6‑300).

(10) Redemption preferences may be ignored in determining lawfulness of distributions, section 6.40 (Section 33‑6‑400).

5. OPTIONS IN MODEL ACT THAT MAY BE ELECTED EITHER IN THE ARTICLES OF INCORPORATION OR IN THE BYLAWS.

a. Options with respect to directors.

(1) Number of directors may be fixed or changed within limits, section 8.03 (Section 33‑8‑103).

(2) Qualifications for directors may be prescribed, section 8.02 (Section 33‑8‑102).

(3) Notice of regular or special meetings of board of directors may be prescribed, section 8.22 (Section 33‑8‑220).

(4) Power of board of directors to act without meeting may be restricted, section 8.21 (Section 33‑8‑210).

(5) Quorum for meeting of board of directors may be increased or decreased (down to one‑third) from majority, section 8.24 (Section 33‑8‑240).

(6) Action at meeting of board of directors may require a greater than majority vote, section 8.24 (Section 33‑8‑240).

(7) Power of directors to participate in meeting without being physically present may be prohibited, section 8.20 (Section 33‑8‑200).

(8) Board of directors may create committees and specify their powers, section 8.25 (Section 33‑8‑250).

(9) Power of board of directors to amend bylaws may be restricted, sections 10.20 and 10.22 (Sections 33‑10‑200 and 33‑10‑220).

b. Options with respect to shares.

(1) Shares may be issued without certificates, section 6.26 (Section 33‑6‑260).

(2) Procedure for treating beneficial owner of street name shares as record owner may be prescribed, section 7.23 (Section 33‑7‑230).

(3) Transfer of shares may be restricted, section 6.27 (Section 33‑6‑270).

**SECTION 33‑2‑103.** Incorporation.

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

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

**SECTION 33‑2‑104.** Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a corporation, when there has been no incorporation under Chapters 1 through 20 of this Title, are jointly and severally liable for all liabilities created while so acting, provided that any person so acting while believing in good faith that the articles have been filed shall not have any liability under this section.

**SECTION 33‑2‑105.** Organization of corporation.

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting.

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

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

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

(b) Action required or permitted by Chapters 1 through 20 of this Title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

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

**SECTION 33‑2‑106.** Bylaws.

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

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

**SECTION 33‑2‑107.** Emergency bylaws.

(a) 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 (d) 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:

(1) procedures for calling a meeting of the board of directors;

(2) quorum requirements for the meeting; and

(3) designation of additional or substitute directors.

(b) 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.

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

(1) binds the corporation; and

(2) may not be used to impose liability on a corporate director, officer, employee, or agent.

(d) 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.