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.

HISTORY: Derived from 1976 Code Section 33‑7‑20 [1962 Code Section 12‑14.2; 1952 Code Section 12‑52; 1942 Code Sections 7726, 7729; 1932 Code Sections 7726, 7729; Civ. C. ‘22 Sections 4301, 4304; Civ. C. ‘12 Sections 2834, 2837; Civ. C. ‘02 Sections 1880, 1883; 1896 (22) 92, 94; 1897 (22) 522; 1900 (23) 386; 1903 (24) 75; 1920 (31) 754; 1923 (33) 157; 1936 (39) 1337; 1952 (47) 2173; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**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.

HISTORY: Derived from 1976 Code Section 33‑7‑30 [1962 Code Section 12‑14.3; 1952 Code Section 12‑58; 1942 Code Sections 7726, 7729; 1932 Code Sections 7726, 7729; Civ. C. ‘22 Sections 4301, 4304; Civ. C. ‘12 Sections 1883, 2834; Civ. C. ‘02 Sections 1880, 1883; 1896 (22) 92, 94; 1897 (22) 522; 1900 (23) 386; 1903 (24) 75; 1920 (31) 754; 1923 (33) 157; 1936 (39) 1337; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2; 1990 Act No. 446, Section 1; 2004 Act No. 221, Section 11.

**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.

HISTORY: Derived from 1976 Code Section 33‑7‑50 [1962 Code Section 12‑14.5; 1952 Code Sections 12‑59, 12‑60; 1942 Code Section 7730; 1932 Code Section 7730; Civ. C. ‘22 Section 4305; Civ. C. ‘12 Section 2838; Civ. C. ‘02 Section 1884; 1896 (22) 94; 1920 (31) 754; 1936 (39) 1320; 1960 (51) 1927; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act. No. 444, Section 2.

**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.

HISTORY: Derived from 1976 Code Section 33‑7‑60 [1962 Code Section 12‑14.6; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**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.

HISTORY: Derived from 1976 Code Section 33‑7‑70 [1962 Code Section 12‑14.7; 1952 Code Section 12‑52; 1942 Code Sections 7726, 7729; 1932 Code Sections 7726, 7729; Civ. C. ‘22 Sections 4301, 4304; Civ. C. ‘12 Sections 2834, 2837; Civ. C. ‘02 Sections 1880, 1883; 1896 (22) 92, 94; 1897 (22) 522; 1900 (23) 386; 1903 (24) 75; 1920 (31) 754; 1923 (33) 157; 1936 (39) 1337; 1952 (47) 2173; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**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.

HISTORY: Derived from 1976 Code Section 33‑11‑10 [1962 Code Section 12‑16.1; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed 1988 Act No. 444 Section 2]; 1988 Act No. 444, Section 2.

**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.

HISTORY: Derived from 1976 Code Section 33‑11‑20 [1962 Code Section 12‑16.2; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.