

MISSOURI NOT-FOR-PROFIT CORPORATIONS

355.066. **Definitions.** – Unless the context otherwise requires or unless otherwise indicated, as used in this chapter the following terms mean:

(23) "***Mutual benefit corporation***", a domestic corporation which is formed as a mutual benefit corporation pursuant to sections 355.096 to 355.121 or is required to be a mutual benefit corporation pursuant to section 355.881;

(28) "***Public benefit corporation***", a domestic corporation which is formed as a public benefit corporation pursuant to sections 355.096 to 355.121, or is required to be a public benefit corporation pursuant to section 355.881;

355.881 Designation of public, mutual benefit corporations.

On July 1, 1995, each domestic corporation existing on that date that is or becomes subject to this chapter shall be designated as a public benefit or mutual benefit corporation as follows:

(1) Any corporation designated by statute as a public benefit corporation or a mutual benefit corporation is the type of corporation designated by statute;

(2) Any corporation which does not come within subdivision (1) of this section but is organized primarily or exclusively for *religious purposes is a public benefit corporation*;

(3) Any corporation which does not come within subdivision (1) or (2) of this section but which is recognized as exempt under *section 501(c)(3)* of the Internal Revenue Code, or any successor section, is a *public benefit corporation*;

(4) Any corporation which does not come within subdivision (1), (2) or (3) of this section, but which is organized for a public or charitable purpose and which *upon dissolution must distribute its assets to a public benefit corporation*, the United States, a state or a person which is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a *public benefit corporation*; and

(5) Any corporation which does not come within subdivision (1), (2), (3) or (4) of this section is a *mutual benefit corporation*.

355.096. Articles of incorporation--contents.

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

2. The articles of incorporation adopted after July 1, 1995, must set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 355.146;

(2) One of the following statements:

(a) This corporation is a *public benefit corporation*; or

- (b) This corporation is a *mutual benefit corporation*;
 - (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) Whether or not the corporation will have members; and
 - (6) Provisions not inconsistent with law regarding the distribution of assets on dissolution.
3. The articles of incorporation may set forth:
- (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
 - (2) The names and addresses of the individuals who are to serve as the initial directors;
 - (3) Provisions not inconsistent with law regarding: (a) Managing and regulating the affairs of the corporation; (b) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members, or any class of members; and (c) The characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members;
 - (4) Any provision that under this chapter is required or permitted to be set forth in the bylaws.

355.141. Power to act--challenge. [Standing] – 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 in a proceeding against the corporation to enjoin an act where a third party has not acquired rights. The proceeding may be brought by the *attorney general*, a *director*, or by a *member* or members in a derivative proceeding.

3. A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee or agent of the corporation. The proceeding may be brought by a director, or by the corporation directly, derivatively, or through a receiver, a trustee or other legal representative, or in the case of a public benefit corporation, by the attorney general.

355.146 Corporate name requirements.

1. A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 355.126 and its articles of incorporation.

2. Except as authorized by subsection 3 of this section, a corporate name must be distinguishable upon the records of the secretary of state from any domestic or foreign corporation, limited partnership, limited liability partnership, limited liability limited partnership, or limited liability company existing under any law of this state or any foreign corporation authorized to transact business in this state, or any business entity organized, reserved, or registered under the laws of this state or a name the exclusive right to which is, at the time, reserved.

3. A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

355.181. Members.

1. The articles or bylaws may establish criteria or procedures for admission of members. No person shall be admitted as a member without his or her consent.

2. A corporation is not required to have members.

3. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

4. This chapter does not control the use of fictitious names.

355.316. Requirement for, duties of board--name of board, permissible alternatives.

1. Each corporation shall have a board of directors, which may also be called a board of trustees, a board of regents or a board of overseers.

2. Except as provided in this chapter, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

3. Any corporation established pursuant to this chapter before August 28, 1997, may use the term "board of curators" as the name of the not-for-profit corporation's board of directors.

355.321. Directors' qualifications.

1. All directors must be natural persons. The articles or bylaws may prescribe other qualifications for directors.

2. A board of directors must consist of three or more persons, with the number specified in or fixed in accordance with the articles or bylaws.

3. The number of directors may be increased or decreased, but to no fewer than three, from time to time by amendment to or in the manner prescribed in the articles or bylaws.

355.326 Election, designation of members.

1. If the corporation has members, all the directors, except the initial directors, shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other

person or designated.

2. If the corporation does not have members, all the directors, except the initial directors, shall be elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors, other than the initial directors, shall be elected by the board.

355.331. Terms of directors, generally.

1. The articles or bylaws shall specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed six years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.

2. A decrease in the number of directors or term of office does not shorten an incumbent director's term.

3. Except as provided in the articles or bylaws:

(1) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) The term of a director filling any other vacancy expires at the end of the unexpired term which such director is filling.

4. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed and qualifies, or until there is a decrease in the number of directors.

355.336. Staggered terms of directors. – The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

355.346 Removal of directors. – The members may, *without cause*, remove one or more directors elected by them.

355.366.-- Compensation of directors. Unless the articles or bylaws provide otherwise, the *directors may not be compensated for their services* as such.

355.376. Regular and special meetings.

1. If the time and place of a directors' meeting are fixed by the bylaws, or the board meets at regular intervals, the meetings are regular meetings. All other meetings are special meetings.

2. A board of directors may hold regular or special meetings in or out of this state.

3. Unless the articles or bylaws provide otherwise, a board may permit any or all directors to 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.

355.381 Action without meeting. –

1. Unless the articles or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.
2. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.
3. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

355.401 Quorum and voting.

1. Except as otherwise provided in this chapter, the *articles or bylaws*, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of *one-third of the number of directors* in office or two directors.
2. 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 unless this chapter, the articles or bylaws require the vote of a greater number of directors.

355.406 Committees of the board.

1. Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors, who serve at the pleasure of the board.
2. The creation of a committee and appointment of members to it must be approved by the greater of:
 - (1) A majority of all the directors in office when the action is taken; or
 - (2) The number of directors required by the articles or bylaws to take action under section 355.401.
3. Sections 355.376 to 355.401, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and committee members as well.
4. To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 355.316.
5. A committee of the board may not:
 - (1) Authorize distributions to members, directors, officers, agents or employees except in exchange for value received;
 - (2) Approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of the corporation's assets;
 - (3) Unless otherwise stated in the bylaws or articles of incorporation, elect, appoint or remove directors or fill vacancies on the board or on any of its committees; or

(4) Adopt, amend or repeal the articles or bylaws.

355.416. Director's conflict of interest.

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a material interest. A conflict of interest transaction is not voidable or the basis for imposing liability on a *noncompensated director* if the transaction was not unfair to the corporation at the time it was entered into or is approved as provided in subsection 2 or 3 of this section.

2. A transaction in which a *noncompensated director* of a **public benefit** or religious corporation has a conflict of interest may be approved:

(1) In advance by the vote of the board of directors or a committee of the board if:

(a) The material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(b) The directors approving the transaction in good faith reasonably believe that the transaction is not unfair to the corporation; or

(2) Before or after it is consummated by obtaining approval of the:

(a) Attorney general; or

(b) The circuit court in an action in which the attorney general is joined as a party.

3. A transaction in which *a director* of a **mutual benefit corporation** has a conflict of interest may be approved if:

(1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(2) The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

4. For purposes of subsections 2 and 3 of this section, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on the committee, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a material interest in the transaction does not affect the validity of any action taken under subdivision (1) of subsection 2 of this section or subdivision (1) of subsection 3 of this section if the transaction is otherwise approved as provided in subsection 2 of this section or subsection 3 of this section.

5. For purposes of subdivision (2) of subsection 3 of this section, a conflict of interest transaction is

authorized, approved or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by a director who has a material interest in the transaction may not be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction under subdivision (2) of subsection 3 of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

6. The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

355.421. Loans, guarantees for directors, officers. – A corporation which qualifies for an exemption from federal income tax in accordance with U.S.C. 26 Sec. 501(c) may lend money to or guarantee the obligation of a director or officer of the corporation, provided that such loan does not exceed the lesser of twenty-five percent of the total assets of the corporation or two hundred and fifty thousand dollars

355.431 Required officers.

1. Unless otherwise provided in the articles or bylaws, a corporation shall have a chairman or president, or both a chairman and president, a secretary, a treasurer and such other officers as are appointed by the board. In addition to other matters, the articles or bylaws may provide for the direct election of officers of the corporation by the members.

2. The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

3. The same individual may simultaneously hold more than one office in a corporation.

355.456. Execution of contracts by officers. – Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in category 1 or by one officer in category 1 and one officer in category 2. Category 1 officers are the presiding officer of the board and the president. Category 2 officers are a vice president, the secretary, treasurer and the executive director.

537.117 Officers or members of governing bodies of certain corporations, charities, organizations or clubs immune from personal liability for official acts, exceptions. – Any officer or member of the governing body of an entity which operates under the standards of section 501(c) of the Internal Revenue Code of 1986, who is not compensated for his services on a salary or prorated equivalent basis, shall be immune from personal liability for any civil damages arising from acts performed in his official capacity. The immunity shall extend only to such actions for which the person would not otherwise be liable, but for his affiliation with such an entity. This immunity shall not apply to intentional conduct, wanton or willful conduct, or gross negligence. Nothing herein shall be construed to create or abolish an immunity in favor of the entity itself.

537.118 Volunteers, limited personal liability, certain organizations and government

entities, exceptions.

1. As used in this section, the following terms mean: ...

(3) "**Volunteer**", an individual performing services for a nonprofit organization or a governmental entity who is not compensated for his services on a salary or prorated equivalent basis. The term shall not include those covered by section 537.117.

2. Any volunteer of a nonprofit organization or governmental entity shall be immune from personal liability for any act or omission resulting in damage or injury to any person intended to receive benefit from such volunteer's service if:

(1) The volunteer acted in good faith and within the scope of his official functions and duties with the organization or entity; and

(2) The damage or injury was not caused by the intentional or malicious conduct or by the negligence of such volunteer.

355.471. Indemnification of directors. – Unless limited by its articles of incorporation or bylaws, a corporation *shall indemnify a director who was successful*, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

355.476. Indemnification of other persons.

1. *A corporation created under the laws of this state may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.* The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

2. *The corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he acted in good faith and in a manner he reasonably*

believed to be in or not opposed to the best interests of the corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which the action or suit was brought determines upon application that, despite the adjudication of liability and in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity* for such expenses which the court shall deem proper.

3. To the extent that a director, officer, employee or agent of the corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections 1 and 2 of this section, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by him in connection with the action, suit, or proceeding.

4. Any indemnification under subsections 1 and 2 of this section, unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in this section. The determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action, suit, or proceeding, or if such a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders.

5. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of the action, suit, or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

6. The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under section 537.117, RSMo, any other provision of law, the articles of incorporation or bylaws or any agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

7. A corporation created under the laws of this state shall have the power to give any further indemnity, in addition to the indemnity authorized or contemplated under other subsections of this section, including subsection 6, to any person who is or was a director, officer, employee or agent, or to any person who is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, provided such further indemnity is either (i) authorized, directed, or provided for in the articles of incorporation of the corporation or any duly adopted amendment thereof or (ii) is authorized, directed, or provided for in any bylaw or agreement of the corporation which has been adopted by a vote of the shareholders of the corporation, and provided further that no such indemnity shall indemnify any person from or on account of such person's conduct which was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct. Nothing in this subsection shall be deemed to limit the power of the corporation under subsection 6 of this section to enact bylaws or to enter into agreements without shareholder adoption of the same.

8. The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the

corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

355.671 Authorization, approval of dissolution.

1. Unless this chapter, the articles, bylaws, or the board of directors or members acting pursuant to subsection 3 of this section, require a greater vote or voting by class, dissolution is authorized if it is approved:

(1) *By the board*;

(2) *By the members*, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 355.606 for an amendment to the articles or bylaws.

2. If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection 3 of section 355.386. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

3. The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution on receipt of a higher percentage of affirmative votes or on any other basis.

4. If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 355.251. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

5. If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

6. The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

355.676 Dissolution of public benefit corporation.

1. *A public benefit corporation shall give the attorney general written notice* that it intends to dissolve at or before the time it delivers articles of dissolution to the secretary of state. The notice shall include a copy

or summary of the plan of dissolution.

2. No assets shall be transferred or conveyed by a public benefit corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection 1 of this section to the attorney general or until the attorney general has consented in writing to, or indicated in writing that he will take no action in respect to, the transfer or conveyance, whichever is earlier.

3. When all or substantially all of the assets of a public benefit corporation other than a church or convention or association of churches have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general a list showing those, other than creditors, to whom the assets were transferred or conveyed. The list shall indicate the address of each person, other than creditors, who received assets and indicate what assets each received.

355.646. Donations inure to surviving corporation. – Any bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription, or conveyance, which is made to a constituent corporation and which takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.