

Part 1 - Short Title and Reservation of Power

§ 48-51-101. Short Title

Universal Citation: TN Code § 48-51-101 (2021)

Chapters 51-68 of this title shall be known and may be cited as the "Tennessee Nonprofit Corporation Act."

§ 48-51-102. Reservation of Power to Amend or Repeal

Universal Citation: TN Code § 48-51-102 (2021)

The general assembly has the power to amend or repeal all or part of chapters 51-68 of this title at any time, and all domestic and foreign corporations subject to chapters 51-68 of this title shall be governed by the amendment or repeal.

§ 48-51-103. Eminent Domain

Universal Citation: TN Code § 48-51-103 (2021)

Chapters 51-68 of this title do not repeal or affect the right or power of eminent domain under other existing laws, and any corporation which shall have the power of eminent domain under existing laws shall have the power to the same extent and in the same manner as if organized under chapters 51-68 of this title, and all statutes of this state granting the power of eminent domain and making compensation shall remain in force and effect and applicable to the appropriate existing corporations and to the appropriate corporations organized under chapters 51-68 of this title.

§ 48-51-104. Applicability

Universal Citation: TN Code § 48-51-104 (2021)

Chapters 51-68 of this title shall apply to every nonprofit corporation now existing or hereafter formed; provided, that if there are other specific statutory provisions which govern the formation of, impose restrictions or requirements on, confer special powers, privileges or authorities on, or fix special procedures or methods for, special categories of corporations, then to the extent such provisions are inconsistent with or different from chapters 51-68 of this title, such provisions shall prevail.

Part 2 - Definitions

§ 48-51-201. Definitions for Chapters 51 Through 68

Universal Citation: TN Code § 48-51-201 (2021)

As used in chapters 51-68 of this title, unless the context otherwise requires:

(1) "Approved by (or approval by) the members" means approved or ratified by affirmative votes that exceed the number of negative votes represented and voting at a duly held meeting at which a quorum is present or by a written ballot or written consent in conformity with chapters 51-68 of this title or by the affirmative vote, written ballot or written consent of such greater proportions, including the votes of all the members of any class, unit or grouping as may be provided in the charter, bylaws or chapters 51-68 of this title for any specified member action;

(2) "Board" or "board of directors" means the governing board of a corporation, whether denominated the board of directors or otherwise, except that no person or group of persons is the board of directors because of powers delegated to that person or group pursuant to § 48-58-101;

(3) "Bylaws" means the code or codes of rules (other than the charter) adopted pursuant to chapters 51-68 of this title for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;

(4) "Charitable purpose" means a purpose that:

(A) Would make a corporation operated exclusively for that purpose eligible to be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;

(B) Is for the public benefit; or

(C) Is considered charitable under law in this state other than in chapters 51-68 of this title;

(5) "Charter" includes amended and restated charters and articles of merger;

(6) "Class" refers to a group of memberships which have the same rights with respect to voting, dissolution, redemption and transfer. For the purpose of this section, rights shall be considered the same if they are determined by a formula applied uniformly;

(7) "Confirmation of good standing" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued a domestic or foreign corporation is current on all taxes and penalties to the satisfaction of the commissioner;

(8) "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";

(9) "Corporation" or "domestic corporation" means a public benefit or mutual benefit corporation which is not a foreign corporation, incorporated under or subject to chapters 51-68 of this title;

(10) "Delegates" means those persons elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters;

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

(12) "Directors" means natural persons, designated in the charter or bylaws or elected or appointed by the incorporators, and their successors and natural persons elected or appointed to act as members of the board, irrespective of the names or titles by which such persons are described;

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

- (A) The payment of compensation in a reasonable amount and the reimbursement of reasonable expenses to its members, directors, or officers for services rendered;
- (B) Conferring benefits on its members in conformity with its purposes;
- (C) Repayment of debt obligations in the normal and ordinary course of conducting activities;
- (D) The incurrance of indebtedness, whether directly or indirectly, including through a guaranty, for or on behalf of a member, director or officer;
- (E) A sale on credit in the ordinary course of business or a life insurance policy loan; or
- (F) Any item in § 48-58-303(c);

(14) "Document" means:

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

(15) "Effective date of notice," has the same meaning as provided in § 48-51-202;

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

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

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

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

(19) "Emergency" exists when a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event;

(20) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee;

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

(22) "Foreign corporation" means a nonprofit corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if formed under the laws of this state;

(23) "Governmental subdivision" includes authority, county, district and municipality;

(24) "Includes" denotes a partial definition;

(25) "Individual" includes the estate of an incompetent or deceased individual;

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

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

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

(28) "Means" denotes an exhaustive definition;

(29)

(A) "Member" means, without regard to what a person is called in the charter or bylaws, any person who on more than one (1) occasion, pursuant to a provision of a corporation's charter or bylaws, has the right to vote for the election or appointment of a director or directors;

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

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

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

(31) "Month" means the time from any day of any month to the corresponding day of the succeeding month, if any, and if none, the last day of the succeeding month;

(32) "Mutual benefit corporation" means a domestic corporation which becomes by operation of law a mutual benefit corporation pursuant to § 48-68-104 or is formed as a mutual benefit corporation pursuant to chapter 52 of this title;

(33) "Notice," has the same meaning as provided in § 48-51-202;

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

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

(36) "Person" includes individual and entity;

(37) "Principal office" means the office (in or out of this state) so designated in the charter or certificate of authority where the principal executive offices of a domestic or foreign corporation are located;

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

(39) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;

(40) "Public benefit corporation" means a domestic corporation which becomes by operation of law a public benefit corporation pursuant to § 48-68-104 or is formed as a public benefit corporation pursuant to chapter 52 of this title;

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

(42) "Record date" means the date established under chapter 56 or 57 of this title on which a corporation determines the identity of its members for purposes of chapters 51-68 of this title;

(43) "Religious corporation" means a public benefit or mutual benefit corporation organized and operating primarily or exclusively for religious purposes;

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

(45) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(A) To execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or

(B) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission;

(46) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States;

(47) "Tax clearance for termination or withdrawal" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that a domestic or foreign corporation has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties and taxes as required by the revenue laws of this state;

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

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

(50) "Voting power" means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. When a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

§ 48-51-202. Notice
Universal Citation: TN Code § 48-51-202 (2021)

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

(b) A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions shall be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.

(c) Notice in the form of a document by a corporation having members is effective:

- (1) Upon deposit in the United States mail or with a commercial delivery service, if the postage or delivery charge is paid and the notice is correctly addressed to the member's address shown in the corporation's current record of the member; or
- (2) When given, if the notice is delivered in any other manner that the member has authorized.
- (d) A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current record of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current record of members, if addressed or delivered to one (1) of such members, at the address appearing on the current list of members.
- (e) Notice or other communication to a domestic or foreign corporation (authorized to transact business in this state) may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent annual report (or to a designated mailing address such as a post office box if the United States Postal Service does not deliver to the corporation's principal office) or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.
- (f) Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection (l).
- (g)
- (1) Any consent under subsection (f) may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if:
- (A) The corporation is unable to deliver two (2) consecutive electronic transmissions given by the corporation in accordance with the consent; and
- (B) Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communication.
- (2) The inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.
- (h) Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when:
- (1) It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission; and
- (2) It is in a form capable of being processed by that system.
- (i) Receipt of an electronic acknowledgement from an information processing system described in subdivision (h)(1) establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.
- (j) An electronic transmission is received under this section even if no individual is aware of its receipt.
- (k) Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:
- (1) If in a physical form, the earliest of when it is actually received, or when it is left at:
- (A) A member's address shown on the corporation's record of members maintained by the corporation under § 48-66-101(c);
- (B) A director's residence or usual place of business; or
- (C) The corporation's principal place of business;
- (2) If mailed first class postage prepaid and correctly addressed to a member, upon deposit in the United States mail;
- (3) If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a member, the earliest of when it is actually received; or
- (A) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or
- (B) Five (5) days after it is deposited in the United States mail;
- (4) If an electronic transmission, when it is received as provided in subsection (h); or
- (5) If oral, when communicated, if communicated in a comprehensible manner.
- (l) A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:
- (1) The electronic transmission is otherwise retrievable in perceivable form; and
- (2) The sender and the recipient have consented in writing to the use of such form of electronic transmission.
- (m) If chapters 51-68 of this title prescribe requirements for notices or other communications in particular circumstances, those requirements govern. If the charter or bylaws prescribe requirements for notices or other communications, not inconsistent with this section or other provisions of chapters 51-68 of this title, those requirements govern. The charter or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

Part 3 - Filing Documents

§ 48-51-301. Filing Requirements

Universal Citation: TN Code § 48-51-301 (2021)

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

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

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

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

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

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

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

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

(g) The person executing the document shall sign it and state beneath or opposite such person's signature such person's name and the capacity in which such person signs. The document may, but need not, contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary;

(3) An acknowledgement, verification, or proof; or

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

(h) If the secretary of state has prescribed a mandatory form for the document under § 48-51-302, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the secretary of state for filing and must be accompanied by the correct filing fee, and any corporate tax, license fee, interest or penalty required by chapters 51-68 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in subdivision (j)(2)(A) or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this subdivision (j)(5) are deemed to be

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authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

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

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

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

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

§ 48-51-302. Forms and Filing Methods
Universal Citation: TN Code § 48-51-302 (2021)

(a.) The secretary of state may prescribe and furnish forms and filing methods for all filings required by this title.

(b.) If the secretary of state so requires, then use of these forms is mandatory.

§ 48-51-303. Filing, Service, and Copying Fees
Universal Citation: TN Code § 48-51-303 (2021)

(a) The secretary of state shall collect the following fees when the documents described in this subsection (a) are delivered to the secretary of state for filing:

Document Fee

(1) Charter (including designation of initial registered office \$100.00 and agent)

(2) Application for use of indistinguishable name 20.00

(3) Application for reserved name 20.00

(4) Notice of transfer or cancellation of reserved name 20.00

(5) Application for registered name 20.00

(6) Application for renewal of registered name 20.00

(7) Application for or change, cancellation, or renewal of 20.00 assumed name

(8) Corporation's statement of change of registered agent 20.00 or registered office, or both

(9) Agent's statement of change of registered office 5.00 per corporation but not less than 20.00

(10) Agent's statement of resignation 20.00

(11) Charter amendment 20.00

(12) Restatement of charter 20.00

(13) Amended and restated charter 20.00

(14) Articles of entity conversion 100.00

(15) Articles of charter surrender 20.00

(16) Statement of abandonment of merger, conversion, or 20.00 membership exchange

(17) Articles of merger or membership exchange 100.00

(18) Articles of dissolution and termination by incorporators 20.00 or directors

(19) Articles of dissolution 20.00

(20) Articles of revocation of dissolution 20.00

(21) Articles of termination of corporate existence 20.00

(22) Certificate of administrative dissolution No fee

(23) Application for reinstatement following administrative 70.00 dissolution

(24) Certificate of reinstatement No fee

(25) Articles of termination following administrative dissolution or revocation 100.00

(26) Certificate of judicial dissolution No fee

(27) Application for certificate of authority (including 600.00 designation of initial registered office and agent)

(28) Application for amended certificate of authority 20.00

(29) Application for certificate of withdrawal 20.00

(30) Certificate of revocation of authority to transact business No fee

(31) Application for reinstatement following administrative 70.00 revocation

(32) Application for certificate of withdrawal following 100.00 administrative revocation

(33) Annual report 20.00

(34) Articles of correction 20.00

(35) Application for certificate of existence or authorization 20.00

(36) Any other document required or permitted to be filed 20.00 by chapters 51-68 of this title

(b) The secretary of state shall collect a fee of twenty dollars (\$20.00) each time process is served on the secretary of state under chapters 51-68 of this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

(c) The secretary of state shall collect a fee of twenty dollars (\$20.00) for copying all filed documents relating to a domestic or foreign corporation. All such copies will be certified or validated by the secretary of state.

(d) In addition to the other filing requirements of chapters 51-68 of this title, a copy of all documents specified in subdivisions (a)(1), (11), (12), (17), (19)-(21) shall also be filed in the office of the register of deeds in the county wherein a corporation has its principal office, if such principal office is in Tennessee, and in the case of a merger, in the county in which the new or surviving corporation shall have its principal office, if such principal office is in Tennessee. The register of deeds may charge five dollars (\$5.00) plus fifty cents (50¢) per page in excess of five (5) pages for such filing.

§ 48-51-304. Effective Time and Date of Document
Universal Citation: TN Code § 48-51-304 (2021)

(a) Except as provided in subsection (b) and § 48-51-305(c), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed by the secretary of state, as evidenced by the secretary of state's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date and, if it does so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed by the secretary of state. Notwithstanding the foregoing, documents specified in § 48-51-303(a)(3)-(7), (16), (20), (21), (25), (31), (33), (34), may not specify a delayed effective time and date.

(c) The secretary of state shall not file any charter or application for a certificate of authority unless that document designates the registered agent and registered office of such domestic

or foreign corporation in accordance with chapters 55 and 65 of this title. The secretary of state shall not file any other document under chapters 51-68 of this title if at the time of filing the domestic or foreign corporation does not have a registered agent or registered office designated at such time, unless at the time such document is received for filing the secretary of state also receives for filing a statement designating such registered agent or registered office, or both.

§ 48-51-305. Correcting Filed Document
Universal Citation: TN Code § 48-51-305 (2021)

(a) A domestic or foreign corporation may correct a document filed by the secretary of state if the document:

(1) Contains an incorrect statement; or

(2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected by:

(1) Preparing articles of correction that:

(A) Describe the document (including its filing date) or attach a copy of it to the articles;

(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and

(C) Correct the incorrect statement or defective execution; and

(2) Delivering the articles to the secretary of state for filing.

(c) Articles of correction are effective on the effective time and date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

§ 48-51-306. Filing Duty of Secretary of State
Universal Citation: TN Code § 48-51-306 (2021)

(a) If a document delivered to the office of the secretary of state for filing satisfies the requirements of § 48-51-301, the secretary of state shall file it.

(b) The secretary of state files a document by stamping or otherwise endorsing "filed," together with the secretary of state's name and official title and the date and time of receipt, on such document. After filing a document, except for filings pursuant to §§ 48-55-103, 48-65-109 and 48-66-203, the secretary of state shall deliver the document, with the filing fee receipt (or acknowledgement of receipt if no fee is required) attached, to the domestic or foreign corporation or its representative in due course. A domestic or foreign corporation or its representative may present to the secretary of state an exact or conformed copy of the document presented for filing, together with such document and, in that event, the secretary of state shall stamp or otherwise endorse the exact or conformed copy "filed," together with the secretary of state's name and official title and the date and time of receipt, and immediately return the exact or conformed copy to the party filing the original of such document.

(c) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within a reasonable time after the document was received for filing, together with a brief, written explanation of the reason for the secretary of state's refusal.

(d) The secretary of state's duty to file documents under this section is ministerial. The secretary of state's filing or refusing to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document;
- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect; or
- (4) Establish that a document purporting to be an exact or conformed copy is in fact an exact or conformed copy.

(e) Any corporate document which meets the requirements of chapters 51-68 of this title for filing and recording shall be received, filed and recorded by the appropriate office, notwithstanding any contrary requirements found in any other provision of the laws of this state.

§ 48-51-307. Appeal From Secretary of State's Refusal to File Document

Universal Citation: TN Code § 48-51-307 (2021)

(a) If the secretary of state refuses to file a document delivered to the secretary of state's office for filing, the domestic or foreign corporation may appeal the refusal to the chancery court of Davidson County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the secretary of state's refusal to file.

(b) The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

(d) Any judicial review of the secretary of state's refusal to file a document shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

§ 48-51-308. Evidentiary Effect of Copy of Filed Document

Universal Citation: TN Code § 48-51-308 (2021)

A certificate attached, or certification affixed, to a copy of a document filed by the secretary of state, bearing the secretary of state's signature (which may be in facsimile) and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

§ 48-51-309. Certificate of Existence

Universal Citation: TN Code § 48-51-309 (2021)

(a) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation authorized to transact business in this state.

(b) A certificate of existence or authorization sets forth:

- (1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;
- (2) That:
 - (A) The domestic corporation is duly incorporated under the laws of this state, the effective date of its incorporation, and the period of its duration if less than perpetual; or
 - (B) The foreign corporation is authorized to conduct affairs in this state;
- (3) That all fees, taxes and penalties owed to this state have been paid, if:
 - (A) Payment is reflected in the records of the secretary of state or the department of revenue; and
 - (B) Nonpayment allows:
 - (i) Administrative dissolution of a domestic corporation; or
 - (ii) Administrative revocation of the certificate of authority of a foreign corporation;
- (4) That its most recent annual report required by § 48-66-203 has been filed with the secretary of state;
- (5)
 - (A) For a domestic corporation:
 - (i) That articles of termination of existence have not been filed;
 - (ii) Whether or not articles of dissolution have been filed and remain effective;
 - (iii) Whether or not a certificate of dissolution has been filed and remains effective; and
 - (iv) That a decree of judicial dissolution has not been filed;

(B) For a foreign corporation:

- (i) That a certificate of withdrawal has not been filed; and
- (ii) Whether or not a certificate of revocation of certificate of authority has been filed and remains effective;

(6) That the certificate of existence or authorization is effective as of the date of the issuance of the certificate; and

(7) Other facts of record in the office of the secretary of state that may be requested by the applicant.

(c) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state is effective as of the date on the certificate and may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state and is in good standing.

§ 48-51-310. Penalty for Signing False Document

Universal Citation: TN Code § 48-51-310 (2021)

A person who signs a document, knowing it to be false in any material respect, with intent that the document be delivered to the secretary of state for filing, commits a Class A misdemeanor.

Part 4 - Secretary of State

§ 48-51-401. Powers

Universal Citation: TN Code § 48-51-401 (2021)

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by chapters 51-68 of this title, including, without limitation, the power to promulgate necessary and appropriate rules and regulations consistent with chapters 51-68 of this title, and the power to destroy any records in the secretary of state's office concerning the domestic or foreign corporation ten (10) years after such corporation has dissolved, withdrawn from the state, or has had its certificate of authority revoked.

§ 48-51-402. Deputies of Secretary of State

Universal Citation: TN Code § 48-51-402 (2021)

An act of a duly authorized deputy of the secretary of state in the secretary of state's behalf under chapters 51-68 of this title is the equivalent of the act of the secretary of state; provided, that the name of the secretary of state is signed by such deputy as deputy.

Part 5 - Private Foundations

§ 48-51-501. Private Foundations

Universal Citation: TN Code § 48-51-501 (2021)

(a)

(1) Except when otherwise determined by a court of competent jurisdiction, a corporation which is a "private foundation," as defined in § 509(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 509(a)):

(A) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under § 4942 of the Code (26 U.S.C. § 4942);

(B) Shall not engage in any act of self-dealing as defined in § 4941(d) of the Code (26 U.S.C. § 4941(d));

(C) Shall not retain any excess business holdings as defined in § 4943(c) of the Code (26 U.S.C. § 4943(c));

(D) Shall not make any taxable expenditures as defined in § 4944 of the Code (26 U.S.C. § 4944); and

(E) Shall not make any taxable expenditures as defined in § 4945(d) of the Code (26 U.S.C. § 4945(d)).

(2) All references in this section to sections of the Code shall be to such sections of the Internal Revenue Code of 1986 (26 U.S.C.), as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States.

(b) Subsection (a) shall not apply to any corporation to the extent that a court of record having equity jurisdiction shall determine that such application would be contrary to the terms of the charter or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not be properly changed to conform to such sections.

Part 6 - Judicial Relief

§ 48-51-601. Judicial Relief

Universal Citation: TN Code § 48-51-601 (2021)

(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its charter, bylaws, or chapters 51-68 of this title, then upon petition of a director, officer, delegate, member or the attorney general and reporter, any court of record having equity jurisdiction in the county where the corporation's principal office is located (and if not in this state, in Davidson County) may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized, in such a manner as the court finds fair and equitable under the circumstances.

(b) The court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the charter, bylaws and chapters 51-68 of this title, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section, the court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to

quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the charter, bylaws, or chapters 51-68 of this title.

(d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the charter or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section; provided, that an order under this section may also authorize the obtaining of whatever votes and approvals are necessary for a dissolution, merger or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and which complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the charter, bylaws and chapters 51-68 of this title.

Part 7 - Attorney General and Reporter

§ 48-51-701. Attorney General and Reporter Universal Citation: TN Code § 48-51-701 (2021)

(a) The attorney general and reporter shall be given notice of the commencement of any proceeding which chapters 51-68 of this title authorize the attorney general and reporter to bring but which has been commenced by another person.

(b) Whenever any provision of chapters 51-68 of this title requires that notice be given to the attorney general and reporter or permits the attorney general and reporter to commence a proceeding:

(1) If no proceeding has been commenced, the attorney general and reporter may take appropriate action including, but not limited to, seeking injunctive relief;

(2) If a proceeding has been commenced by a person other than the attorney general and reporter, the attorney general and reporter, as of right, may intervene in such proceeding.

(c) Whenever any provision of chapters 51-68 of this title requires or authorizes any act or transaction upon a corporation providing written notice to the attorney general and reporter or obtaining prior review, approval, consent, or waiver of the attorney general and reporter, with respect to such act or transaction, then:

(1) The party seeking such approval, consent, or waiver shall make full, true and timely disclosure with respect to the proposed act or transaction, including the production of any relevant data, documents, and detailed statements of any and all collateral or oral understandings or agreements;

(2) The party seeking consent, approval, or waiver is obligated to produce in a timely fashion any additional information or documents the attorney general and reporter may thereafter request in order to review the matter, and the attorney general and reporter may also conduct whatever independent investigation the attorney general and reporter believes is appropriate;

(3) No oral clearance, release, or other oral statement purporting to bind the attorney general and reporter may be given, and the requesting party may rely only upon a written consent, approval, or waiver signed by the attorney general and reporter or the attorney general and reporter's designee;

(4) The attorney general and reporter may decline to consider the request for consent, approval, or waiver, and inaction by the attorney general and reporter, within the statutory period of notice, or otherwise, shall not be construed as consent to or approval of the act or transaction, or construed to waive, estop, or in any other way restrict the attorney general and reporter from exercising the attorney general and reporter's authority under chapters 51-68 of this title; and

(5) Any written consent, approval, or waiver given by the attorney general and reporter under chapters 51-68 of this title shall be deemed only to state the enforcement intention of the attorney general and reporter as of the date of such written statement. The attorney general and reporter retains the right to bring whatever action or proceeding the attorney general and reporter subsequently comes to believe is required by the public interest; provided, that if the attorney general and reporter in writing approves, consents to, or waives enforcement with respect to an act or transaction, the attorney general and reporter will not exercise the attorney general and reporter's right to bring an enforcement action hereunder when:

(A) There has been full and true disclosure at the time the request was presented; and

(B) Each request, if any, for additional information or documents by the attorney general and reporter as set forth in this section has been met fully, truthfully and timely.

Chapter 52 - Incorporation

§ 48-52-101. Incorporators Universal Citation: TN Code § 48-52-101 (2021)

One (1) or more persons may act as the incorporator or incorporators of a corporation by delivering a charter to the secretary of state for filing. If any incorporator dies or is for any reason unable to act, the other incorporators, if any, may act. If there is no incorporator able to act, any person for whom an incorporator was acting as agent may act in the incorporator's stead or, if such other person also dies or is for any reason unable to act, or the incorporator was not acting as an agent, the incorporator's legal representative may act.

§ 48-52-102. Charter Universal Citation: TN Code § 48-52-102 (2021)

(a.) The charter must set forth:

(1) A corporate name for the corporation that satisfies the requirements of § 48-54-101;

(2) One (1) of the following statements:

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

- (B) This corporation is a mutual benefit corporation;
 - (3) If the corporation is a religious corporation, a statement to that effect;
 - (4) The street address and zip code of the corporation's initial registered office, the county in which the office is located, and the name of its initial registered agent at that office;
 - (5) The name, address and zip code of each incorporator;
 - (6) The street address and zip code of the initial principal office, and a mailing address if the United States Postal Service does not deliver to the principal office, of the corporation;
 - (7) A statement that the corporation is not for profit;
 - (8) A statement that the corporation will or will not have members; and
 - (9) Provisions not inconsistent with law regarding the distribution of assets upon dissolution.
- (b.) The charter may set forth:
- (1) The names and addresses of the individuals who are to serve as the initial directors;
 - (2) Provisions not inconsistent with law:
 - (A) Stating the purpose or purposes for which the corporation is organized;
 - (B) Regarding the management of the business and regulating the affairs of the corporation; and
 - (C) Defining, limiting and regulating the powers and rights of the corporation, its board of directors and members or any class thereof;
 - (3.)
 - (A) A provision eliminating or limiting the personal liability of a director to the corporation or its members for monetary damages for breach of fiduciary duty as a director; provided, that such 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 members;
 - (ii) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or
 - (iii) Under § 48-58-302;
 - (B)
 - (i) No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective;
- (ii) All references in this subsection (b) to a "director" are also deemed to refer to a member of the governing body of a corporation which dispenses with or limits the authority of the board of directors pursuant to § 48-58-101(c);
- (4.) Any provision that under Chapters 51-68 of this title is required or permitted to be set forth in the bylaws;
- (5.)
 - (A) A provision permitting or making obligatory indemnification of a director for liability to any person for any action taken, or any failure to take any action, as a director, except liability for:
 - (i) Receipt of a financial benefit to which the director is not entitled;
 - (ii) An intentional infliction of harm;
 - (iii) A violation of § 48-58-302; or
 - (iv) An intentional violation of criminal law; and
 - (B) For purposes of subdivision (b)(5)(A):
 - (i) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including excise tax assessed with respect to an employee benefit plan, as reasonable expenses incurred with respect to a proceeding; and
 - (ii) "Proceeding" includes a threatened, pending or completed proceeding;
- (6) That the liability of a director of a corporation that is not a public benefit corporation may be eliminated or limited by a provision of the charter that a director shall not be liable to the corporation or its members for money damages for any action taken, or any failure to take any action, as a director, except liability for:
 - (A) The amount of a financial benefit received by the director to which the director is not entitled;
 - (B) An intentional infliction of harm;
 - (C) A violation of § 48-58-302; or
 - (C) An intentional violation of criminal law.
 - (D) The charter need not set forth any of the corporate powers enumerated in Chapters 51-68 of this title.

§ 48-52-103. Incorporation

Universal Citation: TN Code § 48-52-103 (2021)

(a) Unless a delayed effective date is specified, the corporate existence begins when the charter is filed by the secretary of state.

(b) The secretary of state's filing of the charter 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.

§ 48-52-104. Liability for Preincorporation Transactions.

Universal Citation: TN Code § 48-52-104 (2021)

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under chapters 51-68 of this title, are jointly and severally liable for all liabilities created while so acting, except for any liability to any person who knew or reasonably should have known that there was no incorporation.

§ 48-52-105. Organization of Corporation

Universal Citation: TN Code § 48-52-105 (2021)

(a) After incorporation:

(1) If initial directors are named in the charter, 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 charter, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators and upon two (2) days' notice of the date, time, and place of the meeting to:

(A) Elect directors and complete the organization of the corporation; or

(B) Elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by chapters 51-68 of this title to be taken by incorporators at an organizational meeting may be taken without a meeting. If all incorporators consent to taking such action without a meeting, the affirmative vote of the number of incorporators that would be necessary to authorize or take such action at a meeting is the act of the incorporators. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each incorporator in one (1) or more counterparts, indicating each signing incorporator's vote or abstention on the action, and shall be included in the minutes or filed with the corporate records reflecting the action taken.

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

§ 48-52-106. Bylaws -- Limitations on Liability

Universal Citation: TN Code § 48-52-106 (2021)

(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 charter.

(c)

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

(A) Receipt of a financial benefit to which the director is not entitled;

(B) An intentional infliction of harm;

(C) A violation of § 48-58-302 (unlawful distribution); or

(D) An intentional violation of criminal law; and

(2) For purposes of this subsection (c):

(A) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including excise tax assessed with respect to an employee benefit plan, as reasonable expenses incurred with respect to a proceeding; and

(B) "Proceeding" includes a threatened, pending or completed proceeding.

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

(1) The amount of a financial benefit received by the director to which the director is not entitled;

(2) An intentional infliction of harm;

(3) A violation of § 48-58-302; or

(4) An intentional violation of criminal law.

§ 48-52-107. Emergency Bylaws

Universal Citation: TN Code § 48-52-107 (2021)

(a) Unless the charter provides otherwise, the board of directors or the incorporators of a corporation may adopt bylaws to be effective only in an emergency. The emergency bylaws, which are subject to amendment or repeal by the members, 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.

Chapter 53 - Purposes and Powers

Part 1 - Purposes and Powers of Nonprofit Corporations

§ 48-53-101. Purposes

Universal Citation: TN Code § 48-53-101 (2021)

(a) Every corporation incorporated under chapters 51-68 of this title has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the charter.

(b) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under chapters 51-68 of this title only if permitted by, and subject to all limitations of, the other statute.

§ 48-53-102. General Powers

Universal Citation: TN Code § 48-53-102 (2021)

(a) Unless its charter provides 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 affairs, including, without limitation, power to:

- (1) Sue and be sued, complain, and defend in its corporate name;
- (2) 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) Make and amend bylaws, not inconsistent with its charter or with the laws of this state, for regulating and managing the affairs of the corporation;
- (4) 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) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of, or grant a security interest in, all or any part of its property;
- (6) Purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, or grant a security interest in; and deal in and with shares of other interests in, or obligations of, any other entity;
- (7) 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 or those of any

other person by mortgage, pledge of, or security interest in, any of its property, franchises, or income;

(8) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) Conduct its activities, locate offices, and exercise the powers granted by chapters 51-68 of this title within or without this state;

(11) Elect, appoint, and designate directors and appoint officers, employees, and agents of the corporation, define their duties, and fix their compensation;

(12) Pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit or incentive plans for any or all of the current or former directors, officers, employees, and agents;

(13) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) Make payments or donations, or do any other act, not inconsistent with law, that furthers the corporate interest;

(15) Accept gifts, devises, and bequests subject to any conditions or limitations contained in such gift, devise, or bequest, so long as such conditions or limitations are not contrary to chapters 51-68 of this title or the purposes for which the corporation is organized;

(16) Impose dues, assessments, admission, service and transfer fees upon its members;

(17) Establish conditions for admission to membership, admit members, and issue memberships;

(18) Carry on a business; and

(19) Do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

(b) A nonprofit corporation shall not have or issue shares of stock.

Part 1 - Purposes and Powers of Nonprofit Corporations

§ 48-53-103. Emergency Powers

Universal Citation: TN Code § 48-53-103 (2021)

(a) In anticipation of or during an emergency, the board of directors of a corporation may:

- (1) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency, unless emergency bylaws provide otherwise:

(1) 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

(2) 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.

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

(1) Binds the corporation; and

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

§ 48-53-104. Ultra Vires Actions

Universal Citation: TN Code § 48-53-104 (2021)

(a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) 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 proceedings may be brought by the attorney general and reporter, a director, or by a member or members in a derivative proceeding.

(c) 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, the attorney general and reporter, or the corporation, directly, derivatively, or through a receiver, a trustee or other legal representative.

Part 2 - Nonprofit Fair Asset Protection Act

§ 48-53-201. Short Title

Universal Citation: TN Code § 48-53-201 (2021)

This part shall be known and may be cited as the "Nonprofit Fair Asset Protection Act."

§ 48-53-202. Nonprofit Fair Asset Protection

Universal Citation: TN Code § 48-53-202 (2021)

Notwithstanding any provision of law to the contrary, it is unlawful for:

(1) A national nonprofit corporation that has received a charter under 36 U.S.C. Subt. II, Pt. B, to terminate, revoke, suspend, or fail to renew a license or charter affiliating a Tennessee nonprofit corporation with the national nonprofit corporation absent good cause;

(2) A national nonprofit corporation that has received a charter under 36 U.S.C. Subt. II, Pt. B, to discriminate against a licensed or chartered affiliated Tennessee nonprofit corporation by imposing requirements not imposed on other similarly situated affiliates of the national nonprofit corporation; or

(3) A national nonprofit corporation that has received a charter under 36 U.S.C. Subt. II, Pt. B, to act indirectly to accomplish what would be otherwise prohibited under this part.

§ 48-53-203. "Good Cause" Defined

Universal Citation: TN Code § 48-53-203 (2021)

For the purpose of this part, "good cause" means to exclude any refusal or failure by the Tennessee nonprofit corporation to make purchases of or to contract to make purchases of goods or services where the board of directors of the Tennessee nonprofit corporation determines, according to the standards set forth in § 48-58-301, that making a purchase or contracting to make a purchase is not in the best interest of the Tennessee nonprofit corporation or is commercially unreasonable.

§ 48-53-204. Violations - Remedies

Universal Citation: TN Code § 48-53-204 (2021)

(a) Any condition, stipulation, provision, or term of any agreement that is in conflict with this part or that would purport to waive or restrict the application of any provision of this part is void and unenforceable.

(b) Nothing in this part abrogates or amends the standards for directors set forth in § 48-58-301.

(c) In addition to any other remedies or rights of actions, a Tennessee nonprofit corporation that is injured by a violation or threatened violation of this part may bring a private right of action for injunctive relief and to recover costs and reasonable attorneys' fees if the Tennessee nonprofit corporation is the prevailing party in the action.

(d) All ordinances, resolutions, rules, or requirements of any type that are in conflict with this part are void and unenforceable.

Chapter 54 - Name

§ 48-54-101. Corporate Name

Universal Citation: TN Code § 48-54-101 (2021)

(a) A corporate name may not contain language stating or implying that the corporation:

(1) Transacts or has power to transact any affairs for which authorization in whatever form and however denominated is required under the laws of this state, unless the appropriate commission or officer has granted such authorization and certifies that fact in writing;

(2) Is organized as, affiliated with, or sponsored by, any fraternal, veterans', service, religious, charitable or professional organization, unless that fact is certified in writing by the organization with which affiliation or sponsorship is claimed;

(3) Is an agency or instrumentality of, affiliated with, or sponsored by the United States or the state of Tennessee or a subdivision or agency thereof, unless such fact is certified in writing by the appropriate official of the United States or the state of Tennessee or subdivision or agency thereof; or

(4) Is organized for a purpose other than that permitted by § 48-53-101 and its charter.

(b) Except as authorized by subsection (c), the name of a corporation shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

(c) A domestic corporation, or person acting on behalf of a corporation not yet formed, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

(d)

(1) A domestic corporation or a foreign corporation authorized to conduct affairs or applying for a certificate of authority to conduct affairs may elect to adopt an assumed corporate name that complies with the requirements of subsections (a), (b) and (c).

(2) As used in chapters 51-68 of this title, "assumed corporate name" means any name used by the corporation other than its true corporate name, except that the following shall not constitute the use of an assumed corporate name under chapters 51-68 of this title:

(A) The identification by a corporation of its business with a trademark or service mark of which it is the owner or licensed user; and

(B) The use of a name of a division, not separately incorporated; provided, that the corporation also clearly discloses its corporate name.

(3) Before conducting affairs in this state under an assumed corporate name or names, the corporation shall, for each assumed corporate name, pursuant to resolution by its board of directors, execute and file in accordance with chapter 51, part 3 of this title, an application setting forth:

(A) The true corporate name;

(B) The state or country under the laws of which it is organized;

(C) That it intends to transact business under an assumed corporate name; and

(D) The assumed corporate name which it proposes to use.

(4) The right to use an assumed corporate name shall be effective for five (5) years from the date of filing by the secretary of state.

(5) A corporation shall renew the right to use its assumed corporate name or names, if any, within the two (2) months preceding the expiration of such right, for a period of five (5) years, by filing an application to renew each assumed name and paying the renewal fee as prescribed by § 48-51-303(a).

(e) Any domestic or foreign corporation may, pursuant to resolution by its board of directors, change or cancel any or all of its assumed corporate names by executing and filing, in accordance with chapter 51, part 3 of this title, an application setting forth:

(1) The true corporate name;

(2) The state or country under the laws of which it is organized;

(3) That it intends to cease conducting affairs under an assumed corporate name by changing or cancelling it;

(4) The assumed corporate name to be changed from or cancelled; and

(5) If the assumed corporate name is to be changed, the assumed corporate name which the corporation proposes to use.

(f) Upon the filing of an application to change an assumed corporate name, the corporation shall have the right to use such assumed corporate name for the period authorized by subsection (d).

(g) The right to use an assumed corporate name shall be cancelled by the secretary of state:

(1) If the corporation fails to renew an assumed corporate name;

(2) If the corporation has filed an application to change or cancel an assumed corporate name;

(3) If a domestic corporation has been dissolved; or

(4) If a foreign corporation has had its certificate of authority to conduct affairs in this state revoked or has withdrawn its certificate of authority.

(h) Nothing in this section or in § 48-54-102, § 48-54-103 or § 48-65-106 shall abrogate or limit the law as to unfair competition or unfair trade practice, or 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 and trademarks.

§ 48-54-102. Reserved Name

Universal Citation: TN Code § 48-54-102 (2021)

(a) A person may reserve the exclusive use of a corporate name, including an assumed corporate name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for meets the requirements of § 48-54-101 and is available, the secretary of state shall reserve the name for the applicant's exclusive use for a four-month period. Upon the expiration of the four-month period, the same or any other party may apply to reserve the same name.

(b) The owner of a reserved corporate name, including an assumed corporate name, may transfer the reservation to another person by delivering to the secretary of state a notice of the transfer signed by the owner that states the name and address of the transferee.

(c) The reservation of a specific name may be cancelled by filing with the secretary of state a notice, executed by the applicant or transferee, specifying the name reservation to be cancelled and the name and address of the applicant or transferee.

§ 48-54-103. Registered Name

Universal Citation: TN Code § 48-54-103 (2021)

(a) A foreign corporation may register its corporate name, or an assumed corporate name under which it conducts affairs, if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under § 48-54-101(b).

(b) A foreign corporation registers its corporate name, or its assumed corporate name, or its corporate name with any changes required by § 48-65-106, by delivering to the secretary of state for filing an application:

(1) Setting forth its corporate name, or its corporate name with any changes required by § 48-65-106, the state or country and date of its incorporation, and a brief description of the activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation. The certificate shall not bear a date of more than one (1) month prior to the date the application is filed in this state.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the end of the calendar year in which such registration occurs.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (b), between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under chapters 51-68 of this title or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

§ 48-55-104. Service on Corporation

Universal Citation: TN Code § 48-55-104 (2021)

(a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(b) Whenever a domestic or foreign corporation authorized to transact business or conduct affairs in this state fails to appoint or maintain a registered agent in this state, whenever its registered agent cannot be found with reasonable diligence, whenever a foreign corporation shall transact business or conduct affairs in this state without first procuring a certificate of authority to do so from the secretary of state, or whenever the certificate of authority of a foreign corporation shall have been withdrawn or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

§ 48-55-105. Procedure for Service on Domestic or Foreign Corporation by Service on Secretary of State

Universal Citation: TN Code § 48-55-105 (2021)

(a) Service on the secretary of state, when the secretary of state is an agent for a domestic or foreign corporation as provided in § 48-55-104(b), of any process, notice, or demand shall be made by delivering to the secretary of state the original and one (1) copy of such process, notice, or demand, duly certified by the clerk of the court in which the suit or action is pending or brought, together with the proper fee. A statement which identifies which of the grounds, as listed in § 48-55-104(b), for service on the secretary of state is applicable, must be included. The secretary of state shall endorse the time of receipt upon the original and copy and immediately shall send the copy, along with a written notice that service of the original was also made, by registered or certified mail, with return receipt requested, addressed to such corporation at its registered office or principal office as shown in the records on file in the secretary of state's office or as shown in the official registry of the state or country in which such corporation is incorporated. If none of the previously mentioned addresses are available to the secretary of state, service may be made on any one (1) of the incorporators at the address set forth in the charter. The secretary of state may require the plaintiff (or complainant as the case may be) or such person's attorney to furnish the latter address.

(b) The refusal or failure of such corporation to accept delivery of the registered or certified mail provided for in subsection (a), or the refusal or failure to sign the return receipt, shall not affect the validity of such service; and any such corporation refusing or failing to accept delivery of such registered or certified mail shall be charged with knowledge of the contents of any process, notice, or demand contained therein.

(c) When the registered or certified mail return receipt is received by the secretary of state or when a corporation refuses or fails to accept delivery of the registered or certified mail and it is returned to the secretary of state, the secretary of state shall forward the receipt or such refused or undelivered mail to the clerk of the court in which the suit or action is pending, together with the original process, notice, or demand, a copy of the notice sent to the defendant corporation and the secretary of state's affidavit setting forth the secretary of state's compliance with this section. Upon receipt thereof, the clerk shall copy the affidavit on the rule docket of the court and shall mark it, the receipt or refused or undelivered mail, and

the copy of notice as of the day received and place them in the file of the suit or action where the process and pleadings are kept, and such receipt or refused or undelivered mail, affidavit, and copy of notice shall be and become a part of the technical record in the suit or action and thereupon service on the defendant shall be complete. Service made under this section shall have the same legal force and validity as if the service had been made personally in this state.

(d) Subsequent pleadings or papers permitted or required to be served on such defendant domestic or foreign corporation may be served on the secretary of state as agent for such defendant corporation in the same manner, at the same cost and with the same effect as process, notice, or demand are served on the secretary of state as agent for such defendant corporation under this section.

(e) No appearance shall be required in the suit or action by the defendant domestic or foreign corporation nor shall any judgment be taken against the defendant domestic or foreign corporation in less than one (1) month after the date service is complete under this section.

(f) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, which record shall include the time of such service and the secretary of state's action with reference thereto.

Chapter 56 - Members and Memberships

Part 1 - Admission of Members

§ 48-56-101. Admission

Universal Citation: TN Code § 48-56-101 (2021)

(a) A corporation may admit any person as a member. If there are to be criteria or procedures for admission as a member, then such criteria or procedures shall be established by the charter or bylaws.

(b) No person shall be admitted as a member without the person's consent.

(c) A corporation may issue certificates evidencing membership therein, but such certificates shall not include provisions inconsistent with the charter, bylaws, or chapters 51-68 of this title.

§ 48-56-102. Consideration.

Universal Citation: TN Code § 48-56-102 (2021)

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

§ 48-56-103. No Members Required

Universal Citation: TN Code § 48-56-103 (2021)

A corporation is not required to have members.

Part 2 - Types of Memberships – Members' Rights and Obligations

§ 48-56-201. Differences in Rights and Obligations of Members

Universal Citation: TN Code § 48-56-201 (2021)

All members have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the charter or bylaws establish classes of membership with different rights or obligations. All members have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the charter or bylaws.

§ 48-56-202. Transfers

Universal Citation: TN Code § 48-56-202 (2021)

- (a) Except as set forth in or authorized by the charter or bylaws, no member of a corporation may transfer a membership or any right arising therefrom.
- (b) Where transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

§ 48-56-203. Member's Liability to Third Parties

Universal Citation: TN Code § 48-56-203 (2021)

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

§ 48-56-204. Member's Liability for Dues, Assessments and Fees

Universal Citation: TN Code § 48-56-204 (2021)

- (a) A member may become liable to the corporation for dues, assessments or fees by consenting (expressly or impliedly) to such obligation; provided, that a charter or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments or fees does not, of itself, create liability.
- (b) Nothing in this section shall prevent a corporation from terminating or suspending a member's membership for nonpayment of dues, assessments or fees, even though the member is not liable to the corporation, pursuant to this section, for payment of such dues, assessments or fees.

§ 48-56-205. Creditor's Action Against Member

Universal Citation: TN Code § 48-56-205 (2021)

- (a.) No proceeding may be brought by a creditor of a corporation to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.
- (b.) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

(c.) Nothing provided in subsection (a) or (b) is intended to preclude the availability of other remedies to a creditor.

Chapter 57 - Meetings and Voting

Part 1 - Meetings and Action Without Meetings

§ 48-57-101. Annual Meeting

Universal Citation: TN Code § 48-57-101 (2021)

(a) At a time stated in or fixed in accordance with the bylaws, a corporation with members shall hold annually a meeting of its members.

(b) Annual membership 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.

(c) At the annual meeting:

(1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(2) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of § 48-57-105.

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

§ 48-57-102. Special Meeting

Universal Citation: TN Code § 48-57-102 (2021)

(a) A corporation with members shall hold a special meeting of members:

(1) On call of its board of directors or the person or persons authorized to do so by the charter or bylaws; or

(2) Unless the charter otherwise provides, if the holders of at least ten percent (10%) 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's secretary one (1) or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under § 48-57-103 or § 48-57-107, the record date for determining the members entitled to demand a special meeting is the date the first member signs the demand.

(c) If a notice for a special meeting demanded under subdivision (a)(2) is not given pursuant to § 48-57-105 within one (1) month after the effective date of the written demand or demands under § 48-51-202, regardless of the requirements of subsection (d), any person or persons signing the demand or demands may set the time and place of the meeting and give notice pursuant to § 48-57-105.

(d) Special meetings of members 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, special meetings shall be held at the corporation's principal office.

(e) Only business within the purpose or purposes described in the meeting notice required by § 48-57-105 may be conducted at a special meeting of members.

§ 48-57-103. Court-Ordered Meeting

Universal Citation: TN Code § 48-57-103 (2021)

(a) A court of record having equity jurisdiction in the county where a corporation's principal office (or, if none in this state, its registered office) is located may summarily order a meeting to be held on application of:

(1) Any member or other person entitled to participate in the annual meeting, and in the case of a public benefit corporation, the attorney general and reporter, if an annual meeting was not held within the earlier of six (6) months after the end of the corporation's fiscal year or fifteen (15) months after its last annual meeting; or

(2) A member who signed a demand for a special meeting valid under § 48-57-102, or a person or persons entitled to call a special meeting and in the case of a public benefit corporation, the attorney general and reporter, if:

(A) Notice of the special meeting was not given within one (1) month after the date the demand was delivered to the corporation's secretary; or

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

(b) The court may fix the time and place of the meeting, determine the members entitled to participate and vote at the meeting, specify a record date for determining members entitled to notice of 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.

(c) If the court orders a meeting, it may also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

§ 48-57-104. Action by Written Consent

Universal Citation: TN Code § 48-57-104 (2021)

(a) Action required or permitted by chapters 51-68 of this title to be taken at a meeting of members may be taken without a meeting if all members entitled to vote on the action consent in writing to taking such action without a meeting. If all members entitled to vote on the action consent in writing to taking such action without a meeting, the affirmative vote of the number of votes that would be necessary to authorize or take such action at a meeting shall be the act of the members. The action must be evidenced by one (1) or more written consents describing the action taken, signed by each member entitled to vote on the action in one (1) or more counterparts, indicating each signing member's vote or abstention on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

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

(c) If not otherwise determined under § 48-57-103 or § 48-57-107, the record date for determining members entitled to take such action without a meeting is the date the first member signs the consent under subsection (a).

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

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

(f)

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

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

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

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

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

(h) An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation can

determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the member, the member's agent or the member's attorney-in-fact.

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

§ 48-57-105. Notice of Meeting
Universal Citation: TN Code § 48-57-105 (2021)

(a) A corporation shall give notice consistent with its charter or bylaws of meetings of members in a fair and reasonable manner.

(b) Any notice which conforms to the requirements of subsection (c) is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered.

(c) Notice is fair and reasonable if:

(1) The corporation notifies its members of the place, date and time of each annual and special meeting of members no fewer than ten (10) days nor more than two (2) months before the meeting date;

(2) Notice of an annual meeting includes a description of any matter or matters which must be approved by the members under § 48-58-302, § 48-58-507, § 48-60-103, § 48-60-202, § 48-61-103, § 48-62-102 or § 48-64-102; and

(3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.

(d) Unless the bylaws require otherwise, if an annual or special meeting of members 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 § 48-57-107, however, notice of the adjourned meeting must be given under this section to the members of record of the new record date.

(e) When giving notice of an annual or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if:

(1) Requested in writing to do so by a person entitled to call a special meeting; and

(2) The request is received by the secretary or president of the corporation at least ten (10) days before the corporation gives notice of the meeting.

(f) A certificate of the secretary or other person giving the notice that the notice required by this section has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

§ 48-57-106. Waiver of Notice

Universal Citation: TN Code § 48-57-106 (2021)

(a) A member may waive any notice required by chapters 51-68 of this title, the charter, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

- (1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting (or promptly upon the member's arrival) objects to holding the meeting or transacting business at the meeting; and
- (2) 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 member objects to considering the matter when it is presented.

§ 48-57-107. Record date -- Determining Members Entitled to Notice and Vote

Universal Citation: TN Code § 48-57-107 (2021)

(a) The bylaws may fix or provide the manner of fixing the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a member's meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise rights.

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

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than four (4) months after the record date for determining members entitled to notice of the original meeting.

(f) If a court orders a meeting adjourned to a date more than four (4) months after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

§ 48-57-108. Action by Written Ballot

Universal Citation: TN Code § 48-57-108 (2021)

(a) Except as otherwise restricted by the charter or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation having members delivers a ballot to every member entitled to vote on the matter.

(b) A ballot must:

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

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

(d) All solicitations for votes by ballot must:

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

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

Part 2 - Voting

§ 48-57-201. Members' List for Meeting

Universal Citation: TN Code § 48-57-201 (2021)

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of a meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting, but

not entitled to notice of the meeting. This list shall be prepared on the same basis and be part of the list of members.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two (2) business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of §§ 48-66-102(c) and 48-66-105, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or attorney to inspect the list of members before or at the meeting (or copy the list as permitted by subsection (b)), a court of record having equity jurisdiction in the county where a corporation's principal office (or if none in this state, its registered office) is located, on application of the member, 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.

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

§ 48-57-202. Voting Entitlement Generally
Universal Citation: TN Code § 48-57-202 (2021)

(a) Unless the charter or bylaws provide otherwise, each member is entitled to one (1) vote on each matter voted on by the members.

(b) Unless the charter or bylaws provide otherwise, if a membership stands of record in the names of two (2) or more persons, their acts with respect to voting shall have the following effect:

- (1) If only one (1) vote, such act binds all; and
- (2) If more than one (1) vote, the vote shall be divided on a pro rata basis.

(c) Memberships standing in the name of another nonprofit or for-profit corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe or, in the absence of a bylaw provision, as the board of directors of such corporation may determine. The corporation whose membership is being voted may rely on the representations of such officer, agent, or proxy as to the authority unless such authority is questioned.

§ 48-57-203. Quorum Requirements
Universal Citation: TN Code § 48-57-203 (2021)

(a) Unless chapters 51-68 of this title or the charter or bylaws provide for a higher or lower quorum, ten percent (10%) of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(b) An amendment to the charter or bylaws that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement in subsection (a) 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.

(c) When a quorum is once present to organize a meeting, a meeting may be adjourned despite the absence of a quorum caused by the subsequent withdrawal of any of those present.

§ 48-57-204. Voting Requirements
Universal Citation: TN Code § 48-57-204 (2021)

If a quorum exists, action on a matter 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 charter, bylaws or chapters 51-68 of this title require a greater number of affirmative votes.

§ 48-57-205. Proxies
Universal Citation: TN Code § 48-57-205 (2021)

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

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

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

(2) A member may authorize another person or persons to act for the member as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission; provided, that any such telegram, cablegram, or electronic transmission shall either set forth or be submitted with information from which it can be determined that the telegram, cablegram, or electronic transmission was authorized by the member. If it is determined that such telegrams, cablegrams, or electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making such determination shall specify the information upon which they relied;

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

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

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

(1) A pledgee;

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

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

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

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

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

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

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

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

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

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

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

§ 48-57-206. Voting for Directors - Cumulative Voting
Universal Citation: TN Code § 48-57-206 (2021)

(a) Unless otherwise provided in the charter or the bylaws, directors are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting at which a quorum is present.

(b) Members do not have a right to cumulate their votes for directors unless the charter or the bylaws so provide.

(c) If the charter or the bylaws provide for cumulative voting by members, members may so vote, by multiplying 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.

(d) Members otherwise entitled to vote cumulatively may not vote cumulatively at a particular meeting unless:

(1) The meeting notice or statement accompanying the notice states conspicuously that cumulative voting is authorized; or

(2) A member who has the right to cumulate the member's votes gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one (1) member gives this notice, all other members participating in the election are entitled to cumulate their votes without giving further notice.

(e) Members may not cumulatively vote if the directors and members are identical.

§ 48-57-207. Other Methods of Electing Directors
Universal Citation: TN Code § 48-57-207 (2021)

A corporation may provide in its charter or bylaws for election of directors by members or delegates:

(1) On the basis of chapter or other organizational unit;

(2) By region or other geographic unit;

(3) By preferential voting; or

(4) By any other reasonable method.

§ 48-57-208. Corporation's Acceptance of Votes
Universal Citation: TN Code § 48-57-208 (2021)

- (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, 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 member.
- (b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, 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 member if:
- (1) The member is an entity and the name signed purports to be that of an officer or agent of the entity;
 - (2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the member 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;
 - (3) The name signed purports to be that of a receiver or trustee in bankruptcy of the member, 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;
 - (4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or
 - (5) Two (2) or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one (1) of the coholders and the person signing appears to be acting on behalf of all the coholders.
- (c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis for doubt about the validity of the signature or about the signatory's authority to sign for the member.
- (d) 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 are not liable in damages to the member for the consequences of the acceptance or rejection.
- (e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.
- (f) The grounds for acceptance of votes set out in subsection (b) do not constitute the exclusive basis on which a corporation may accept votes.

§ 48-57-209. Inspectors
Universal Citation: TN Code § 48-57-209 (2021)

- (a) A corporation with members may appoint one (1) or more inspectors to act at a meeting of members and make a report in the form of a document of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.
- (b) The inspectors shall:
- (1) Ascertain the number of members and their voting power;
 - (2) Determine the members present at a meeting;
 - (3) Determine the validity of proxies and ballots;
 - (4) Count all votes; and
 - (6) Determine the result.
- (c) An inspector may, but need not, be a director, member, officer, or employee of the membership corporation. A person who is a candidate for office to be filled at the meeting shall not be an inspector.

Part 3 - Voting Agreements

§ 48-57-301. Voting Agreements
Universal Citation: TN Code § 48-57-301 (2021)

- (a) An agreement between two (2) or more members, if in writing and signed by the parties thereto, may provide the manner in which the parties to the agreement will exercise their voting rights. Nothing in this subsection (a) shall impair the right of the corporation to treat the members of record as entitled to exercise their voting rights.
- (b) No written agreement to which all or less than all the members have actually assented, whether embodied in the charter or bylaws or in any agreement in writing signed by all the parties thereto, which agreement relates to any phase of the affairs of the corporation, whether to its management or otherwise, shall be invalid as between the parties thereto on the ground that it is an attempt by the parties thereto to restrict the discretion of the board of directors in its management of the corporation or to treat the corporation as if it were a partnership or to arrange their relationships in a manner that would be appropriate only between parties.
- (c) The duration of any agreement permitted by subsection (a) shall not exceed twenty (20) years. Failure to state a period of duration or stating a period of duration in excess of twenty (20) years shall not invalidate the agreement, but in either case the period of duration of the agreement shall be twenty (20) years. Any such agreement shall be renewable at any time before the expiration of such twenty-year period by agreement of all members bound thereby at the date of renewal.
- (d) A transferee of a membership in a corporation whose members have entered into an agreement authorized by subsection (a) or (b) shall be bound by such agreement or any renewal of such agreement authorized by subsection (c) if the transferee takes the

membership with notice thereof. A transferee shall be deemed to have notice of any such agreement or any such renewal if the existence thereof is noted on the face or the back of the certificate representing such membership.

(e) The effect of any agreement authorized by subsection (b) or any renewal thereof authorized by subsection (c) shall be to relieve the directors and impose upon the members assenting thereto the liability for managerial acts or omissions that is imposed on directors by law, to the extent that and so long as the discretion or powers of the board of directors, in its management of corporate affairs, are controlled by any such agreement.

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

Chapter 58 - Directors and Officers

Part 1 - Board of Directors

§ 48-58-101. Requirement for and Duties of Board of Directors

Universal Citation: TN Code § 48-58-101 (2021)

(a) Each corporation must have a board of directors.

(b) Except as provided in chapters 51-68 of this title or subsection (c), 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.

(c) The charter of a mutual benefit corporation may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

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

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

§ 48-58-102. Qualifications of Directors

Universal Citation: TN Code § 48-58-102 (2021)

All directors must be natural persons. The charter or bylaws may prescribe other qualifications for directors. A director need not be a resident of this state or a member of the corporation unless the charter or bylaws so prescribe.

§ 48-58-103. Number of Directors

Universal Citation: TN Code § 48-58-103 (2021)

(a) A board of directors must consist of three (3) or more natural persons, with the number specified in or fixed in accordance with the charter or bylaws.

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

§ 48-58-104. Election, Designation, and Appointment of Directors

Universal Citation: TN Code § 48-58-104 (2021)

(a) If the corporation has members, all directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the charter 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.

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

§ 48-58-105. Terms of Directors Generally

Universal Citation: TN Code § 48-58-105 (2021)

(a) The charter or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five (5) years. In the absence of any term specified in the charter or bylaws, the term of each director shall be one (1) year. Directors may be elected for successive terms.

(b) Except in the case of designated or appointed directors, a decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the charter 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.

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

§ 48-58-106. Staggered Terms for Directors

Universal Citation: TN Code § 48-58-106 (2021)

The charter or bylaws may provide for dividing the total number of directors into groups and staggering the terms of directors. The terms of office of the several groups need not be uniform.

§ 48-58-107. Resignation of Directors

Universal Citation: TN Code § 48-58-107 (2021)

(a) A director may resign at any time by delivering written notice to the board of directors, its chair or president, or to the corporation.

(b) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

§ 48-58-108. Removal of Directors Elected by Members or Directors.

Universal Citation: TN Code § 48-58-108 (2021)

(a) The members may remove one (1) or more directors elected by them with or without cause, unless the charter provides that directors may be removed only for cause. The charter or bylaws may specify what constitutes cause for removal.

(b) If a director is elected by a class, chapter or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit or grouping.

(c) Except as provided in subsection (i), a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

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

(f) In computing whether a director is protected from removal under subsections (b)-(d), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a)-(e).

(h) The board of directors of a corporation may remove a director without cause who has been elected by the board by the vote of two thirds (⅔) of the directors then in office or such greater number as is set forth in the charter or bylaws.

(i) If at the beginning of a director's term on the board, the charter or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

§ 48-58-109. Removal of Designated or Appointed Directors

Universal Citation: TN Code § 48-58-109 (2021)

(a) A designated director may be removed by an amendment to the charter or bylaws deleting or changing the designation.

(b) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary. A removal is effective when the notice is effective unless the notice specifies a future effective date.

§ 48-58-110. Removal of Directors by Judicial Proceeding

Universal Citation: TN Code § 48-58-110 (2021)

(a) Any court of record having equity jurisdiction in the county where a corporation's principal office (or if none in this state, its registered office) is located may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent (10%) of the voting power of any class or the attorney general and reporter in the case of a public benefit corporation if the court finds that:

(1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, or a final judgment has been entered finding that the director has violated a duty set forth in part 3 of this chapter; and

(2) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(c) If members or the attorney general and reporter commence a proceeding under subsection (a), the corporation shall be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a), they shall give the attorney general and reporter written notice of the proceeding.

§ 48-58-111. Vacancy on Board

Universal Citation: TN Code § 48-58-111 (2021)

(a) Unless the charter or bylaws provide otherwise, and except as provided in subsections (b) and (c), if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors or a vacancy resulting from a removal with or without cause:

(1) The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter or other organizational unit or by region or other geographic

grouping, only members of that class, chapter, unit or grouping are entitled to vote to fill the vacancy if it is filled by the members;

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

(3) 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.

(b) Unless the charter or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the charter or bylaws. In the absence of an applicable charter or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under § 48-58-107(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

§ 48-58-112. Compensation of Directors
Universal Citation: TN Code § 48-58-112 (2021)

Unless the charter or bylaws provide otherwise, the board of directors may fix the compensation of directors.

Part 2 - Meetings and Action of Board

§ 48-58-201. Regular and Special Meetings
Universal Citation: TN Code § 48-58-201 (2021)

(a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this state. Unless the charter or bylaws otherwise provide, special meetings of the board of directors may be called by the presiding officer of the board, the president, or any two (2) directors.

(c) Unless the charter 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.

§ 48-58-202. Action Without Meeting
Universal Citation: TN Code § 48-58-202 (2021)

(a) Unless the charter or bylaws provide otherwise, action required or permitted by chapters 51-68 of this title to be taken at a board of directors' meeting may be taken without a meeting. If all directors consent to taking such action without a meeting, the affirmative vote of the number of directors that would be necessary to authorize or take such action at a meeting is the act of the board. The action must be evidenced by one (1) 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.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

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

§ 48-58-203. Notice of Meetings
Universal Citation: TN Code § 48-58-203 (2021)

(a) Unless the charter, bylaws or subsection (c) provide otherwise, regular meetings of the board may be held without notice.

(b) Unless the charter, bylaws or subsection (c) provide otherwise, special meetings of the board must be preceded by at least two (2) days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members, any board action to remove a director or to approve a matter, which would require approval by the members if the corporation had members, shall not be valid unless each director is given at least seven (7) days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to § 48-58-204.

(d) Notice of an adjourned meeting need not be given if the time and place to which the meeting is adjourned are fixed at the meeting at which the adjournment is taken and if the period of adjournment does not exceed one (1) month in any one (1) adjournment.

§ 48-58-204. Waiver of Notice
Universal Citation: TN Code § 48-58-204 (2021)

(a) A director may waive any notice required by chapters 51-68 of this title, the charter or bylaws before or after the date and time stated in the notice. Except as provided in subsection (b), the waiver must be in the form of a document, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director at the beginning of the meeting (or promptly upon the director's 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.

§ 48-58-205. Quorum and Voting
Universal Citation: TN Code § 48-58-205 (2021)

(a) Except as otherwise provided in chapters 51-68 of this title, the charter 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 charter or bylaws authorize a quorum of fewer than the greater of one third (1/3) of the number of directors in office or two (2) directors. When a quorum is once present to organize a meeting, a meeting may be later adjourned despite the absence of a quorum caused by the subsequent withdrawal of any of those present.

(b) 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 chapters 51-68 of this title, the charter or bylaws require the vote of a greater number of directors.

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

- (1) The director objects at the beginning of the meeting (or promptly upon the director's arrival) to holding it or transacting business at the meeting;
- (2) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or
- (3) The director delivers notice in the form of a document of the director's 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.

§ 48-58-206. Committees.

Universal Citation: TN Code § 48-58-206 (2021)

(a) Unless the charter or bylaws provide otherwise, a board of directors may create one (1) or more committees of the board. A committee may consist of one (1) natural person. Except as provided in § 48-58-703, members of committees of the board of directors may be members of the board of directors or other natural persons, and they shall serve at the pleasure of the board of directors.

(b) 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 charter or bylaws to take action under § 48-58-205.

(c) Sections 48-58-201 – 48-58-205, 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 their members as well.

(d) To the extent specified by the board of directors or in the charter or bylaws, each committee of the board may exercise the board's authority under § 48-58-101.

(e) A committee may not, however:

- (1) Authorize distributions;
- (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) Elect, appoint or remove directors or fill vacancies on the board or on any of its committees; or

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

(f) 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 § 48-58-301.

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

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

Part 3 - Standards of Conduct

§ 48-58-301. General Standards for Directors

Universal Citation: TN Code § 48-58-301 (2021)

(a) A director shall discharge all duties as a director, including duties as a member of a committee:

- (1) In good faith;
- (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) In a manner the director reasonably believes to be in the best interests of the corporation.

(b) In discharging such duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (2) Legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence;
- (3) A committee of the board of directors of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or
- (4) One (1) or more volunteers of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) A director is not liable for any action taken as a director or any failure to take action, if the director performed the duties of the office in compliance with this section, or if the director is immune from suit under § 48-58-601.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property.

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

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

**§ 48-58-302. Personal Liability of Director - Enforcement
Universal Citation: TN Code § 48-58-302 (2021)**

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

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

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

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

(c) A proceeding to enforce:

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

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

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

**§ 48-58-303. Loans to or guarantees for directors and officers.
Universal Citation: TN Code § 48-58-303 (2021)**

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

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

(c) This section does not apply to:

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

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

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

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

(5) Loans to pay relocation expenses.

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

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

§ 48-58-304. [Repealed.]

Part 4 - Officers

**§ 48-58-401. Required Officers
Universal Citation: TN Code § 48-58-401 (2021)**

(a) A corporation has the officers described in its bylaws or designated by its board of directors in accordance with the bylaws; provided, that every corporation shall have a president and a secretary. Unless the charter or bylaws provide otherwise, officers shall be elected or appointed by the board of directors.

(b) A duly appointed officer may appoint one (1) or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one (1) office in a corporation, except the offices of president and secretary.

**§ 48-58-402. Duties of Officers
Universal Citation: TN Code § 48-58-402 (2021)**

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 and authority of other officers.

§ 48-58-403. Standards of Conduct for Officers
Universal Citation: TN Code § 48-58-403 (2021)

- (a) An officer with discretionary authority shall discharge all duties under that authority:
- (1) In good faith;
 - (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
 - (3) In a manner the officer reasonably believes to be in the best interests of the corporation.
- (b) In discharging such duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
- (1) One (1) or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or
 - (2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.
- (c) The duty of an officer includes the obligation to inform:
- (1) The superior officer to whom, or the board of directors or the committee thereof to which, the officer reports, of information about the affairs of the nonprofit corporation known to the officer, within the scope of the officer's functions and known to the officer to be material to the superior officer, board or committee; and
 - (2) The officer's superior officer, or another appropriate person within the nonprofit corporation, or the board of directors, or a committee thereof, of any action or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation, that the officer believes has occurred or is likely to occur.
- (d) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.
- (e) An officer is not liable for any action taken as an officer or any failure to take any action, if the officer performed the duties of office in compliance with this section.

§ 48-58-404. Resignation and Removal of Officers
Universal Citation: TN Code § 48-58-404 (2021)

- (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the later effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.
- (b) A board may remove any officer at any time with or without cause and any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer.

§ 48-58-405. Contract Rights of Officers - Removal
Universal Citation: TN Code § 48-58-405 (2021)

- (a) The appointment of an officer does not itself create contract rights.
- (b) 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.
- (c) Except as provided in the charter or bylaws, an officer may be removed at any time with or without cause by the appointing officer unless the board provides otherwise. In this section, "appointing officer" means the officer (including any successor to that officer) who appointed the officer resigning or being removed.

§ 48-58-406. Release or Assignment of Life Insurance on Officers.
Universal Citation: TN Code § 48-58-406 (2021)

When a corporation, organized under the laws of this state, has caused or shall cause to be insured the life of any director, officer, agent, or employee, or when such corporation is named as a beneficiary in or assignee of any policy of life insurance, due authority to effect, assign, release, relinquish, convert, surrender, change the beneficiary, or to take any other action with reference to such insurance shall be sufficiently evidenced to the insurance company by a written statement to that effect, signed by the president or secretary or other corresponding officer of such corporation. Such statement shall be binding upon such corporation, and any act done or suffered to be done by it upon the faith thereof shall protect the insurance company concerned, without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings. No person shall be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of such corporation, on any corporate procedure touching such insurance.

Part 5 - Indemnification

§ 48-58-501. Part Definitions
Universal Citation: TN Code § 48-58-501 (2021)

In this part:

- (1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction;
- (2) "Director" means an individual who is or was a director of a corporation, is or was a member of a committee of the board, or an individual who, while a director of a corporation or an individual serving on a committee of the board, is or was serving at the corporation's request as a director, member of a committee of the board, officer, partner, trustee, employee, or agent of another foreign or domestic for-profit or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on or otherwise involve services by the director to the plan or to participants in or beneficiaries

of the plan. "Director" includes, unless the contract requires otherwise, the estate or personal representative of a director;

(3) "Expenses" include counsel fees;

(4) "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 actually incurred with respect to a proceeding;

(5) "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 individual other than a director, as contemplated in § 48-58-507, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic profit or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise;

(6) "Party" includes an individual who was, is, or is threatened to be made, a named defendant or respondent in a proceeding; and

(7) "Proceeding" means any threatened, pending, or completed action, suit or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

§ 48-58-502. Authority to Indemnify

Universal Citation: TN Code § 48-58-502 (2021)

(a) Except as provided in subsection (d), a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(1) The individual's conduct was in good faith; and

(2) The individual reasonably believed:

(A) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in its best interest; and

(B) In all other cases, that the individual's conduct was at least not opposed to its best interests; and

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and beneficiaries of, the plan is conduct that satisfies the requirements of subdivision (a)(2)(B).

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

(d) A corporation may not indemnify a director under this section:

(1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation;

(2) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director;

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

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

(5) Under § 48-58-302.

§ 48-58-503. Mandatory Indemnification

Universal Citation: TN Code § 48-58-503 (2021)

Unless limited by its charter, a corporation shall indemnify a director to the extent the director was successful, on the merits or otherwise, or who is immune from suit under § 48-58-601, 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 incurred by the director in connection with the proceeding.

§ 48-58-504. Advance for Expenses

Universal Citation: TN Code § 48-58-504 (2021)

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes the corporation a document of the director's good faith belief that the director has met the standard of conduct described in § 48-58-502 or is immune from suit under § 48-58-601;

(2) The director furnishes the corporation a document, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director is not entitled to indemnification; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

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

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in § 48-58-506.

§ 48-58-505. Court-Ordered Indemnification
Universal Citation: TN Code § 48-58-505 (2021)

Unless a corporation's charter provides otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the amount it considers proper if it determines the director is:

- (1) Entitled to mandatory indemnification under § 48-58-503, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or
- (2) Fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in § 48-58-502(a) or was adjudged liable as described in § 48-58-502(d), but, if the director was adjudged so liable, indemnification is limited to reasonable expenses incurred.

§ 48-58-506. Determination and Authorization of Indemnification
Universal Citation: TN Code § 48-58-506 (2021)

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

(b) The determination shall be made by:

- (1) The board of directors by majority vote of a quorum consisting of directors whether or not at the time are parties to the proceeding;
- (2) If a quorum cannot be obtained under subdivision (b)(1), majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceedings;
- (3) Independent special legal counsel:
 - (A) Selected by the board of directors or its committee in the manner prescribed in subdivision (b)(1) or (b)(2); or
 - (B) If a quorum of the board cannot be obtained under subdivision (b)(1) and a committee cannot be designated under subdivision (b)(2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate);
- (4) The members, but directors who are at the time parties to the proceeding may not vote on the determination; or
- (5) Qualified directors as provided in § 48-58-703.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by independent special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subdivision (b)(3) to select counsel.

§ 48-58-507. Indemnification of Officers, Employees, and Agents
Universal Citation: TN Code § 48-58-507 (2021)

Unless a corporation's charter provides otherwise:

- (1) An officer of the corporation who is not a director is entitled to mandatory indemnification under § 48-58-503, and is entitled to apply for court-ordered indemnification under § 48-58-505 in each case, to the same extent as a director;
- (2) The corporation may indemnify and advance expenses under this part to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and
- (3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its charter, bylaws, general or specific action of its board of directors, or contract.

§ 48-58-508. Insurance
Universal Citation: TN Code § 48-58-508 (2021)

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under § 48-58-502 or § 48-58-503.

§ 48-58-509. Applicability of Part
Universal Citation: TN Code § 48-58-509 (2021)

(a)

- (1) The indemnification and advancement of expenses granted pursuant to, or provided by, chapters 51-68 of this title shall not be deemed exclusive of any other rights to which a director or officer seeking indemnification or advancement of expenses may be entitled, whether contained in chapters 51-68 of this title, the charter, or the bylaws or, when authorized by such charter or bylaws, in a resolution of members, a resolution of directors, or an agreement providing for such indemnification; provided, that no indemnification may be made to or on behalf of any director or officer if a judgment or other final adjudication adverse to the director or officer establishes the director's or officer's liability:
 - (A) For any breach of the duty of loyalty to the corporation or its members;

- (B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
- (C) For a director's or officer's conflicting interest transaction under part 7 of this chapter; or
- (D) Under § 48-58-302.

(2) Nothing contained in chapters 51-68 of this title shall affect any rights to indemnification to which corporate personnel, other than directors and officers, may be entitled by contract or otherwise under law. If the charter limits indemnification or advancement for expenses, indemnification and advancement for expenses are valid only to the extent consistent with the charter.

(b) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

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

Part 6 - Limitation of Actions and Immunity

§ 48-58-601. Limitation of and Immunity From Actions for Breach of Fiduciary Duty Universal Citation: TN Code § 48-58-601 (2021)

(a) Any action alleging breach of fiduciary duties by directors or officers, including alleged violations of the standards established in § 48-58-301, §§ 48-58-701 – 48-58-704, or § 48-58-403, must be brought within one (1) year from the date of such breach or violation. In the event the alleged breach or violation is not discovered nor reasonably should have been discovered within that one-year period, the period of limitation shall be one (1) year from the date such was discovered or reasonably should have been discovered. In no event shall any such action be brought more than three (3) years after the date on which the breach or violation occurred, except where there is fraudulent concealment on the part of the defendant, in which case the action shall be commenced within one (1) year after the alleged breach or violation is, or should have been, discovered.

(b) The general assembly finds and declares that the services of nonprofit boards are critical to the efficient conduct and management of the public and charitable affairs of the citizens of this state. Members of such nonprofit boards must be permitted to operate without concern for the possibility of litigation arising from the discharge of their duties as policy makers.

(c) All directors, trustees or members of the governing bodies of nonprofit cooperatives, corporations, clubs, associations and organizations described in subsection (d), whether compensated or not, shall be immune from suit arising from the conduct of the affairs of such cooperatives, corporations, clubs, associations or organizations. Such immunity from suit shall be removed when such conduct amounts to willful, wanton or gross negligence. Notwithstanding other provisions of this subsection (c) to the contrary, all directors, trustees or members of the governing bodies of nonprofit cemetery corporations, associations and organizations referred to in subdivision (d)(6) shall be immune from personal liability only if such cemetery corporations, associations or organizations carry liability insurance coverage in an amount to be determined by the department of commerce and insurance; provided, that such requirement shall not apply in any county having a population of not less than six thousand (6,000) nor more than six thousand one hundred twenty-five (6,125), according to

the 1980 federal census or any subsequent federal census. Nothing in chapters 51-68 of this title shall be construed to grant immunity to the nonprofit cooperative, corporation, association or organization.

(d) Subsection (c) shall apply to the following:

(1) Electric membership corporations organized under former title 65, chapter 24 [repealed];

(2) Electric cooperatives organized under title 65, chapter 25;

(3) Nonprofit corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(3)), as amended;

(4) Not-for-profit civic leagues or organizations which are exempt from federal income taxation under § 501(c)(4) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)(4)), as amended;

(5) Nonprofit corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(6) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(6)), as amended;

(6) Not-for-profit cemetery corporations, associations and organizations which are exempt from federal income taxation under § 501(c)(13) of the Internal Revenue Code (26 U.S.C. § 501(c)(13)), as amended;

(7) Not-for-profit agricultural or horticultural organizations which are exempt from federal income taxation under § 501(c)(5) of the Internal Revenue Code of 1986 (26 U.S.C. § 501(c)(5)), as amended;

(8) Nonprofit corporations, associations and organizations that are exempt from federal income taxation under § 115 of the Internal Revenue Code of 1986 (26 U.S.C. § 115), as amended;

(9) Telephone cooperatives organized or, by virtue of conversion or otherwise, operating under title 65, chapter 29;

(10) Public broadcast stations, as defined in 47 U.S.C. § 397(6);

(11) Workers' compensation self-insurers pools established in compliance with § 50-6-405(c), by ten (10) or more employers of the same trade or professional association if such trade or professional association is exempt from federal taxation under § 501(c)(6) of the Internal Revenue Code (26 U.S.C., § 501(c)(6));

(12) Not-for-profit corporations or associations which are exempt from federal income taxation under Internal Revenue Code of 1954, § 501(c)(7) (26 U.S.C. § 501(c)(7)), as amended, but only if general liability insurance in a reasonable amount is carried by or on behalf of any such club; and

(13) Workers' compensation self-insurance pooling arrangements between municipal electric systems and rural electric cooperatives established in compliance with title 50, chapter 6, part 7.

(e) In order for the immunity granted by subsection (c) to apply to workers' compensation self-insurers, such insurers must notify in writing each participating employer and applicant for membership in such self-insurance pool of the immunity from liability granted by this section to the directors, trustees or members of the governing bodies of such nonprofit organization. Notification of such immunity shall be given each time an employer makes application for membership in the pool.

Part 7 - Director's or Officer's Conflicting Interest Transactions

§ 48-58-701. Part Definitions

Universal Citation: TN Code § 48-58-701 (2021)

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

(6)

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

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

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

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

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

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

(7) "Related person" means:

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

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

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

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

(E) A domestic or foreign:

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

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

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

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

(8) "Relevant time" means:

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

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

(9) "Required disclosure" means disclosure of:

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

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

§ 48-58-702. Conflicting Interest Transaction May Be Subject of Equitable Relief or Give Rise to Damages Award or Sanctions - Circumstances When Conflicting Interest Transaction May Not Be Subject of Equitable Relief or Give Rise to Damages Award or Sanctions

Universal Citation: TN Code § 48-58-702 (2021)

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

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

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

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

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

(4) Approval of the transaction is obtained from:

(A) The attorney general and reporter; or

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

§ 48-58-703. When director's or officer's action respecting conflicting interest transaction is effective -- Required disclosures -- Quorum.

Universal Citation: TN Code § 48-58-703 (2021)

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

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

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

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

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

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

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

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

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

(c)

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

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

§ 48-58-704. When members' action respecting a director's or officer's conflicting interest transaction is effective -- Disclosure of nonqualified memberships -- Quorum -- Procedure for noncompliant member votes.
Universal Citation: TN Code § 48-58-704 (2021)

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

- (1) Notice to members describing the action to be taken respecting the transaction;
- (2) Provision to the corporation of the information referred to in subsection (b); and
- (3) Communication to the members entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

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

(c) For purposes of this section:

- (1) "Beneficial member" means the person who is a beneficial owner of a membership interest held by a nominee as the record member;
- (2) "Holder" means, and "held by" refers to, memberships held by both a record member and a beneficial member;
- (3) "Qualified memberships" means all memberships entitled to be voted with respect to the transaction except for memberships that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under subsection (b) is notified, are held by:
 - (A) A director or officer who has a conflicting interest respecting the transaction; or
 - (B) A related person of the director or officer (excluding a person described in § 48-58-701(7)(F)); and
- (4) "Record member" means the person in whose name a membership interest is registered in the records of a corporation or the beneficial owner of the membership interest to the extent of the rights granted by a nominee certificate or other document on file with the corporation.

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

(e) If a member's vote does not comply with subsection (a) solely because of a director's or officer's failure to comply with subsection (b), and if the director or officer establishes that the

failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director or officer, and may give such effect, if any, to the members' vote, as the court considers appropriate in the circumstances.

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

§ 59. [Reserved]

Chapter 60 - Amendment of Charter and Bylaws

Part 1 - Amendment of Charter

§ 48-60-101. Authority to Amend
Universal Citation: TN Code § 48-60-101 (2021)

(a) A corporation may amend its charter at any time to add or change a provision that is required or permitted in the charter or to delete a provision not required in the charter. Whether a provision is required or permitted in the charter is determined as of the effective date of the amendment.

(b) Except as provided in § 48-56-202(b), a member of the corporation does not have a vested property right resulting from any provision in the charter or bylaws.

§ 48-60-102. Amendment by board of directors.
Universal Citation: TN Code § 48-60-102 (2021)

(a) Unless the charter provides otherwise, a corporation's board of directors may adopt one (1) or more amendments to the corporation's charter without member approval to:

- (1) Delete the names and addresses of the initial directors;
- (2) Delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;
- (3) Designate or change the address of the principal office of the corporation and a mailing address if the United States Postal Service does not deliver to the principal office;
- (4) Change the corporate name by substituting the word "corporation," "incorporated," "company," or the abbreviation "corp.," "inc.," "co.," for a similar word or abbreviation in the name, or by adding, deleting or changing a geographical attribution to the name;
- (5) Designate the street address and zip code of the corporation's current registered office, the county in which the office is located, and the name of its current registered agent at that office, as required by § 48-68-101(b);
- (6) Delete the initial principal office, if an annual report is on file with the secretary of state;

(7) Make any other change expressly permitted by chapters 51-68 of this title to be made by director action without member action;

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

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

(b) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors may adopt one (1) or more amendments to the corporation's charter subject to any approval required pursuant to § 48-60-301. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with § 48-58-203. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the charter and contain or be accompanied by a copy or summary of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

§ 48-60-103. Amendment by Board of Directors and Members
Universal Citation: TN Code § 48-60-103 (2021)

(a) Unless chapters 51-68 of this title, the charter, bylaws, the members (acting pursuant to subsection (b)), or the board of directors (acting pursuant to subsection (c)) require a greater vote or voting by class, an amendment to a corporation's charter to be adopted must be approved:

(1) Except as provided in § 48-60-102, by the members by two thirds ($\frac{2}{3}$) of the votes cast or a majority of the voting power, whichever is less; and

(2) In writing by any person or persons whose approval is required by a provision of the charter authorized by § 48-60-301.

(b) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the charter or board approval is required by the charter or bylaws to adopt a charter amendment, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with § 48-57-105. The notice must state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment 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 amendment.

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

§ 48-60-104. Voting on Amendments by Members of a Class
Universal Citation: TN Code § 48-60-104 (2021)

(a) The members of a class are entitled to vote as a class on a proposed amendment to the charter if the amendment would:

(1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than the amendment would affect another class;

(2) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;

(3) Increase or decrease the number of memberships authorized for that class;

(4) Increase the number of memberships authorized for another class;

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

(6) Authorize a new class of memberships; or

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

(b) If a class is to be divided into two (2) or more classes as a result of an amendment to the charter, the amendment must be approved by the members of each class that would be created by the amendment.

(c) If a class vote is required to approve an amendment to the charter, the amendment must be approved by the members of the class by two thirds ($\frac{2}{3}$) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(d) A class of members is entitled to the voting rights granted by this section although the charter and bylaws provide that the class may not vote on the proposed amendment.

§ 48-60-105. Articles of Amendment
Universal Citation: TN Code § 48-60-105 (2021)

A corporation amending its charter shall deliver to the secretary of state for filing articles of amendment setting 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 memberships, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If approval of members was not required, a statement to that effect and a statement that the amendment was duly adopted by the incorporators or board of directors;

(6) If approval by members was required, a statement that the amendment was duly adopted by the members; and

(7) A statement as to whether or not approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to § 48-60-301; and if such approval is required, a statement that the approval was obtained.

§ 48-60-106. Restated Charter
Universal Citation: TN Code § 48-60-106 (2021)

(a) A corporation's board of directors may restate its charter at any time with or without approval by members or any other person.

(b) The restatement may include one (1) or more amendments to the charter. If the restatement includes an amendment requiring approval by the members or any other person, it shall be adopted as provided in § 48-60-103.

(c) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.

(d) If the board of directors submits a restatement for member action, the corporation shall notify each member, whether or not entitled to vote, of the proposed members' meeting in accordance with § 48-57-105. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the charter.

(e) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the charter.

(f) A restatement requiring approval by the members must be approved by the same vote as a charter amendment under § 48-60-103.

(g) If the restatement includes an amendment requiring approval pursuant to § 48-60-301, the board must submit the restatement for such approval.

(h) A corporation restating its charter shall deliver to the secretary of state the restated charter, setting forth the name of the corporation and the text of the restated charter, together with a certificate setting forth:

(1) Whether the restatement contains an amendment to the charter requiring approval by the members or any person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or

(2) If the restatement contains an amendment to the charter requiring approval by the members, the information required by § 48-60-105; and

(3) If the restatement contains an amendment to the charter requiring approval by a person whose approval is required pursuant to § 48-60-301, a statement that such approval was obtained.

(i) If the restatement contains an amendment to the charter, it shall be designated in the heading as an "Amended and Restated Charter."

(j) The restated charter must contain all the requirements of a charter as set out in § 48-52-102(a) unless the corporation is exempt from any of those requirements pursuant to § 48-68-101(b).

(k) A duly adopted restated charter supersedes the original charter and all prior amendments thereto.

(l) The secretary of state may certify a restated charter as the charter currently in effect, without including the certificate information required by subsection (h).

§ 48-60-107. Amendment of Charter Pursuant to Reorganization
Universal Citation: TN Code § 48-60-107 (2021)

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

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

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

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

§ 48-60-108. Effect of amendment.
Universal Citation: TN Code § 48-60-108 (2021)

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

(b) Property held in trust by a corporation or otherwise dedicated to a charitable purpose may not be diverted from its purpose by an amendment of its charter unless the corporation obtains an appropriate order of a court of competent jurisdiction to the extent required by

and pursuant to the law of this state on cy pres or otherwise dealing with the nondiversion of charitable assets.

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

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

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

Part 2 - Amendment of Bylaws

§ 48-60-201. Amendment of Bylaws by Board of Directors Universal Citation: TN Code § 48-60-201 (2021)

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one (1) or more amendments to the corporation's bylaws, subject to any approval required pursuant to § 48-60-301. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice shall be in accordance with § 48-58-203. The notice must also state that the purpose, or one (1) of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

§ 48-60-202. Amendment of Bylaws by Board of Directors or Members Universal Citation: TN Code § 48-60-202 (2021)

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

- (1) The charter or chapters 51-68 of this title reserve this power exclusively to the members in whole or in part; or
- (2) The members in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(b) A corporation's members may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors. An amendment to the bylaws shall be approved by members by two thirds (2/3) of the votes cast or a majority of the voting power, whichever is less. An amendment to the bylaws which relates solely to the dues required for membership and which establishes or changes a specific amount for dues shall be approved by a majority of the members present and voting unless the charter or bylaws specify a higher voting percentage.

(c) An amendment or repeal of a bylaw requires the written approval of a third person or persons if the charter so provides in accordance with § 48-60-301.

§ 48-60-203. Bylaw Increasing Quorum or Voting Requirement for Members Universal Citation: TN Code § 48-60-203 (2021)

(a) If expressly authorized by the charter, the members may adopt or amend a bylaw that fixes a greater quorum or voting requirement for members (or voting groups of members) than is required by chapters 51-68 of this title. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for members 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 requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for members under subsection (a) may not be adopted, amended or repealed by the board of directors.

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

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

§ 48-60-204. Bylaw Increasing Quorum or Voting Requirement for Directors Universal Citation: TN Code § 48-60-204 (2021)

(a) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

- (1) By written approval of any person or persons whose approval is required by a charter provision authorized by § 48-60-301;
- (2) If originally adopted by the members, only by the members; and
- (3) If originally adopted by the board of directors, either by the members or by the board of directors.

(b) A bylaw adopted or amended by the members that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the members or the board of directors.

(c) Action by the board of directors under subdivision (a)(3) to adopt or amend 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.

§ 48-60-205. Class Voting by Members on Amendments

Universal Citation: TN Code § 48-60-205 (2021)

(a) The members of a class in a corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:

- (1) Affect the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer of memberships in a manner different than the amendment would affect another class;
- (2) Change the rights, privileges, preferences, restrictions or conditions of that class as to voting, dissolution, redemption or transfer by changing the rights, privileges, preferences, restrictions or conditions of another class;
- (3) Increase or decrease the number of memberships authorized for that class;
- (4) Increase the number of memberships authorized for another class;
- (5) Effect an exchange, reclassification or termination of all or part of the memberships of that class; or
- (6) Authorize a new class of memberships.

(b) If a class is to be divided into two (2) or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment.

(c) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two thirds ($\frac{2}{3}$) of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(d) A class of members is entitled to the voting rights granted by this section although the charter and bylaws provide that the class may not vote on the proposed amendment.

§ 48-60-206. Amendment to Bylaws May Not Divert Property Held in Trust for Charitable Purpose From That Purpose - Exception - Financial Benefit in Connection With Bylaws Amendment Prohibited - Exception
Universal Citation: TN Code § 48-60-206 (2021)

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

(b) Unless a corporation, after notifying the attorney general and reporter obtains an appropriate order of a court of competent jurisdiction under the law of this state on cy pres or

otherwise dealing with the nondiversion of charitable assets, an amendment of its bylaws may not affect:

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

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

Part 3 - Charter and Bylaws

§ 48-60-301. Approval by Third Persons

Universal Citation: TN Code § 48-60-301 (2021)

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

§ 48-60-302. Amendment Terminating Members or Redeeming or Cancelling Memberships

Universal Citation: TN Code § 48-60-302 (2021)

(a) Any amendment to the charter or bylaws which would terminate all members or any class of members or redeem or cancel all memberships of any class of memberships must meet the requirements of chapters 51-68 of this title and this section.

(b) Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.

(c) After the board has adopted a resolution proposing such an amendment, the notice to members proposing such amendment shall include one (1) statement of up to five hundred (500) words opposing the proposed amendment if such statement is submitted by any five (5) members or members having three percent (3%) or more of the voting power, whichever is less, not later than twenty (20) days after the board has voted to submit such amendment to the members for their approval. In public benefit corporations, the production and mailing costs shall be paid by the requesting members. In mutual benefit corporations, the production and mailing costs shall be paid by the corporation.

(d) Any such amendment shall be approved by the members by two thirds ($\frac{2}{3}$) of the voting power.

(e) Section 48-56-302 shall not apply to any amendment meeting the requirements of chapters 51-68 of this title and this section.

Chapter 61 - Mergers, Membership Exchanges, Entity Conversions, and For-Profit Conversions

§ 48-61-101. Chapter Definitions
Universal Citation: TN Code § 48-61-101 (2021)

As used in this chapter, unless the context otherwise requires:

- (1) "Converted entity" means the domestic corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic corporation;
- (2) "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign business corporation;
- (3) "Eligible interests" means interests or shares;
- (4) "Filing entity" means an unincorporated entity that is of a type that is created by filing a public organic document;
- (5) "Foreign business corporation" means a corporation for-profit incorporated under an organic law other than the laws of this state;
- (6) "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law other than the laws of this state;
- (7) "Interest" means either or both of the following rights under the organic law of an unincorporated entity:
 - (A) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or
 - (B) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs;
- (8) "Interest holder" means a person who holds of record an interest;
- (9) "Membership" means the rights of a member in a domestic or foreign nonprofit corporation and includes the rights and obligations a member has pursuant to a corporation's charter, bylaws and chapters 51-68 of this title;
- (10) "Party to a merger or membership exchange" means any domestic or foreign nonprofit corporation, or eligible entity that will:
 - (A) Merge in a plan of merger;
 - (B) Acquire memberships or eligible interests of another domestic or foreign corporation, or an eligible entity in a membership exchange; or
 - (C) Have all of its memberships or eligible interests of one (1) or more classes or series acquired in membership exchange;

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

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

§ 48-61-102. Permitted Mergers - Plan of Merger
Universal Citation: TN Code § 48-61-102 (2021)

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

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

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

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

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

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

(2) The terms and conditions of the merger;

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

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

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

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

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

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

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

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

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

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

§ 48-61-103. Plan of Membership Exchange
Universal Citation: TN Code § 48-61-103 (2021)

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

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

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

other property, or any combination of the foregoing, pursuant to a plan of membership exchange.

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

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

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

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

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

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

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

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

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

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

§ 48-61-104. Approval and Adoption of Plan of Merger or Membership Exchange
Universal Citation: TN Code § 48-61-104 (2021)

In the case of a domestic nonprofit corporation that is a party to a merger or membership exchange:

- (1) The plan of merger or membership exchange shall be adopted by the board of directors of each party to the merger or membership exchange and approved by the members, if any, of each party;
- (2) Except as provided in subdivision (7) and in § 48-61-105, after adopting the plan of merger or membership exchange, the board of directors shall submit the plan of merger or membership exchange for approval to the members if there are members entitled to vote on the plan. The board of directors must also transmit to the members a recommendation that the members approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the members the basis for that determination;
- (3) The board of directors may condition its submission of the plan of merger or membership exchange to its members on any basis;
- (4) If the plan of merger or membership exchange is required to be approved by the members, and if the approval is to be given at a meeting, the corporation shall notify each member, whether or not entitled to vote, of the members' meeting at which the plan is to be submitted for approval. The notice shall state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of merger or membership exchange and shall contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the charter or organic documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or a summary of the charter or organizational documents of the new corporation or other entity;
- (5) Unless chapters 51-68 of this title, the charter, the organic documents or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of merger or membership exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group;
- (6) Separate voting by voting groups is required:

- (A) On a plan of merger, by each class or series of memberships that would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the charter or bylaws, would entitle the class of members to vote as a class on the proposed amendment under § 48-60-104 or § 48-60-205;
- (B) On a plan of membership exchange, by each class or series of memberships included in the exchange, with each class or series constituting a separate voting group; or

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

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

- (A) The corporation will survive the merger or is the acquiring corporation in a membership exchange;
- (B) Except for amendments enumerated in § 48-60-102, its charter will not differ from the charter before the merger;
- (C) Each member of the corporation whose memberships were outstanding immediately before the effective date of the merger or exchange will hold the same number of memberships, with identical designations, preferences, limitations and relative rights, immediately after the effective date of the merger or exchange;
- (D) The voting power of the members and memberships outstanding immediately after the merger or exchanging, plus the voting power of the memberships issuable as a result of the merger or exchange (either by the conversion of memberships, rights or eligible interests issued pursuant to the merger or exchange or by the exercise of rights or contracts issued pursuant to the merger or exchange), will not exceed by more than twenty percent (20%) the voting power of the total memberships of the corporation immediately before the merger or exchange; and
- (E) The number of participating memberships immediately after the merger or exchange, plus the number of participating memberships issuable as a result of the merger or exchange (either by the conversion of memberships, rights or eligible interests issued pursuant to the merger or exchange by the exercise of rights or options issued pursuant to the merger or exchange), will not exceed by more than twenty percent (20%) the total number of participating memberships immediately before the merger or exchange; and

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

§ 48-61-105. Merger Between Parent and Subsidiary Corporations - Plan of Merger - Approval
Universal Citation: TN Code § 48-61-105 (2021)

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

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

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

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

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

(2) The terms and conditions of the merger;

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

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

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

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

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

§ 48-61-106. Abandonment of Merger or Membership Exchange - Certificate of Abandonment

Universal Citation: TN Code § 48-61-106 (2021)

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

(b) If the merger or membership exchange is abandoned after articles of merger or membership exchange have been filed with the secretary of state but before the merger or

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

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

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

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

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

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

§ 48-61-107. Articles of Merger or Membership Exchange - Contents - Filing
Universal Citation: TN Code § 48-61-107 (2021)

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

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

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

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

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

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

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

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

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

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

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

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

§ 48-61-108. Effect of Merger or Membership Exchange

Universal Citation: TN Code § 48-61-108 (2021)

(a) When a merger becomes effective:

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

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

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

(4) A proceeding pending against any corporation or eligible entity that is a party to the merger may be continued as if the merger did not occur or the name of the survivor may be substituted in the proceeding for any corporation or eligible entity whose existence ceased in the merger;

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

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

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

(b) When a membership exchange takes effect, the memberships of each corporation that are to be exchanged for memberships, other securities, interests, obligations, rights to acquire

memberships, other securities or eligible interests, cash, other property or any combination of the foregoing in the membership exchange shall be exchanged, and the former holders of such memberships shall be entitled only to the rights provided in the plan of membership exchange.

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

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

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

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

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

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

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

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

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

§ 48-61-109. Plan of Entity Conversion

Universal Citation: TN Code § 48-61-109 (2021)

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

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

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

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

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

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

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

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

§ 48-61-110. Contents of Plan of Entity Conversion

Universal Citation: TN Code § 48-61-110 (2021)

(a) A plan of entity conversion must include:

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

(2) The terms and conditions of the conversion;

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

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

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

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

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

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

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

§ 48-61-111. Approval of Entity Conversion of a Domestic Nonprofit Corporation to a Domestic or Foreign Unincorporated Entity

Universal Citation: TN Code § 48-61-111 (2021)

In the case of an entity conversion of a domestic nonprofit corporation to a domestic or foreign unincorporated entity:

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

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

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

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

(5) Unless chapters 51-67 of this title, the charter, or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group;

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

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

§ 48-61-112. Articles of Entity Conversion
Universal Citation: TN Code § 48-61-112 (2021)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If the converting entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to chapter 65 of this title, its certificate of authority or other type of foreign qualification shall be cancelled automatically on the effective date of its conversion.

§ 48-61-113. Entity Conversion of Domestic Nonprofit Corporation to Foreign Unincorporated Entity - Articles of Charter Surrender
Universal Citation: TN Code § 48-61-113 (2021)

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

- (1) The name of the corporation;
- (2) A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign unincorporated entity;
- (3) A statement that the conversion was duly approved by the members or the board of directors or otherwise in the manner required by this chapter and the charter;
- (4) The jurisdiction under the laws of which the survivor will be organized; and
- (5) If the survivor will be a nonfiling entity, the address of its executive office immediately after the conversion.

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

§ 48-61-114. Effect of Entity Conversion
Universal Citation: TN Code § 48-61-114 (2021)

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

- (1) All title to real and personal property, both tangible and intangible, of the converting entity remains in the survivor without reversion or impairment;
- (2) All obligations and liabilities of the converting entity continue as obligations and liabilities of the survivor;
- (3) An action or proceeding pending against the converting entity continues against the survivor as if the conversion had not occurred;
- (4) In the case of a survivor that is a filing entity, its charter or public organic documents and its private organic documents become effective;
- (5) In the case of a survivor that is a nonfiling entity, its private organic documents become effective;
- (6) The memberships or interests of the converting entity are reclassified into memberships, interests, other securities, obligations, rights to acquire memberships, interests, or other securities, or into cash or other property in accordance with the plan of conversion; and the members or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the applicable organic law of the converting entity if it is other than a corporation; and
- (7) The survivor is deemed to:
 - (A) Be incorporated or organized under and subject to the organic law of the converting entity for all purposes;
 - (B) Be the same corporation or unincorporated entity without interruption as the converting entity; and

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

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

- (1) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of members or interest holders who exercise appraisal rights that they may have under the applicable organic law of the converting entity if it is other than a corporation in connection with the conversion; and
- (2) Agree that it will promptly pay the amount, if any, to which such members are entitled under the applicable law of the converting entity if it is other than a corporation.

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

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

- (1) The conversion does not discharge any owner liability under the organic law of the unincorporated entity to the extent any such owner liability arose before the effective time of the articles of entity conversion;
- (2) The interest holder shall not have owner liability under the organic law of the unincorporated entity for any debt, obligation, or liability of the corporation that arises after the effective time of the articles of entity conversion;
- (3) The organic law of the unincorporated entity shall continue to apply to the collection or discharge of any owner liability preserved by subdivision (d)(1), as if the conversion had not occurred; and
- (4) The interest holder shall have whatever rights of contribution from other interest holders are provided by the organic law of the unincorporated entity with respect to any owner liability preserved by subdivision (d)(1), as if the conversion had not occurred.

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

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

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

(h) Notwithstanding any other law to the contrary, this section and § 48-61-109 shall have no effect on the application of title 67 and other state and federal tax statutes. Any tax

consequences of the conversion as referenced herein shall continue to be controlled by applicable state and federal tax statutes as they may be amended from time to time.

§ 48-61-115. Abandonment of Plan of Entity Conversion - Filing of Statement of Abandonment

Universal Citation: TN Code § 48-61-115 (2021)

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

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

§ 48-61-116. Plan of For-Profit Conversion - Contents of Plan

Universal Citation: TN Code § 48-61-116 (2021)

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

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

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

(1) The terms and conditions of the conversion;

(2) The manner and basis of:

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

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

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

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

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

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

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

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

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

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

§ 48-61-117. Approval of Conversion of a Domestic Nonprofit Corporation to a Domestic or Foreign For-Profit Corporation

Universal Citation: TN Code § 48-61-117 (2021)

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

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

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

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

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

(5) Unless chapters 51-68 of this title, the charter, or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of for-profit conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group; and

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

§ 48-61-117. Approval of Conversion of a Domestic Nonprofit Corporation to a Domestic or Foreign For-Profit Corporation
Universal Citation: TN Code § 48-61-117 (2021)

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

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

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

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

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

(5) Unless chapters 51-68 of this title, the charter, or the board of directors acting pursuant to subdivision (3) requires a greater vote or a vote by voting groups, the plan of for-profit conversion to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group; and

(6) If any provision of the charter, bylaws, or an agreement to which any of the directors or members are parties, adopted or entered into before January 1, 2015, applies to a merger of the corporation and the document does not refer to a for-profit conversion of the corporation, the provision shall be deemed to apply to a for-profit conversion of the

corporation until such time as the provision is amended on or subsequent to January 1, 2015.

§ 48-61-118. Articles of For-Profit Conversion - Contents
Universal Citation: TN Code § 48-61-118 (2021)

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

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

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

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

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

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

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

(c) The articles of for-profit conversion shall be delivered to the secretary of state for filing, together with the required filing fee, and shall take effect at the effective time provided in § 48-51-304. The attached charter shall be delivered to the secretary of state for filing and a fee therefor shall be paid in accordance with § 48-11-303.

§ 48-61-119. Conversion of Domestic Nonprofit Corporation to Foreign For-Profit Corporation - Articles of Charter Surrender
Universal Citation: TN Code § 48-61-119 (2021)

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

(1) The name of the corporation;

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

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

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

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

§ 48-61-120. Effect of For-Profit Conversion

Universal Citation: TN Code § 48-61-120 (2021)

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

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

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

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

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

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

(6) The corporation is deemed to:

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

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

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

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

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

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

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

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

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

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

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

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

§ 48-61-121. Abandonment of For-Profit Conversion - Filing of Statement of Abandonment

Universal Citation: TN Code § 48-61-121 (2021)

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

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

§ 48-61-122. Limitations on Entities with Which a Public Benefit Corporation May be a Party to a Merger, Membership Exchange, Entity Conversion or For-Profit Conversion Transaction

Universal Citation: TN Code § 48-61-122 (2021)

(a) Without the prior approval of a court of record of this state having equity jurisdiction in a proceeding of which the attorney general and reporter has been given written notice of a plan of merger or membership exchange, a plan of entity conversion, or a plan of for-profit conversion in accordance with § 48-61-123; or unless the attorney general and reporter, after receiving written notice to the attorney general in accordance with § 48-61-123, has issued a

written statement of no enforcement intent with respect to the plan, a public benefit corporation may be a party to a merger, membership exchange, entity conversion or for-profit conversion transaction described in this chapter only with:

- (1) A domestic nonprofit public benefit corporation;
- (2) A foreign nonprofit corporation which would qualify under chapters 51-68 of this title as a public benefit corporation;
- (3) A foreign or domestic corporation for profit; provided, that the public benefit corporation is the surviving corporation and continues to be a public benefit corporation after the transaction; or
- (4) A foreign or domestic corporation for profit that is the surviving corporation; provided that:
 - (A) On or prior to the effective date of the transaction, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including good will) of the public benefit corporation, or the fair market value of the public benefit corporation if it were to be operated as a business concern, are transferred or conveyed to one (1) or more persons who would have received its assets under § 48-64-106(a)(5) and (a)(6) had it dissolved;
 - (B) It shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the transaction, in accordance with such condition;
 - (C) The transaction is approved by a majority of directors of the public benefit corporation who are not and will not become shareholders in or officers, employees, agents or consultants of the for-profit corporation; and
 - (D) A copy of the plan of transaction is submitted to the attorney general and reporter not less than forty-five (45) days prior to the effective date of the transaction.

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

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

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

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

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

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

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

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

§ 48-61-123. Public benefit corporation to provide notice to attorney general and reporter of intent to consummate any merger, membership exchange, or conversions -- Time after notice for consummation of transaction.
Universal Citation: TN Code § 48-61-123 (2019)

(a) A public benefit corporation shall give the attorney general and reporter written notice that it intends to consummate any merger, membership exchange or conversions. The notice shall include a copy or summary of the plan of merger, membership exchange or conversion.

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

§ 48-61-124. Bequests, Devises and Gifts
Universal Citation: TN Code § 48-61-124 (2021)

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

§ 48-62-101. Sale of the Assets in Regular Course of Activities and Mortgage of Assets
Universal Citation: TN Code § 48-62-101 (2021)

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

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

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

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

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

§ 48-62-102. Sale of Assets Other Than in Regular Course of Activities
Universal Citation: TN Code § 48-62-102 (2021)

(a)

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will) other than in the usual and regular course of its activities, on the terms and conditions and for the consideration determined by the corporation's board, if the proposed transaction is authorized by subsection (b).

(2) The sale, lease, exchange or other disposition of all, or substantially all, of the properties (with or without good will) of one (1) or more subsidiaries of a corporation in which such corporation possesses at least eighty percent (80%) of the total combined voting power of the corporation, or of all classes of membership otherwise entitled to vote for the election of directors, otherwise than in the usual and regular course of business, shall be treated as a disposition within the meaning of this subsection (a) if the subsidiary or subsidiaries constitute all, or substantially all, of the properties of the corporation.

(b) Unless chapters 51-68 of this title, the charter, bylaws, or the board of directors or members (acting pursuant to subsection (d)) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(1) By the board;

(2) By the members by two-thirds ($\frac{2}{3}$) 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 the charter authorized by § 48-60-301 for an amendment to the charter or bylaws.

(c) If the corporation does not have members, the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved and be approved in writing by any person or persons whose approval is required by the charter. The notice required by § 48-58-203(c) of any directors' meeting at which such approval is to be obtained must state that the purpose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

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

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the notice required by § 48-57-105 must state that the purpose, or one (1) of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If approval by the members by written consent or written ballot is required, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) A public benefit corporation must give written notice to the attorney general and reporter at least forty-five (45) days before it sells, leases, exchanges or otherwise disposes of all, or substantially all, of its property in a transaction not in the usual and regular course of its activities unless the attorney general and reporter has given the corporation a written waiver of this subsection (g).

(h) After a sale, lease, exchange or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights), without further action by the members or other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

§ 48-62-103. Property Held in Trust or Otherwise Dedicated to Charitable Purpose Not to be Diverted From Its Purpose - Financial Benefit in Connection with Disposition Prohibited - Notice Required of Transactions Not in Usual and Regular Course of Activities
Universal Citation: TN Code § 48-62-103 (2021)

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

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

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

Chapter 63 - Distributions

§ 48-63-101. Prohibited Distributions

Universal Citation: TN Code § 48-63-101 (2021)

Except as authorized by § 48-63-102, a corporation shall not make any distributions.

§ 48-63-102. Purchase of Memberships - Authorized Distributions

Universal Citation: TN Code § 48-63-102 (2021)

(a) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

- (1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (2) The corporation's total assets would at least equal the sum of its total liabilities.

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

(c) A public benefit corporation and a mutual benefit corporation may make distributions upon dissolution in conformity with chapter 64 of this title.

Chapter 64 - Dissolution

Part 1 - Voluntary Dissolution

§ 48-64-101. Dissolution by Incorporators or Directors

Universal Citation: TN Code § 48-64-101 (2021)

(a) A majority of the incorporators or directors of a corporation that has no members may, subject to any approval required by the charter or bylaws, dissolve the corporation by delivering to the secretary of state for filing articles of dissolution and termination that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3) A statement that the corporation has no members; and
- (4) A statement that a majority of the incorporators or directors authorized the dissolution and the date dissolution was thus authorized.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with § 48-58-203(c). The notice must also state that the purpose, or one (1) 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.

(c) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

(d) If the secretary of state finds that the articles of dissolution and termination of corporate existence comply with the requirements of subsection (a), and if the articles are accompanied by a tax clearance for termination or withdrawal relative to such corporation, then the secretary of state shall file the articles of dissolution and termination of corporate existence. Upon such filing, the existence of the corporation shall cease. Unless a claim is barred pursuant to § 48-64-107 or § 48-64-108, the termination of corporate existence shall not take away or impair any remedy to or against the corporation, its directors, officers or members, for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have the power to take such corporate or other action as may be appropriate to protect such remedy, right, or claim.

§ 48-64-102. Dissolution by Board of Directors, Members and Third Persons

Universal Citation: TN Code § 48-64-102 (2021)

(a) A corporation may be voluntarily dissolved by the written consent of its members in accordance with § 48-57-104 or at a special meeting called in accordance with § 48-57-102.

(b) A corporation's board of directors may propose dissolution for submission to the members. Notice of any meeting of the directors to approve such action shall be in accordance with § 48-64-101(b).

(c) For a proposal to dissolve to be adopted:

- (1) The board of directors shall recommend dissolution to the members unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the members;
- (2) The members entitled to vote shall approve the proposal to dissolve as provided in subsection (f); and
- (3) Any person or persons whose approval is required by a charter provision authorized by § 48-60-301 for a charter or bylaw amendment shall approve the dissolution in writing.

(d) The board of directors or members may condition its submission of the proposal for dissolution on any basis.

(e) The corporation shall notify its members, whether or not entitled to vote, of the proposed members' meeting in accordance with § 48-57-105. The notice must also state that the purpose, or one (1) 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.

(f) Unless the charter, bylaws, the board of directors, or members (acting pursuant to subsection (c)) require a greater vote or voting by class, the proposal to dissolve to be adopted shall be approved by two thirds ($\frac{2}{3}$) of the votes cast by members or a majority of the voting power, whichever is less.

(g) 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.

(h) 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.

§ 48-64-103. Notices to the Attorney General and Reporter
Universal Citation: TN Code § 48-64-103 (2021)

(a) A public benefit corporation shall give the attorney general and reporter written notice that it intends to dissolve at or before the time it delivers the articles of dissolution to the secretary of state. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a public benefit corporation as part of the dissolution process until forty-five (45) days after it has given the written notice required by subsection (a) to the attorney general and reporter or until the attorney general and reporter has consented in writing to, or indicated in writing that the attorney general and reporter will take no action in respect to, the transfer or conveyance, whichever is earlier.

(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the attorney general and reporter 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.

§ 48-64-104. Articles of Dissolution
Universal Citation: TN Code § 48-64-104 (2021)

(a) 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:

- (1) The name of the corporation;
- (2) The date dissolution was authorized;
- (3) A statement that the resolution was duly adopted by the members;
- (4) If approval by members was not required, a statement that the resolution was duly adopted by a majority of the board of directors;
- (5) A copy of the resolution or the written consent authorizing the dissolution;
- (6) If approval of dissolution by some third person or persons other than the members, directors, or incorporators was required, a statement that such approval was obtained; and
- (7) If the corporation is a public benefit corporation, a statement that the notice to the attorney general and reporter required by § 48-64-103(a) has been given.

(b) Unless a delayed effective date is specified in the articles of dissolution, a corporation is dissolved when the articles of dissolution are filed.

§ 48-64-105. Revocation of Dissolution
Universal Citation: TN Code § 48-64-105 (2021)

(a) A corporation may revoke its dissolution at any time prior to filing the articles of termination of corporate existence with the secretary of state.

(b) Revocation of dissolution shall be authorized in any manner that dissolution may be authorized under § 48-64-102, unless the authorization for dissolution permitted revocation by action by the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) 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 that set forth:

- (1) The name of the corporation;
- (2) The effective date of the dissolution that was revoked;
- (3) The date that the revocation of dissolution was authorized;
- (4) If the corporation's board of directors (or its incorporators) revoked the dissolution, a statement to that effect;
- (5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
- (6) If member or third person action was required to revoke the dissolution, the information required by § 48-64-104(a)(3), (5) and (6).

(d) Revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(e) 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 activities as if dissolution had never occurred.

§ 48-64-106. Effect of Dissolution
Universal Citation: TN Code § 48-64-106 (2021)

(a) A dissolved corporation continues its corporate existence, but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:

- (1) Collecting its assets;
- (2) Conveying and disposing of its properties that will not be distributed in kind;

- (3) Discharging or making provision for discharging its liabilities;
- (4) Returning, transferring or conveying assets held by the corporation upon a condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
- (5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its charter or bylaws;
- (6) If the corporation is a public benefit corporation, and no provision has been made in its charter or bylaws for distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets to:
 - (A) One (1) or more persons recognized as exempt under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));
 - (B) If the dissolved corporation is not recognized as exempt under Section 501(c)(3) of the Internal Revenue Code, one (1) or more public benefit corporations; or
 - (C) The state of Tennessee or any county, municipality, or political subdivision thereof;
- (7) If the corporation is a mutual benefit corporation and no provision has been made in its charter or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, those persons whom the corporation holds itself out as benefitting or serving; and
- (8) Doing every other act necessary to wind up and liquidate its assets and affairs.

(b) Dissolution of a corporation does not:

- (1) Transfer title to the corporation's property;
- (2) Subject its directors or officers to standards of conduct different from those prescribed in chapter 58 of this title;
- (3) Change quorum or voting requirements for its board of directors or members; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;
- (4) Prevent commencement of a proceeding by or against the corporation in its corporate name;
- (5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- (6) Terminate the authority of the registered agent of the corporation.

§ 48-64-107. Known Claims Against Dissolved Corporation
Universal Citation: TN Code § 48-64-107 (2021)

(a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

- (1) Describe information that must be included in a claim;
- (2) State whether the claim is admitted, or not admitted, and if admitted:
 - (A) The amount that is admitted, which may be as of a given date; and
 - (B) Any interest obligation if fixed by an instrument of indebtedness;
- (3) Provide a mailing address where a claim may be sent;
- (4) State the deadline, which may not be fewer than four (4) months from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (5) State that, except to the extent that any claim is admitted, the claim will be barred if written confirmation of the claim is not received by the deadline.

(c) A claim against the dissolved corporation is barred to the extent that it is not admitted:

- (1) If the dissolved corporation delivered written notice to the claimant in accordance with subsection (b) and the dissolved corporation does not receive a written notice of the claim by the deadline set out in subdivision (b)(4); or
- (2) If the dissolved corporation delivered written notice to the claimant that the claimant's claim is rejected, in whole or in part, and the claimant does not commence a proceeding to enforce the claim within three (3) months from the effective date of the rejection notice.

(d) 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.

§ 48-64-108. Unknown Claims Against Dissolved Corporation
Universal Citation: TN Code § 48-64-108 (2021)

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

- (1) Be published one (1) time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located;
- (2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two (2) years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), 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:

- (1) A claimant who did not receive written notice under § 48-64-107;
 - (2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and
 - (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim may be enforced under this section:
- (1) Against the dissolved corporation, to the extent of its undistributed assets; or
 - (2) If the assets have been distributed in liquidation, against any person other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to the distributee in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

§ 48-64-109. Articles of Termination of Corporate Existence
Universal Citation: TN Code § 48-64-109 (2021)

(a) When a corporation has distributed all its assets to its creditors and other parties authorized by chapters 51-68 of this title and voluntary dissolution proceedings have not been revoked, it shall deliver to the secretary of state for filing articles of termination of corporate existence. The articles shall set forth:

- (1) The name of the corporation;
- (2) That all the assets of the corporation have been distributed to its creditors and other parties authorized by chapters 51-68 of this title; and
- (3) That the dissolution of the corporation has not been revoked.

(b) If the secretary of state finds that the articles of termination of corporate existence comply with the requirements of subsection (a), and if the articles are accompanied by a tax clearance for termination or withdrawal relative to such corporation, then the secretary of state shall file the articles of dissolution and termination of corporate existence. Upon such filing, the existence of the corporation shall cease. Unless a claim is barred pursuant to § 48-64-107 or § 48-64-108, the termination of corporate existence shall not take away or impair any remedy to or against the corporation, its directors, officers, or members, for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers have the power to take such corporate or other action as may be appropriate to protect such remedy, right, or claim.

§ 48-64-110. Directors to Cause Dissolved Corporation to Discharge or Make Reasonable Provision for Payment of Claims and Distributions of Assets Thereafter - Liability for Breach
Universal Citation: TN Code § 48-64-110 (2021)

- (a) Directors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets after payment or provision for claims.
- (b) Directors of a dissolved corporation that has disposed of claims under § 48-64-107 or § 48-64-108 shall not be liable for breach of § 48-64-110(a) with respect to claims against the dissolved corporation that are barred or satisfied under § 48-64-107 or § 48-64-108.

Part 2 - Administrative Dissolution
§ 48-64-201. Grounds for Administrative Dissolution
Universal Citation: TN Code § 48-64-201 (2021)

The secretary of state may commence a proceeding under § 48-64-202 to administratively dissolve a corporation if the:

- (1) Corporation does not deliver its properly completed annual report to the secretary of state within two (2) months after it is due;
- (2) Corporation is without a registered agent or registered office in this state for two (2) months or more;
- (3) Name of a corporation contained in a document filed after the enactment of chapters 51-68 of this title fails to comply with § 48-54-101;
- (4) Corporation does not notify the secretary of state within two (2) months that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;
- (5) Corporation's period of duration, if any, stated in its charter expires; or
- (6) Corporation submits to the secretary of state's office a check, bank draft, money order or other such instrument, for payment of any fee and it is dishonored upon presentation for payment.

§ 48-64-202. Procedure for and Effect of Administrative Dissolution
Universal Citation: TN Code § 48-64-202 (2021)

- (a) If the secretary of state determines that one (1) or more grounds exist under § 48-64-201 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the secretary of state's determination under §§ 48-55-104 and 48-55-105, except that such determination may be sent by first class mail, and in the case of a public benefit corporation, shall notify the attorney general and reporter in writing.
- (b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the notice is perfected under §§ 48-55-104 and 48-55-105, the secretary of state shall administratively dissolve the corporation

by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under §§ 48-55-104 and 48-55-105, except that the certificate may be sent by first class mail.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except that necessary to wind up and liquidate its assets and affairs under § 48-64-106 and notify claimants under §§ 48-64-107 and 48-64-108.

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

§ 48-64-203. Reinstatement Following Administrative Dissolution
Universal Citation: TN Code § 48-64-203 (2021)

(a) A corporation administratively dissolved under § 48-64-202 may apply to the secretary of state for reinstatement. The application must:

- (1) Contain a confirmation of good standing relative to such foreign corporation;
- (2) Recite the name of the corporation at its date of dissolution;
- (3) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
- (4) State a corporate name that satisfies the requirements of § 48-54-101.

(b)

(1) If the secretary of state determines that the application contains the confirmation of good standing and information required by subsection (a), and that such information is correct, then the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under §§ 48-55-104 and 48-55-105.

(2) If the corporate name in subdivision (a)(4) is different than the corporate name in subdivision (a)(2), the application for reinstatement shall constitute an amendment to the charter insofar as it pertains to the corporate name.

(c) When the reinstatement hereunder or under § 48-64-204 is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes carrying on its activities as if the administrative dissolution had never occurred.

§ 48-64-204. Appeal from Denial of Reinstatement
Universal Citation: TN Code § 48-64-204 (2021)

(a) If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under §§ 48-55-104 and 48-55-105 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the chancery court of Davidson County within thirty (30) days after service of the notice of denial is perfected. The corporation

appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

(c) The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

§ 48-64-205. Articles of Termination Following Administrative Dissolution or Revocation
Universal Citation: TN Code § 48-64-205 (2021)

(a) When a corporation, which has been administratively dissolved or has had its charter revoked, wishes to terminate its corporate existence, it may do so without first being reinstated by delivering to the secretary of state for filing articles of termination following administrative dissolution or revocation setting forth:

- (1) The name of the corporation;
- (2) The date that termination of corporate existence was authorized;
- (3) A statement that the resolution authorizing termination was duly adopted by the members or that approval by the members was not required, and that the resolution authorizing termination was adopted by a majority of the board of directors;
- (4) A copy of the resolution or the written consent authorizing the termination;
- (5) If approval of dissolution by some third person or persons other than the members, directors, or incorporators was required, a statement that such approval was obtained;
- (6) If the corporation is a public benefit corporation, a statement that notice to the attorney general and reporter required by § 48-64-103(a) has been given; and
- (7) A statement that all the assets of the corporation have been distributed to its creditors and other parties authorized by chapters 51-68 of this title.

(b) If the secretary of state finds that the articles of termination following administrative dissolution or revocation comply with the requirements of subsection (a), and if the articles are accompanied by a tax clearance for termination or withdrawal, then the secretary of state shall file the articles of termination following administrative dissolution or revocation. Upon such filing, the existence of the corporation shall cease. Unless a claim is barred pursuant to § 48-64-107 or § 48-64-108, the termination of corporate existence shall not take away or impair any remedy to or against the corporation, its directors, officers or members, for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers have the power to take such corporate or other action as may be appropriate to protect such remedy, right, or claim.

§ 48-64-206. Reinstatement Within Certain Amount of Time - it Amendment of Charter - Application for Reinstatement

Universal Citation: TN Code § 48-64-206 (2021)

A nonprofit corporation that has been administratively dissolved by the expiration of its period of duration may reinstate within one (1) year of the expiration of the period of duration by:

- (1) Amending its charter to extend its period of duration or set the period of duration to perpetual; and
- (2) Filing an application for reinstatement following administrative dissolution pursuant to § 48-64-203.

Part 3 - Judicial Dissolution

§ 48-64-301. Grounds for Judicial Dissolution

Universal Citation: TN Code § 48-64-301 (2021)

(a) Any court of record with proper venue in accordance with § 48-64-302(a) may dissolve a corporation:

- (1) In a proceeding by the attorney general and reporter if it is established that the corporation:
 - (A) Obtained its charter through fraud;
 - (B) Has exceeded or abused the authority conferred upon it by law;
 - (C) Has violated any provision of law resulting in the forfeiture of its charter;
 - (D) Has carried on, conducted, or transacted its business or affairs in a persistently fraudulent or illegal manner;
 - (E) Is a public benefit corporation and the corporate assets are being misapplied or wasted; or
 - (F) Is a public benefit corporation and is no longer able to carry out its purposes; provided, that the enumeration of these grounds for dissolution shall not exclude actions or special proceedings by the attorney general and reporter or other state officials for the dissolution of a corporation for other causes as provided in this chapter or in any other statute of this state;
- (2) In a proceeding by fifty (50) members or members holding five percent (5%) of the voting power, whichever is less, or any person specified in this chapter, if it is established that:
 - (A) The directors are deadlocked in the management of the corporate affairs, the members are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be generally conducted because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(C) The members 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 or would have expired upon the election of their successors;

(D) The corporate assets are being misapplied or wasted; or

(E) The corporation is a public benefit corporation and is no longer able to carry out its purposes;

(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; and

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

(b) With respect to actions based on subdivision (a)(2), (a)(3) or (a)(4), prior to dissolving a corporation, the court shall consider whether:

- (1) There are reasonable alternatives to dissolution;
- (2) Dissolution is in the public interest, if the corporation is a public benefit corporation; and
- (3) Dissolution is the best way of protecting the interests of members, if the corporation is a mutual benefit corporation.

§ 48-64-302. Procedure for Judicial Dissolution

Universal Citation: TN Code § 48-64-302 (2021)

(a) Venue for a proceeding by the attorney general and reporter to dissolve a corporation lies in Davidson County. Venue for a proceeding brought by any other party named in § 48-64-301 lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(b) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) 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.

(d) A person other than the attorney general and reporter who brings an involuntary dissolution proceeding for a public benefit corporation shall forthwith give written notice of the proceeding to the attorney general and reporter who may intervene.

§ 48-64-303. Receivership or Custodianship
Universal Citation: TN Code § 48-64-303 (2021)

(a) A court of record having equity jurisdiction 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 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.

(b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in this state), whether a nonprofit corporation or a corporation for-profit, 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.

(c) 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:

(1) The receiver may:

(A) 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

(B) Sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) 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 members, and creditors.

(e) 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 the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

§ 48-64-304. Decree of Dissolution
Universal Citation: TN Code § 48-64-304 (2021)

(a) If after a hearing the court determines that one (1) or more grounds for judicial dissolution described in § 48-64-301 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.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's assets and affairs in accordance with § 48-64-105 and the notification of claimants in accordance with §§ 48-64-106 and 48-64-107.

Chapter 65 - Foreign Corporations

Part 1 - Certificate of Authority

§ 48-65-101. Authority to Transact Business Required
Universal Citation: TN Code § 48-64-304 (2021)

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

(1) Maintaining, defending, or settling any proceeding, claim, or dispute;

(2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or appointing and maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, deeds of trust, mortgages, and security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages, deeds of trust, and security interests in property securing the debts;

(9) Owning, without more, real or personal property; provided, that for a reasonable time the management and rental of real property acquired in connection with enforcing a mortgage or deed of trust shall also not be considered transacting business if the owner is attempting to liquidate the owner's investment and if no office or other agency therefor, other than an independent agency, is maintained in this state;

(10) Conducting an isolated transaction that is completed within one (1) month that is not one in the course of repeated transactions of a like nature; and

(11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive, and is applicable solely to determine whether a foreign corporation must procure a certificate of authority and for no other purpose.

§ 48-65-102. Consequences of Transacting Business Without Authority

Universal Citation: TN Code § 48-65-102 (2021)

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation which transacts business or conducts affairs in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business or conducted affairs in this state without a certificate of authority, in an amount equal to treble the amount of all fees, penalties and taxes, plus interest, which would have been imposed by the laws of this state upon such corporation had it duly applied for and received a certificate of authority as required by this chapter, and thereafter had failed to file all reports required.

(e) An application for a certificate of authority by a foreign corporation which has transacted business in this state without a certificate of authority shall not be filed by the secretary until all amounts due under subsection (d) shall have been paid.

(f) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

§ 48-65-103. Application for Certificate of Authority

Universal Citation: TN Code § 48-65-103 (2021)

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

- (1) The name of the foreign corporation, and, if different, the name under which the certificate of authority is to be obtained pursuant to § 48-65-106;
- (2) The name of the state or the country under whose law it is incorporated;
- (3) Its date of incorporation and period of duration, if other than perpetual;

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

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

(6) The names and business addresses, including the zip code of its current directors and officers;

(7) Whether the foreign corporation has members;

(8) A statement that the corporation is not for-profit; and

(9) Whether the corporation, if it had been incorporated in this state, would be a public benefit or mutual benefit corporation.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate shall not bear a date of more than two (2) months prior to the date the application is filed in this state.

(c) If the secretary of state determines upon application that a foreign corporation has been transacting business in this state without a certificate of authority for a period of one (1) year or more, then the application shall not be issued by the secretary of state until the foreign corporation submits a confirmation of good standing relative to such foreign corporation.

§ 48-65-104. Amended Certificate of Authority

Universal Citation: TN Code § 48-65-104 (2021)

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

- (1) Its corporate name;
- (2) The period of its duration; or
- (3) The state or country of its incorporation.

(b) The requirements of § 48-65-103 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

§ 48-65-105. Effect of Certificate of Authority
Universal Citation: TN Code § 48-65-105 (2021)

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in chapters 51-68 of this title.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by chapters

51-68 of this title, is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) Chapters 51-68 of this title do not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

(d) This state does hereby release its right of escheat by virtue of the alien origin of such foreign corporation, or the alienage or nonresidence of the members of such foreign corporation, or any of them, in accordance with the Uniform Unclaimed Property Act, compiled in title 66, chapter 29, part 1.

§ 48-65-106. Corporate Name of Foreign Corporation

Universal Citation: TN Code § 48-65-106 (2021)

(a) A foreign corporation may obtain or maintain a certificate of authority to transact business in this state under any of the following names:

- (1) The corporate name of the foreign corporation; provided, that such name complies with § 48-54-101; or
- (2) An assumed corporate name which meets the requirements of § 48-54-101.

(b) Except as authorized by subsections (c) and (d), the name of a foreign corporation that is authorized to transact business in this state or is applying for a certificate of authority to transact business in this state, shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

(c) A foreign corporation, or person acting on behalf of a corporation not yet authorized to transact business in this state, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for, if:

- (1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;
- (2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or
- (3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

(d) A foreign corporation may use in this state the name (including the assumed corporate name) of another domestic or foreign nonprofit or business corporation that is used in this

state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has:

- (1) Merged with the other corporation;
- (2) Been formed by reorganization of the other corporation; or
- (3) Acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of § 48-54-101, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of § 48-54-101 and obtains an amended certificate of authority under § 48-65-104.

§ 48-65-107. Registered Office and Registered Agent of Foreign Corporation

Universal Citation: TN Code § 48-65-107 (2021)

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

- (1) A registered office that may be the same as its place of business; and
- (2) A registered agent, who may be:
 - (A) An individual who resides in this state and whose office is identical with the registered office;
 - (B) A domestic for-profit or nonprofit corporation whose office is identical with the registered office; or
 - (C) A foreign for-profit or nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.

§ 48-65-108. Change of Registered Office or Registered Agent of Foreign Corporation

Universal Citation: TN Code § 48-65-108 (2021)

(a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- (1) Its name;
- (2) If the current registered office is to be changed, the street address, including the zip code, of its new registered office and the county in which the office is located;
- (3) If the current registered agent is to be changed, the name of its new registered agent; and
- (4) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of such registered agent's business office, such registered agent may change the street address of the registered office of any foreign corporation for which such registered agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

(c) Each foreign corporation authorized to transact business in this state shall comply with § 48-55-101(b).

§ 48-65-109. Resignation of Registered Agent of Foreign Corporation
Universal Citation: TN Code § 48-65-109 (2021)

(a) A registered agent may resign the agency appointment by signing and filing with the secretary of state an original statement of resignation accompanied by the agent's certification that the agent has mailed a copy thereof to the principal office of the corporation by certified mail. The statement may include a statement that the registered office is also discontinued.

(b) The agency is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

§ 48-65-110. Service on Foreign Corporation
Universal Citation: TN Code § 48-65-110 (2021)

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) Service on a foreign corporation when the secretary of state is its agent for service of process may be obtained pursuant to § 48-55-105.

(c) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Part 2 - Withdrawal

§ 48-65-201. Withdrawal of foreign corporation.
Universal Citation: TN Code § 48-65-201 (2021)

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application shall set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it either continues its registered agent in this state or revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subdivision (b)(3); and

(5) A commitment to notify the secretary of state in the future of any change in the mailing address.

(c) The foreign corporation shall provide any additional information in its application requested by the commissioner of revenue or the secretary of state in order to determine and assess any unpaid taxes and fees payable under the laws of this state.

(d) The secretary of state shall not file an application for a certificate of withdrawal unless it is accompanied by a tax clearance for termination or withdrawal relative to such foreign corporation.

(e) After the withdrawal of the corporation is effective, service of process on the secretary of state or the continued registered agent under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b).

Part 3 - Revocation of Certificate of Authority

§ 48-65-301. Grounds for revocation.
Universal Citation: TN Code § 48-65-301 (2021)

The secretary of state may commence a proceeding under § 48-65-302 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its properly completed annual report to the secretary of state within two (2) months after it is due;

(2) The foreign corporation is without a registered agent or registered office in this state for two (2) months or more;

(3) The foreign corporation does not inform the secretary of state under § 48-65-108 or § 48-65-109 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within two (2) months of the change, resignation or discontinuance;

(4) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing;

(5) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under

whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger;

(6) The foreign corporation is exceeding the authority conferred upon it by this chapter;

(7) The name of a foreign corporation contained in a document filed after January 1, 1988, fails to comply with provisions of § 48-65-106; or

(8) The foreign corporation submits to the secretary of state's office a check, bank draft, money order or other such instrument, for payment of any fee and it is dishonored upon presentation for payment.

§ 48-65-302. Procedures for and Effect of Revocation
Universal Citation: TN Code § 48-65-302 (2021)

(a) If the secretary of state determines that one (1) or more grounds exist under § 48-65-301 for revocation of a certificate of authority, the secretary of state shall serve the foreign corporation with written notice of the secretary of state's determination under § 48-65-110, except that such determination may be sent by first class mail. Notice need not be sent if the grounds for revocation are pursuant to § 48-65-301(5) and a certificate of revocation may be sent without the two-month waiting period required by subsection (b).

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within two (2) months after service of the communication is perfected under § 48-65-110, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under § 48-65-110, except that the certificate may be sent by first class mail.

(c) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(d) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state as the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection (d) is service on the foreign corporation. Upon receipt of process, the secretary of state shall comply with § 48-55-105.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

§ 48-65-303. Reinstatement Following Administrative Revocation
Universal Citation: TN Code § 48-65-303 (2021)

(a) A foreign corporation whose certificate of authority is administratively revoked under § 48-65-302 may apply to the secretary of state for reinstatement. The application must:

(1) Contain a confirmation of good standing relative to such foreign corporation;

(2) Recite the name of the corporation at its date of revocation;

(3) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(4) State a corporate name that satisfies the requirements of § 48-54-101.

(b)

(1) If the secretary of state determines that the application contains the confirmation of good standing and information required by subsection (a), and that such information is correct, then the secretary of state shall reinstate the certificate of authority, prepare a certificate that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under § 48-55-104.

(2) If the corporate name in subdivision (a)(4) is different than the corporate name in subdivision (a)(2), the application for reinstatement shall constitute an amendment to its certificate of authority insofar as it pertains to the corporate name.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the corporation resumes carrying on its business as if the administrative revocation had never occurred.

§ 48-65-304. Appeal from Denial of Reinstatement
Universal Citation: TN Code § 48-65-304 (2021)

(a) If the secretary of state denies a foreign corporation's application for reinstatement following administrative revocation, the secretary of state shall serve the corporation under §§ 48-55-104 and 48-55-105 with a written communication that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the chancery court of Davidson County within one (1) month after service of the communication of denial is perfected. The corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the secretary of state's communication of denial.

(c) The court may summarily order the secretary of state to reinstate the revoked corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

§ 48-65-305. Certificate of Withdrawal Following Administrative Revocation
Universal Citation: TN Code § 48-65-305 (2021)

(a) When a foreign corporation, which has had its certificate of authority revoked, wishes to withdraw from the state, it may do so without first being reinstated by delivering to the secretary of state for filing an application for a certificate of withdrawal following administrative revocation of the certificate of authority. The application shall set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it either continues its registered agent in this state or revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subdivision (a)(3); and

(5) A commitment to notify the secretary of state in the future of any change in its mailing address.

(b) The foreign corporation shall provide any additional information in its application requested by the commissioner of revenue or the secretary of state in order to determine and assess any unpaid taxes and fees payable under the laws of this state.

(c) The secretary of state shall not file an application for a certificate of withdrawal following administrative revocation unless it is accompanied by a tax clearance for termination or withdrawal relative to such foreign corporation.

(d) After the withdrawal of the corporation is effective, service of process on the secretary of state or the continued registered agent under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (a).

Chapter 66 - Records and Reports

Part 1 - Records

§ 48-66-101. Corporate Records

Universal Citation: TN Code § 48-66-101 (2021)

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors in place of the board of directors as authorized by § 48-58-206(d).

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class showing the number of votes each member is entitled to vote.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

- (1) Its charter or restated charter and all amendments to it currently in effect;
- (2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;

(4) The minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(5) All written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years under § 48-66-201;

(6) A list of the names and business or home addresses of its current directors and officers; and

(7) Its most recent annual report delivered to the secretary of state under § 48-66-203.

§ 48-66-102. Inspection of Records by Members

Universal Citation: TN Code § 48-66-102 (2021)

(a) Subject to § 48-66-103(c), a member is entitled to inspect and copy, during regular business hours and at a reasonable location specified by the corporation, any of the records of the corporation described in § 48-66-101(e) if the member gives the corporation a written demand at least five (5) business days before the date on which the member wishes to inspect and copy.

(b) A member is entitled to inspect and copy, during regular business hours and at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five (5) business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under § 48-66-101(a), to the extent not subject to inspection under subsection (a);

(2) Accounting records of the corporation; and

(3) Subject to § 48-66-105, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with the purpose for which the demand is made.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's charter or bylaws.

(e) This section does not affect:

(1) The right of a member to inspect records under § 48-57-201 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of chapters 51-68 of this title, to compel the production of corporate records for examination.

§ 48-66-102. Inspection of Records by Members
Universal Citation: TN Code § 48-66-102 (2021)

(a) Subject to § 48-66-103(c), a member is entitled to inspect and copy, during regular business hours and at a reasonable location specified by the corporation, any of the records of the corporation described in § 48-66-101(e) if the member gives the corporation a written demand at least five (5) business days before the date on which the member wishes to inspect and copy.

(b) A member is entitled to inspect and copy, during regular business hours and at a reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) and gives the corporation written notice at least five (5) business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under § 48-66-101(a), to the extent not subject to inspection under subsection (a);

(2) Accounting records of the corporation; and
(3) Subject to § 48-66-105, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) only if:

(1) The member's demand is made in good faith and for a proper purpose;

(2) The member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(3) The records are directly connected with the purpose for which the demand is made.

(d) The right of inspection granted by this section may not be abolished or limited by a corporation's charter or bylaws.

(e) This section does not affect:

(1) The right of a member to inspect records under § 48-57-201 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of chapters 51-68 of this title, to compel the production of corporate records for examination.

§ 48-66-103. Scope of Inspection Rights
Universal Citation: TN Code § 48-66-103 (2021)

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under § 48-66-102 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

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

(d) The corporation may comply with a member's demand to inspect the record of members under § 48-66-102(b)(3) by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

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

§ 48-66-104. Court-Ordered Inspection
Universal Citation: TN Code § 48-66-104 (2021)

(a) If a corporation does not allow a member who complies with § 48-66-102(a) to inspect and copy any records required by that subsection to be available for inspection, a court of record having equity jurisdiction in the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with § 48-66-102(b) and (c) may apply to a court of record having equity jurisdiction in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection (b) on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member'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 member to inspect the records demanded.

(d) 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 member.

§ 48-66-105. Limitations on Use of Membership List
Universal Citation: TN Code § 48-66-105 (2021)

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

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

(2) Used for any commercial purpose; or

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

§ 48-66-106. Notice Excused as to Members Whose Prior Notices Were Returned as Undeliverable - Reinstatement of Notice Requirement
Universal Citation: TN Code § 48-66-106 (2021)

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

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

§ 48-66-107. Prohibited uses of membership lists -- Mutual benefit corporation's election to proceed under § 48-57-201.
Universal Citation: TN Code § 48-66-107 (2021)

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

- (1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) Used for any commercial purpose; or
- (3) Given or sold to or purchased by any person.

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

§ 48-66-108. Inspection Rights of Director of Corporation
Universal Citation: TN Code § 48-66-108 (2021)

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

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

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

Part 2 - Reports

§ 48-66-201. Financial Statements for Members
Universal Citation: TN Code § 48-66-201 (2021)

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

(b) If annual financial statements are reported upon by a public accountant, the public accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or the person responsible for the corporation's financial accounting records:

- (1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
- (2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

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

§ 48-66-202. Report of Indemnification to Members
Universal Citation: TN Code § 48-66-202 (2021)

If a corporation indemnifies or advances expenses to a director under § 48-58-502, § 48-58-503, § 48-58-504 or § 48-58-505 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 members with or before the notice of the next meeting of members.

§ 48-66-203. Annual Report for Secretary of State
Universal Citation: TN Code § 48-66-203 (2021)

(a) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state an annual report that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The street address, including the zip code, of its registered office, the county in which the office is located, and the name of its registered agent at that office in this state;

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

(4) The names and business addresses, including the zip code, of its directors and principal officers; provided, that corporations which are exempt from the payment of income tax under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)) and are currently operating shall not be required to comply with this subdivision (a)(4);

(5) If a domestic corporation, a statement that the corporation is a public benefit corporation or a mutual benefit corporation;

(6) If a foreign corporation, a statement whether the corporation, if it had been incorporated in this state, would be a public benefit or mutual benefit corporation;

(7) If a domestic religious corporation, a statement to that effect; and

(8) The federal employer identification number (FEIN) of the corporation, or its corporation control number as assigned by the secretary of state.

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

(c) Every corporation shall file the annual report with the secretary of state on or before the first day of the fourth month following the close of the corporation's fiscal year, if a domestic corporation or a foreign corporation.

(d) The secretary of state shall make a report to the commissioner of revenue, by the fifteenth day of each month, of any and all new corporations that have been licensed or authorized to operate in the state during the preceding month, giving the name and address of each new corporation, foreign or domestic.

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

Chapter 67 - Religious Corporations

§ 48-67-101. Chapters 51-68 applicable to religious corporations. Universal Citation: TN Code § 48-67-101 (2021)

Except as provided in § 48-67-102, chapters 51-68 of this title apply to religious corporations.

§ 48-67-102. Provisions Not Applicable to Religious Corporations Universal Citation: TN Code § 48-67-102 (2021)

(a) The following provisions of chapters 51-68 of this title shall not apply to religious corporations unless otherwise provided in their articles or bylaws:

(1) Section 48-56-202;

(2) Section 48-56-302;

(3) Section 48-58-110(d);

(4) Section 48-58-303; and

(5) Section 48-64-303.

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

Chapter 68 - Transition Provisions

Part 1 - General Provisions

§ 48-68-101. Application to Existing Domestic Corporations Universal Citation: TN Code § 48-68-101 (2021)

(a) Chapters 51-68 of this title apply to all domestic nonprofit corporations in existence on January 1, 1988, that were incorporated under any general statute of this state providing for incorporation of nonprofit corporations. Chapters 51-68 of this title shall, however, not apply to corporations, the charters of which were granted by special legislative act prior to the adoption of the Constitution of 1870. Such corporations may amend their charters for any purposes consistent with chapters 51-68 of this title and in the manner set out in chapters 51-68 of this title. Such amendments and the particular rights, obligations, duties, and privileges conferred or imposed by the amendments shall be subject to § 48-51-102.

(b) Section 48-52-102(a) does not apply to the charter of any corporation existing on January 1, 1988, unless and until a charter amendment is filed. The first charter amendment filed by a corporation following January 1, 1988, shall include any information required by § 48-52-102(a) not otherwise on file in the office of the secretary of state, except that the name and address of each incorporator may be excluded, and the information required by § 48-52-102(a)(4) shall be provided for the current registered agent and registered office. Until such a charter amendment is filed, a corporation's registered agent shall be that agent specified in the office of the secretary of state on January 1, 1988, and such corporation's registered office

shall be deemed to be that office specified as the address of its registered agent unless such agent or office is changed thereafter pursuant to chapter 55 or 65 of this title.

(c) Chapters 51-68 of this title shall not apply to municipal corporations; provided, that this chapter shall apply to any public governmental corporation or authority created by or established under the authority of a municipal corporation or county or both for the performance of public functions, including industrial development boards created pursuant to title 7.

(d) Chapter 523, § 1 (3.06 - 3.11) of the Acts of 1968, as amended, in effect on January 1, 1988, shall apply to any claims, applications, or proceedings for indemnification, or any corporate action authorizing indemnification, made or begun before January 1, 1988.

(e) Chapter 523, § 1 (12.01 - 12.12, 12.14) of the Acts of 1968 and chapter 66, §§ 1 and 2 of the Acts of 1969, in effect on January 1, 1988, shall apply to any dissolution as to which a statement of intent to dissolve has been filed or a court proceeding filed before January 1, 1988.

§ 48-68-102. Application to Qualified Foreign Corporations
Universal Citation: TN Code § 48-68-102 (2021)

A foreign corporation authorized to transact business in this state on January 1, 1988, is subject to chapters 51-68 of this title but is not required to obtain a new certificate of authority to transact business under chapters 51-68 of this title.

§ 48-68-103. Saving Provisions
Universal Citation: TN Code § 48-68-103 (2021)

(a) Except as provided in subsection (b), the repeal of a statute by chapters 51-68 of this title does not affect:

(1) The operation of the statute or any action taken under it before its repeal and if any certificate or document is required to be filed in any public office of this state relating to such action, it may be filed after January 1, 1988, in accordance with the prior statute; provided, that such certificate or document is received by the secretary of state or other recording official on or before April 30, 1988. Any certificate or document recorded or filed pursuant to this subdivision (a)(1) shall pay the fee required by chapters 51-68 of this title for such recording or filing;

(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 commenced, or reorganization or dissolution authorized by the board of directors, 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.

(b) If a penalty or punishment imposed for violation of a statute repealed by chapters 51-68 of this title is reduced by chapters 51-68 of this title, the penalty or punishment if not already imposed shall be imposed in accordance with chapters 51-68 of this title.

§ 48-68-104. Public Benefit and Mutual Benefit Corporations
Universal Citation: TN Code § 48-68-104 (2021)

On January 1, 1988, each domestic corporation existing on January 1, 1988, that is or becomes subject to chapters 51-68 of this title, shall be designated as a public benefit or a 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) but which is recognized as exempt under § 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)), or any successor section, is a public benefit corporation;

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

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

§ 48-68-105. Administrative Procedures
Universal Citation: TN Code § 48-68-105 (2021)

The secretary of state is authorized to prescribe forms and to promulgate regulations in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Part 2 - Public Benefit Hospital Sales and Conveyance Act of 2006

§ 48-68-201. Short title.
Universal Citation: TN Code § 48-68-201 (2021)

This part shall be known and may be cited as the "Public Benefit Hospital Sales and Conveyance Act of 2006."

§ 48-68-202. Part Definitions
Universal Citation: TN Code § 48-68-202 (2021)

As used in this part, unless the context otherwise requires:

(1) "Acquiring entity" means the person who gains ownership or control of a public benefit hospital entity as a result of a public benefit hospital conveyance transaction;

(2) "Person" means any individual, partnership, trust, estate, corporation, association, joint venture, joint stock company or other organization;

(3)

(A) "Public benefit hospital conveyance transaction" means:

- (i) The sale, transfer, lease, exchange, optioning, conveyance or other disposition of a material amount of the assets or operations of any public benefit hospital entity to an entity or person other than another public benefit hospital entity that controls, is controlled by or is under common control with such public benefit hospital entity; and
- (ii) The transfer of control or governance of a public benefit hospital entity to an entity or person other than another public benefit hospital entity that controls, is controlled by or is under common control with such public benefit hospital entity;

(B) "Public benefit hospital conveyance transaction" includes any transaction described in subdivision (3)(A)(i) or (3)(A)(ii) that is entered into by the public benefit hospital entity or by any entity that controls, is controlled by or is under common control with such public benefit hospital entity;

(4) "Public benefit hospital entity" means any public benefit corporation, as defined in chapter 51, part 2 of this title, or any governmental entity that is licensed as a hospital under title 68, chapter 11, part 2, or considered a hospital under title 33, chapter 1, including entities affiliated with any of these through ownership, governance, or membership, such as a holding company or subsidiary.

§ 48-68-203. Written Notice Prior to Entering into Public Benefit Hospital Conveyance Transaction

Universal Citation: TN Code § 48-68-203 (2021)

(a) Notwithstanding chapters 61 and 64 of this title, any public benefit hospital entity shall be required to provide written notice to the attorney general and reporter, prior to entering into any public benefit hospital conveyance transaction. At the time of providing notice to the attorney general and reporter, the public benefit hospital entity shall provide the attorney general and reporter with written certification that a copy of this part has been given in its entirety to each member of the board of trustees of the public benefit hospital entity.

(b) The notice to the attorney general and reporter provided for in this section shall include and contain all the information the attorney general and reporter determines is required. No notice shall be effective until the attorney general and reporter has acknowledged receipt of a complete notice, in accordance with protocol established by the attorney general and reporter.

(c) This part shall not apply to a public benefit hospital entity, if the public benefit hospital conveyance transaction is in the usual and regular course of its activities, and if the attorney general and reporter has given the public benefit hospital entity a written waiver of this part as to the public benefit hospital conveyance transaction.

§ 48-68-204. Notification by Attorney General and Reporter of Action

Universal Citation: TN Code § 48-68-204 (2021)

Within forty-five (45) days of receipt of a complete written notice as required by § 48-68-203, the attorney general and reporter shall notify the public benefit hospital entity in writing of the

attorney general and reporter's decision to object to the proposed public benefit hospital conveyance transaction or to take no action. The attorney general and reporter may extend this period for an additional thirty (30) days; provided, that the extension is necessary to obtain information pursuant to §§ 48-68-206, 48-68-208 and 48-68-209.

§ 48-68-205. Published Written Notice

Universal Citation: TN Code § 48-68-205 (2021)

(a) Within five (5) days after giving written notice pursuant to § 48-68-203, the public benefit hospital entity shall cause the written notice to be published in one (1) or more newspapers of general circulation that are published in the county of the public benefit hospital entity. The published written notice shall contain:

(1) The text of the written notice provided to the attorney general and reporter under § 48-68-203; and

(2) The following statements:

(A) "This notice is provided pursuant to Tennessee Code Annotated, Title 48, Chapter 68, Part 2"; and

(B) "Any interested party wishing to provide written comment may submit the written comment directly to the Attorney General and Reporter, Antitrust Division, 425 Fifth Avenue North, Nashville, Tennessee 37243".

(b) A failure by the public benefit hospital entity giving notice under § 48-68-203 to provide a published written notice as required by subsection (a) shall be a sufficient ground for the attorney general and reporter to object to the proposed public benefit hospital conveyance transaction.

§ 48-68-206. Considerations in Making Decision Regarding Proposed Transaction

Universal Citation: TN Code § 48-68-206 (2021)

In making a decision whether to object to a proposed public benefit hospital conveyance transaction, the attorney general and reporter shall consider:

(1) Whether the public benefit hospital entity will receive full and fair market value for its charitable or social welfare assets;

(2) Whether the fair market value of the public benefit hospital entity's assets to be transferred has been manipulated by the actions of the parties in a manner that causes the fair market value of the assets to decrease;

(3) Whether the proceeds of the proposed public benefit hospital conveyance transaction will be used consistent with the trust under which the assets are held by the public benefit hospital entity;

(4) Whether the proceeds are used by a county or municipality for general or special revenue obligations not expressly provided for when the hospital was established;

(5) Whether the proceeds will be controlled as funds independently of the acquiring or related entities; provided, however, no proceeds shall be returned to any county or

municipal government except to the extent necessary to pay lawful obligations to such county or municipal government;

(6) Whether the proposed public benefit hospital conveyance transaction will result in a breach of fiduciary duty, as determined by the attorney general and reporter, including conflicts of interest related to payments or benefits to officers, directors, board members, executives and experts employed or retained by the parties;

(7) Whether the governing body of the public benefit hospital entity exercised due diligence in deciding to dispose of the public benefit hospital entity's assets, selecting the acquiring entity, and negotiating the terms and conditions of the disposition;

(8) Whether the public benefit hospital conveyance transaction will result in private inurement to any person;

(9) Whether health care providers will be offered the opportunity to invest or own an interest in the acquiring entity or a related party, and whether procedures or safeguards are in place to avoid conflict of interest in patient referrals;

(10) Whether the terms of any management or services contract negotiated in conjunction with the proposed public benefit hospital conveyance transaction are reasonable;

(11) Whether any foundation established to hold the proceeds of the public benefit hospital conveyance transaction will be broadly based in the community and be representative of the affected community, taking into consideration the structure and governance of the foundation;

(12) Whether the attorney general and reporter has been provided with sufficient information and data by the public benefit hospital entity to adequately evaluate the proposed public benefit hospital conveyance transaction or the effects of the transaction on the public; provided, that the attorney general and reporter has notified the public benefit hospital entity or the acquiring entity of any inadequacy of the information or data and has provided a reasonable opportunity to remedy the inadequacy; and

(13) Any other criteria the attorney general and reporter considers necessary to determine whether the public benefit hospital entity will receive full and fair market value for its assets to be transferred, as required in rules adopted by the attorney general and reporter under § 48-68-208.

§ 48-68-207. Determination of Whether the Transaction Will Have Effect on Availability or Accessibility to Health Care Services
Universal Citation: TN Code § 48-68-207 (2021)

In making a decision whether to object to a public benefit hospital conveyance transaction, the attorney general and reporter shall also determine whether the proposed public benefit hospital conveyance transaction may have a significant effect on the availability or accessibility of health care services to the affected community. In making this determination, the attorney general and reporter shall consider:

(1) Whether sufficient safeguards are included to assure the affected community continued access to affordable care;

(2) Whether the proposed public benefit hospital conveyance transaction creates or has the likelihood of creating an adverse effect on the access to or availability or cost of health care services to the community;

(3) Whether the acquiring entities have made a commitment, at least comparable to the public benefit hospital entity, to provide health care to the disadvantaged, the uninsured and the underinsured, and to provide benefits to the affected community to promote improved health care. Activities and funding provided by the public benefit hospital entity or its successor public benefit hospital entity or foundation to provide such health care or to provide support or medical education and teaching programs or medical research programs shall be considered in evaluating compliance with this commitment;

(4) Whether the public benefit hospital conveyance transaction will result in the revocation of hospital privileges;

(5) Whether sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education; and

(6) Whether the proposed public benefit hospital conveyance transaction demonstrates that the public interest will be served considering the essential medical services needed to provide safe and adequate treatment, appropriate access and balanced health care delivery to the residents.

§ 48-68-208. Providing Sufficient Information to Complete Review of the Transaction
Universal Citation: TN Code § 48-68-208 (2021)

The attorney general and reporter may demand that the public benefit hospital entity giving notice under § 48-68-203 provide such information as the attorney general and reporter reasonably deems necessary to complete the review of any proposed public benefit hospital conveyance transaction described in §§ 48-68-206 and 48-68-207. A failure by the public benefit hospital entity giving notice under § 48-68-203 to provide timely information as required by the attorney general and reporter shall be a sufficient ground for the attorney general and reporter to object to the proposed public benefit hospital conveyance transaction.

§ 48-68-209. Permitted Action to Assist in Review of Proposed Transaction
Universal Citation: TN Code § 48-68-209 (2021)

(a) Within the time periods designated in § 48-68-204, the attorney general and reporter may do any of the following to assist in the review of the proposed public benefit hospital conveyance transaction described in this part:

(1) Contract with, consult, and receive advice from any agency of the state or the United States on such terms and conditions the attorney general and reporter deems appropriate; or

(2) At the attorney general and reporter's sole discretion, contract with experts or consultants the attorney general and reporter deems appropriate to assist the attorney general and reporter in reviewing the proposed public benefit hospital conveyance transaction.

(b) Any contract costs incurred by the attorney general and reporter pursuant to this section shall not exceed an amount that is reasonable and necessary to conduct the review of the proposed public benefit hospital conveyance transaction. The attorney general and reporter shall be exempt from all state procurement for competitive bidding for purposes of entering into contracts pursuant to this section. The acquiring entity, upon request, shall pay the attorney general and reporter promptly for all costs of contracts entered into by the attorney general and reporter pursuant to this section.

granting injunctive relief, or any combination of these and other remedies available under common law or statutory law.

(c) The attorney general and reporter shall be entitled to reimbursement from the acquiring entity for all reasonable and actual costs incurred by the attorney general and reporter in reviewing any proposed public benefit hospital conveyance transaction under this part, including attorney fees at the billing rate used by the attorney general and reporter to bill state agencies for legal services. The acquiring entity, upon request, shall pay the attorney general and reporter promptly for all costs, but in no event shall reimbursement associated with reviewing a proposed public benefit hospital conveyance transaction exceed fifty thousand dollars (\$50,000). The attorney general and reporter shall not be entitled to reimbursement for expenses incurred for any legal services rendered by external legal counsel.

(d) The failure by the acquiring entity to promptly reimburse the attorney general and reporter for all costs pursuant to this section shall be sufficient ground for the attorney general and reporter to object to the proposed public benefit hospital conveyance transaction.

§ 48-68-210. Public Records

Universal Citation: TN Code § 48-68-210 (2021)

Unless subject to title 8, chapter 6, part 4, all documents submitted to the attorney general and reporter by any person, including public benefit hospital entities giving notice under § 48-68-203, in connection with the attorney general and reporter's review of the proposed public benefit hospital conveyance transaction pursuant to this part, shall be public records subject to title 10, chapter 7.

§ 48-68-211. Violations -- Penalties -- Remedies.

Universal Citation: TN Code § 48-68-211 (2021)

(a) Any public benefit hospital conveyance transactions entered into in violation of this part shall be null and void, and each member of the governing boards and the chief financial officers of the parties to the public benefit hospital conveyance transaction may be subject to a civil penalty of up to one million dollars (\$1,000,000), the amount to be determined by a court of competent jurisdiction in Davidson County. The attorney general and reporter shall institute proceedings to impose such a penalty. In addition, no license to operate a hospital may be issued or renewed under title 68, chapter 11, part 2, or applicable regulation, if there is a public benefit hospital conveyance transaction entered into in violation of the notice, public hearing, and review requirements of this part.

(b) Nothing in this section shall be construed to limit the common law authority of the attorney general and reporter to protect charitable trusts and charitable assets in this state. These penalties and remedies are in addition to, and not a replacement for, any other civil or criminal actions that the attorney general and reporter may file under either the common law or statutory law, including rescinding the public benefit hospital conveyance transaction,