

Article 2. Formation of Corporations.

Sec. 10.20.146. Incorporators.

Three or more natural persons at least 19 years of age may act as incorporators of a corporation by signing and delivering in duplicate to the commissioner articles of incorporation for the corporation.

Sec. 10.20.151. Articles of incorporation; relationship to bylaws; director liability.

(a) The articles of incorporation must set out

(1) the name of the corporation;

(2) the period of its duration, which may be perpetual;

(3) the purpose or purposes for which the corporation is organized;

(4) provisions, not inconsistent with law, which the incorporators elect to set out in the articles of incorporation for the regulation of the internal affairs of the corporation, including provision for distribution of assets on dissolution or final liquidation;

(5) the address of its initial registered office, and the name of its initial registered agent at the address;

(6) the number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors;

(7) the name and address of each incorporator.

(b) It is not necessary to set out in the articles of incorporation any of the corporate powers enumerated in this chapter.

(c) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws is controlling. In all other cases, if a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

(d) In addition to the matters required to be set out in the articles of incorporation by (a) of this section, the articles of incorporation may also contain a provision eliminating or limiting the personal liability of a director to the corporation for monetary damages for the breach of fiduciary duty as a director. The articles of incorporation may not eliminate or limit the liability of a director for

(1) a breach of a director's duty of loyalty to the corporation;

(2) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; or

(3) a transaction from which the director derives an improper personal benefit.

(e) The provisions of (d) of this section do not eliminate or limit the liability of a director for an act or omission that occurs before the effective date of the articles of incorporation or of an amendment to the articles of incorporation authorized by (d) of this section.

Sec. 10.20.153. Provisions considered to be in articles of incorporation by operation of law; option to exclude provision.

(a) The articles of incorporation of every nonprofit corporation which is a private foundation, as defined in 26 U.S.C. 509 (Internal Revenue Code of 1954), are considered to contain provisions prohibiting the corporation from

(1) engaging in an act of self-dealing, as defined in 26 U.S.C. 4941(d) (Internal Revenue Code of 1954), which would give rise to liability for the tax imposed by 26 U.S.C. 4941(a) (Internal Revenue Code of 1954);

(2) retaining excess business holdings, as defined in 26 U.S.C. 4943(c) (Internal Revenue Code of 1954), which would give rise to liability for the tax imposed by 26 U.S.C. 4943(a) (Internal Revenue Code of 1954);

(3) making an investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of 26 U.S.C. 4944 (Internal Revenue Code of 1954), so as to give rise to liability for the tax imposed by 26 U.S.C. 4944(a) (Internal Revenue Code of 1954); and

(4) making taxable expenditures, as defined in 26 U.S.C. 4945(d) (Internal Revenue Code of 1954), which would give rise to liability for the tax imposed by 26 U.S.C. 4945(a) (Internal Revenue Code of 1954).

(b) The articles of incorporation of every nonprofit corporation that is a private foundation, as defined in 26 U.S.C. 509 (Internal Revenue Code of 1954), are considered to contain a provision requiring the corporation to distribute, for the purposes specified in its articles of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by 26 U.S.C. 4942(a) (Internal Revenue Code of 1954).

(c) A nonprofit corporation may at any time amend its articles of incorporation or other instrument governing the corporation, by any amendment process open to it under the laws of this state, to provide that some or all provisions of (a) and (b) of this section do not apply to the corporation. A nonprofit corporation formed after August 23, 1971 may provide in its articles of incorporation that some or all provisions of (a) and (b) of this section do not apply to the corporation.

(d) In this section, references to provisions of the Internal Revenue Code of 1954 include future amendments to those provisions.

Sec. 10.20.156. Filing of articles of incorporation.

(a) Duplicate originals of the articles of incorporation shall be delivered to the commissioner. Upon finding that the articles of incorporation conform to law, the commissioner shall, when all fees prescribed by this chapter have been paid,

- (1) endorse on each duplicate original the word "filed," and the date of the filing;
- (2) file one duplicate original in the commissioner's office;
- (3) issue a certificate of incorporation and affix the other duplicate original to it.

(b) The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed by the commissioner, shall be returned to the incorporators or their representative.

Sec. 10.20.161. Effect of issuance of certificate of incorporation.

Upon the issuance of the certificate of incorporation, the corporate existence begins. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated. The issuance of the certificate does not affect the right of the state to bring a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

Sec. 10.20.166. Organizational meeting of directors; first meeting of members.

(a) After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held at a designated place, by remote communication, or at a designated place and by remote communication at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers, and the transaction of other business as may come before the meeting. The designated place may be inside or outside the state. The incorporators calling the meeting shall give at least three days' notice of the meeting by mail to each director named, and the notice must state the time and place of the meeting.

(b) A first meeting of the members may be held at the call of a majority of the directors for purposes stated in the notice of the meeting.