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CHAPTER 1.

 GENERAL PROVISIONS

ARTICLE 1.

 SHORT TITLE AND RESERVATION OF POWER

**SECTION 33‑1‑101.** Short title.

Chapters 1 through 20 of Title 33 is known and may be cited as the “South Carolina Business Corporation Act of 1988”.

**SECTION 33‑1‑102.** Reservation of power to amend or repeal.

The General Assembly of South Carolina has power to provide regulations regarding Chapters 1 through 20 of this Title and to amend or repeal all or any part of Chapters 1 through 20 of Title 33 or its regulations at any time; and all domestic and foreign corporations subject to Chapters 1 through 20 of this Title are governed by the amendment or repeal.

**SECTION 33‑1‑103.** Designation of representation in magistrates’ court; unauthorized practice of law.

A corporation or partnership, as defined in this section, may designate an employee or principal of the corporation or partnership to represent it in magistrates’ court. This designation must be in writing and must be submitted to the magistrate at the time the initial pleading in the case is filed by the party. Notwithstanding the provisions of Chapter 5 of Title 40 or any other provision of law, the person so designated, while representing the corporation or partnership in magistrates’ court, is not engaging in the unauthorized practice of law.

As used in this section, a corporation or partnership is defined as a general partnership, a limited liability partnership, a limited liability company, a limited partnership, a professional association, a professional corporation, a nonprofit corporation, a business corporation, or a statutory close corporation.

ARTICLE 2.

 FILING DOCUMENTS

**SECTION 33‑1‑200.** Filing requirements.

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

(b) Chapters 1 through 20 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 1 through 20 of this Title. It may contain other information as well.

(d) The document must be in a medium and form as permitted by the Secretary of State.

(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 chairman of the board of directors of a domestic or foreign corporation, or by its president, or by another of its 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 his signature his name and the capacity in which he signs. The document may but need not contain: (1) the corporate seal, (2) an attestation by the secretary or an assistant secretary, and (3) an acknowledgment, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for the document under Section 33‑1‑210, 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 one exact or conformed copy (except as provided in Sections 33‑5‑103 and 33‑15‑109), the correct filing fee, and any franchise tax, license fee, or penalty required by the act or other law.

**SECTION 33‑1‑210.** Forms.

(a) The Secretary of State may prescribe and furnish on request forms for:

(1) an application for a certificate of existence,

(2) a foreign corporation’s application for a certificate of authority to transact business in this State,

(3) a foreign corporation’s application for a certificate of withdrawal, and

(4) in conjunction with the Department of Revenue, the annual report. If the Secretary of State so requires, use of these forms is mandatory. The Secretary of State, through regulation, may prescribe a mandatory form in regard to any other forms required or permitted by Chapters 1 through 20 of this Title to be filed in his office. All such mandatory forms must comply with all statutory requirements contained in Chapters 1 through 20 of this Title.

(b) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by Chapters 1 through 20 of this Title but their use is not mandatory.

**SECTION 33‑1‑220.** Filing, service, and copying fees.

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

 DOCUMENT FEE

 (1) Articles of incorporation $10.00.

 (2) Application for use of indistinguishable name $10.00.

 (3) Application for reserved name $10.00.

 (4) Notice of transfer of reserved name $ 3.00.

 (5) Application for registered name $10.00.

 (6) Application for renewal of registered name $10.00.

 (7) Corporation’s statement of change of registered agent or $10.00.

 registered office or both

 (8) Agent’s statement of change of registered office for each $ 2.00.

 affected corporation

 (9) Agent’s statement of resignation $ 3.00.

(10) Amendment of articles of incorporation $10.00.

(11) Restatement of articles of incorporation with amendment of $10.00.

 articles

(12) Articles of merger or share exchange $10.00.

(13) Articles of dissolution $10.00.

(14) Articles of revocation of dissolution $10.00.

(15) Certificate of administrative dissolution No fee.

(16) Application for reinstatement following administrative $25.00.

 dissolution

(17) Certificate of reinstatement No fee.

(18) Certificate of judicial dissolution No fee.

(19) Application for certificate of authority $10.00.

(20) Application for amended certificate of authority $10.00.

(21) Application for certificate of withdrawal $10.00.

(22) Certificate of revocation of authority to transact business No fee.

(23) Annual report‑‑As provided in Section 12‑19‑20 Fee Paid

 to the

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 ent of

 Revenue

(24) Articles of correction $10.00.

(25) Application for certificate of existence or authorization $ 2.00.

(26) Articles of domestication $10.00.

(27) Articles of conversion $10.00.

(28) Any other document required or authorized to be filed by this $ 10.00.

 act.

(b) The Secretary of State shall collect a fee of ten dollars each time process is served on him under Chapters 1 through 20 of this Title. The party to a proceeding causing service of process is entitled to recover this fee as costs if he prevails in the proceeding.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

(1) for copying, one dollar for the first page and fifty cents for each additional page; and

(2) two dollars for the certificate.

(d) Before filing any of the following documents, the Secretary of State shall collect the following taxes that must be remitted to the State Treasurer for use of the State:

(1) articles of incorporation, one hundred dollars plus the minimum license fee imposed pursuant to Chapter 19 of Title 12;

(2) amendment to articles of incorporation, one hundred dollars;

(3) articles of merger or share exchange, one hundred dollars;

(4) application by a foreign corporation for a certificate of authority to do business in South Carolina, one hundred dollars plus the minimum license fee imposed pursuant to Chapter 19 of Title 12;

(5) amendment by a foreign corporation of its certificate of authority, one hundred dollars;

(6) articles of conversion pursuant to either Section 33‑11‑111 or Section 33‑11‑113, one hundred dollars;

(7) articles of domestication pursuant to Section 33‑9‑100, one hundred dollars.

**SECTION 33‑1‑230.** Effective time and date of filing.

(a) Except as provided in subsection (b) of this section and Section 33‑1‑240(c), a document accepted for filing is effective:

(1) at the time for filing on the date it is filed, 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.

**SECTION 33‑1‑240.** Correcting filed document.

(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:

(1) by preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) by delivering the articles to the Secretary of State for filing.

(c) Articles of correction are effective on the effective 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.

**SECTION 33‑1‑250.** Filing duty of Secretary of State.

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of Section 33‑1‑200, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing “Filed”, together with his name and official title and the date and time of receipt, on both the original and document copy, together with a further endorsement that the document copy is a true copy of the original document. After filing a document, except as provided in Sections 33‑5‑103 and 33‑15‑200, the Secretary of State shall deliver the document copy to the domestic or foreign corporation or its representative and the document copy must be retained as a part of the permanent records of the corporation.

(c) If the Secretary of State refuses to file a document, he shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason for his refusal.

(d) The Secretary of State’s duty to file documents under this section is ministerial. His 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.

**SECTION 33‑1‑260.** Appeal from Secretary of State’s refusal to file document.

(a) If the Secretary of State refuses to file a document delivered to his office for filing, the domestic or foreign corporation may appeal the refusal within thirty days after the return of the document to the Circuit Court of Richland 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 his 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.

**SECTION 33‑1‑270.** Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the Secretary of State, bearing his 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 and must be taken and received in all courts, public offices, official bodies, and in all proceedings as prima facie evidence of the facts therein stated.

**SECTION 33‑1‑280.** Certificate of existence.

(a) Anyone 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.

(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 (i) the domestic corporation is duly incorporated under the law of this State, the date of its incorporation, and the period of its duration if less than perpetual; or (ii) the foreign corporation is authorized to transact business in this State;

(3) that all fees, taxes, and penalties owed to the Secretary of State have been paid;

(4) that the Secretary of State has not mailed notice to the corporation pursuant to either Section 33‑14‑210 or 33‑15‑310 that the corporation is subject to being dissolved or its authority revoked;

(5) that articles of dissolution have not been filed; and

(6) 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 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.

**SECTION 33‑1‑290.** Penalty for signing false document.

(a) A person commits an offense if he signs a document he knows is false in any material respect (including an omission of a material fact necessary in order to make the statements made in light of the circumstances under which they were made, not misleading) with intent that the document be delivered to the Secretary of State for filing.

(b) An offense under this section is a misdemeanor punishable by a fine of not to exceed five hundred dollars.

(c) Any person who violates subsection (a) is liable to any person who is damaged thereby.

ARTICLE 3.

 SECRETARY OF STATE

**SECTION 33‑1‑300.** Powers.

The Secretary of State has the power reasonably necessary to perform the duties required of him by Chapters 1 through 20 of this Title.

ARTICLE 4.

 DEFINITIONS

**SECTION 33‑1‑400.** Act definitions.

As used in Chapters 1 through 19 of this title:

(1) “Agreement” includes a valid agreement, written or oral, of the shareholders or between any of the shareholders and the corporation as to the affairs of the corporation and the conduct of its business. The bylaws of a corporation are an agreement.

(2) “Articles of incorporation” includes amended and restated articles of incorporation and articles of merger.

(3) “Authorized shares” means the shares of all classes a domestic or foreign corporation is authorized to issue.

(4) “Corporation” or “domestic corporation” means a corporation for profit, which is not a foreign corporation, incorporated pursuant or subject to the provisions of Chapters 1 through 20 of this Title. “Corporation” or “domestic corporation” also may include a “ nonprofit” corporation to the extent permitted by the provisions of Section 33‑20‑103.

(5) “Conspicuous” means written so that a reasonable person against whom the writing is to operate should notice it. For example, printing in italics, boldface, or contrasting color, or typing in capitals or underlined is conspicuous.

(6) “Deliver” includes mail.

(7) “Distribution” means a direct or indirect transfer of money or other property, except its own shares, or incurring of indebtedness by a corporation to or for the benefit of its shareholders in respect to its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or other distribution.

(8) “Effective date of notice” is defined in Section 33‑1‑410.

(9) “Electronic transmission” or “electronically transmitted” means a process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

(10) “Employee” includes an officer but not a director, unless a director accepts duties that make him also an employee.

(11) “Entity” includes corporation and foreign corporation; not‑for‑profit corporation; profit and not‑for‑profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

(12) “Foreign corporation” means a corporation for profit incorporated pursuant to a law other than the law of this State.

(13) “Governmental subdivision” includes authority, county, district, and municipality.

(14) “Includes” denotes a partial definition.

(15) “Individual” includes the estate of an incompetent or deceased individual.

(16) “Limited partnership” means a limited partnership created pursuant to the Uniform Limited Partnership Act, Chapter 42 of Title 33, a predecessor law, or a comparable law of another jurisdiction.

(17) “Means” denotes an exhaustive definition.

(18) “Notice” is defined in Section 33‑1‑410.

(19) “Partnership” means a general partnership subject to the Uniform Partnership Act, Chapter 41 of Title 33, a predecessor law, or a comparable law of another jurisdiction.

(20) “Person” includes individual and entity.

(21) “Principal office” means the in‑state or out‑of‑state location of the principal executive offices of a domestic or foreign corporation as designated in the annual report.

(22) “Proceeding” includes civil suit and criminal, administrative, and investigatory action, and formal or informal arbitration.

(23) “Record date” means the date established by Chapter 6 or 7 on which a corporation determines the identity of its shareholders for purposes of Chapters 1 through 20 of this title.

(24) “Secretary” means the corporate officer to whom the board of directors has delegated responsibility pursuant to Section 33‑8‑400(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(25) “Shares” mean the units into which the proprietary interests in a corporation are divided.

(26) “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent rights granted by a nominee certificate are on file with a corporation. Creditors of a corporation may have the rights of a shareholder as allowed in the corporation’s articles of incorporation.

(27) “State” includes a state, commonwealth, territory, and insular possession, and their agencies and governmental subdivisions, of the United States and the District of Columbia.

(28) “Subscriber” means a person who subscribes for shares in a corporation before or after incorporation.

(29) “United States” includes district, authority, bureau, commission, department, and other agency of the United States.

(30) “Voting group” means all shares of one or more classes or series that may vote and be counted together collectively on a matter at a meeting of shareholders pursuant to the articles of incorporation or Chapters 1 through 20 of this title. Shares entitled to vote generally on the matter are for that purpose a single voting group.

(31) “Public corporation” means a corporation that has a class of equity securities registered with a federal agency pursuant to the Securities Exchange Act of 1934 or a successor act to the Securities Exchange Act of 1934.

**SECTION 33‑1‑410.** Notice.

(a) Notice under Chapters 1 through 20 of this Title must be in writing unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice 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) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder’s address shown in the corporation’s current record of shareholders; however, a notice to a shareholder of a public corporation of a meeting of shareholders which accompanies a proxy statement or information statement is effective when it is addressed and mailed or transmitted in any manner which satisfies the applicable rules of the Securities and Exchange Commission requiring delivery of a proxy statement including, without limitation, rules regarding delivery to shareholders sharing an address and implied consent to such delivery.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) when received;

(2) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed;

(3) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If Chapters 1 through 20 of this Title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of Chapters 1 through 20 of this Title, those requirements govern.

**SECTION 33‑1‑420.** Number of shareholders.

(a) For purposes of Chapters 1 through 20 of this Title, the following identified as a shareholder in a corporation’s current record of shareholders constitutes one shareholder:

(1) three or fewer co‑owners;

(2) a corporation, partnership, trust, estate, or other entity;

(3) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of Chapters 1 through 20 of this Title, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.