CHAPTER 8

Directors and Officers

ARTICLE 1

Board of Directors

**SECTION 33‑8‑101.** Requirement for and duties of board of directors.

Unless otherwise provided in:

(a) Chapters 1 through 20 of this Title;

(b) the articles of incorporation; or

(c) an agreement unanimously approved by the shareholders and disclosed in the articles of incorporation and on the corporation's share certificates,

all corporate powers must be exercised by or under the authority of, and the business and affairs of a corporation must be managed under the direction of, a board of directors. If the authority of the board is dispensed with or limited by a provision in the articles of incorporation under (b) or by a shareholder agreement under (c), the articles or the agreement shall describe who is to perform some or all of the duties of a board of directors.

HISTORY: Derived from 1976 Code Section 33‑11‑220 [1962 Code Section 12‑16.22; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 21; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑10 [1962 Code Section 12‑18.1; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑102.** Qualifications of directors.

The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this State or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

HISTORY: Derived from 1976 Code Section 33‑13‑20 [1962 Code Section 12‑18.2; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑103.** Number and election of directors.

(a) A board of directors consists of one or more individuals with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) In the case of a corporation which is not a public corporation, if a board of directors has power under the articles of incorporation or under a bylaw provision to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent the number of directors last approved by the shareholders.

(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed within the minimum and maximum by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable‑range size board or vice versa.

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under Section 33‑8‑106.

HISTORY: Derived from 1976 Code Section 33‑13‑30 [1962 Code Section 12‑18.3; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑40 [1962 Code Section 12‑18.4; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2; 1998 Act No. 328, Section 4.

**SECTION 33‑8‑104.** Election of directors by certain classes of shareholders.

If the articles of incorporation authorize dividing the shares into classes, the articles also may authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

HISTORY: Derived from 1976 Code Section 33‑13‑50 [1962 Code Section 12‑18.5; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑105.** Terms of directors generally.

(a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under Section 33‑8‑106.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

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

HISTORY: Derived from 1976 Code Section 33‑13‑40 [1962 Code Section 12‑18.4; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed 1988 Act No. 444, Section 2], and Section 33‑13‑50 [1962 Code Section 12‑18.5; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑106.** Staggered terms for directors.

If there are six or more directors, the articles of incorporation may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group containing one‑half or one‑third of the total, as near as may be. The terms of directors in the first group expire at the first annual shareholders' meeting after their election; the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors are chosen for a term of two years or three years, as the case may be, to succeed those directors whose terms expire.

HISTORY: Derived from 1976 Code Section 33‑13‑50 [1962 Code Section 12‑18.5; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2; 1994 Act No. 461, Section 6.

**SECTION 33‑8‑107.** Resignation of directors.

(a) A director may resign by delivering written notice to the board of directors, its chairman, or the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

HISTORY: Derived from 1976 Code Section 33‑13‑40 [1962 Code Section 12‑18.4; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑108.** Removal of directors by shareholders.

(a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect him under cumulative voting is voted against his removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove him exceeds the number of votes cast not to remove him.

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

(e) "Cause" for removal of a director under this section means fraudulent or dishonest acts, or gross abuse of authority in the discharge of duties to the corporation, and must be established after written notice of specific charges and opportunity to meet and refute such charges.

HISTORY: Derived from 1976 Code Section 33‑13‑70 [1962 Code Section 12‑18.7; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑109.** Removal of directors by judicial proceeding.

(a) The circuit court of the county where a corporation's principal office (or, if none in this State, its registered office) is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least five percent of the outstanding shares of any class if the court finds that (1) the director engaged in fraudulent or dishonest acts, or gross abuse of authority in discharge of duties to the corporation, and (2) removal is in the best interest of the corporation.

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

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

HISTORY: Derived from 1976 Code Section 33‑13‑70 [1962 Code Section 12‑18.7; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 144, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑110.** Vacancy on board.

(a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) the shareholders may fill the vacancy;

(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) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group may fill the vacancy.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under Section 33‑8‑108(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

(d) If, by reason of death, resignation, or other cause, a corporation has no directors in office, then any officer or any shareholder or an executor, administrator, trustee, or guardian of a shareholder or other fiduciary entrusted with like responsibility for the person or estate of a shareholder may call for a special meeting of shareholders to elect directors or may apply to the court for an order requiring election of directors.

HISTORY: Derived from 1976 Code Section 33‑13‑60 [1962 Code Section 12‑18.6; 1962 (52) 1996; 1969 (56) 701; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑111.** Compensation of directors.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors for their services as directors, or in any other capacity.

HISTORY: Derived from 1976 Code Section 33‑13‑160 [1962 Code Section 12‑18.16; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

ARTICLE 2

Meetings and Action of Board of Directors

**SECTION 33‑8‑200.** Meetings.

Unless the articles or bylaws otherwise provide:

(a) The board of directors may hold regular or special meetings in or out of this State.

(b) The board of directors 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 considered to be present in person at the meeting.

HISTORY: Derived from 1976 Code Section 33‑13‑80 [1962 Code Section 12‑18.8; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑210.** Action without meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by Chapters 1 through 20 of this Title to be taken at a board of directors' meeting may be taken without a meeting if the action is assented to by all members of the board.

(b) The action may be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken. Action evidenced by written consents under this subsection is effective when the last director signs the consent, unless the consent specifies a different effective date. A consent signed under this subsection has the effect of a meeting vote and may be described as such in any document.

HISTORY: Derived from 1976 Code Section 33‑13‑120 [1962 Code Section 12‑18.12; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑220.** Notice of meeting.

(a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

HISTORY: Derived from 1976 Code Section 33‑13‑90 [1962 Code Section 12‑18.9; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑230.** Waiver of notice.

(a) A director may waive any notice required by this act, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

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

HISTORY: Derived from 1976 Code Section 33‑13‑90 [1962 Code Section 12‑18.9; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 144, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑240.** Quorum and voting.

(a) Unless the articles of incorporation or bylaws require a greater number, a quorum of a board of directors consists of:

(1) a majority of directors then in office if the corporation has a fixed board size; or

(2) a majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable‑range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one‑third of the fixed or prescribed number of directors determined under subsection (a).

(c) 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 of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is considered to have assented to the action taken unless: (1) he objects at the beginning of the meeting (or promptly upon his arrival) to holding it or transacting business at the meeting; (2) his dissent or abstention from the action taken is entered in the minutes of the meeting; or (3) he delivers written notice of his 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.

HISTORY: Derived from 1976 Code Section 33‑13‑100 [1962 Code Section 12‑18.10; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑250.** Committees.

(a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have two or more members who 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 articles of incorporation or bylaws to take action under Section 33‑8‑240.

(c) Sections 33‑8‑200 through 33‑8‑240, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under Section 33‑8‑101.

(e) A committee, however, may not:

(1) authorize distributions;

(2) approve or propose to shareholders action that Chapters 1 through 20 of this Title requires be approved by shareholders;

(3) fill vacancies on the board of directors or on any of its committees;

(4) amend articles of incorporation pursuant to Section 33‑10‑102;

(5) adopt, amend, or repeal bylaws;

(6) approve a plan of merger not requiring shareholder approval;

(7) authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or

(8) authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.

(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 Section 33‑8‑300.

HISTORY: Derived from 1976 Code Section 33‑13‑110 [1962 Code Section 12‑18.11; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

ARTICLE 3

Standards of Conduct

**SECTION 33‑8‑300.** General standards for directors.

(a) A director shall discharge his duties as a director, including his 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 he reasonably believes to be in the best interests of the corporation and its shareholders.

(b) In discharging his 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 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; or

(3) a committee of the board of directors of which he is not a member if the director reasonably believes the committee merits confidence.

(c) A director is not acting in good faith if he 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 any action, if he performed the duties of his office in compliance with this section.

(e) An action against a director for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has accrued, or within two years after the time when the cause of action is discovered, or should reasonably have been discovered, whichever sooner occurs. This limitations period does not apply to breaches of duty which have been concealed fraudulently.

HISTORY: Derived from 1976 Code Section 33‑13‑150 [1962 Code Section 12‑18.15; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑310.** Director or Officer conflict of interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

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

(2) the material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction; or

(3) the transaction was fair to the corporation.

If (1) or (2) has been accomplished, the burden of proving unfairness of any transaction covered by this section is on the party claiming unfairness. If neither (1) nor (2) has been accomplished, the party seeking to uphold the transaction has the burden of proving fairness.

(b) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which he has a material financial interest or in which he is a general partner is a party to the transaction or (2) another entity of which he is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

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

(d) For purposes of subsection (a)(2), a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection (b)(1), may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a)(2). The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of Chapters 1 through 20 of this Title. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

HISTORY: Derived from 1976 Code Section 33‑13‑160 [1962 Code 12‑18.16; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2; 1990 Act No. 446, Section 5.

**SECTION 33‑8‑320.** Loans to directors.

(a) Except as provided by subsection (c), a corporation may not directly or indirectly lend money to or guarantee the obligation of a director of the corporation unless:

(1) the particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director; or

(2) the corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

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

(c) This section does not apply to loans and guarantees authorized by statute regulating any special class of corporations.

HISTORY: Derived from 1976 Code Section 33‑13‑170 [1962 Code Section 12‑18.17; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑330.** Liability for unlawful distributions.

(a) A director who votes for or assents to a distribution made in violation of Section 33‑6‑400 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating Section 33‑6‑400 or the articles of incorporation if it is established that he did not perform his duties in compliance with Section 33‑8‑300. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

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

(1) from every other director who could be held liable under subsection (a) for the unlawful distribution; and

(2) from each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of Section 33‑6‑400 or the articles of incorporation.

HISTORY: Derived from 1976 Code Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

ARTICLE 4

Officers

**SECTION 33‑8‑400.** Required officers.

(a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one 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 of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(d) The same individual may hold more than one office in a corporation simultaneously.

HISTORY: Derived from 1976 Code Section 33‑13‑130 [1962 Code Section 12‑18.13; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑410.** Duties of officers.

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 of other officers.

HISTORY: Derived from 1976 Code Section 33‑13‑130 [1962 Code Section 12‑18.13; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑420.** Standards of conduct for officers.

(a) An officer with discretionary authority shall discharge his 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 he reasonably believes to be in the best interests of the corporation and its shareholders.

(b) In discharging his 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 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) An officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if he performed the duties of his office in compliance with this section.

(e) An action against an officer for failure to perform the duties imposed by this section must be commenced within three years after the cause of action has accrued, or within two years after the time when the cause of action is discovered, or should reasonably have been discovered, whichever sooner occurs. This limitations period does not apply to breaches of duty which have been concealed fraudulently.

HISTORY: Derived from 1976 Code Section 33‑13‑150 [1962 Code Section 12‑18.15; 1962 (52) 1996; 1963 (53) 327; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑430.** Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) A board of directors may remove any officer, except an officer elected by the shareholders pursuant to the articles of incorporation, the bylaws, or a shareholder agreement, at any time with or without cause. An officer elected by the shareholders pursuant to the articles of incorporation, the bylaws, or a shareholder agreement may be removed only by the shareholders entitled to elect that officer.

HISTORY: Derived from 1976 Code Section 33‑13‑140 [1962 Code Section 12‑18.14; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑440.** Contract rights of officers.

(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.

HISTORY: Derived from 1976 Code Section 33‑13‑140 [1962 Code Section 12‑18.14; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

ARTICLE 5

Indemnification

**SECTION 33‑8‑500.** Article definitions.

In this subchapter:

(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 or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic 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 his duties to the corporation also impose duties on, or otherwise involve services by, him to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context 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 incurred with respect to a proceeding.

(5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in Section 33‑8‑560, 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 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.

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

HISTORY: Derived from 1976 Code Section 33‑13‑180 [1962 Code Section 12‑18.18; 1962 (52) 1996; 1973 (58) 381; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑510.** Authority to indemnify.

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

(1) he conducted himself in good faith; and

(2) he reasonably believed:

(i) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interest; and

(ii) in all other cases, that his conduct was at least not opposed to its best interest; and

(3) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

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

(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; or

(2) in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

HISTORY: Derived from 1976 Code Section 33‑13‑180 [1962 Code Section 12‑18.18; 1962 (52) 1996; 1973 (58) 381; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑520.** Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he is or was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding.

HISTORY: Derived from 1976 Code Section 33‑13‑180 [1962 Code Section 12‑18.18; 1962 (52) 1996; 1973 (58) 381; 1981 Act No. 146, Section 2; Repealed, 1988 AJ No. 444, Section 2], and Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑530.** Advance for expenses.

(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 written affirmation of his good faith belief that he has met the standard of conduct described in Section 33‑8‑510;

(2) the director furnishes the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

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

(b) The undertaking required by subsection (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 must be made in the manner specified in Section 33‑8‑550.

HISTORY: Derived from 1976 Code Section 33‑13‑180 [1962 Code Section 12‑18.18; 1962 (52) 1996; 1973 (58) 381; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑540.** Court‑ordered indemnification.

Unless a corporation's articles of incorporation provide 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 if it determines:

(1) the director is entitled to mandatory indemnification under Section 33‑8‑520, in which case the court also shall order the corporation to pay the director's reasonable expenses incurred to obtain court‑ordered indemnification; or

(2) the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he met the standard of conduct set forth in Section 33‑8‑510 or was adjudged liable as described in Section 33‑8‑510(d), but if he was adjudged so liable his indemnification is limited to reasonable expenses incurred.

HISTORY: Derived from 1976 Code Section 33‑13‑180 [1962 Code Section 12‑18.18; 1962 (52) 1996; 1973 (58) 381; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑550.** Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under Section 33‑8‑510 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standard of conduct set forth in Section 33‑8‑510.

(b) The determination must be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under subdivision (1), by 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 or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in item (1) or (2); or

(ii) if a quorum of the board of directors cannot be obtained under subdivision (1) and a committee cannot be designated under subdivision (2), selected by majority vote of the full board of directors (in which selection directors who are parties may participate); or

(4) by the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

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

HISTORY: Derived from 1976 Code Section 33‑13‑180 [1962 Code Section 12‑18.18; 1962 (52) 1996; 1973 (58) 381; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑560.** Indemnification of officers, employees, and agents.

Unless a corporation's articles of incorporation provide otherwise:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under Section 33‑8‑520, and is entitled to apply for court‑ordered indemnification under Section 33‑8‑540, in each case to the same extent as a director;

(2) the corporation may indemnify and advance expenses under this subchapter 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 also may 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 articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

HISTORY: Derived from 1976 Code Section 33‑13‑180 [1962 Code Section 12‑18‑18; 1962 (52) 1996; 1973 (58) 381; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444 Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑570.** Insurance.

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 corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him in that capacity or arising from his status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify him against the same liability under Section 33‑8‑510 or 33‑8‑520.

HISTORY: Derived from 1976 Code Section 33‑13‑180 [1962 Code Section 12‑18.18; 1962 (52) 1996; 1973 (58) 381; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑8‑580.** Application of article.

(a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise is valid only if and to the extent the provision is consistent with this article. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

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

HISTORY: Derived from 1976 Code Section 33‑13‑180 [1962 Code Section 12‑18.18; 1962 (52) 1996; 1973 (58) 381; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑13‑190 [1962 Code Section 12‑18.19; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.