CHAPTER 16

Records and Reports

ARTICLE 1

Records

**SECTION 33‑16‑101.** Corporate records.

 (a) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

 (b) A corporation shall maintain appropriate accounting records.

 (c) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

 (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 articles or restated articles of incorporation and all amendments to them 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 creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;

 (4) the minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past ten years;

 (5) all written communications to shareholders as a group within the past three years, including the financial statements furnished for the past three years under Section 33‑16‑200;

 (6) a list of the names and business addresses of its current directors and officers;

 (7) its most recent annual report delivered to the Department of Revenue under Section 12‑19‑20;

 (8) its federal and state income tax returns for the last ten years.

HISTORY: Derived from 1976 Code Section 33‑11‑250 [1962 Code Section 12‑16.25; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2; 1993 Act No. 181, Section 519.

**SECTION 33‑16‑102.** Inspection of records by shareholders.

 (a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in Section 33‑16‑101(e) if he gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy. Shareholders holding at least one percent of any class of shares are entitled to conduct an inspection of the tax returns described in Section 33‑16‑101(e)(8) under the same conditions.

 (b) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (c) and gives the corporation written notice of his demand at least five business days before the date on which he wishes to inspect and copy:

 (1) excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under Section 33‑16‑102(a);

 (2) accounting records of the corporation; and

 (3) the record of shareholders.

 (c) A shareholder may inspect and copy the records described in subsection (b) only if:

 (1) his demand is made in good faith and for a proper purpose;

 (2) he describes with reasonable particularity his purpose and the records he desires to inspect; and

 (3) the records are directly connected with his purpose.

 (d) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

 (e) This section does not affect:

 (1) the right of a shareholder to inspect records under Section 33‑7‑200 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant;

 (2) the power of a court, independently of Chapters 1 through 20 of this Title, to compel the production of corporate records for examination.

HISTORY: Derived from 1976 Code Section 33‑11‑250 [1962 Code Section 12‑16.25; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2], and Section 33‑11‑260 [1962 Code Section 12‑16.26; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑16‑103.** Scope of inspection right.

 (a) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder he represents.

 (b) The right to copy records under Section 33‑16‑102 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 shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

 (d) The corporation may comply with a shareholder's demand to inspect the record of shareholders under Section 33‑16‑102(b)(3) by providing him with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

HISTORY: Derived from 1976 Code Section 33‑11‑260 [1962 Code Section 12‑16.26; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑16‑104.** Court‑ordered inspection.

 (a) If a corporation does not allow a shareholder who complies with Section 33‑16‑102(a) to inspect and copy any records required by that subsection to be available for inspection, the circuit court of the county where the corporation's principal office (or, if none in this State, its registered office) is located summarily may order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

 (b) If a corporation, within a reasonable time, does not allow a shareholder to inspect and copy any other record, the shareholder who complies with Section 33‑16‑102(b) and (c) may apply to the circuit court 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 on an expedited basis.

 (c) If the court orders inspection and copying of the records demanded, it also shall order the corporation to pay the shareholder'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 shareholder to inspect the demanded records.

 (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 shareholder.

HISTORY: Derived from 1976 Code Section 33‑11‑260 [1962 Code Section 12‑16.26; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

ARTICLE 2

Reports

**SECTION 33‑16‑200.** Financial statements for shareholders.

 (a) A corporation shall furnish its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements also must be prepared on that basis.

 (b) If the annual financial statements are reported upon by a public accountant, his report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

 (1) stating his reasonable belief 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 mail the annual financial statements to each shareholder within one hundred twenty days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not mailed the statements, the corporation shall mail him the last financial statements.

HISTORY: Derived from 1976 Code Section 33‑11‑250 [1962 Code Section 12‑16.26; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.

**SECTION 33‑16‑210.** Other reports to shareholders.

 (a) If a corporation indemnifies or advances expenses to a director under Section 33‑8‑510, 33‑8‑520, 33‑8‑530, or 33‑8‑540 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 shareholders with or before the notice of the next shareholders' meeting.

 (b) If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting. However, this report is not required for a corporation subject to the registration requirements of Section 12 of the Securities Exchange Act of 1934, if the shares are issued or authorized pursuant to a plan that has been approved by the shareholders of the corporation.

HISTORY: Derived from 1976 Code Section 33‑11‑250 [1962 Code Section 12‑16.26; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2; 1992 Act No. 420, Section 1.

**SECTION 33‑16‑220.** Annual report.

 Every corporation organized under the laws of this State and every corporation qualified to do business in this State shall file an annual report as provided in Title 12.

HISTORY: Derived from 1976 Code Section 33‑11‑250 [1962 Code Section 12‑16.26; 1962 (52) 1996; 1981 Act No. 146, Section 2; Repealed, 1988 Act No. 444, Section 2]; 1988 Act No. 444, Section 2.