

Part 2 Incorporation

16-6a-201 Incorporators.

- (1) One or more persons may act as incorporators of a nonprofit corporation by delivering to the division for filing articles of incorporation meeting the requirements of Section 16-6a-202.
- (2) An incorporator who is a natural person shall be 18 years of age or older.

Enacted by Chapter 300, 2000 General Session

16-6a-202 Articles of incorporation.

- (1) The articles of incorporation shall set forth:
 - (a) one or more purposes for which the nonprofit corporation is organized;
 - (b) a corporate name for the nonprofit corporation that satisfies the requirements of Section 16-6a-401;
 - (c) the information required by Subsection 16-17-203(1);
 - (d) the name and address of each incorporator;
 - (e) whether or not the nonprofit corporation will have voting members;
 - (f) if the nonprofit corporation is to issue shares of stock evidencing membership in the nonprofit corporation or interests in water or other property rights:
 - (i) the aggregate number of shares that the nonprofit corporation has authority to issue; and
 - (ii) if the shares are to be divided into classes:
 - (A) the number of shares of each class;
 - (B) the designation of each class; and
 - (C) a statement of the preferences, limitations, and relative rights of the shares of each class;
 - (g) provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (2) The articles of incorporation may but need not set forth:
 - (a) the names and addresses of the individuals who are to serve as the initial directors;
 - (b) provisions not inconsistent with law regarding:
 - (i) managing the business and regulating the affairs of the nonprofit corporation;
 - (ii) defining, limiting, and regulating the powers of:
 - (A) the nonprofit corporation;
 - (B) the board of directors of the nonprofit corporation; and
 - (C) the members of the nonprofit corporation or any class of members;
 - (iii) whether cumulative voting will be permitted; and
 - (iv) the characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members; and
 - (c) any provision that under this chapter is permitted to be in the articles of incorporation or required or permitted to be set forth in the bylaws, including elective provisions that in accordance with this chapter shall be included in the articles of incorporation to be effective.
- (3)
 - (a) It is sufficient under Subsection (1)(a) to state, either alone or with other purposes, that the purpose of the nonprofit corporation is to engage in any lawful act for which a nonprofit corporation may be organized under this chapter.

- (b) If the articles of incorporation include the statement described in Subsection (3)(a), all lawful acts and activities shall be within the purposes of the nonprofit corporation, except for express limitations, if any.
- (4) The articles of incorporation need not set forth any corporate power enumerated in this chapter.
- (5) The articles of incorporation shall:
 - (a) be signed by each incorporator; and
 - (b) meet the filing requirements of Section 16-6a-105.
- (6)
 - (a) If this chapter conditions any matter upon the presence of a provision in the bylaws, the condition is satisfied if the provision is present either in:
 - (i) the articles of incorporation; or
 - (ii) the bylaws.
 - (b) If this chapter conditions any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both:
 - (i) the articles of incorporation; and
 - (ii) the bylaws.

Amended by Chapter 43, 2010 General Session

16-6a-203 Incorporation.

- (1) A nonprofit corporation is incorporated, and its corporate existence begins:
 - (a) when the articles of incorporation are filed by the division; or
 - (b) if a delayed effective date is specified pursuant to Subsection 16-6a-108(2), on the delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective date.
- (2) Notwithstanding Subsection 16-6a-110(4), the filing of the articles of incorporation by the division is conclusive proof that all conditions precedent to incorporation have been satisfied, except in a proceeding by the state to:
 - (a) cancel or revoke the incorporation; or
 - (b) involuntarily dissolve the nonprofit corporation.

Amended by Chapter 240, 2015 General Session

16-6a-204 Liability for preincorporation transactions.

All persons purporting to act as or on behalf of a nonprofit corporation, knowing there is no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

Enacted by Chapter 300, 2000 General Session

16-6a-205 Organization of the nonprofit corporation.

- (1) After incorporation:
 - (a) if initial directors are named in the articles of incorporation, the initial directors may hold an organizational meeting, at the call of a majority of the initial directors, to complete the organization of the nonprofit corporation by:
 - (i) appointing officers;
 - (ii) adopting bylaws, if desired; and
 - (iii) carrying on any other business brought before the meeting; or

- (b) if initial directors are not named in the articles of incorporation, until directors are elected, the incorporators may hold an organizational meeting at the call of a majority of the incorporators to do whatever is necessary and proper to complete the organization of the nonprofit corporation, including:
 - (i) the election of directors and officers;
 - (ii) the appointment of members; and
 - (iii) the adoption and amendment of bylaws.
- (2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents that:
 - (a) describe the action taken; and
 - (b) are signed by each incorporator.
- (3) An organizational meeting may be held in or out of this state.

Enacted by Chapter 300, 2000 General Session

16-6a-206 Bylaws.

- (1)
 - (a) The board of directors of a nonprofit corporation may adopt initial bylaws for the nonprofit corporation.
 - (b) If no directors of the nonprofit corporation have been elected, the incorporators may adopt initial bylaws for the nonprofit corporation.
 - (c) If neither the incorporators nor the board of directors have adopted initial bylaws, the members, if any, may adopt initial bylaws.
- (2) The bylaws of a nonprofit corporation may contain any provision for managing the business and regulating the affairs of the nonprofit corporation that is not inconsistent with law or the articles of incorporation, including management and regulation of the nonprofit corporation in the event of an emergency.

Enacted by Chapter 300, 2000 General Session

16-6a-207 Incorporation of cooperative association.

- (1)
 - (a) If a cooperative association meets the requirements of Subsection (1)(b), it may:
 - (i) be incorporated under this chapter; and
 - (ii) use the word "cooperative" as part of its corporate or business name.
 - (b) A cooperative association described in Subsection (1)(a):
 - (i) may not be:
 - (A) an association subject to the insurance or credit union laws of this state;
 - (B) a health insurance purchasing association as defined in Section 31A-34-103; or
 - (C) a health insurance purchasing alliance licensed under Title 31A, Chapter 34, Voluntary Health Insurance Purchasing Alliance Act; and
 - (ii) shall state in its articles of incorporation that:
 - (A) a member may not have more than one vote regardless of the number or amount of stock or membership capital owned by the member unless voting is based in whole or in part on the volume of patronage of the member with the cooperative association; and
 - (B) savings in excess of dividends and additions to reserves and surplus shall be distributed or allocated to members or patrons on the basis of patronage.

- (2)
 - (a) Any cooperative association incorporated in accordance with Subsection (1):
 - (i) has all the rights and is subject to the limitations provided in Section 3-1-11; and
 - (ii) may pay dividends on its stock, if it has stock, subject to the limitations of Section 3-1-11.
 - (b) The articles of incorporation or the bylaws of a cooperative association incorporated in accordance with Subsection (1) may provide for:
 - (i) the establishment and alteration of voting districts;
 - (ii) the election of delegates to represent:
 - (A) the districts described in Subsection (2)(b)(i); and
 - (B) the members of the districts described in Subsection (2)(b)(i);
 - (iii) the establishment and alteration of director districts; and
 - (iv) the election of directors to represent the districts described in Subsection (2)(b)(ii) by:
 - (A) the members of the districts; or
 - (B) delegates elected by the members.
- (3)
 - (a) A corporation organized under Title 3, Uniform Agricultural Cooperative Association Act, or Title 16, Chapter 16, Uniform Limited Cooperative Association Act, may convert itself into a cooperative association subject to this chapter by adopting appropriate amendments to its articles of incorporation by which:
 - (i) it elects to become subject to this chapter; and
 - (ii) makes changes in its articles of incorporation that are:
 - (A) required by this chapter; and
 - (B) any other changes permitted by this chapter.
 - (b) The amendments described in Subsection (3)(a) shall be adopted and filed in the manner provided by the law then applicable to the cooperative nonprofit corporation.
- (4) Notwithstanding Subsection (1), a health insurance purchasing association may not use the word "cooperative" or "alliance" but may use the word "association."
- (5) Except as otherwise provided in this section, a cooperative nonprofit corporation is subject to this chapter.
- (6) A corporation that is a cooperative under this chapter may convert to a limited cooperative association under Title 16, Chapter 16, Uniform Limited Cooperative Association Act, by complying with that chapter.

Amended by Chapter 363, 2008 General Session