

ARTICLE 13

FOREIGN CORPORATIONS

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§ 1301. Authorization of foreign corporations.

(a) A foreign corporation shall not conduct activities in this state until it has been authorized to do so as provided in this article. A foreign corporation may be authorized to conduct in this state any activities which may be conducted lawfully in this state by a domestic corporation, to the extent that it is authorized to conduct such activities in the jurisdiction of its incorporation, but no other activities.

(b) Without excluding other acts which may not constitute conducting activities in this state, a foreign corporation shall not be considered to be conducting activities in this state, for the purposes of this chapter, by reason of doing in this state any one or more of the following acts:

(1) Maintaining or defending any action or proceeding, whether judicial, administrative, arbitrative or otherwise, or effecting settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its directors or its members.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies only for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(5) Granting funds.

(6) Distributing information to its members.

(c) The specification in paragraph (b) does not establish a standard for activities which may subject a foreign corporation to service of

process under this chapter or any other statute of this state.

(d) A foreign corporation whose corporate name is not acceptable for authorization pursuant to sections 301 and 302 of this chapter, may submit in its application for authority pursuant to section thirteen hundred four of this chapter, a fictitious name under which it shall do business in this state. A fictitious name submitted pursuant to this section shall be subject to the provisions of subparagraphs 2 through 9 of paragraph (a) of section 301 and section 302 of this chapter. A foreign corporation authorized to conduct activities in this state under a fictitious name pursuant to this section, shall use such fictitious name in all of its dealings with the secretary of state and in the conduct of its activities in this state. The provisions of section one hundred thirty of the general business law shall not apply to any fictitious name filed by a foreign corporation pursuant to this section.

§ 1302. Application to existing authorized foreign corporations.

Every foreign corporation which on the effective date of this chapter is authorized to conduct activities in this state under a certificate of authority heretofore issued to it by the secretary of state shall continue to have such authority. Such foreign corporation, its members, directors, and officers shall have the same rights, franchises, and privileges and shall be subject to the same limitations, restrictions, liabilities, and penalties as a foreign corporation authorized under this chapter, its members, directors, and officers respectively. A foreign corporation may by amendment to its certificate of authority set forth whether it is a charitable corporation or a non-charitable corporation and in the absence of such amendment an authorized foreign corporation shall be a charitable corporation. Reference in this chapter to an application for authority shall, unless the context otherwise requires, include the statement and designation and any amendment thereof required to be filed by the secretary of state under prior statutes to obtain a certificate of authority.

§ 1303. Violations.

The attorney-general may bring an action to restrain a foreign corporation from conducting in this state without authority any activities for the conduct of which it is required to be authorized in the state, or from conducting in this state any activities not set forth in its application for authority or certificate of amendment filed by the department of state. The attorney-general may bring an action or special proceeding to annul the authority of a foreign corporation to conduct in this state any activities not set forth in its application for authority or certificate of amendment or the authority of which was obtained through fraudulent misrepresentation or concealment of a material fact or to enjoin or annul the authority of any foreign corporation which within this state contrary to law has done or omitted any act which if done by a domestic corporation would be a cause for its dissolution under section 1101 (Attorney-general's action for judicial dissolution) or to annul the authority of a foreign corporation that has been dissolved or has had its authority or existence otherwise terminated or cancelled in the jurisdiction of its incorporation. The attorney-general shall deliver a certified copy of the order of annulment to the department of state. Upon the filing thereof by the department of state the authority of the foreign corporation to conduct activities in this state shall be annulled. The secretary of state shall continue as agent of the foreign corporation upon whom process against it may be served in any action or special proceeding based upon any liability or obligation incurred by the foreign corporation within the

state prior to the filing of the certified copy of the order of annulment by the department of state.

§ 1304. Application for authority; contents.

(a) A foreign corporation may apply for authority to conduct activities in this state by filing an application entitled "Application for authority of (name of corporation) under section 1304 of the Not-for-Profit Corporation Law." The application shall be signed and delivered to the department of state. It shall set forth:

(1) The name of the foreign corporation.

(2) The fictitious name the corporation agrees to use in this state pursuant to section 1301 of this chapter, if applicable.

(3) The jurisdiction and date of its incorporation.

(4) That the corporation is a foreign corporation as defined in subparagraph (7) of paragraph (a) of section 102 (Definitions) of this chapter, whether it would be a charitable corporation or non-charitable corporation if formed in this state; a statement of its purposes to be pursued in this state and of the activities which it proposes to conduct in this state; and a statement that it is authorized to conduct those activities in the jurisdiction of its incorporation.

(5) The county within this state in which its office is to be located.

(6) A designation of the secretary of state as its agent upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him.

(7) If it is to have a registered agent, his name and address within this state and a statement that the registered agent is to be its agent upon whom process against it may be served.

(8) A statement that the foreign corporation has not, since its incorporation or since the date its authority to conduct activities in this state was last surrendered, done any act in this state, except as set forth in paragraph (b) of section 1301 (Authorization of foreign corporations); or in lieu of such statement the consent of the state tax commission to the filing of the application shall be attached thereto.

(9) Any provision required by any governmental body or officer or other person or body as a condition for giving the consent or approval required for the filing of such application for authority, provided such provision is not inconsistent with this chapter or any other statute of this state. A corporation whose statement of purposes to be conducted in this state specifically includes the establishment or operation of a child day care center, as that term is defined in section three hundred ninety of the social services law, shall provide a certified copy of any application for authority and any amendment thereto involving such corporation to the office of children and family services within thirty days after the filing of such application or amendment with the department of state.

(b) Attached to the application for authority shall be a certificate by an authorized officer of the jurisdiction of its incorporation that the foreign corporation is an existing corporation. If such certificate is in a foreign language, a translation thereof under oath of the translator shall be attached thereto.

(c) If the application for authority sets forth any purpose or activity for which a domestic corporation could be formed only with the consent or approval of any governmental body or officer, or other person or body under section 404 (Approvals, notices and consents) of this chapter, such consent or approval shall be endorsed thereon or annexed thereto.

(d) If the application for authority sets forth any purpose or

activity requiring a domestic corporation to provide notice of the filing of a certificate of incorporation to any person or entity under section 404 (Approvals, notices and consents) of this chapter, then the corporation shall send by certified mail, return receipt requested, a certified copy of the certificate of authority to such person or entity within ten business days after the corporation receives confirmation from the department of state that the certificate has been accepted for filing.

§ 1305. Application for authority; effect.

Upon filing by the department of state of the application for authority the foreign corporation shall be authorized to conduct in this state any activities set forth in the application. Such authority shall continue so long as the corporation retains its authority to conduct such activities in the jurisdiction of its incorporation and its authority to conduct activities in this state has not been surrendered, suspended or annulled in accordance with law.

§ 1306. Powers of authorized foreign corporations.

An authorized foreign corporation shall have such powers as are permitted by the laws of the jurisdiction of its incorporation but no greater powers than those of a domestic corporation formed for the purposes set forth in the application for authority.

§ 1307. Tenure of real property.

A foreign corporation may acquire and hold real property in this state in furtherance of its corporate purposes and may convey the same by deed or otherwise in the same manner as a domestic corporation.

§ 1308. Amendments or changes.

(a) An authorized foreign corporation may amend or change its application for authority from time to time in any and as many of the following respects as may be desired if the amendments contain only such provisions as might be lawfully contained in an application for authority at the time of making such amendment:

(1) To change its corporate name if such change has been effected under the laws of the jurisdiction of its incorporation.

(2) To change its fictitious name filed pursuant to paragraph (d) of section 1301 of this chapter, to another fictitious name, if its true corporate name is not available for use in this state.

(3) To delete its fictitious name filed pursuant to paragraph (d) of section 1301 of this chapter, if its true corporate name is now available for use in this state.

(4) To adopt a fictitious name when the corporate name is changed and is not available in this state.

(5) To enlarge, limit or otherwise change the activities which it proposes to conduct in this state.

(6) To change the location of its office in this state.

(7) To specify or change the post office address to which the secretary of state shall mail a copy of any process against it served upon him.

(8) To make, revoke or change the designation of a registered agent or to specify or change his address.

§ 1309. Certificate of amendment; contents, effect.

(a) To accomplish such amendment a certificate, entitled "Certificate of amendment of application for authority of (name of corporation) under section 1309 of the Not-for-Profit Corporation Law," shall be signed and delivered to the department of state. It shall set forth:

(1) The name of the foreign corporation as it appears on the index of names of existing domestic and authorized foreign corporations of any

kind in the department of state and the fictitious name the corporation has agreed to use in this state pursuant to paragraph (d) of section 1301 of this article.

(2) The jurisdiction of its incorporation.

(3) The date it was authorized to conduct activities in this state.

(4) Each amendment effected thereby.

(5) If the true corporate name of the foreign corporation is to be changed, a statement that the change of name has been effected under the laws of the jurisdiction of its incorporation and the date the change was so effected.

(6) If the activities it proposes to conduct in this state are to be enlarged, limited or otherwise changed, a statement that it is authorized to conduct in the jurisdiction of its incorporation the activities which it proposes to conduct in this state.

(b) If an authorized foreign corporation has changed its name in the jurisdiction of its incorporation, it shall deliver to the department of state within twenty days after the change became effective in that jurisdiction a certificate of amendment under paragraph (a). Upon its failure to deliver such certificate, its authority to conduct activities in this state shall upon the expiration of said twenty days be suspended. The filing by the department of state of a certificate of amendment changing the corporation name within one hundred twenty days after the effective date of the change of name in the jurisdiction of its incorporation shall annul the suspension and its authority to conduct activities in this state shall be restored and continue as if no suspension had occurred. The secretary of state shall continue, during such suspension, as agent of the foreign corporation upon whom process against the foreign corporation may be served in the manner set forth in paragraph (b) of section 306 (Service of process).

(c) A certificate of amendment of application for authority shall not be filed, if the amendment adds, changes or eliminates a purpose, power or provision the inclusion of which in an application for authority requires consent or approval of any governmental body or officer or other person or body, or if the amendment changes the name of a corporation whose application for authority had such consent or approval endorsed thereon or annexed thereto, unless such consent or approval is endorsed on or annexed to the certificate of amendment of application for authority.

§ 1310. Certificate of change; contents.

(a) In lieu of a certificate of amendment, an authorized foreign corporation, upon compliance with this section, may make any or all of the following changes in its application for authority:

(1) To change the location of its office in this state.

(2) To specify or change the post office address to which the secretary of state shall mail a copy of any process against it served upon him.

(3) To make, revoke or change the designation of a registered agent or specify or change his address.

(b) To accomplish such change, a certificate entitled "Certificate of change of application for authority of (name of corporation) under section 1310 of the Not-for-Profit Corporation Law" shall be signed and delivered to the department of state. It shall set forth:

(1) The name of the foreign corporation as it appears on the index of names of existing domestic and authorized foreign corporations of any kind in the department of state and the fictitious name the corporation has agreed to use in this state pursuant to paragraph (d) of section 1301 of this article.

- (2) The jurisdiction of its incorporation.
- (3) The date it was authorized to conduct activities in this state.
- (4) Each change effected thereby.

(c) A certificate of change of application for authority which changes only the post office address to which the secretary of state shall mail a copy of any process against an authorized foreign corporation served upon him or which changes the address of its registered agent, provided such address is the address of a person, partnership or other corporation whose address, as agent, is the address to be changed or who has been designated as registered agent for such authorized foreign corporation, may be signed and delivered to the department of state by such agent. The certificate of change of application for authority shall set forth the statements required under subparagraphs (1), (2), (3) and (4) of paragraph (b) of this section; that a notice of the proposed change was mailed by the party signing the certificate to the authorized foreign corporation not less than thirty days prior to the date of delivery to the department and that such corporation has not objected thereto; and that the party signing the certificate is the agent of such foreign corporation to whose address the secretary of state is required to mail copies of process or the registered agent, if such be the case. A certificate signed and delivered under this paragraph shall not be deemed to effect a change of location of the office of the corporation in whose behalf such certificate is filed.

§ 1311. Surrender of authority.

(a) An authorized foreign corporation desiring to surrender its authority shall deliver to the department of state a certificate entitled "Certificate of surrender of authority of (name of corporation) under section 1311 of the Not-for-Profit Corporation Law." The certificate shall be signed. It shall set forth:

(1) The name of the foreign corporation as it appears on the index of names of existing domestic and authorized foreign corporations of any kind in the department of state and the fictitious name the corporation has agreed to use in this state pursuant to paragraph (d) of section 1301 of this article.

(2) The jurisdiction of its incorporation.

(3) The date it was authorized to conduct activities in this state.

(4) That it surrenders its authority to conduct activities in this state.

(5) That it revokes the authority of its registered agent, if any, previously designated and consents that process against it in any action or special proceeding based upon any liability or obligation incurred by it within this state before the filing of the certificate of surrender may be served on the secretary of state after the filing thereof in the manner set forth in paragraph (b) of section 306 (Service of process).

(6) A post office address within or without this state to which the secretary of state shall mail a copy of any process against it served upon him.

(b) The department shall not file such certificate unless the consent of the state tax commission to the surrender of authority is attached thereto.

(c) The authority of the foreign corporation to conduct activities in this state shall terminate on the filing by the department of state of the certificate of surrender of authority.

(d) The post office address specified under subparagraph (a) (6) may be changed by delivering to the department of state a certificate, entitled "Certificate of amendment of certificate of surrender of authority of (name of corporation) under section 1311 of the

Not-for-Profit Corporation Law." The certificate shall be signed. It shall set forth:

- (1) The name of the foreign corporation.
- (2) The jurisdiction of its incorporation.

(3) The date its certificate of surrender of authority was filed by the department of state.

(4) The changed post office address, within or without this state, to which the secretary of state shall mail a copy of any process against it served upon him.

§ 1312. Termination of existence.

When an authorized foreign corporation is dissolved or its authority or existence is otherwise terminated or cancelled in the jurisdiction of its incorporation or when such foreign corporation is merged into or consolidated with another foreign corporation, a certificate of the secretary of state, or official performing the equivalent function as to corporate records, of the jurisdiction of incorporation of such foreign corporation attesting to the occurrence of any such event or a certified copy of an order or decree of a court of such jurisdiction directing the dissolution of such foreign corporation, the termination of its existence or the cancellation of its authority shall be delivered to the department of state. The filing of the certificate, order or decree shall have the same effect as the filing of a certificate of surrender of authority under section 1311 (Surrender of authority). The secretary of state shall continue as agent of the foreign corporation upon whom process against it may be served in the manner set forth in paragraph (b) of section 306 (Service of process), in any action or special proceeding based upon any liability or obligation incurred by the foreign corporation within this state prior to the filing of such certificate, order or decree and he shall promptly cause a copy of any such process to be mailed by registered mail, return receipt requested, to such foreign corporation at the post office address on file in his office specified for such purpose. The post office address may be changed by signing and delivering to the department of state a certificate of change setting forth the statements required under section 1310 (Certificate of change, contents) to effect a change in the post office address under subparagraph (a) (4) of section 1308 (Amendments or changes).

§ 1313. Actions or special proceedings by unauthorized foreign corporations.

(a) A foreign corporation conducting activities in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to conduct activities in this state and it has paid to the state all fees, penalties and franchise taxes, if any, for the years or parts thereof during which it conducted activities in this state without authority. This prohibition shall apply to any successor in interest of such foreign corporation.

(b) The failure of a foreign corporation to obtain authority to conduct activities in this state shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in this state.

§ 1314. Actions or special proceedings by foreign corporations.

An action or special proceeding may be maintained by a foreign corporation, in like manner and subject to the same limitations, as an action or special proceeding brought by a domestic corporation, except

as otherwise prescribed by statute.

§ 1315. Actions or special proceedings against foreign corporations.

(a) An action or special proceeding against a foreign corporation may be maintained by a resident of this state or by a domestic corporation of any kind for any cause of action.

(b) Except as otherwise provided in this article, an action or special proceeding against a foreign corporation may be maintained by another foreign corporation of any kind or by a nonresident in the following cases only:

(1) Where the action is brought to recover damages for the breach of a contract made or to be performed within this state, or relating to property situated within this state at the time of the making of the contract.

(2) Where the subject matter of the litigation is situated within this state.

(3) Where the cause of action arose within this state, except where the object of the action or special proceeding is to affect the title of real property situated outside this state.

(4) Where, in any case not included in the preceding subparagraphs, a non-domiciliary would be subject to the personal jurisdiction of the courts of this state under section three hundred two of the civil practice law and rules.

(5) Where the defendant is a foreign corporation conducting activities or authorized to conduct activities in this state.

(c) Paragraph (b) does not apply to a corporation which was formed under the laws of the United States and which maintains an office in this state.

§ 1316. Record of members.

(a) Any resident of this state who shall have been a member of record, for at least six months immediately preceding his demand, of a foreign corporation conducting activities in this state, or any resident of this state authorized in writing by at least five percent of the members, entitled to vote, of the foreign corporation, upon at least five days' written demand may require such foreign corporation to produce a record of its members setting forth the names and addresses of all members, the number and class of capital certificates held by each and the dates when they respectively became the owners of record thereof, and shall have the right to examine in person or by agent or attorney at the office of the foreign corporation in this state or at the office of its transfer agent or registrar in this state or at such other place in any county in this state in which the foreign corporation is conducting activities as may be designated by the foreign corporation during the usual business hours, a record of members or an exact copy of the record of members certified as correct by the corporate officer or agent responsible for keeping or producing such record and to make extracts therefrom. In the case of a foreign corporation having shares, a record of shareholders shall for the purpose of this section be regarded as a record of members, and holders of voting trust certificates representing such shares shall for the purpose of this section be regarded as members.

(b) An examination authorized by paragraph (a) may be denied to such member or other person upon his refusal to furnish to the foreign corporation or its transfer agent or registrar an affidavit that such inspection is not desired for a purpose which is in the interests of a business or object other than the activities of the foreign corporation and that such member or other person has not within five years sold or offered for sale any list or record of members of any corporation of any kind, whether or not formed under the laws of this state, or aided or

abetted any person in procuring any such list or record of members for any such purpose.

(c) Upon refusal by the foreign corporation or by an officer or agent of the foreign corporation to produce for examination or to permit an examination of the record of members as herein provided, the person making the demand for production and examination may apply to the supreme court in the judicial district where the office of the foreign corporation within this state is located, upon such notice as the court may direct, for an order directing the foreign corporation, its officer or agent, to show cause why an order should not be granted directing such production and permitting such examination by the applicant. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is qualified and entitled to such examination, the court shall grant an order compelling such production for examination and awarding such further relief as to the court may seem just and proper.

(d) Nothing herein contained shall impair the power of courts to compel the production for examination of the books of a foreign corporation. The record of members specified in paragraph (a) shall be prima facie evidence of the facts therein stated in favor of the plaintiff in any action or special proceeding against such foreign corporation or any of its officers, directors or members.

§ 1317. Voting trust records.

(a) A voting trustee, appointed under a voting trust agreement to vote the shares of a foreign corporation conducting activities in this state, who either has an office in this state or has designated a transfer agent within this state, shall produce for examination and permit to be examined in this state, at the office of the foreign corporation or at his office or at the office of such transfer agent, a record of voting trust certificate holders setting forth their names, alphabetically arranged, and addresses, the number and class of shares represented by the certificates held by them respectively and the dates when they respectively became the owners thereof, upon the written demand of any resident of this state who shall have been a voting trust certificate holder or a shareholder of the foreign corporation for at least six months immediately preceding his demand, or of any resident of this state holding, or thereunto authorized in writing by the holders of, at least five percent of any class of the outstanding shares of such foreign corporation, either directly or as holders of voting trust certificates for such shares, subject to the same terms and conditions set forth with respect to the right of examination of the record of members of the foreign corporation in section 1316 (Record of members).

(b) The voting trustee shall deposit an exact copy of the voting trust agreement with the foreign corporation at its office in this state or at the office of the transfer agent in this state.

(c) The copy of the voting trust agreement shall be subject to the same right of examination by voting trust certificate holders and by shareholders of the foreign corporation as is the record of members of a corporation under section 621 (Books and records; right of inspection, prima facie evidence).

(d) Upon refusal by a voting trustee or his transfer agent to produce for examination or to permit an examination of the record of voting trust certificate holders or of such copy of the voting trust agreement as herein provided, the person making the demand may apply to the supreme court, upon such notice as the court may direct, for an order directing the voting trustee or his transfer agent to show cause why an order should not be granted directing such production and permitting

such examination. Upon the return day of the order to show cause, the court shall hear the parties summarily, by affidavit or otherwise, and if it appears that the applicant is entitled to such examination, the court shall grant an order compelling such production for examination and awarding such further relief as to the court may seem just and proper.

(e) Where the voting trust agreement shall vest in the voting trustee the right to vote the shares of a foreign corporation which has an office in this state for conducting activities and either the principal activity of which is conducted within this state or the greater part of its property is located within this state, the voting trust agreement is an express trust created under the laws of this state and the supreme court upon the petition of a voting trust certificate holder may exercise such power over the trustee named therein as is granted to the court by section 7-2.6 of the estates, powers and trusts law.

§ 1318. Liabilities of directors and officers of foreign corporations.

(a) Except as otherwise provided in this chapter, the directors and officers of a foreign corporation conducting activities in this state are subject, to the same extent as directors and officers of a domestic corporation, to the provisions of:

(1) Section 719 (Liability of directors in certain cases) except subparagraph (a) (4) thereof, and

(2) Section 720 (Action against directors and officers for misconduct)

(b) Any liability imposed by paragraph (a) may be enforced in, and such relief granted by, the courts in this state, in the same manner as in the case of a domestic corporation.

§ 1319. Liability of foreign corporations for failure to disclose required information.

A foreign corporation conducting activities in this state shall, in the same manner as a domestic corporation, disclose to its members of record who are residents of this state the information required under Article 5 and shall be liable as provided in section 521 (Liability for failure to disclose required information) for failure to comply in good faith with these requirements.

§ 1320. Applicability of other provisions.

(a) In additions to articles 1 (Short title; definitions; application; certificates; miscellaneous) and 3 (Corporate name and service of process) and the other sections of article 13, the following provisions, to the extent provided therein, shall apply to a foreign corporation conducting activities in this state, its directors, officers and members:

(1) Section 623 (Members' derivative action brought in the right of the corporation to procure a judgment in its favor).

(2) Sections 721 (Exclusivity of statutory provisions for indemnification of directors and officers) through 727 (Insurance for indemnification of directors and officers), inclusive.

(3) Section 906 (Merger or consolidation of domestic and foreign corporations).

§ 1321. Exemption from certain provisions.

(a) Notwithstanding any other provision of this chapter, a foreign corporation conducting activities in this state which is authorized under this article, its directors, officers and members, shall be exempt from the provisions of paragraph (e) of section 1317 (Voting trust records), subparagraph (1) of paragraph (a) of section 1318 (Liabilities of directors and officers of foreign corporations), and subparagraph (2) of paragraph (a) of section 1320 (Applicability of other provisions) of

this article if such provision would otherwise apply:

(1) The corporation is a non-charitable corporation under this chapter; its principal activities are conducted outside this state; the greater part of its property is located outside this state; and less than one third of its members are residents of this state; or

(2) The corporation is a charitable corporation under this chapter; its principal activities are conducted outside this state; the greater part of its property is located outside this state; and less than ten per cent of its annual revenues is derived from solicitation of funds within this state.