

MODEL STATUTORY CLOSE CORPORATION SUPPLEMENT

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Creation

SECTION 1. SHORT TITLE

This Supplement shall be known and may be cited as the “[name of state] Statutory Close Corporation Supplement.”

SECTION 2. APPLICATION OF [MODEL] BUSINESS CORPORATION ACT AND [MODEL] PROFESSIONAL CORPORATION SUPPLEMENT

- (a) The [Model] Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this Supplement.
- (b) This Supplement applies to a professional corporation organized under the [Model] Professional Corporation Supplement whose articles of incorporation contain the statement required by section 3(a), except insofar as the [Model] Professional Corporation Supplement contains inconsistent provisions.
- (c) This Supplement does not repeal or modify any statute or rule of law that is or would apply to a corporation that is organized under the [Model] Business Corporation Act or the [Model] Professional Corporation Supplement and that does not elect to become a statutory close corporation under section 3.

SECTION 3. DEFINITION AND ELECTION OF STATUTORY CLOSE CORPORATION STATUS

- (a) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.
- (b) A corporation having 50 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the statement required by subsection (a). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters’ rights under [MBCA ch. 13].

Shares

SECTION 10. NOTICE OF STATUTORY CLOSE CORPORATION STATUS ON ISSUED SHARES

- (a) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation: The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders’ agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.
- (b) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (a).
- (c) The notice required by this section satisfies all requirements of this Act and of [MBCA § 6.27] that notice of share transfer restrictions be given.

(d) A person claiming an interest in shares of a statutory close corporation which has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation which has not complied with the notice requirement of this section is bound by any documents of which he, or a person through whom he claims, has knowledge or notice.

(e) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

SECTION 11. SHARE TRANSFER PROHIBITION

(a) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under section 12.

(b) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

- (1) to the corporation or to any other holder of the same class or series of shares;
- (2) to members of the shareholder's immediate family (or to a trust, all of whose beneficiaries are members of the shareholder's immediate family), which immediate family consists of his spouse, parents, lineal descendants (including adopted children and stepchildren) and the spouse of any lineal descendant, and brothers and sisters;
- (3) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;
- (4) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;
- (5) by merger or share exchange [under MBCA ch. 11] or an exchange of existing shares for other shares of a different class or series in the corporation;
- (6) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor;
- (7) made after termination of the corporation's status as a statutory close corporation.

SECTION 12. SHARE TRANSFER AFTER FIRST REFUSAL BY CORPORATION

(a) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of section 11 must first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (b). The offer by the third person must be in writing and state the offeror's name and address, the number and class (or series) of shares offered, the offering price per share, and the other terms of the offer.

(b) A third person is eligible to purchase the shares if:

- (1) he is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and he agrees in writing not to terminate his qualification without the approval of the remaining shareholders; and
- (2) his purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(c) The person desiring to transfer shares shall deliver the offer to the corporation, and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all (but not less than all) of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(d) The corporation must deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected. If the corporation makes a counteroffer, the shareholder must deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(e) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. If the corporation has more than one class (or series) of shares, however, the remaining holders of the class (or series) of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(f) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received his offer, is entitled to transfer to the third person offeror all (but not less than all) of the offered shares in accordance with the terms of his offer to the corporation.

SECTION 13. ATTEMPTED SHARE TRANSFER IN BREACH OF PROHIBITION

(a) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(b) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by section 10 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within 30 days after they are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

SECTION 14. COMPULSORY PURCHASE OF SHARES AFTER DEATH OF SHAREHOLDER

(a) This section, and sections 15 through 17, apply to a statutory close corporation only if so provided in its articles of incorporation.

If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all (but not less than all) of the decedent's shares or to be dissolved.

(b) The provisions of sections 15 through 17 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(c) An amendment to the articles of incorporation to provide for application of sections 15 through 17, or to modify or delete the provisions of these sections, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or, if none, by all of the incorporators.

(d) A shareholder who votes against an amendment to modify or delete the provisions of sections 15 through 17 is entitled to dissenters' rights under [MBCA chapter 13] if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(e) A shareholder may waive his and his estate's rights under sections 15 through 17 by a signed writing.

(f) Sections 15 through 17 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independently of these sections.

SECTION 15. EXERCISE OF COMPULSORY PURCHASE RIGHT

(a) A person entitled and desiring to exercise the compulsory purchase right described in section 14 must deliver a written notice to the corporation, within 120 days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and requesting that the corporation offer to purchase the shares.

(b) Within 20 days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(c) The corporation must deliver a purchase offer to the person requesting it within 75 days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any. The person must accept the purchase offer in writing within 15 days after receiving it or the offer is rejected.

(d) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve the allocation. If the corporation has more than one class or series of shares, however, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the

corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(e) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, by-laws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is entitled to commence a proceeding for dissolution under section 16.

SECTION 16. COURT ACTION TO COMPEL PURCHASE

(a) If an offer to purchase shares made under section 15 is rejected, or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the [name or describe] court of the county where the corporation's principal office (or, if none in this state, its registered office) is located. The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(b) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in section 42 together with terms for the purchase. Upon making these determinations the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(c) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(d) If the corporation or other purchaser does not make a payment required by the court's order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(e) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

SECTION 17. COURT COSTS AND OTHER EXPENSES

(a) The court in a proceeding commenced under section 16 shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by the parties. Except as provided in subsection (b), the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(b) The court may assess all or a portion of the total costs of the proceeding:

- (1) against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, vexatious, or otherwise not in good faith; or

(2) against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before commencement of the proceeding and that the offer was arbitrary, vexatious, or otherwise not made in good faith.

Governance

SECTION 20. SHAREHOLDER AGREEMENTS

(a) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of the corporation.

(b) An agreement authorized by this section is effective although:

- (1) it eliminates a board of directors;
- (2) it restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;
- (3) its effect is to treat the corporation as a partnership; or
- (4) it creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(c) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed by law, and imposes that liability on each person in whom the board's discretion or power is vested, to the extent that the discretion or powers of the board of directors are governed by the agreement.

(d) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by section 21.

(e) A provision entitling one or more shareholders to dissolve the corporation under section 33 is effective only if a statement of this right is contained in the articles of incorporation.

(f) To amend an agreement authorized by this section, all the shareholders must approve the amendment in writing unless the agreement provides otherwise.

(g) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(h) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

SECTION 21. ELIMINATION OF BOARD OF DIRECTORS

(a) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(b) An amendment to articles of incorporation eliminating a board of directors must be approved by all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if none, by all the incorporators.

(c) While a corporation is operating without a board of directors as authorized by subsection (a):

- (1) all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the shareholders;
- (2) unless the articles of incorporation provide otherwise, (i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders and (ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the ma-

jority or greater percentage of the votes of shareholders entitled to vote on the action;

(3) a shareholder is not liable for his act or omission, although a director would be, unless the shareholder was entitled to vote on the action;

(4) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders;

(5) the shareholders by resolution may appoint one or more shareholders to sign documents as "designated directors."

(d) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under [MBCA § 8.01].

SECTION 22. BYLAWS

(a) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by section 20.

(b) If a corporation does not have bylaws when its statutory close corporation status terminates under section 31, the corporation shall immediately adopt bylaws under [MBCA § 2.06].

SECTION 23. ANNUAL MEETING

(a) The annual meeting date for a statutory close corporation is the first business day after May 31st unless its articles of incorporation, bylaws, or a shareholder agreement authorized by section 20 fixes a different date.

(b) A statutory close corporation need not hold an annual meeting unless one or more shareholders deliver written notice to the corporation requesting a meeting at least 30 days before the meeting date determined under subsection (a).

SECTION 24. EXECUTION OF DOCUMENTS IN MORE THAN ONE CAPACITY

Notwithstanding any law to the contrary, an individual who holds more than one office in a statutory close corporation may execute, acknowledge, or verify in more than one capacity any document required to be executed, acknowledged, or verified by the holders of two or more offices.

SECTION 25. LIMITED LIABILITY

The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

Reorganization and Termination

SECTION 30. MERGER, SHARE EXCHANGE, AND SALE OF ASSETS

(a) A plan of merger or share exchange:

(1) that if effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan;

(2) that if effected would create the surviving corporation as a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(b) A sale, lease, exchange, or other disposition of all or substantially all of the property (with or without the good will) of a statutory close corporation, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

SECTION 31. TERMINATION OF STATUTORY CLOSE CORPORATION STATUS

(a) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under section 21, the amendment must either comply with [MBCA § 8.01] or delete the statement dispensing with the board of directors from its articles of incorporation.

(b) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(c) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under [MBCA ch. 13].

SECTION 32. EFFECT OF TERMINATION OF STATUTORY CLOSE CORPORATION STATUS

(a) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the [Model] Business Corporation Act or, if incorporated under the [Model] Professional Corporation Supplement, to all provisions of that Supplement.

(b) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this Act, the [Model] Business Corporation Act, or another law of this state invalidates the right.

SECTION 33. SHAREHOLDER OPTION TO DISSOLVE CORPORATION

(a) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority must give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under [MBCA sections 14.03 through 14.07].

(b) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (a) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if none, by all the incorporators.

Judicial Supervision

SECTION 40. COURT ACTION TO PROTECT SHAREHOLDERS

(a) Subject to satisfying the conditions of subsections (c) and (d), a shareholder of a statutory close corporation may petition the [name or describe] court for any of the relief described in section 41, 42, or 43 if:

(1) the directors or those in control of the corporation have acted, or are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer, of the corporation;

(2) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(3) there exists one or more grounds for judicial dissolution of the corporation under [MBCA § 14.30].

(b) A shareholder must commence a proceeding under subsection (a) in the [name or describe] court of the county where the corporation's principal office (or, if none in this state, its registered office) is located. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(c) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(d) If a shareholder has dissenters' rights under this Act or [MBCA ch. 13] with respect to proposed corporate action, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under [MBCA § 13.21] or to demand payment under [MBCA § 13.23] or the proceeding is barred.

(e) Except as provided in subsections (c) and (d), a shareholder's right to commence a proceeding under this section and the remedies available under sections 41 through 43 are in addition to any other right or remedy he may have.

SECTION 41. ORDINARY RELIEF

(a) If the court finds that one or more of the grounds for relief described in section 40(a) exist, it may order one or more of the following types of relief:

(1) the performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers of or any other party to the proceeding;

(2) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(3) the removal from office of any director or officer;

- (4) the appointment of any individual as a director or officer;
 - (5) an accounting with respect to any matter in dispute;
 - (6) the appointment of a custodian to manage the business and affairs of the corporation;
 - (7) the appointment of a provisional director (who has all the rights, powers, and duties of a duly elected director) to serve for the term and under the conditions prescribed by the court;
 - (8) the payment of dividends;
 - (9) the award of damages to any aggrieved party.
- (b) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

SECTION 42. EXTRAORDINARY RELIEF: SHARE PURCHASE

- (a) If the court finds that the ordinary relief described in section 41(a) is or would be inadequate or inappropriate, it may order the corporation dissolved under section 43 unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (b).
- (b) If the court orders a share purchase, it shall:
- (1) determine the fair value of the shares, considering among other relevant evidence the going concern value of the corporation, any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose, the recommendations of appraisers (if any) appointed by the court, and any legal constraints on the corporation's ability to purchase the shares;
 - (2) specify the terms of the purchase, including if appropriate terms for installment payments, subordination of the purchase obligation to the rights of the corporation's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on the seller;
 - (3) require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;
 - (4) provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers, or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and
 - (5) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under section 43.
- (c) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.
- (d) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

SECTION 43. EXTRAORDINARY RELIEF: DISSOLUTION

- (a) The court may dissolve the corporation if it finds:
- (1) there are one or more grounds for judicial dissolution under [MBCA § 14.30]; or
 - (2) all other relief ordered by the court under section 41 or 42 has failed to resolve the matters in dispute.
- (b) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

Transition Provisions

SECTION 50. APPLICATION TO EXISTING CORPORATIONS

- (a) This Supplement applies to all corporations electing statutory close corporation status under section 3 after its effective date.
- (b) [If Sec. 54 repeals an integrated close corporation statute enacted before this Supplement, this and additional subsections should provide a cutoff date by which corporations qualified under the repealed statute must elect whether to be covered by this Supplement, the procedure for making the election, and the effect of the election on existing agreements among shareholders. Cf. MBCA ch. 17 and Model Professional Corporation Supplement sec. 70.]

SECTION 51. RESERVATION OF POWER TO AMEND OR REPEAL

The [name of state legislature] has power to amend or repeal all or part of this supplement at any time and all corporations subject to this supplement are governed by the amendment or repeal.

SECTION 52. SAVING PROVISIONS

- (a) The repeal of a statute by this Supplement does not affect:
- (1) the operation of the statute or any action taken under it before its repeal;
 - (2) any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
 - (3) any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
 - (4) any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

SECTION 53. SEVERABILITY

If any provision of this Supplement or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the Supplement that can be given effect without the invalid provision or application, and to this end the provisions of the Supplement are severable.

SECTION 54. REPEAL

The following laws and parts of laws are repealed:

_____.

SECTION 55. EFFECTIVE DATE

This Supplement takes effect _____.