

## APPENDIX 1

	<b>Proposed Revised Model Nonprofit Corporations Act (“RMNCA”)</b>	<b>Cross Reference to Existing South Dakota Nonprofit Corporation Act (SDCL § 47-22-, 47-23, 47-24 (1965))</b>	<b>Comments and Comparison Between RMNCA and Existing Law</b>
<b>Chapter 1 General Provisions</b>	<b>Section(s)</b>	<b>Statute(s)</b>	
<b>(Sections 1-20)</b>	1	47-22-78	Name and citation of the Act.
	1.1	47-22-12	Electronic filing permitted; clarification of who authorized signatories are; allows for foreign corporations to be authenticated if in English translation.
	2	47-28-17	Same – Secretary of State can provide forms but they are not mandatory.
	3	47-28-6-68; 10-16	Updated – there are only 12 items delineated in the old act and with advancements in different types of transactions and documents required, the new revised language delineates 28 different documents that can be ordered and the charges.
	4	47-22-13	Clarifies an important timeline for the creation of a nonprofit organization, and gives flexibility for delayed filing.
	5	47-22-13; 47-27-1; 47-22-11	Appears to streamline the existing statutory process.
	6	47-27-3; 47-28-2	Combines the two existing statutes into one, and narrows the time of denial from 10 days to 5 days.
	7	47-28-3; 47-28-5	Combines two existing statutes and changes the forum for appeal from the county of the registered office to Hughes County.
	8	47-28-9	Essentially serving similar goals, but existing statute mandates acceptance by Courts, public offices, and official board of directors.
	9	47-22-13; 47-27-1; 47-22-11	Combines these disparate statutes into a clear and concise statute directing the public to the Secretary of State for certificates of existence.
	10	NA	No such punishment appears to exist within the tools available to the Secretary of State.
	11	47-28-1	Substantially similar in language and effect.

	12	47-22-1; 47-23-28	The RMNCA's definition section is far more elaborate in scope than found within the existing statute, with such additional definitions as 'charitable purpose', 'charitable corporation', 'delegate', etc.
	13	47-22-48; 47-22-49; 47-22-50	The proposed model language does not appear to be directly applicable to existing statutes insofar as the model language does not indicate actual service, just mere notice.
	14	NA	Existing statute does not have a clear definition of what constitutes a 'corporate action'.
	15	47-23-4	Existing statutes simply mandates that an annual meeting shall be held, the proposed model language creates an enforcement mechanism through judicial action.
	16	NA	Under existing statutes it is presumed that a judicial action could be undertaken, but no clear black and white language for guiding the courts has been given.
	17	NA	No such language exists in existing statute.
	18	NA	No such language exists in existing statute.
	19	NA	No such language exists in existing statute.
	20	47-22-5	Changes the requirement that three or more persons of the age of majority act as incorporator to only one, and removes amended language regarding filing.
<b>Chapter 2 Incorporation</b>			
<b>(Sections 21-25)</b>	21	47-22-6	The RMNCA is far more elaborate as to what may be included in the Articles, including language pertaining to director liability.
	22	47-22-12; 47-22-13	Other than the added RMNCA language pertaining to conclusive proof, the scope and nature of the RMNCA is very similar to existing statutes.
	23.1	47-22-73	Similar in nature and scope.
	24	47-22-31	The RMNCA is a bit more elaborate, but generally similar in nature and scope of existing law.
	25	47-22-33	Substantially similar between the RMNCA and existing state law.
<b>Chapter 3 Purposes and Powers</b>			
<b>(Sections 26-23)</b>	26	47-22-4	Rather than a check list approach to the purpose of a corporation under existing state law, the RMNCA greatly streamlines the purpose.
	27	47-22-52 to 47-22-65.1	Generally assuming the existing powers identified in SDCL Ch. 47-22, the RMNCA goes further with authorizing promotions, pay pensions, etc.

	28	47-22-35 –to 38; 47-22-40; 47-22-41	RMNCA streamlines existing state laws by combining existing statutes into one.
	29	47-22-69 to 47-22-72	RMNCA streamlines existing state laws by combining existing statutes into one.
<b>Chapter 4 Name</b>			
<b>(Sections 30-32)</b>	30	47-22-7; 47-22-8.1	RMNCA is substantially similar to existing state law, but combines the two statutes into one.
	31	47-22-9; 47-22-10; 47-22-11	RMNCA is substantially similar to existing state law, but combines the statutes into one.
	32	47-22-9	The RMNCA does not appear to be directly on point with existing state law, but broadens existing foreign nonprofit corporation statutes by allowing foreign entities to register themselves under the nonprofit act.
<b>Chapter 5 Memberships and Financial Provisions</b>			
<b>(Sections 33-49)</b>	33	47-23-1	RMNCA provides default of notice and action by board of directors if no members exist; RMNCA does allow classes of membership like existing law.
	34	47-23-1	RMNCA provides articles may establish membership criteria; person must consent to being a member.
	35	NA	New provision permitting board of directors to set consideration for membership.
	36	NA	New provision stating all members have same membership rights.
	37	47-23-2	RMNCA only allows transfers per articles or bylaws; transfer restrictions only prospective in application unless transfer or agreed to restriction.
	38	47-23-2	Same.
	39	NA	RMNCA permits dues, assessments, and fees to be collected, including different amounts between classes of members and different amounts among members of the same class.
	40	NA	RMNCA requires creditors to obtain judgment against corporations before pursuing judgment against member owing to corporation; creditors are permitted to intervene in any creditor proceedings.

	41	NA	RMNCA allows members to resign at any time but resignation does not relieve prior obligations.
	42	NA	RMNCA permits membership termination or suspension according to the articles or bylaws, appeal of termination must be made within 1 year, termination or suspension does not relieve any prior obligations of member.
	43	NA	RMNCA requires articles or bylaws to establish purchase of membership interest but not applicable to charitable corporation.
	44	NA	RMNCA allows articles or bylaws to provide delegates and qualifications for the same.
	45	47-24-3	RMNCA prohibits distributions from corporation except for corporation purchasing membership (Section 43) and reasonable compensation for members, directors, etc. and distribution upon dissolution or liquidation (Section 46).
	46	47-24-4	RMNCA is substantially similar. Board of directors is permitted to set compensation for directors.
	47	NA	RMNCA permits capital contributions in differing amounts or proportions as provided in the articles or bylaws; provides notice requirements for members voting against capital contribution requirement.
	48	NA	RMNCA prohibits corporation from issuing debt except for goods/services actually received; board of directors may mortgage or pledge corporation property unless articles or bylaws require member approval to mortgage/pledge.
	49	47-22-68.3; 47-22-68.7	RMNCA is substantially similar.
<b>Chapter 6</b>			
<b>Member Meetings</b>			
<b>(Sections 50-68)</b>	50	47-23-4	Allows place and date of meetings to be fixed in either articles or bylaws; with internet or electronic meetings allowed if provided for in articles or bylaws.
	51	47-23-5	Establishes percent of members who can call for special meetings (at least 10% or up to 25%) as specified in either articles or bylaws; and provides procedure for revoking demand for special meeting; purposes for which called; place of special meeting specified; with articles or bylaws allowing such meetings to occur by means of the internet or electronic communications.
	52	NA	Adds section authorizing court to order a meeting to be held under certain circumstances upon application of a member and specifies procedure for demand and for notice.
	53	7-23-6	Adds details as to the requirements for consenting to actions without meeting.

	54	47-23-7	Notice fixed by articles or bylaws no fewer than 10, no more than 60 days before the meeting; adds procedure for notice if meeting is adjourned to a different date, time or place.
	55	47-23-26	Waivers must be in form of a record, signed by the member and delivered to corporation for inclusion in minutes. Specifies that objections to lack of notice or defective notice, or to purpose described in notice, are waived unless member objects at the meeting.
	56	NA	Articles or bylaws may fix record date to determine the members entitled to notice not more than 70 days before meeting. Upon adjournment, new record date is fixed by board of directors to a date more than 120 days after the original meeting date, or else members entitled to vote at meeting on the record date allows court to order a meeting adjourned and to fix a new record date.
	57	NA	Outlines procedures for chair meeting to be determined and meeting conduct.
	58	NA	Allows balloting on actions by members with or without meetings, with procedure for approving the ballot, and soliciting and revoking ballots as provided in the articles or bylaws.
	59	NA	Requires preparation of member voting lists; open to inspection by any member in advance of meeting and available at meetings; creates a court remedy for allowing inspection of membership list; and allows alternative method in response to a demand for providing access to the list of members.
	60	47-23-8	Except as provided in articles or bylaws requires one vote per member.
	61	47-23-9	Except as provided in articles or bylaws establish right to vote in person or by proxy; establishes procedure for appointing proxy and establishing procedure to determine effectiveness for up to three years; provides for effect of proxy's authority upon death or disability; and procedure for expressly limited proxy authority and appointment form.
	62	NA	Establishes requirements for accepting or rejecting ballots, waivers and proxy appointments; and specifies corporation officers and agents are not liable to member for damages in accepting or rejecting if they act in good faith and standards of this section; and creates presumption if such acceptance or rejection is valid absent court determination.
	63	47-23-12	Except as provided in articles and bylaws majority of votes entitled to be cast on voting group constitutes a quorum; and provides procedure for adjournment if voting groups vote on action; amendment of articles and bylaws as specified in Section 7.26; and procedure where quorum is not present.

	64	NA	If articles or bylaws provide for voting by a single voting group on a matter, procedure followed; as well as providing procedure for voting by two or more voting groups.
	65	NA	Articles or bylaws may provide higher or lower quorum or voting requirements for groups or members; and specifies quorum requirements for changing or deleting those requirements in articles or bylaws.
	66	47-23-10	Except as provided in articles or bylaws specifies a plurality to elect directors if a quorum is present; and disallows cumulative voting for directors.
	67	NA	Authorizes membership corporations to appoint one or more election inspectors; specifies inspector(s) duties; and specifies candidate cannot serve as inspector.
	68	NA	Allows members to enter agreements providing for the manner in which they will vote for a period of up to 10 years; and allows for specific performance of such agreements unless such agreement violates corporation purposes.
<b>Chapter 7 Directors and Officers</b>			
<b>(Sections 69- 111)</b>	69	47-23-13	Similar but adds reference to designated board of directors. Must have a board of directors, and all corporation powers and functions exercised through board of directors unless vested in a designated board of directors (see Sec 80), and activities of corporation managed or subject to oversight by board of directors.
	70	47-23-13	Similar, but clarifies that directors must be individuals, need not be members (same), and need not be a resident of this state unless articles of bylaws state otherwise. This section does not apply to designated board of directors.
	71	47-23-14	No substantive change – 3 directors or more, options to increase or decrease board of directors but not less than 3.
	72	47-23-16; 47-23-15	Updated to distinguish between election of Directors for membership and nonmembership corporations. Directors of a membership corporation shall be elected at first and each annual meeting of members unless provided otherwise. Directors of nonmembership corporation shall be elected or appointed as set forth in bylaws or articles; if no method, then elected by board of directors.
	73	47-23-16; 47-23-14; 47-23-19; 47-23-17	Substantially similar, but sets a maximum number of years for a director's term in most cases. If the term of a director is not specified, default is one year, and in some cases, a term may not exceed twelve years.
	74	47-23-17	Substantially similar. Staggered terms allowed, terms do not need to be uniform.

	75	NA	New section to clarify director resignation. Director may resign by delivering notice.
	76	47-23-18	Substantially updated. Directors can generally be removed with or without cause unless stated otherwise, and what constitutes cause may be defined in corporation documents. Different rules for membership and nonmembership corporations. Other default rules are listed for removal of a director in a membership corporation. Sec. 76(c) lists some options for removal of a director regardless of articles or bylaws, such as felony conviction.
	77	NA	
	78	47-23-19	No previous equivalent. Section outlines judicial removal of a director for extraordinary circumstances, such as fraud, intentional harm, or gross abuse of the office. If judicial action brought to remove a director of a charitable corporation (which is defined in the RMNCA), the attorney general must be notified. If corporation does not have a principal office in this state, the action must be brought in Hughes County.
	79	NA	A new section which states that, except as set forth in articles or bylaws, board of directors may fix compensation. Reverses common law doctrine prohibiting board of directors of setting own compensation. Reimbursement is not compensation under this section. Although there is no equivalent statute in the current nonprofit code, note 47-23-2.1 regarding serving on board of directors with no compensation.
	80		New section, no previous equivalent. Some rights and obligations (but not all) of the board of directors, and also of members, may be delegated to a designated board of directors. To the extent delegated, the board of directors or members are relieved of responsibility as to the delegated powers. Except as otherwise provided in articles and bylaws, a member of a designated board of directors does not need to be an individual, director, officer or member of the nonprofit, or a resident of this state. The Comment to the RMNCA notes that delegation does not relieve the board of directors from responsibilities of oversight, and the board of directors is not personally liable for actions of employees or agents of corporation so long as board of directors relied reasonably and in good faith upon those agents.
	81	47-23-21	Similar but updated. Annual or special meetings of the board of directors may be held (electronically or otherwise) in or out of state. Any means of communication where all directors participating can hear each other is acceptable.

	82	47-23-6	Power of board of directors to act unanimously without a meeting. Substantially similar, but new section adds option for revoking consent when action is taken without a meeting. Also, a designated board of directors may act without a meeting, see section 80(a)(1).
	83	47-23-21	Similar default rules. Regular meetings may be held without notice. Two days' notice for special meetings. Articles and bylaws may authorize oral notice.
	84	47-23-21; 47-23-26	Substantially similar, Director may waive notice before or after the fact, and showing up at the meeting waives notice unless presence is for specific purpose of objection.
	85	47-23-20; 47-23-23	Substantially similar. Majority of board of directors is quorum, or no less than 1/3 if authorized by bylaws or articles. If present when vote is taken, there is a presumption of assent unless director objects, dissents, or abstains as set forth in this statute or the corporate documents.
	86	47-23-22	Substantial update. Board of directors may designate committees consisting of ONE or more directors (current statute provides that committees consist of two or more directors). A committee may not do those actions discussed in Section 86(e), such as amending or repealing bylaws. The board of directors may appoint advisory committees whose members are not directors, but such an advisory committee is not a 'committee' of the board of directors and may not exercise any powers of the board of directors.
	87	See 47-1A-830	Substantial new section and update. No current Nonprofit Act equivalent provision, but this is similar to the standards of directors in the South Dakota Business Corporation Act. This section sets forth the basic standards that govern director conduct, including when a director must disclose certain information, when a director can rely on reports and opinions of others, and clarifies that a director is not a trustee in respect to any property held or administered by the corporation. This section focuses on the manner in which a director performs duties, not on the correctness of decisions.
	88	47-24-5	Update. Same idea as existing statute, but new section expands and clarifies in which cases an advance or loan may be acceptable to be made to a director or officer, such as an advance to pay reimbursable expenses reasonably expected to be incurred. Such an advance may arguably be a prohibited 'loan' under current law.



	89	47-24-3.1	Update. A director may be held personally liable if a director votes for or assents to a distribution made in violation of the Act if the asserting party proves that the director did not comply with section 87 above when making the decision. Liability of director is barred after two years if proceeding is not commenced. This is arguably a change from the 'good faith' reliance of 47-24-3.1, however, a director would essentially have to be acting not in good faith to violate the standards of 87.
	90	47-23-24	Significant update. Nonprofits may name officers it wants in the articles or bylaws, but are not required to call such person or persons president, vice president, secretary and treasurer. One officer must be assigned the duty of recording or supervising the taking of minutes, and such officer is referred to as the 'secretary' in parts of the RMNCA. The same individual can hold multiple officers, even president and secretary.
	91	NA	New section, no current equivalent. Officers must perform the duties set in the articles or bylaws or validly assigned to them.
	92	NA	New section, no current equivalent. This section sets forth the basic standards for an officer in discharging his or her duties, including when an officer must inform their superior officer or the board of directors as to knowledge of certain material information. Shares similar ideas and standards with section 87 above.
	93	47-23-25	Similar to current, but clarifies that officers may resign at any time, and can also be removed at any time with or without cause. Current statute says removal for "best interests" of the corporation.
	94	47-23-25	Similar to current, contract rights not automatically created by becoming officer, and not affected by officer's removal.
	95 and 95.1	47-23-2; 47-23-2.1	This section is substantially similar to the current statute. Language was updated to include designated board of directors.
	96	47-23-28	Nearly identical to current statute.
	97	47-23-29	Nearly identical to current statute.
	98	47-23-30	Nearly identical to current statute, but expanded to also include Section 95 (47-23-2.1).
	99	47-23-32	Nearly identical to current statute.
	100	47-23-31	Just states that sections 95-99 cannot be construed to be a modification or repeal of certain other immunity laws.
	101	See 47-1A-850 to 47-1A-858	No current equivalent. Definitions for certain terms in sections 101-109.

	102	47-22-65.1	Significant update. This section outlines when a corporation may indemnify a director, and when a corporation may not indemnify unless otherwise ordered by a court. Indemnification is not required under this section, and any authorized indemnification is subject to the articles. This section is substantially similar to 47-1A-851 and 47-1A-851.1.
	103	47-22-65.2	Significant update. A corporation must indemnify a director to the extent that the director was successful in defending the proceeding in which the director was a party by reason of being a director of the corporation. This section is nearly identical to 47-1A-852.
	104	47-22-65.4	Significant update. Under the terms of this section, a corporation may advance funds to pay for or reimburse reasonable expenses of an individual director incurred by reason of such individual being a party to a proceeding because such person is a director. This section is substantially similar to 47-1A-853 and 47-1A-853.1.
	105	NA	Significant update. A director involved in a court proceeding may ask the court to order indemnification, and this section explains when and under what circumstances a court may order such indemnification of a director. Substantially similar to 47-1A-854.
	106	47-22-65.3	Significant update. Permissible indemnification under 102 above may not be made until a determination is made that the director has met the standard of conduct discussed in section 8.51. This section sets forth how the determination must be made. This section is substantially similar to 47-1A-855.
	107	47-22-65.2; 47-22-65.4	Significant update. This section outlines when a corporation may indemnify an officer. For an officer who is not also a director, the officer is entitled to mandatory indemnification, and the court option, under sections 103 and 105 above. This section is substantially similar to 47-1A-856.
	108	47-22-65.6	Substantially similar to current statute. A corporation may purchase D&O liability insurance, whether or not the corporation could indemnify such director or officer for the same liability. This section is substantially similar to 47-22-65.6 and 47-1A-857.
	109	47-22-65.5	Significant update. This section allows the corporation to make the permissive indemnification provisions of the above statutes obligatory, or to limit rights to indemnification and advances under this subchapter, through the corporation's articles or bylaws. This section is substantially similar to, but also adds to, 47-1A-858.

	110	NA	No current equivalent. This section outlines when a transaction or contract between the corporation and one or more of its directors, officers, members etc. may be voidable, and when it is not. This is similar to the corporate standard for interested transactions, as opposed to a trustee-like standard where nearly every interested transaction is prohibited.
	111	NA	No current equivalent. Read with section 8.60 above, this section provides a 'safe harbor' for a director to take advantage of a business opportunity that might otherwise have the director's duty of loyalty. Essentially, the corporation can disclaim its interest in the opportunity by following certain procedures.
<b>Chapter 8 Domestication and Conversion</b>			
<b>(Sections 112- 133)</b>	112	NA	Definitions
	113	NA	RMNCA requires approval from AG, Div. of Ins., Pub. Util., our court under cy pres before nonprofit corporation can be a party to a merger or sale of assets; members or other affiliates of nonprofit corporation may not receive direct or indirect financial benefit from any merger or sale; testamentary gifts inure to the benefit of the surviving nonprofit corporation after merger or sale.
	114	NA	RMNCA, sections 114-118, allow foreign nonprofit corporation to be domesticated and domestic nonprofit corporation to become foreign; requirements of domestication; substantially similar to other entity acts.
	115	NA	RMNCA provides the requirements for approval of the plan of domestication; substantially similar to other entity acts.
	116	NA	RMNCA provides requirements for articles of domestication; substantially similar to other entity acts.
	117	NA	RMNCA provides the effects of domestication; substantially similar to other entity acts.
	118	NA	RMNCA provides abandonment of plan of domestication prior to completion of domestication; substantially similar to other entity acts.
	119	NA	RMNCA, sections 119-123, provides option of nonprofit corporation to convert to for-profit corporation; provides requirements for plan of for-profit conversion; substantially similar to other conversion provisions in other entity acts.
	120	NA	RMNCA provides requirements of for-profit conversion plan; substantially similar to other entity acts.

	121	NA	RMNCA provides requirements for articles of conversion to for-profit status; substantially similar to conversion provisions in other entity acts.
	122	NA	RMNCA provides the effect of a for-profit conversion; substantially similar to other entity acts.
	123	NA	A for-profit conversion may be abandoned by the board of directors before it becomes effective; substantially similar to other entity acts.
	124	NA	Sections 124-127 permit a foreign business corporation to become a domestic nonprofit corporation if the domestication and conversion is permitted by the law of the foreign jurisdiction. Substantially similar to other entity acts. These sections of the RMNCA are virtually identical to the existing unless stated otherwise; see the summary of these corresponding provisions of the RMNCA.
	125	NA	
	126	NA	Same as existing but RMNCA uses the optional subsection c of 9.42.
	127	NA	
	128	NA	The procedures of sections 128 - 133 permit a domestic nonprofit corporation to become a domestic or foreign unincorporated entity, and also permit a domestic or foreign unincorporated entity to become a domestic nonprofit corporation. Substantially similar to other entity acts. These sections of the RMNCA are virtually identical to the existing unless stated otherwise, see the summary of these corresponding provisions of the RMNCA.
	129	NA	RMNCA does not include subsection c of 9.51 of the RMNCA.
	130	NA	
	131	NA	
	132	NA	
	133	NA	
<b>Chapter 9 Amendments of Articles of Incorporation and Bylaws</b>			
<b>(Sections 134-147)</b>	134	47-22-14; 47-22-30	Changes the ability to amend the articles of incorporation from time to time to the ability to amend the articles of incorporation at any time. Changes the effective date of the amendment from the time of the issuance of the restated articles of incorporation to the effective date of the amendment.

	135	47-22-17	Under RMNCA, an amendment is adopted after receiving a vote of a majority of directors or the incorporators. Under the old law, amendment adopted at a meeting of the board upon receiving the vote of a majority of the directors in office.
	136	47-22-16	Under the RMNCA, amendments are adopted by board. Under the old law, amendments are adopted by the board or members. The board must transmit to the members a recommendation that the members approve the amendment, unless there is a conflict of interest or other special circumstances. Then the board should not make a recommendation and the board must transmit to the members the basis for the determination. An amendment may be proposed by 10% or more of members entitled to vote on the amendment or be a greater or lesser number of members as is specified in the articles. If amendment is required to be approved by the members, and the approval is to be given at a meeting, the corporation must give notice to each member entitled to vote on the amendment of the meeting of members as which the amendment is to be submitted for approval. The notice must state the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain a copy of the proposed amendment. The amendment must also be approved by a designated board of directors whose approval is required in the articles of incorporation or bylaws. Allows the board to adopt amendments to articles without approval of the members to do certain actions – extend duration of corporation if incorporated at the time when duration was required by law. Allows board to adopt amendments to articles without approval of members to do certain actions – delete the name and addresses of initial directors or members of a designated board of directors. Allows the board to adopt amendments to articles without approval of the members to do certain actions – delete the names and addresses of the registered agent or office. Allows board to adopt amendments to articles without approval of the members to do certain actions – change the corporate name by substituting or deleting corporation, incorporated, company, limited or their abbreviations for a similar work or abbreviation. Allows the board to adopt amendments to articles without approval of the members to do certain actions – restate without change all of the then operative provisions of the articles, unless the articles state otherwise.

	137	47-22-16	RMNCA sets out distinction of different classes of members and different classes being allowed to vote as separate voting groups. Different classes allowed to vote if amendment would effect an exchange or reclassification of all or part of the memberships of the class into memberships of another class; effect the exchange or reclassification, or create the right of exchange, of all or part of the membership of another class into memberships of the class; change the rights, preferences or limitations of all or part of the memberships of the class in manner different than the amendment would affect other classes; change rights, preferences or limitations of all or part of the memberships of the class changing the rights, preferences or limitations of another class; increase or decrease the number of memberships authorized for that class; increase the number of memberships authorized for another class; or authorize a new class of memberships. If a class of members will be divided into two or more classes, the amendment must be approved by a majority of members of each class created.
	138	47-22-17	RMNCA calls for any amendment adopted by board must be approved by a designated board of directors whose approval is required under the articles or bylaws. RMNCA calls for any amendment adopted by board must be approved if the amendment changes or deletes a provision regarding the appointment of a director by persons other than the board, by those persons as if they constituted a voting group. RMNCA calls for any amendment adopted by board must be approved if the amendment changes or deletes a provision regarding the designation of a director, by the individual designated at the time as that director.

	139	47-22-19; 47-22-20	RMNCA calls for provisions for implementing amendment if the amendment provides for an exchange, reclassification or cancellation of memberships. RMNCA calls for stating the date of the amendment's adoption. Under the RMNCA, if an amendment is adopted by the incorporators, board or designated board of directors without member approval, as statement that the amendment was adopted by such group and that member approval was not required. RMNCA calls for a statement that the amendment was approved as required by the Act and the articles and bylaws. Under old law, there is a provision that there be a statement of the date of the meeting of members at which the amendment was adopted, that there was a quorum at such meeting, and that the amendment received at least a majority of the votes or a statement that the amendment was adopted by a consent in writing signed by all members entitled to vote. RMNCA calls for more specificity to filing – must note if the amendment provides for an exchange, reclassification or cancellation of memberships, provisions for implementing the amendment if not contained in the amendment itself. Also must outline if the amendment was adopted by the incorporators, board or designated board of directors without member approval, a statement that the amendment was adopted by the incorporators or by the board or designated board of directors, as the case may be and that member approval was not required or the amendment required approval by the members, a statement that the amendment was duly approved by the members in the manner required by the Act and the articles and bylaws.
	140	47-22-24; 47-22-26; 47-22-28; 47-22-30	Under the RMNCA, the board may restate its articles without approval by members or other person unless required in articles or bylaws. Under old law, this was to be submitted to members. Under the RMNCA there is no requirement for a copy of the restated articles be submitted to the Secretary of State. Under the RMNCA, there is no requirement to state the corporation's period of duration.
	141		This matter is addressed in 47-25-2, Amendment of surviving corporation's articles, 47-1A-1008, Amendment pursuant to reorganization (for profit corporations), 47-26-16 (involuntary dissolution by the court).
	142	47-22-22	
	143	47-22-30	Under RMNCA, corporation's bylaws can be repealed through its members or designated board of directors in whole or part. Under old law, this was done by the board.
	144		This matter is address in 47-1A-1021, Bylaw increasing quorum or voting requirement for directors.

	145	47-22-33	Under RMNCA, neither the board nor designated body can adopt bylaws providing that some members have different rights or obligations than others with respect to voting, dissolution, transfer or membership or other matters. Under RMNCA, neither the board nor designated body can amend or adopt bylaws levying dues, assessments, or fees on some or all of the members. Under RMNCA, neither the board nor designated body can amend or adopt bylaws relating to the termination or suspension of members. Under RMNCA, neither the board nor designated body can amend or adopt bylaws authorizing the purchase of memberships. Under RMNCA, neither the board nor designated body can amend or adopt bylaws requiring cause to remove a director nor specifying what constitutes cause to remove a director. Under RMNCA, neither the board nor designated body can amend or adopt bylaws relating to the removal of a director who is designated in a manner other than election or appointment. Under RMNCA, neither the board nor designated body can amend or adopt bylaws Section 7.12 (designated board of directors). Under RMNCA, neither the board nor designated body can amend or adopt bylaws that vary the application of subsection (a). Under RMNCA, neither the board nor designated body can amend or adopt bylaws where there is more than one class of members. The members of the class are entitled to vote as a separate voting group to an amendment to the bylaws that affect the members of that class differently than members of another class. Under RMNCA, neither the board nor designated body can amend or adopt bylaws that have effects of section 9.04. Under RMNCA, neither the board nor designated body can amend or adopt bylaws if a class of members will be divided into two or more classes, then the amendment must be approved by a majority of the members of each class that will be created.
	146	NA	
	147	NA	
<b>Chapter 10 Mergers and Membership Exchanges</b>			



<p><b>(Sections 148-155)</b></p>	<p>148</p>	<p>NA</p>	<p>Currently under SDCL Ch. 47-25, two or more domestic corporations may merge into one corporation or may be consolidated into a new corporation or one or more foreign corporations, and one or more domestic corporations may be merged or consolidated. SDCL 47-25-1, 3 &amp; 18. These methods of reorganization are currently limited only to nonprofit corporations. Under proposed § 148(a), the references to “eligible entity” as used throughout the rest of Ch. 10 opens the reorganization possibilities to entities other than just nonprofit corporations; specifically, “eligible entity” is defined as a domestic or foreign unincorporated entity or a domestic or foreign business corporation. See § 12(16). An “unincorporated entity” means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation; an estate, a trust, a governmental subdivision, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business or statutory trust, joint stock association, and unincorporated nonprofit association. See § 12(60). Although Ch. 10 refers only to either a “merger” or a “membership exchange,” the definition of “survivor” in § 148(a)(5) providing that the survivor may preexist or be created by the merger in effect provides for consolidation. In short, the RMNCA provides for mergers (and exchanges) with other entities other than merely nonprofit corporations as allowed under the current statutes. Section 148(b)(c) &amp; (d) provide certain restrictions on mergers and membership exchanges which protect property held in trust or dedicated to a charitable purchase from being diverted by a merger or membership exchange from its trust purposes unless the entity receives an appropriate order of the circuit court. There is no South Dakota statute similar to this currently in effect; but see Banner Health System v. Long, 663 N.W.2d 242 (S.D. 2003).</p>
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	149	47-25-1; 47-25-18	<p>Section 149 generally authorizes mergers between one or more domestic nonprofit corporations and one or more domestic or foreign nonprofit corporations or eligible entities. Under § 149(c), if the organic law of a domestic eligible entity does not prohibit a merger with a nonprofit corporation but does not provide procedures for the approval, the plan of merger may be adopted and approved in accordance with §§ 148-155. A merger of a domestic nonprofit corporation with a foreign nonprofit corporation or foreign eligible entity is authorized only if the merger is permitted by the laws under which the foreign corporation or the foreign eligible entity is organized. The terms and conditions of the merger are to be set forth in a plan of merger specified in 149(d). Section 149(e) allows the plan of merger to include a provision that the plan may be amended prior to filing articles of merger, subject to certain restrictions.</p>
	150	NA	<p>Section 150 allows membership exchanges. Under this section, the acquiring nonprofit corporation must acquire all of the memberships or eligible interests that are being acquired. The purpose of this section is to be able to structure a corporate combination so that the separate existence of one or more parties to the combination does not cease, although another nonprofit corporation or eligible entity obtains ownership of the memberships or eligible interests in those parties. Section 150(f) makes clear that a domestic nonprofit corporation may acquire memberships in another corporation or eligible interests in an eligible entity in a transaction other than a membership exchange, i.e., may acquire less than all of the membership interests. This section does not apply to the acquisition of a nonprofit corporation without members. As with the merger statute, a foreign nonprofit corporation or eligible entity may be a party to a membership exchange only if such is permitted by the organic law of the corporation or eligible entity. Also, if the organic law of a domestic eligible entity does not prohibit a membership exchange with a nonprofit corporation but does not provide procedures for the approval of such an exchange, the membership exchange may be adopted and approved in accordance with the procedures in §§ 148-155. A plan of membership exchange must be entered into (§ 150(d)) and may include a provision that the plan may be amended prior to filing articles of a membership exchange subject to certain restrictions.</p>

	151	47-25-5; 47-25-6; 47-25-8	<p>This section sets forth the requirements for approval and other action on a merger or membership exchange in the case of a nonprofit corporation which is a party thereto. Generally, the plan of merger or exchange must initially be adopted by the board of directors. Then, unless there are no members entitled to vote, after adopting the plan of merger or exchange, the board of directors must submit the plan to the members entitled to vote on the plan for their approval. Unless the articles of incorporation or bylaws requires a greater vote or greater number of votes to be present, the approval of the plan of merger or membership exchange requires the approval of the members at a meeting at which a quorum exists. A quorum usually consists of a majority of the votes entitled to be cast. If a quorum is present, the plan will be approved if more votes are cast in favor of the plan than against it. The current requirements for approval of a merger or consolidation require at least two-thirds of the votes entitled to be cast by members present or represented by proxy at a meeting. See SDCL 47-25-7.</p> <p>Section 151(7) specifically provides that if as a result of a merger or membership exchange, one or more members of a domestic nonprofit corporation would become subject to owner liability for the debts of any other person or entity, approval of the plan of merger or membership exchange requires the signature by each such member of a separate record consenting to become subject to such owner liability.</p>
	152	NA	<p>Section 152 is new. This allows an entity holding 80% of the voting power of a nonprofit corporation to merge that controlled corporation into the controlling entity, or another controlled corporation, or merge the controlling entity into the controlled corporation, without the approval of members, board of directors, or a designated board of directors of the controlled corporation, subject only to certain informational and notice requirements. This section does not dispense with approval by the members of a nonprofit corporation that is the controlling entity in a merger subject to § 152.</p>
	153	47-25-10; 14-25-12	<p>Section 153 sets forth the requirements for filing articles of merger or membership exchange with the Secretary of State. These are similar to the current requirement for filing articles of merger or consolidation.</p>

	154	47-25-13; 47-25-14; 47-25-16; 47-25-17	<p>Under § 154(a), in the case of a merger, the survivor and the parties that merge into the survivor become one entity; the survivor automatically becomes the owner of all real and personal property without reversion or impairment and becomes subject to all liabilities, actual or contingent, of each party that is merged into it. This is similar to the current statutes providing for cessation of previous corporate existence upon a merger or consolidation; the transfer of assets and liabilities to the surviving corporation, including title to any real estate without reversion or impairment; and the responsibility of the surviving or new corporation for the liabilities and obligations of the corporations merged or consolidated. See SDCL 47-25-14, 15, 16 &amp; 17.</p> <p>In contrast to a merger, a membership exchange does not in and of itself affect the separate existence of the parties, vest in the acquiring entity the assets of the exchanging entity, or render the acquiring entity liable for the liabilities of the exchanging entity. §§ 154(b). Sections 154(c) &amp; (d) provide rules for preserving and limiting owner liability.</p>
	155	47-25-9; 47-25-23	<p>Under § 155, unless otherwise provided in the plan of merger or membership exchange, a party to a merger or membership exchange may abandon the transaction without member approval, even though the transaction has been previously approved by the parties' members, but subject to any contract rights that other parties may have. This is similar to current SDCL 47-25-9 &amp; 23, which allow abandonment pursuant to the provisions set forth in the plan of merger or consolidation, if any.</p>
<b>Chapter 11</b> <b>Disposition of</b> <b>Assets</b>			
<b>(Sections 156-158)</b>	156	47-25-24	<p>This governs the sale or disposition of assets of a nonprofit corporation. As drafted, the vote of members, if any, of a corporation is not required to (1) sell, lease, exchange, or otherwise dispose of assets in the ordinary course of business, or if, after a disposition of assets, at least thirty three percent (33%) of the total assets of the corporation are retained by the corporation; (2) mortgage, pledge, or dedicate any or all of a corporation's assets, whether or not in the ordinary course of business; and (3) transfer any or all of the assets of a corporation to a subsidiary of the corporation. Comment: Currently, SDCL § 47-25-24 does NOT make the distinction between a sale, or other transfer, and a pledge or encumbrance. South Dakota law treats sales and pledges in the same manner. South Dakota also uses the phrase "all, or substantially all" which is otherwise undefined. The RMNCA's 33% provides an express definition.</p>

	157	47-25-25; 47-25-26; 47-25-27	<p>This sets forth the requirements that must be followed in the event a member vote is required to dispose of, or otherwise transfer, company assets. Any disposition requiring member approval must be initiated by the board through an adopted resolution. The board must then submit the resolution, along with the board’s recommendation of the same, to the members. The RMNCA also uses new, conflict of interest/special circumstances language. Comment: This Section is largely the same as current SDCL 47-25-25, but includes new conflict of interest/special circumstance language which allows the board to withhold its recommendation of a resolution. Section 11.02(c) is new. It allows for the board to condition its submission of a disposition to the members on any basis. Section 11.02(d) sets forth the requisite notice requirements for a meeting regarding a proposed disposition of assets. The notice must include a description of the disposition, including the terms and conditions thereof. Comment: The notice requirements under the RMNCA are more intensive than the current requirements. Currently, only a statement of the purpose of a meeting is required. SDCL § 47-25-25. Under SDCL § 47-25-26, the members entitled to vote are still authorized to fix any or all of the terms and conditions of such disposition including the consideration to be received by the corporation, but prior notice of those terms and conditions is not required. Section 11.02(e) provides that a quorum of those members entitled to vote, or a quorum of a separate group that is entitled to vote separately, is necessary to approve a disposition. No other voting requirement, i.e. 51%, 66.67%, is provided. Comment: South Dakota law currently requires a two-thirds (2/3) vote to approve a disposition of all or substantially all of a nonprofit corporation’s assets. SDCL § 47-25-26. Section 11.02(f) provides that a disposition under Chapter 11 may be abandoned at any time and without member approval, after the disposition has already been approved by the members, subject to the contractual rights of parties to the disposition.</p>
	158	NA	<p>This is new. This Section requires court approval for any transfer of property “held in trust or otherwise dedicated to a charitable purpose” and the attorney general must be provided notice of the proposed transfer. No member may receive a direct or indirect benefit in connection with a disposition under Chapter 11 unless the person is also a charitable person or organization.</p>
	159	NA	

	160	NA	This is new. This section states that a derivative action may be brought by 1) members having 5% or more of the voting power or 50 members, whichever is less, or 2) any director or member. 12.02 further provides that the plaintiff in the derivative action must 1) be a member, director, or member of the organization at the time the proceeding is commenced, and 2) the member must also have been a member at the time of the action complained of in the derivative action.
	161	NA	This is new. This section states that before an action can be commenced, the member must 1) make a demand to take suitable action, and 2) 90 days have expired since the date the demand was effective, unless the member is notified that its demand has been denied, or unless irreparable harm would be incurred to the corporation by waiting.
	162	NA	This is new. This section states that if the non-profit commences an inquiry into the allegations made, the court may stay any derivative proceedings for such period as the court deems appropriate.
	163	NA	This is new. This section provides multiple provisions for dismissal of a derivative action.
	164	NA	This is new. This section states that a derivative action cannot be settled or discontinued without approval by the court. In the event that the court determines that settlement or discontinuance will substantially affect the interests of the members or a class of members, the court must provide notice to the members affected.
	165		This is new. This section provides that at any time during an action, the nonprofit corporation may ask for an order requiring the plaintiff to give security for reasonable expenses, including attorney fees and expenses, that may be incurred. This section further grants the court discretion in granting security. Upon termination of the action, the court may 1) order the nonprofit to pay the plaintiff's expenses, 2) order the plaintiff to pay the defendant's reasonable expenses, or 3) order a party to pay an opposing party's reasonable expenses.
	166	NA	This is new. This section states that for any foreign nonprofit, the matters covered by this chapter shall be governed by the laws of the jurisdiction of incorporation of the foreign nonprofit corporation, except for sections 12.04, 12.06, and 12.07.
	167	NA	This is new. In the event that the derivative action is brought against a charitable nonprofit corporation, the plaintiff shall notify the attorney general.
<b>Chapter 13 Dissolution</b>			
<b>(Sections 168-185)</b>	168	47-26-1 through 4 (Process)	RMNCA - Board of directors majority vote if no business.

## APPENDIX 1

	<b>Proposed Revised Model Nonprofit Corporations Act (“RMNCA”)</b>	<b>Cross Reference to Existing South Dakota Nonprofit Corporation Act (SDCL § 47-22-, 47-23, 47-24 (1965))</b>	<b>Comments and Comparison Between RMNCA and Existing Law</b>
<b>Chapter 1 General Provisions</b>	<b>Section(s)</b>	<b>Statute(s)</b>	
<b>(Sections 1-20)</b>	1	47-22-78	Name and citation of the Act.
	1.1	47-22-12	Electronic filing permitted; clarification of who authorized signatories are; allows for foreign corporations to be authenticated if in English translation.
	2	47-28-17	Same – Secretary of State can provide forms but they are not mandatory.
	3	47-28-6-68; 10-16	Updated – there are only 12 items delineated in the old act and with advancements in different types of transactions and documents required, the new revised language delineates 28 different documents that can be ordered and the charges.
	4	47-22-13	Clarifies an important timeline for the creation of a nonprofit organization, and gives flexibility for delayed filing.
	5	47-22-13; 47-27-1; 47-22-11	Appears to streamline the existing statutory process.
	6	47-27-3; 47-28-2	Combines the two existing statutes into one, and narrows the time of denial from 10 days to 5 days.
	7	47-28-3; 47-28-5	Combines two existing statutes and changes the forum for appeal from the county of the registered office to Hughes County.
	8	47-28-9	Essentially serving similar goals, but existing statute mandates acceptance by Courts, public offices, and official board of directors.
	9	47-22-13; 47-27-1; 47-22-11	Combines these disparate statutes into a clear and concise statute directing the public to the Secretary of State for certificates of existence.
	10	NA	No such punishment appears to exist within the tools available to the Secretary of State.
	11	47-28-1	Substantially similar in language and effect.

	169	47-26-2; 47-26-3	Both existing law and RMNCA 2/3rds vote.
	170	47-26-9; 47-26-10 (similar to)	RMNCA no mention if no members.
	171	47-26-12; 47-26-13; 47-26-14; 47-26-15	RMNCA – within 120 days; existing law – prior to Cert of Dissolution.
	172	47-26-4; 47-26-39	Law defines preexisting claims as exempt.
	173	47-26-4; 47-26-34; 47-26-39	
	174	47-26-38	Act requires publication to unknowns.
	175	47-26-16; 47-26-22 through 25	
	176	47-26-3 - 6; 47-26-8 (generally)	Act more direct on Director's duties.
	177	47-24-13.1	RMNCA – any failure to file; existing law – 2 successive
	178	47-24-13.2	
	179	47-24-14; 47-24-16	RMNCA - reinstatement relates back to dissolution date.
	180	47-24-14.1	
	181	47-26-16; 47-26-22; 47-26-23; 47-26-24	RMNCA- expands reasons for court dissolution.
	182	47-26-19; 47-26-27; 47-26-28	
	183	47-26-29	RMNCA - may require custodian to be bonded.
	184	47-26-36; 47-26-37	Similar to.
	185	47-26-38	



<b>Chapter 14 Foreign Corporations</b>			
<b>(Sections 186-199)</b>	186	47-27-11	RMNCA explicitly exempts variety of activities from certificate requirement.
	187	47-27-12; 47-27-13	RMNCA explicitly permits court to stay proceedings.
	188	47-27-1	RMNCA does not cross-reference 59-11-6, require statement of purpose, additional information that may be necessary, or original and copy as prescribed by secretary (see word doc for other changes).
	189	47-27-17	RMNCA includes period of duration and state or country of incorporation and removes pursuing other or additional purposes.
	190	47-27-4; 47-27-6; 47-27-5	RMNCA only mentions right to revoke (not suspend); only provides state not authorized to regulate organization but doesn't mention denying certificate for difference in laws.
	191	47-27-8; 47-22-8.1; 47-27-10	RMNCA written in a simpler format; provides protection for fictitious names; provides procedure for mergers, etc.; defines when a name is distinguishable (see word doc for other changes).
	192		
	193	47-27-32	RMNCA explicitly requires Secretary of State to mail a copy of process.
	194	NA	RMNCA provides if foreign nonprofit converts to domestic it is deemed to have withdrawn on date of conversion.
	195	NA	RMNCA gives procedure for converting to nonfiling entity and gives requirements for service of process.
	196	NA	RMNCA gives procedure for transferring authority to converted entity.
	197	47-27-36; 47-27-36	RMNCA includes failure to file change or resignation of agent and notice of dissolution or merger where incorporated; it eliminates failure to file amendment to articles of incorporation or articles of merger.
	198	47-27-36; 47-27-37; 47-27-38	RMNCA requires certificate of revocation to state grounds; it includes that revocation appoints secretary of state as agent; clarifies revocation does not terminate agent's authority.
	199	47-28-4; 47-28-5	RMNCA sets a 30 day timeline for appeals; allows the court to take action it deems proper versus prior could direct the secretary to take action it deemed proper.

<b>Chapter 15 Records and Reports</b>			
<b>(Sections 200- 207)</b>	200	47-24-1	RMNCA broadens scope to include all actions and any designated board of directors.
	201	47-24-2	RMNCA entitles members, includes copying, and requires notice; 2014 Amendment guarantees right of inspection, cannot be drafted around in articles of incorporation.
	202	47-24-2	RMNCA includes rights to copy, nonprofit may impose reasonable charge.
	203	NA	RMNCA provides member may resort to court order.
	204	NA	RMNCA provides director has inspection and copying rights and may resort to court order.
	205	NA	RMNCA provides notice waiver provisions.
	206	NA	RMNCA limits membership list use.
	207	NA	RMNCA provides nonprofit must provide financial statements on member demand; 2014 Amendment removes exception for articles of incorporation or bylaws of religious nonprofit.
<b>Chapter 16 Transition Provisions</b>			
<b>(Sections 208- 213)</b>	208	NA	RMNCA applies to domestic.
	209	NA	RMNCA applies to foreign.
	210	NA	RMNCA provides if statutes repealed no retroactive effect except for penalty or punishment not already imposed.
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