

Model Corporate Charter Revocation Act

Introduction

State corporations laws have long authorized state officials to revoke the charters of corporations that exceed or abuse their legal authority. However, this authority is left to the discretion of state officials and is rarely used. This model law revises state corporations law to enhance enforcement.

Each state has its own law of corporations, but about half of the states base their corporations law on the American Bar Association's Model Business Corporation Act (MBCA). Because the MBCA is so widely used, this model act is written as a revision to the MBCA. For states that do not use the MBCA, the language of this model act can easily be adopted to fit the state's own corporations law. The model act includes the proposed revisions to the MBCA (shown in underline) and certain existing provisions for context.

Section 14.30 of the MBCA already authorizes the state attorney general to file a judicial action to revoke a corporate charter if the court finds that "the corporation has continued to exceed or abuse the authority conferred upon it by law." Sections 14.31-33 provide detailed procedures for the court proceeding and for court appointment of receivers or custodians to manage the corporation and, if appropriate, wind up its affairs and liquidate its assets.

This model act revises Section 14.30 to authorize citizens to file the same type of judicial actions. However, as a safeguard, it requires that any such citizen suits allege at least three separate felonies in a ten-year period. The model act also extends similar authority to the secretary of state, and to citizens, with respect to an out-of-state corporation's authority to transact business in the state. Finally, the model act bars a person from serving as director of a corporation if s/he within the past ten years served as a director or officer of a corporation that was found to exceed or abuse its authority.

§ 8.02 Qualifications of Directors

- (a) The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.
- (b) No person may serve as a director who has, within the past ten years, been a director or officer of a corporation that was found to exceed or abuse the authority conferred upon it by law in a proceeding under section 14.30, 15.30-31, or 15.33 of this chapter.

§ 8.09 Removal of Directors by Judicial Proceeding

(a) The [name or describe] court of the county where a corporation’s principal office (or, if none in this state, its registered office) is located may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that (1) the director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and (2) considering the director’s course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

...

(c) The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

(d) Nothing in this section limits the equitable powers of the court to order other relief.

(e) The [name or describe] court of the county where a corporation’s principal office (or, if none in this state, its registered office) is located may remove a director of the corporation from office in a proceeding commenced by the attorney general or by any citizen of the state if the court finds that the director has, within the past ten years, been a director or officer of a corporation that was found to exceed or abuse the authority conferred upon it by law in a proceeding under section 14.30, 15.30-31, or 15.33 of this chapter. Such a proceeding shall be subject to subsections (c) and (d).

§ 14.30 Grounds for Judicial Dissolution

(a) The [name or describe court or courts] may dissolve a corporation:

(1) in a proceeding by the attorney general if it is established that:

(i) ...

(ii) the corporation has continued to exceed or abuse the authority conferred upon it by law;

(2-5)

(6) in a proceeding by any citizen of the state, or by a shareholder, if it is established that the corporation has continued to exceed or abuse the authority conferred upon it by law. Any complaint initiating a proceeding under this subsection must allege at least three criminal felonies, arising from three or more separate acts or omissions within the same ten-year period, and each of which concluded with the corporation receiving or entering one or more of the following:

(i) conviction,

(ii) plea of guilt or no contest, or

(iii) entry into a non-prosecution or deferred prosecution agreement to resolve the charge, if the terms and

conditions of the agreement include a requirement that the corporation make a payment equal to or greater than \$1,000,000 to resolve criminal charges.

§ 15.30 Grounds for Revocation [Of Corporation's Certificate of Authority]

The secretary of state may commence a proceeding under section 15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) – (6)
- (7) the foreign corporation has continued to exceed or abuse the authority conferred upon it by law. The secretary may determine that such exceedance or abuse has occurred based on the criteria set forth in section 14.30(a)(6) of this chapter, if the acts demonstrating the exceedance or abuse of authority have occurred at least partly in this state.

§ 15.33 Citizen Action for Revocation [Of Corporation's Certificate of Authority]

- (1) Any citizen of this state may commence an action in [name or describe court or courts] to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if the foreign corporation has continued to exceed or abuse the authority conferred upon it by law. Any complaint initiating a proceeding under this subsection must satisfy the requirements set forth in section 14.30(a)(6) of this chapter, and furthermore allege that the acts demonstrating the exceedance or abuse of authority have occurred at least partly in this state.
- (2) The court may order the secretary to revoke the certificate of authority or may take any other action the court considers appropriate.
- (3) The court's final decision may be appealed as in other civil proceedings.