

10-3202. Articles of incorporation; violation; classification

A. The articles of incorporation shall set forth:

1. A corporate name for the corporation that satisfies the requirements of section 10-3401.
2. A brief statement of the character of affairs that the corporation initially intends to conduct. This statement does not limit the affairs that the corporation may conduct.
3. The name and address of each person who is to serve as a director until a successor is elected and qualifies.
4. The name, street address and signature of the corporation's statutory agent.
5. The street address of the known place of business for the corporation, if different from that of its statutory agent.
6. The name and address of each incorporator.
7. Whether or not the corporation will have members.
8. Any provision elected by the incorporators that under chapters 24 through 40 of this title or any other law of this state may be elected only by specific inclusion in the articles of incorporation.
9. The signatures of all incorporators.

B. The articles of incorporation may set forth:

1. A provision eliminating or limiting the liability of a director to the corporation or its members for money damages for any action taken or any failure to take any action as a director, except liability for any of the following:
 - (a) The amount of a financial benefit received by a director to which the director is not entitled.
 - (b) An intentional infliction of harm on the corporation or the members.
 - (c) A violation of section 10-3833.
 - (d) An intentional violation of criminal law.
2. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 10-3850, to any person for any action taken, or any failure to take any action, as a director, except liability for any of the exceptions described in paragraph 1 of this subsection.
3. Any other provision, not inconsistent with law.

C. The articles of incorporation need not set forth any of the corporate powers enumerated in chapters

24 through 40 of this title.

D. The certificate of disclosure shall set forth all of the following:

1. The following information regarding all persons who at the time of its delivery are officers, directors, trustees and incorporators:

(a) Whether any of the persons have been convicted of a felony involving a transaction in securities, consumer fraud or antitrust in any state or federal jurisdiction within the five-year period immediately preceding the execution of the certificate.

(b) Whether any of the persons have been convicted of a felony, the essential elements of which consisted of fraud, misrepresentation, theft by false pretenses or restraint of trade or monopoly in any state or federal jurisdiction within the five-year period immediately preceding the execution of the certificate.

(c) Whether any of the persons are or have been subject to an injunction, judgment, decree or permanent order of any state or federal court entered within the five-year period immediately preceding the execution of the certificate, if the injunction, judgment, decree or permanent order involved any of the following:

(i) The violation of fraud or registration provisions of the securities laws of that jurisdiction.

(ii) The violation of consumer fraud laws of that jurisdiction.

(iii) The violation of the antitrust or restraint of trade laws of that jurisdiction.

(d) With regard to any of the persons who have been convicted of the crimes or who are the subject of the judicial action described in subdivisions (a), (b) and (c) of this paragraph, information regarding:

(i) Identification of the persons, including present full name, all prior names or aliases, including full birth name, present home address, all prior addresses for the immediately preceding five-year period and date and location of birth.

(ii) The nature and description of each conviction or judicial action, the date and location, the court and public agency involved, and the file or case number of the case.

2. A brief statement disclosing whether any persons who at the time of its delivery are officers, directors, trustees and incorporators and who have served in any such capacity in any other corporation on the bankruptcy or receivership of the other corporation. If so, for each corporation, the certificate shall include:

(a) The names and addresses of each corporation and the person or persons involved.

(b) The state in which each corporation:

(i) Was incorporated.

(ii) Transacted business.

(c) The dates of corporate operation.

3. The signatures of all the incorporators.

4. The date of its execution, which shall be not more than thirty days before its delivery to the commission.

5. A declaration by each signer that the signer swears to its contents under penalty of law.

E. The certificate of disclosure may set forth the name and address of any other person whom the incorporator or incorporators choose to be the subject of those disclosures required under subsection D, paragraph 1 of this section.

F. If within sixty days after delivering the articles of incorporation and certificate of disclosure to the commission any person becomes an officer, director or trustee and the person was not the subject of the disclosures set forth in the certificate of disclosure, the incorporator or incorporators or, if the organization of the corporation has been completed as provided in section 10-3205, the corporation shall execute and deliver to the commission within the sixty-day period a declaration, sworn to under penalty of law, setting forth all information required by subsection D, paragraph 1 of this section, regarding the person. If the incorporator or incorporators or, as applicable, the corporation fails to comply with this subsection, the commission may administratively dissolve the corporation pursuant to section [10-11421](#).

G. If any of the persons described in subsection D, paragraph 1 of this section have been convicted of the crimes or are the subject of the judicial action described in subsection D, paragraph 1 of this section, the commission may direct detailed interrogatories to the persons requiring any additional relevant information deemed necessary by the commission. The interrogatories shall be completely answered within thirty days after mailing of the interrogatories. With respect to corporations incorporating or seeking authority to conduct affairs, articles of incorporation or an application for authority shall not be filed until all outstanding interrogatories have been answered to the satisfaction of the commission. With respect to existing domestic and foreign corporations, if the interrogatories are not answered as provided in this subsection or the answers to the interrogatories otherwise indicate proper grounds for an administrative dissolution, the commission shall initiate an administrative dissolution in accordance with chapters 24 through 40 of this title.

H. On a quarterly updated basis, the commission shall provide to the attorney general a list of all persons who are convicted of the crimes or who are the subject of the judicial action described in subsection D, paragraph 1 of this section as indicated by the certificate of disclosure filed during the preceding three months.

I. Any person who executed or contributed information for a certificate of disclosure and who intentionally makes any untrue statement of material fact or withholds any material fact with regard to the information required in subsection D, paragraph 1 of this section is guilty of a class 6 felony.

