

House Judiciary  
Amend of DO #355/ # -3883 4-5-89 (p. 1296)

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SENATE FILE 502  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 354)

Passed Senate, Date 3-27-89 (p. 1031) Passed House, Date 4-24-89 (p. 1831)  
Vote: Ayes 48 Nays 0 Vote: Ayes 96 Nays 2

Approved June 1, 1989

Senate passed 5-1-89 (p. 1784)

Ayes 48 Nays 1 A BILL FOR

1 An Act relating to business corporations, and related matters  
2 including the elimination of filing of corporate documents  
3 with the county recorder for all forms of corporate entities,  
4 and providing a special effective date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I  
GENERAL PROVISIONS  
PART A

Section 1. NEW SECTION. 493B.101 SHORT TITLE.

This Act is entitled and may be cited as the "Iowa Business Corporation Act".

Sec. 2. NEW SECTION. 493B.102 RESERVATION OF POWER TO AMEND OR REPEAL.

The general assembly has the power to amend or repeal all or part of this Act at any time and all domestic and foreign corporations subject to this Act are governed by an amendment or repeal.

PART B

Sec. 3. NEW SECTION. 493B.120 FILING REQUIREMENTS.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be filed in the office of the secretary of state.

3. The document must contain the information required by this chapter. It may contain other information as well.

4. The document must be typewritten or printed.

5. The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. Except as provided in section 493B.1622, subsection 2, the document must be executed by one of the following methods:

a. The chairperson of the board of directors of a domestic or foreign corporation, its president, or another of its officers.

b. If directors have not been selected or the corporation has not been formed, by an incorporator.

1 c. If the corporation is in the hands of a receiver,  
2 trustee, or other court-appointed fiduciary, by that  
3 fiduciary.

4 7. The person executing the document shall sign it and  
5 state beneath or opposite the person's signature, the person's  
6 name and the capacity in which the person signs. The document  
7 may, but need not, contain:

8 a. The corporate seals.

9 b. An attestation by the secretary or an assistant  
10 secretary.

11 c. An acknowledgment, verification, or proof.

12 The secretary of state may accept for filing a document  
13 containing a copy of a signature, however made.

14 8. If the secretary of state has prescribed a mandatory  
15 form for the document under section 493B.121, the document  
16 must be in or on the prescribed form.

17 9. The document must be delivered to the office of the  
18 secretary of state for filing and must be accompanied by the  
19 correct filing fee.

20 Sec. 4. NEW SECTION. 493B.121 FORMS.

21 1. The secretary of state may prescribe and furnish on  
22 request forms including but not limited to the following:

23 a. An application for a certificate of existence.

24 b. A foreign corporation's application for a certificate  
25 of authority to transact business in this state.

26 c. A foreign corporation's application for a certificate  
27 of withdrawal.

28 d. The annual report.

29 If the secretary of state so requires, use of these listed  
30 forms prescribed by the secretary of state is mandatory.

31 2. The secretary of state may prescribe and furnish on  
32 request forms for other documents required or permitted to be  
33 filed by this chapter but their use is not mandatory.

34 Sec. 5. NEW SECTION. 493B.122 FILING, SERVICE, AND  
35 COPYING FEES.

1 1. The secretary of state shall collect the following fees  
 2 when the documents described in this subsection are delivered  
 3 to the secretary's office for filing:

4 Document	Fee
5 a. Articles of incorporation .....	\$ 50
6 b. Application for use of indistinguishable	
7 name .....	\$ 10
8 c. Application for reserved name .....	\$ 10
9 d. Notice of transfer of reserved name .....	\$ 10
10 e. Application for registered name per month	
11 or part thereof .....	\$ 2
12 f. Application for renewal of registered name ....	\$ 20
13 g. Corporation's statement of change of	
14 registered agent or registered office or both .....	No fee
15 h. Agent's statement of change of registered	
16 office for each affected corporation .....	No fee
17 i. Agent's statement of resignation .....	No fee
18 j. Amendment of articles of incorporation .....	\$ 50
19 k. Restatement of articles of incorporation	
20 with amendment of articles .....	\$ 50
21 l. Articles of merger or share exchange .....	\$ 50
22 m. Articles of dissolution .....	\$ 5
23 n. Articles of revocation of dissolution .....	\$ 5
24 o. Certificate of administrative dissolution ....	No fee
25 p. Application for reinstatement following	
26 administrative dissolution .....	\$ 5
27 q. Certificate of reinstatement .....	No fee
28 r. Certificate of judicial dissolution .....	No fee
29 s. Application for certificate of authority .....	\$100
30 t. Application for amended certificate of	
31 authority .....	\$100
32 u. Application for certificate of withdrawal .....	\$ 10
33 v. Certificate of revocation of authority	
34 to transact business .....	No fee
35 w. Annual report .....	\$ 30

- 1 x. Articles of correction ..... \$ 5
- 2 y. Application for certificate of existence
- 3 or authorization ..... \$ 5
- 4 z. Any other document required or permitted
- 5 to be filed by this chapter ..... \$ 5

6 2. The secretary of state shall collect a fee of five  
7 dollars each time process is served on the secretary under  
8 this chapter. The party to a proceeding causing service of  
9 process is entitled to recover this fee as costs if the party  
10 prevails in the proceeding.

11 3. The secretary of state shall collect the following fees  
12 for copying and certifying the copy of any filed document  
13 relating to a domestic or foreign corporation:

- 14 a. \$ .50 a page for copying.
- 15 b. \$5.00 for the certificate.

16 Sec. 6. NEW SECTION. 493B.123 EFFECTIVE TIME AND DATE OF  
17 DOCUMENTS.

18 1. Except as provided in subsection 2 and section  
19 493A.124, subsection 3, a document accepted for filing is  
20 effective at the later of the following times:

- 21 a. At the time of filing on the date it is filed, as  
22 evidenced by the secretary of state's date and time  
23 endorsement on the original document.
- 24 b. At the time specified in the document as its effective  
25 time on the date it is filed.

26 2. A document may specify a delayed effective time and  
27 date, and if it does so the document becomes effective at the  
28 time and date specified. If a delayed effective date but no  
29 time is specified, the document is effective at the close of  
30 business on that date. A delayed effective date for a  
31 document shall not be later than the ninetieth day after the  
32 date it is filed.

33 Sec. 7. NEW SECTION. 493B.124 CORRECTING FILED  
34 DOCUMENTS.

35 1. A domestic or foreign corporation may correct a

1 document filed by the secretary of state if the document  
2 satisfies one or both of the following requirements:

- 3 a. Contains an incorrect statement.
- 4 b. Was defectively executed, attested, sealed, verified,  
5 or acknowledged.

6 2. A document is corrected by complying with both of the  
7 following:

8 a. By preparing articles of correction that satisfy all of  
9 the following requirements:

10 (1) Describe the document, including its filing date, or  
11 attach a copy of it to the articles.

12 (2) Specify the incorrect statement and the reason it is  
13 incorrect or the manner in which the execution was defective.

14 (3) Correct the incorrect statement or defective  
15 execution.

16 b. By delivering the articles to the secretary of state  
17 for filing.

18 3. Articles of correction are effective on the effective  
19 date of the document they correct except as to persons relying  
20 on the uncorrected document and adversely affected by the  
21 correction. As to those persons, articles of correction are  
22 effective when filed.

23 Sec. 8. NEW SECTION. 493B.125 FILING DUTY OF SECRETARY  
24 OF STATE.

25 1. If a document delivered to the office of the secretary  
26 of state for filing satisfies the requirements of section  
27 493B.120, the secretary of state shall file it.

28 2. The secretary of state files a document by stamping or  
29 otherwise endorsing "filed", together with the secretary's  
30 name and official title and the date and time of receipt, on  
31 both the document and the receipt for the filing fee. After  
32 filing a document, except the annual report required by  
33 section 493B.1622, and except as provided in sections 493B.503  
34 and 493B.1509, the secretary of state shall deliver the  
35 document, with the filing fee receipt, or acknowledgment of

1 receipt if no fee is required, attached, to the domestic or  
2 foreign corporation or its representative.

3 3. If the secretary of state refuses to file a document,  
4 the secretary of state shall return it to the domestic or  
5 foreign corporation or its representative within ten days  
6 after the document was received by the secretary of state,  
7 together with a brief, written explanation of the reason for  
8 the refusal.

9 4. The secretary of state's duty to file documents under  
10 this section is ministerial. Filing or refusing to file a  
11 document does not:

12 a. Affect the validity or invalidity of the document in  
13 whole or part.

14 b. Relate to the correctness or incorrectness of  
15 information contained in the document.

16 c. Create a presumption that the document is valid or  
17 invalid or that information contained in the document is  
18 correct or incorrect.

19 Sec. 9. NEW SECTION. 493B.126 APPEAL FROM SECRETARY OF  
20 STATE'S REFUSAL TO FILE DOCUMENT.

21 1. If the secretary of state refuses to file a document  
22 delivered to the secretary's office for filing, the domestic  
23 or foreign corporation may appeal the refusal, within thirty  
24 days after the return of the document, to the district court  
25 for the county in which the corporation's principal office or,  
26 if none in this state, its registered office is or will be  
27 located. The appeal is commenced by petitioning the court to  
28 compel filing the document and by attaching to the petition  
29 the document and the secretary of state's explanation of the  
30 refusal to file.

31 2. The court may summarily order the secretary of state to  
32 file the document or take other action the court considers  
33 appropriate.

34 3. The court's final decision may be appealed as in other  
35 civil proceedings.

1     Sec. 10. NEW SECTION. 493B.127 EVIDENTIARY EFFECT OF  
2 COPY OF FILED DOCUMENT.

3     A certificate attached to a copy of a document filed by the  
4 secretary of state, bearing the secretary of state's  
5 signature, which may be in facsimile, and the seal of this  
6 state, is conclusive evidence that the original document is on  
7 file with the secretary of state.

8     Sec. 11. NEW SECTION. 493B.128 CERTIFICATE OF EXISTENCE.

9     1. Anyone may apply to the secretary of state to furnish a  
10 certificate of existence for a domestic corporation or a  
11 certificate of authorization for a foreign corporation.

12     2. A certificate of existence or authorization must set  
13 forth all of the following:

14     a. The domestic corporation's corporate name or the  
15 foreign corporation's corporate name used in this state.

16     b. That one of the following apply:

17         (1) If it is a domestic corporation, that it is duly  
18 incorporated under the law of this state, the date of its  
19 incorporation, and the period of its duration if less than  
20 perpetual.

21         (2) If it is a foreign corporation, that it is authorized  
22 to transact business in this state.

23     c. That all fees required by this chapter have been paid.

24     d. That its most recent annual report required by section  
25 493B.1622 has been filed by the secretary of state.

26     e. That articles of dissolution have not been filed.

27     f. Other facts of record in the office of the secretary of  
28 state that may be requested by the applicant.

29     3. Subject to any qualification stated in the certificate,  
30 a certificate of existence or authorization issued by the  
31 secretary of state may be relied upon as conclusive evidence  
32 that the domestic or foreign corporation is in existence or is  
33 authorized to transact business in this state.

34     Sec. 12. NEW SECTION. 493B.129 PENALTY FOR SIGNING FALSE  
35 DOCUMENT.

1 1. A person commits an offense if that person signs a  
2 document the person knows is false in any material respect  
3 with intent that the document be delivered to the secretary of  
4 state for filing.

5 2. An offense under this section is a serious misdemeanor  
6 punishable by a fine of not to exceed one thousand dollars.

7 PART C

8 Sec. 13. NEW SECTION. 493B.135 SECRETARY OF STATE --  
9 POWERS.

10 The secretary of state has the power reasonably necessary  
11 to perform the duties required of the secretary of state by  
12 this chapter.

13 PART D

14 Sec. 14. NEW SECTION. 493B.140 DEFINITIONS.

15 In this chapter, unless the context requires otherwise:

16 1. "Articles of incorporation" include amended and  
17 restated articles of incorporation and articles of merger.

18 2. "Authorized shares" means the shares of all classes a  
19 domestic or foreign corporation is authorized to issue.

20 3. "Conspicuous" means so written that a reasonable person  
21 against whom the writing is to operate should have noticed it.  
22 For example, printing in italics or boldface or contrasting  
23 color, or typing in capitals or underlined, is conspicuous.

24 4. "Corporation" or "domestic corporation" means a  
25 corporation for profit, which is not a foreign corporation,  
26 incorporated under or subject to this chapter.

27 5. "Deliver" includes mail delivery.

28 6. "Distribution" means a direct or indirect transfer of  
29 money or other property, except its own shares, or incurrence  
30 of indebtedness by a corporation to or for the benefit of its  
31 shareholders in respect of any of its shares. A distribution  
32 may be in the form of a declaration or payment of a dividend;  
33 a purchase, redemption, or other acquisition of shares; a  
34 distribution of indebtedness; or otherwise.

35 7. "Effective date of notice" is defined in section

1 493B.141.

2 8. "Employee" includes an officer but not a director. A  
3 director may accept duties that make the director also an  
4 employee.

5 9. "Entity" includes corporation and foreign corporation;  
6 not-for-profit corporation; profit and not-for-profit  
7 unincorporated association; business trust, estate,  
8 partnership, trust, and two or more persons having a joint or  
9 common economic interest; and state, United States, and  
10 foreign government.

11 10. "Foreign corporation" means a corporation for profit  
12 incorporated under a law other than the law of this state.

13 11. "Governmental subdivision" includes authority, city,  
14 county, district, township, and other political subdivision.

15 12. "Includes" denotes a partial definition.

16 13. "Individual" includes the estate of an incompetent, a  
17 ward, or a deceased individual.

18 14. "Means" denotes an exhaustive definition.

19 15. "Notice" is defined in section 493B.141.

20 16. "Person" means a person as defined in section 4.1 and  
21 includes an individual and an entity.

22 17. "Principal office" means the office, in or out of this  
23 state, so designated in the annual report, where the principal  
24 executive offices of a domestic or foreign corporation are  
25 located.

26 18. "Proceeding" includes civil suit and criminal,  
27 administrative, and investigatory action.

28 19. "Record date" means the date established under  
29 division 6 or 7 on which a corporation determines the identity  
30 of its shareholders for purposes of this chapter.

31 20. "Secretary" means the corporate officer to whom the  
32 board of directors has delegated responsibility under section  
33 493B.840, subsection 3, for custody of the minutes of the  
34 meetings of the board of directors and of the shareholders and  
35 for authenticating records of the corporation.

1 21. "Share" means the unit into which the proprietary  
2 interests in a corporation are divided.

3 22. "Shareholder" means the person in whose name shares  
4 are registered in the records of a corporation or the  
5 beneficial owner of shares to the extent of the rights granted  
6 by a nominee certificate on file with a corporation.

7 23. "State", when referring to a part of the United  
8 States, includes a state and commonwealth and their agencies  
9 and governmental subdivisions, and a territory and insular  
10 possession and their agencies and governmental subdivisions,  
11 of the United States.

12 24. "Subscriber" means a person who subscribes for shares  
13 in a corporation, whether before or after incorporation.

14 25. "United States" includes a district, authority,  
15 bureau, commission, department, and any other agency of the  
16 United States.

17 26. "Voting group" means all shares of one or more classes  
18 or series that under the articles of incorporation or this  
19 chapter are entitled to vote and be counted together  
20 collectively on a matter at a meeting of shareholders. All  
21 shares entitled by the articles of incorporation or this  
22 chapter to vote generally on the matter are for that purpose a  
23 single voting group.

24 Sec. 15. NEW SECTION. 493B.141 NOTICE.

25 1. Notice under this chapter must be in writing unless  
26 oral notice is reasonable under the circumstances.

27 2. Notice may be communicated in person; by telephone,  
28 telegraph, teletype, or other form of wire or wireless  
29 communication; or by mail or private carrier. If these forms  
30 of personal notice are impracticable, notice may be  
31 communicated by a newspaper of general circulation in the area  
32 where published; or by radio, television, or other form of  
33 public broadcast communication.

34 3. Written notice by a domestic or foreign corporation to  
35 its shareholder, if in a comprehensible form, is effective

1 when mailed, if mailed postpaid and correctly addressed to the  
2 shareholder's address shown in the corporation's current  
3 record of shareholders.

4 4. Written notice to a domestic or foreign corporation  
5 authorized to transact business in this state may be addressed  
6 to its registered agent at its registered office or to the  
7 corporation or its secretary at its principal office shown in  
8 its most recent annual report or, in the case of a foreign  
9 corporation that has not yet delivered an annual report, in  
10 its application for a certificate of authority.

11 5. Except as provided in subsection 3, written notice, if  
12 in a comprehensible form, is effective at the earliest of the  
13 following:

14 a. When received.

15 b. Five days after its deposit in the United States mail,  
16 as evidenced by the postmark, if mailed postpaid and correctly  
17 addressed.

18 c. On the date shown on the return receipt, if sent by  
19 registered or certified mail, return receipt requested, and  
20 the receipt is signed by or on behalf of the addressee.

21 6. Oral notice is effective when communicated if  
22 communicated in a comprehensible manner.

23 7. If this chapter prescribes notice requirements for  
24 particular circumstances, those requirements govern. If  
25 articles of incorporation or bylaws prescribe notice  
26 requirements not inconsistent with this section or other  
27 provisions of this chapter, those requirements govern.

28 Sec. 16. NEW SECTION. 493B.142 NUMBER OF SHAREHOLDERS.

29 1. For purposes of this chapter, any of the following  
30 identified as a shareholder in a corporation's current record  
31 of shareholders constitutes one shareholder:

32 a. Three or fewer co-owners.

33 b. A corporation, partnership, trust, estate, or other  
34 entity.

35 c. The trustees, guardians of the property, custodians, or

1 other fiduciaries of a single trust, estate, or account.

2 2. For purposes of this chapter, shareholdings registered  
3 in substantially similar names constitute one shareholder if  
4 it is reasonable to believe that the names represent the same  
5 person.

6

DIVISION II

7

INCORPORATION

8 Sec. 17. NEW SECTION. 493B.201 INCORPORATORS.

9 One or more persons may act as the incorporator or  
10 incorporators of a corporation by executing and delivering  
11 articles of incorporation to the secretary of state for  
12 filing.

13 Sec. 18. NEW SECTION. 493B.202 ARTICLES OF  
14 INCORPORATION.

15 1. The articles of incorporation must set forth all of the  
16 following:

17 a. A corporate name for the corporation that satisfies the  
18 requirements of section 493B.401.

19 b. The number of shares the corporation is authorized to  
20 issue.

21 c. The street address of the corporation's initial  
22 registered office and the name of its initial registered agent  
23 at that office.

24 d. The name and address of each incorporator.

25 2. The articles of incorporation may set forth any or all  
26 of the following:

27 a. The names and addresses of the individuals who are to  
28 serve as the initial directors.

29 b. Provisions not inconsistent with law regarding:

30 (1) The purpose or purposes for which the corporation is  
31 organized.

32 (2) Managing the business and regulating the affairs of  
33 the corporation.

34 (3) Defining, limiting, and regulating the powers of the  
35 corporation, its board of directors, and shareholders.

1 (4) A par value for authorized shares or classes of  
2 shares.

3 (5) The imposition of personal liability on shareholders  
4 for the debts of the corporation to a specified extent and  
5 upon specified conditions.

6 c. Any provision that under this chapter is required or  
7 permitted to be set forth in the bylaws.

8 d. A provision consistent with section 493B.832.

9 3. The articles of incorporation need not set forth any of  
10 the corporate powers enumerated in this chapter.

11 Sec. 19. NEW SECTION. 493B.203 INCORPORATION.

12 1. Unless a delayed effective date or time is specified,  
13 the corporate existence begins when the articles of  
14 incorporation are filed.

15 2. The secretary of state's filing of the articles of  
16 incorporation is conclusive proof that the incorporators  
17 satisfied all conditions precedent to incorporation except in  
18 a proceeding by the state to cancel or revoke the  
19 incorporation or involuntarily dissolve the corporation.

20 Sec. 20. NEW SECTION. 493B.204 LIABILITY FOR  
21 PREINCORPORATION TRANSACTIONS.

22 All persons purporting to act as or on behalf of a  
23 corporation, knowing there was no incorporation under this  
24 chapter, are jointly and severally liable for all liabilities  
25 created while so acting.

26 Sec. 21. NEW SECTION. 493B.205 ORGANIZATION OF  
27 CORPORATION.

28 1. After incorporation:

29 a. If initial directors are named in the articles of  
30 incorporation, the initial directors shall hold an  
31 organizational meeting, at the call of a majority of the  
32 directors, to complete the organization of the corporation by  
33 appointing officers, adopting bylaws and carrying on any other  
34 business brought before the meeting.

35 b. If initial directors are not named in the articles, the

1 incorporator or incorporators shall hold an organizational  
2 meeting at the call of a majority of the incorporators to do  
3 one of the following:

4 (1) Elect directors and complete the organization of the  
5 corporation.

6 (2) Elect a board of directors who shall complete the  
7 organization of the corporation.

8 2. Action required or permitted by this chapter to be  
9 taken by incorporators at an organizational meeting may be  
10 taken without a meeting if the action taken is evidenced by  
11 one or more written consents describing the action taken and  
12 signed by each incorporator.

13 3. An organizational meeting may be held in or out of this  
14 state.

15 Sec. 22. NEW SECTION. 493B.206 BYLAWS.

16 1. The incorporators or board of directors of a  
17 corporation shall adopt initial bylaws for the corporation.

18 2. The bylaws of a corporation may contain any provision  
19 for managing the business and regulating the affairs of the  
20 corporation that is not inconsistent with law or the articles  
21 of incorporation.

22 Sec. 23. NEW SECTION. 493B.207 EMERGENCY BYLAWS.

23 1. Unless the articles of incorporation provide otherwise,  
24 the board of directors of a corporation may adopt bylaws to be  
25 effective only in an emergency defined in subsection 4. The  
26 emergency bylaws, which are subject to amendment or repeal by  
27 the shareholders, may make all provisions necessary for  
28 managing the corporation during the emergency, including:

29 a. Procedures for calling a meeting of the board of  
30 directors.

31 b. Quorum requirements for the meeting.

32 c. Designation of additional or substitute directors.

33 2. All provisions of the regular bylaws consistent with  
34 the emergency bylaws remain effective during the emergency.  
35 The emergency bylaws are not effective after the emergency

1 ends.

2 3. Corporate action taken in good faith in accordance with  
3 the emergency bylaws has both of the following effects:

4 a. The action binds the corporation.

5 b. The action shall not be used to impose liability on a  
6 corporate director, officer, employee, or agent.

7 4. An emergency exists for purposes of this section if a  
8 quorum of the corporation's directors cannot readily be  
9 assembled because of some catastrophic event.

10

DIVISION III

11

PURPOSES AND POWERS

12

Sec. 24. NEW SECTION. 493B.301 PURPOSES.

13

1. A corporation incorporated under this chapter has the  
14 purpose of engaging in any lawful business unless a more  
15 limited purpose is set forth in the articles of incorporation.

16

2. A corporation engaging in a business that is subject to  
17 regulation under another statute of this state may incorporate  
18 under this chapter only if permitted by, and subject to all  
19 limitations of, the other statute.

20

Sec. 25. NEW SECTION. 493B.302 GENERAL POWERS.

21

Unless its articles of incorporation provide otherwise, a  
22 corporation has perpetual duration and succession in its  
23 corporate name and has the same powers as an individual to do  
24 all things necessary or convenient to carry out its business  
25 and affairs, including without limitation power to do all of  
26 the following:

27

1. Sue and be sued, complain, and defend in its corporate  
28 name.

29

2. Have a corporate seal, which may be altered at will,  
30 and use it, or a facsimile of it, by impressing or affixing it  
31 or in any other manner reproducing it.

32

3. Make and amend bylaws, not inconsistent with its  
33 articles of incorporation or with the laws of this state, for  
34 managing the business and regulating the affairs of the  
35 corporation.

- 1     4. Purchase, receive, lease, or otherwise acquire, and  
2 own, hold, improve, use, and otherwise deal with, real or  
3 personal property, or any legal or equitable interest in  
4 property, wherever located.
- 5     5. Sell, convey, mortgage, pledge, lease, exchange, and  
6 otherwise dispose of all or any part of its property.
- 7     6. Purchase, receive, subscribe for, or otherwise acquire,  
8 own, hold, vote, use, sell, mortgage, lend, pledge, or  
9 otherwise dispose of, and deal in and with shares or other  
10 interests in, or obligations of, any other entity.
- 11    7. Make contracts and guarantees, incur liabilities,  
12 borrow money, issue its notes, bonds, and other obligations,  
13 which may be convertible into or include the option to  
14 purchase other securities of the corporation, and secure any  
15 of its obligations by mortgage or pledge of any of its  
16 property, franchises, or income.
- 17    8. Lend money, invest and reinvest its funds, and receive  
18 and hold real and personal property as security for repayment.
- 19    9. Be a promoter, partner, member, associate, or manager  
20 of any partnership, joint venture, trust, or other entity.
- 21    10. Conduct its business, locate offices, and exercise the  
22 powers granted by this chapter within or without this state.
- 23    11. Elect directors and appoint officers, employees, and  
24 agents of the corporation, define their duties, fix their  
25 compensation, and lend them money and credit.
- 26    12. Pay pensions and establish pension plans, pension  
27 trusts, profit sharing plans, share bonus plans, share option  
28 plans, and benefit or incentive plans for any or all of its  
29 current or former directors, officers, employees, and agents.
- 30    13. Make donations for the public welfare or for  
31 charitable, scientific, or educational purposes.
- 32    14. Transact any lawful business that will aid  
33 governmental policy.
- 34    15. Make payments or donations, or do any other act, not  
35 inconsistent with law, that furthers the business and affairs

1 of the corporation.

2 Sec. 26. NEW SECTION. 493B.303 EMERGENCY POWERS.

3 1. In anticipation of or during an emergency as defined in  
4 subsection 4, the board of directors of a corporation may do  
5 either or both of the following:

6 a. Modify lines of succession to accommodate the  
7 incapacity of any director, officer, employee, or agent.

8 b. Relocate the principal office, designate alternative  
9 principal offices or regional offices, or authorize the  
10 officers to do so.

11 2. During an emergency defined in subsection 4, unless  
12 emergency bylaws provide otherwise:

13 a. Notice of a meeting of the board of directors need be  
14 given only to those directors whom it is practicable to reach  
15 and may be given in any practicable manner, including by  
16 publication and radio.

17 b. One or more officers of the corporation present at a  
18 meeting of the board of directors may be deemed to be  
19 directors for the meeting, in order of rank and within the  
20 same rank in order of seniority, as necessary to achieve a  
21 quorum.

22 3. Corporate action taken in good faith during an  
23 emergency under this section to further the ordinary business  
24 affairs of the corporation shall both:

25 a. Bind the corporation.

26 b. Not be used to impose liability on a corporate  
27 director, officer, employee, or agent.

28 4. An emergency exists for purposes of this section if a  
29 quorum of the corporation's directors cannot readily be  
30 assembled because of some catastrophic event.

31 Sec. 27. NEW SECTION. 493B.304 ULTRA VIRES.

32 1. Except as provided in subsection 2, the validity of  
33 corporate action is not challengeable on the ground that the  
34 corporation lacks or lacked power to act.

35 2. A corporation's power to act may be challenged in any

1 of the following proceedings:

2 a. By a shareholder against the corporation to enjoin the  
3 act.

4 b. By the corporation, directly, derivatively, or through  
5 a receiver, trustee, or other legal representative, against an  
6 incumbent or former director, officer, employee, or agent of  
7 the corporation.

8 c. By the attorney general under section 493B.1430.

9 3. In a shareholder's proceeding under subsection 2,  
10 paragraph "a", to enjoin an unauthorized corporate act, the  
11 court may enjoin or set aside the act, if equitable and if all  
12 affected persons are parties to the proceeding, and may award  
13 damages for loss, other than anticipated profits, suffered by  
14 the corporation or another party because of enjoining the  
15 unauthorized act.

16 DIVISION IV

17 NAMES

18 Sec. 28. NEW SECTION. 493B.401 CORPORATE NAME.

19 1. A corporate name:

20 a. Must contain the word "corporation", "incorporated",  
21 "company", or "limited", or the abbreviation "corp.", "inc.",  
22 "co.", or "ltd.", or words or abbreviations of like import in  
23 another language.

24 b. Shall not contain language stating or implying that the  
25 corporation is organized for a purpose other than that  
26 permitted by section 493B.301 and its articles of  
27 incorporation.

28 2. Except as authorized by subsections 3 and 4, a  
29 corporate name must be distinguishable upon the records of the  
30 secretary of state from all of the following:

31 a. The corporate name of a corporation incorporated or  
32 authorized to transact business in this state.

33 b. A corporate name reserved or registered under section  
34 493B.402 or 493B.403.

35 c. The fictitious name adopted by a foreign corporation

1 authorized to transact business in this state because its real  
2 name is unavailable.

3 d. The corporate name of a not-for-profit corporation  
4 incorporated or authorized to transact business in this state.

5 3. A corporation may apply to the secretary of state for  
6 authorization to use a name that is not distinguishable upon  
7 the secretary's records from one or more of the names  
8 described in subsection 2. The secretary of state shall  
9 authorize use of the name applied for if one of the following  
10 conditions applies:

11 a. The other corporation consents to the use in writing  
12 and submits an undertaking in form satisfactory to the  
13 secretary of state to change its name to a name that is  
14 distinguishable upon the records of the secretary of state  
15 from the name of the applying corporation.

16 b. The applicant delivers to the secretary of state a  
17 certified copy of the final judgment of a court of competent  
18 jurisdiction establishing the applicant's right to use the  
19 name applied for in this state.

20 4. A corporation may use the name, including the  
21 fictitious name, of another domestic or foreign corporation  
22 that is used in this state if the other corporation is  
23 incorporated or authorized to transact business in this state  
24 and the proposed user corporation meets one of the following  
25 conditions:

26 a. Has merged with the other corporation.

27 b. Has been formed by reorganization of the other  
28 corporation.

29 c. Has acquired all or substantially all of the assets,  
30 including the corporate name, of the other corporation.

31 5. This chapter does not control the use of fictitious  
32 names; however, if a corporation uses a fictitious name in  
33 this state it shall deliver to the secretary of state for  
34 filing a copy of the resolution of its board of directors,  
35 certified by its secretary, adopting the fictitious name.

1       Sec. 29. NEW SECTION. 493B.402 RESERVED NAME.

2       1. A person may reserve the exclusive use of a corporate  
3 name, including a fictitious name for a foreign corporation  
4 whose corporate name is not available, by delivering an  
5 application to the secretary of state for filing. The  
6 application must set forth the name and address of the  
7 applicant and the name proposed to be reserved. If the  
8 secretary of state finds that the corporate name applied for  
9 is available, the secretary of state shall reserve the name  
10 for the applicant's exclusive use for a nonrenewable one  
11 hundred twenty-day period.

12       2. The owner of a reserved corporate name may transfer the  
13 reservation to another person by delivering to the secretary  
14 of state a signed notice of the transfer that states the name  
15 and address of the transferee.

16       Sec. 30. NEW SECTION. 493B.403 REGISTERED NAME.

17       1. A foreign corporation may register its corporate name,  
18 or its corporate name with any addition required by section  
19 493B.1506, if the name is distinguishable upon the records of  
20 the secretary of state from the corporate names that are not  
21 available under section 493B.401, subsection 2, paragraph "b".

22       2. A foreign corporation registers its corporate name, or  
23 its corporate name with any addition required by section  
24 493B.1506, by delivering to the secretary of state for filing  
25 an application:

26       a. Setting forth its corporate name, or its corporate name  
27 with any addition required by section 493B.1506, the state or  
28 country and date of its incorporation, and a brief description  
29 of the nature of the business in which it is engaged.

30       b. Accompanied by a certificate of existence, or a  
31 document of similar import, from the state or country of  
32 incorporation.

33       3. The name is registered for the applicant's exclusive  
34 use upon the effective date of the application.

35       4. A foreign corporation whose registration is effective

1 may renew it for successive years by delivering to the  
2 secretary of state for filing a renewal application which  
3 complies with the requirements of subsection 2 between October  
4 1 and December 31 of the preceding year. The renewal  
5 application renews the registration for the following calendar  
6 year.

7 5. A foreign corporation whose registration is effective  
8 may thereafter qualify as a foreign corporation under that  
9 name or consent in writing to the use of that name by a  
10 corporation thereafter incorporated under this chapter or by  
11 another foreign corporation thereafter authorized to transact  
12 business in this state. The first registration terminates  
13 when the domestic corporation is incorporated with that name  
14 or the foreign corporation qualifies or consents to the  
15 qualification of another foreign corporation under the  
16 registered name.

17

DIVISION V

18

REGISTERED OFFICE AND AGENT -- SERVICE

19

Sec. 31. NEW SECTION. 493B.501 REGISTERED OFFICE AND

20

REGISTERED AGENT.

21

Each corporation must continuously maintain in this state

22

both of the following:

23

1. A registered office that may be the same as any of its  
24 places of business.

25

2. A registered agent, who may be any of the following:

26

a. An individual who resides in this state and whose  
27 business office is identical with the registered office.

28

b. A domestic corporation or not-for-profit domestic  
29 corporation whose business office is identical with the  
30 registered office.

31

c. A foreign corporation or not-for-profit foreign  
32 corporation authorized to transact business in this state  
33 whose business office is identical with the registered office.

34

Sec. 32. NEW SECTION. 493B.502 CHANGE OF REGISTERED

35

OFFICE OR REGISTERED AGENT.

1     1. A corporation may change its registered office or  
2 registered agent by delivering to the secretary of state for  
3 filing a statement of change that sets forth all of the  
4 following:

5     a. The name of the corporation.  
6     b. The street address of its current registered office.  
7     c. If the current registered office is to be changed, the  
8 street address of the new registered office.  
9     d. The name of its current registered agent.  
10    e. If the current registered agent is to be changed, the  
11 name of the new registered agent and the new agent's written  
12 consent, either on the statement or attached to it, to the  
13 appointment.  
14    f. That after the change or changes are made, the street  
15 addresses of its registered office and the business office of  
16 its registered agent will be identical.

17    2. If a registered agent changes the street address of the  
18 registered agent's business office, the registered agent may  
19 change the street address of the registered office of any  
20 corporation for which the person is the registered agent by  
21 notifying the corporation in writing of the change and  
22 signing, either manually or in facsimile, and delivering to  
23 the secretary of state for filing a statement that complies  
24 with the requirements of subsection 1 and recites that the  
25 corporation has been notified of the change.

26    3. If a registered agent changes the registered agent's  
27 business address to another place, the registered agent may  
28 change the business address and the address of the registered  
29 agent by filing a statement as required in subsection 2 for  
30 each corporation, or a single statement for all corporations  
31 named in the notice, except that it need be signed only by the  
32 registered agent or agents and need not be responsive to  
33 subsection 1, paragraph "e", and must recite that a copy of  
34 the statement has been mailed to each corporation named in the  
35 notice.

1 4. A corporation may also change its registered office or  
2 registered agent in its annual report as provided in section  
3 493B.1622.

4 Sec. 33. NEW SECTION. 493B.503 RESIGNATION OF REGISTERED  
5 AGENT.

6 1. A registered agent may resign the agent's agency  
7 appointment by signing and delivering to the secretary of  
8 state for filing the signed original and two exact or  
9 conformed copies of a statement of resignation. The statement  
10 may include a statement that the registered office is also  
11 discontinued.

12 2. After filing the statement the secretary of state shall  
13 mail one copy to the registered office, if not discontinued,  
14 and the other copy to the corporation at its principal office.

15 3. The agency appointment is terminated, and the  
16 registered office discontinued if so provided, on the thirty-  
17 first day after the date on which the statement was filed.

18 Sec. 34. NEW SECTION. 493B.504 SERVICE ON CORPORATION.

19 1. A corporation's registered agent is the corporation's  
20 agent for service of process, notice, or demand required or  
21 permitted by law to be served on the corporation.

22 2. If a corporation has no registered agent, or the agent  
23 cannot with reasonable diligence be served, the corporation  
24 may be served by registered or certified mail, return receipt  
25 requested, addressed to the secretary of the corporation at  
26 its principal office. Service is perfected under this  
27 subsection at the earliest of:

28 a. The date the corporation receives the mail.

29 b. The date shown on the return receipt, if signed on  
30 behalf of the corporation.

31 c. Five days after its deposit in the United States mail,  
32 as evidenced by the postmark, if mailed postpaid and correctly  
33 addressed.

34 3. This section does not prescribe the only means, or  
35 necessarily the required means, of serving a corporation.

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DIVISION VI  
SHARES AND SHAREHOLDERS' RIGHTS  
PART A

Sec. 35. NEW SECTION. 493B.601 AUTHORIZED SHARES.

H-5782 1. The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 493B.602.

2. The articles of incorporation must authorize both of the following:

a. One or more classes of shares that together have unlimited voting rights.

b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

3. The articles of incorporation may authorize one or more classes of shares that have any of the following qualities:

a. Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.

b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:

- (1) At the option of the corporation, the shareholders, or another person or upon the occurrence of a designated event.
- (2) For cash, indebtedness, securities, or other property.
- (3) In a designated amount or in an amount determined in

1 accordance with a designated formula or by reference to  
2 extrinsic data or events.

3 c. Entitle the holders to distributions calculated in any  
4 manner, including dividends that may be cumulative,  
5 noncumulative, or partially cumulative.

6 d. Have preference over any other class of shares with  
7 respect to distributions, including dividends and  
8 distributions upon the dissolution of the corporation.

9 4. The description of the designations, preferences,  
10 limitations, and relative rights of share classes in  
11 subsection 3 is not exhaustive.

12 Sec. 36. NEW SECTION. 493B.602 TERMS OF CLASS OR SERIES  
13 DETERMINED BY BOARD OF DIRECTORS.

14 1. If the articles of incorporation so provide, the board  
15 of directors may determine, in whole or part, the preferences,  
16 limitations, and relative rights, within the limits set forth  
17 in section 493B.601, of either of the following:

18 a. Any class of shares before the issuance of any shares  
19 of that class.

20 b. One or more series within a class before the issuance  
21 of any shares of that series.

22 2. Each series of a class must be given a distinguishing  
23 designation.

24 3. All shares of a series must have preferences,  
25 limitations, and relative rights identical with those of other  
26 shares of the same series and, except to the extent otherwise  
27 provided in the description of the series, with those of other  
28 series of the same class.

29 4. Before issuing any shares of a class or series created  
30 under this section, the corporation must deliver to the  
31 secretary of state for filing articles of amendment, which are  
32 effective without shareholder action, that set forth all of  
33 the following:

34 a. The name of the corporation.

35 b. The text of the amendment determining the terms of the

1 class or series of shares.

2 c. The date it was adopted.

3 d. A statement that the amendment was duly adopted by the  
4 board of directors.

5 Sec. 37. NEW SECTION. 493B.603 ISSUED AND OUTSTANDING  
6 SHARES.

7 1. A corporation may issue the number of shares of each  
8 class or series authorized by the articles of incorporation.  
9 Shares that are issued are outstanding shares until they are  
10 reacquired, redeemed, converted, or canceled.

11 2. The reacquisition, redemption, or conversion of  
12 outstanding shares is subject to the limitations of subsection  
13 3 and to section 493B.640.

14 3. At all times that shares of the corporation are  
15 outstanding, one or more shares that together have unlimited  
16 voting rights and one or more shares that together are  
17 entitled to receive the net assets of the corporation upon  
18 dissolution must be outstanding.

19 Sec. 38. NEW SECTION. 493B.604 FRACTIONAL SHARES.

20 1. A corporation may:

21 a. Issue fractions of a share or pay in money the value of  
22 fractions of a share.

23 b. Arrange for disposition of fractional shares by the  
24 shareholders.

25 c. Issue scrip in registered or bearer form entitling the  
26 holder to receive a full share upon surrendering enough scrip  
27 to equal a full share.

28 2. Each certificate representing scrip must be  
29 conspicuously labeled "scrip" and must contain the information  
30 required by section 493B.625, subsection 2.

31 3. The holder of a fractional share is entitled to  
32 exercise the rights of a shareholder, including the right to  
33 vote, to receive dividends, and to participate in the assets  
34 of the corporation upon liquidation. The holder of scrip is  
35 not entitled to any of these rights unless the scrip provides

1 for them.

2 4. The board of directors may authorize the issuance of  
3 scrip subject to any condition considered desirable,  
4 including:

5 a. That the scrip will become void if not exchanged for  
6 full shares before a specified date.

7 b. That the shares for which the scrip is exchangeable may  
8 be sold and the proceeds paid to the scrip holders.

9 PART B

10 Sec. 39. NEW SECTION. 493B.620 SUBSCRIPTION FOR SHARES  
11 BEFORE INCORPORATION.

12 1. A subscription for shares entered into before  
13 incorporation is irrevocable for six months unless the  
14 subscription agreement provides a longer or shorter period or  
15 all the subscribers agree to revocation.

16 2. The board of directors may determine the payment terms  
17 of subscriptions for shares that were entered into before  
18 incorporation unless the subscription agreement specifies  
19 them. A call for payment by the board of directors must be  
20 uniform so far as practicable as to all shares of the same  
21 class or series, unless the subscription agreement specifies  
22 otherwise.

23 3. Shares issued pursuant to subscriptions entered into  
24 before incorporation are fully paid and nonassessable when the  
25 corporation receives the consideration specified in the  
26 subscription agreement.

27 4. If a subscriber defaults in payment of money or  
28 property under a subscription agreement entered into before  
29 incorporation, the corporation may collect the amount owed as  
30 any other debt. Alternatively, unless the subscription  
31 agreement provides otherwise, the corporation may rescind the  
32 agreement and may sell the shares if the debt remains unpaid  
33 more than twenty days after the corporation sends written  
34 demand for payment to the subscriber.

35 5. A subscription agreement entered into after:

1 incorporation is a contract between the subscriber and the  
2 corporation subject to section 493B.621.

3 Sec. 40. NEW SECTION. 493B.621 ISSUANCE OF SHARES.

4 1. The powers granted in this section to the board of  
5 directors may be reserved to the shareholders by the articles  
6 of incorporation.

7 2. The board of directors may authorize shares to be  
8 issued for consideration consisting of any tangible or  
9 intangible property or benefit to the corporation, including  
10 cash, promissory notes, services performed, contracts for  
11 services to be performed, or other securities of the  
12 corporation.

13 3. Before the corporation issues shares, the board of  
14 directors must determine that the consideration received or to  
15 be received for shares to be issued is adequate. That  
16 determination by the board of directors is conclusive insofar  
17 as the adequacy of consideration for the issuance of shares  
18 relates to whether the shares are validly issued, fully paid,  
19 and nonassessable.

20 4. When the corporation receives the consideration for  
21 which the board of directors authorized the issuance of  
22 shares, the shares issued for that consideration are fully  
23 paid and nonassessable.

24 5. The corporation may place in escrow shares issued for a  
25 contract for future services or benefits or a promissory note,  
26 or make other arrangements to restrict the transfer of the  
27 shares, and may credit distributions in respect of the shares  
28 against their purchase price, until the services are  
29 performed, the note is paid, or the benefits received. If the  
30 services are not performed, the note is not paid, or the  
31 benefits are not received, the shares escrowed or restricted  
32 and the distributions credited may be canceled in whole or in  
33 part.

34 Sec. 41. NEW SECTION. 493B.622 LIABILITY OF  
35 SHAREHOLDERS.

1 1. A purchaser from a corporation of its own shares is not  
2 liable to the corporation or its creditors with respect to the  
3 shares except to pay the consideration for which the shares  
4 were authorized to be issued under section 493B.621, or  
5 specified in the subscription agreement authorized under  
6 section 493B.620.

7 2. Unless otherwise provided in the articles of  
8 incorporation, a shareholder of a corporation is not  
9 personally liable for the acts or debts of the corporation.

10 Sec. 42. NEW SECTION. 493B.623 SHARE DIVIDENDS.

11 1. Unless the articles of incorporation provide otherwise,  
12 shares may be issued pro rata and without consideration to the  
13 corporation's shareholders or to the shareholders of one or  
14 more classes or series. An issuance of shares under this  
15 subsection is a share dividend.

16 2. Shares of one class or series shall not be issued as a  
17 share dividend in respect of shares of another class or series  
18 unless one or more of the following conditions are met:

19 a. The articles of incorporation so authorize.

20 b. A majority of the votes entitled to be cast by the  
21 class or series to be issued approve the issue.

22 c. There are no outstanding shares of the class or series  
23 to be issued.

24 3. If the board of directors does not fix the record date  
25 for determining shareholders entitled to a share dividend, it  
26 is the date the board of directors authorizes the share  
27 dividend.

28 Sec. 43. NEW SECTION. 493B.624 SHARE OPTIONS.

29 A corporation may issue rights, options, or warrants for  
30 the purchase of shares of the corporation. The board of  
31 directors shall determine the terms upon which the rights,  
32 options, or warrants are issued, their form and content, and  
33 the consideration for which the shares are to be issued.

34 Sec. 44. NEW SECTION. 493B.625 CONTENT OF CERTIFICATES.

35 1. Shares may be, but need not be, represented by

1 certificates. Unless this chapter or another section  
2 expressly provides otherwise, the rights and obligations of  
3 shareholders are identical whether or not their shares are  
4 represented by certificates.

5 2. At a minimum each share certificate must state on its  
6 face all of the following:

7 a. The name of the issuing corporation and that it is  
8 organized under the law of this state.

9 b. The name of the person to whom issued.

10 c. The number and class of shares and the designation of  
11 the series, if any, the certificate represents.

12 3. If the issuing corporation is authorized to issue  
13 different classes of shares or different series within a  
14 class, the designations, relative rights, preferences, and  
15 limitations applicable to each class, the variations in  
16 rights, preferences, and limitations determined for each  
17 series, and the authority of the board of directors to  
18 determine variations for future series must be summarized on  
19 the front or back of each certificate. Alternatively, each  
20 certificate may state conspicuously on its front or back that  
21 the corporation will furnish the shareholder this information  
22 on request in writing and without charge.

23 4. Each share certificate:

24 a. Must be signed either manually or in facsimile by two  
25 officers designated in the bylaws or by the board of  
26 directors.

27 b. May bear the corporate seal or its facsimile.

28 5. If the person who signed, either manually or in  
29 facsimile, a share certificate no longer holds office when the  
30 certificate is issued, the certificate is nevertheless valid.

31 Sec. 45. NEW SECTION. 493B.626 SHARES WITHOUT  
32 CERTIFICATES.

33 1. Unless the articles of incorporation or bylaws provide  
34 otherwise, the board of directors of a corporation may  
35 authorize the issue of some or all of the shares of any or all

1 of its classes or series without certificates. The  
2 authorization does not affect shares already represented by  
3 certificates until they are surrendered to the corporation.

4 2. Within a reasonable time after the issue or transfer of  
5 shares without certificates, the corporation shall send the  
6 shareholder a written statement of the information required on  
7 certificates by section 493B.625, subsections 2 and 3, and, if  
8 applicable, section 493B.627.

9 Sec. 46. NEW SECTION. 493B.627 RESTRICTION ON TRANSFER  
10 OF SHARES AND OTHER SECURITIES.

11 1. The articles of incorporation, bylaws, an agreement  
12 among shareholders, or an agreement between shareholders and  
13 the corporation may impose restrictions on the transfer or  
14 registration of transfer of shares of the corporation. A  
15 restriction does not affect shares issued before the  
16 restriction was adopted unless the holders of the shares are  
17 parties to the restriction agreement or voted in favor of the  
18 restriction.

19 2. A restriction on the transfer or registration of  
20 transfer of shares is valid and enforceable against the holder  
21 or a transferee of the holder if the restriction is authorized  
22 by this section and its existence is noted conspicuously on  
23 the front or back of the certificate or is contained in the  
24 information statement required by section 493B.626, subsection  
25 2. Unless so noted, a restriction is not enforceable against  
26 a person without knowledge of the restriction.

27 3. A restriction on the transfer or registration of  
28 transfer of shares is authorized for any of the following  
29 purposes:

30 a. To maintain the corporation's status when it is  
31 dependent on the number or identity of its shareholders.

32 b. To preserve exemptions under federal or state  
33 securities law.

34 c. For any other reasonable purpose.

35 4. A restriction on the transfer or registration of

1 transfer of shares may do any of the following:

2 a. Obligate the shareholder first to offer the corporation  
3 or other persons, separately, consecutively, or  
4 simultaneously, an opportunity to acquire the restricted  
5 shares.

6 b. Obligate the corporation or other persons, separately,  
7 consecutively, or simultaneously, to acquire the restricted  
8 shares.

9 c. Require the corporation, the holders of any class of  
10 its shares, or another person to approve the transfer of the  
11 restricted shares, if the requirement is not manifestly  
12 unreasonable.

13 d. Prohibit the transfer of the restricted shares to  
14 designated persons or classes of persons, if the prohibition  
15 is not manifestly unreasonable.

16 5. For purposes of this section, "shares" includes a  
17 security convertible into or carrying a right to subscribe for  
18 or acquire shares.

19 Sec. 47. NEW SECTION. 493B.628 EXPENSE OF ISSUE.

20 A corporation may pay the expenses of selling or  
21 underwriting its shares, and of organizing or reorganizing the  
22 corporation, from the consideration received for shares.

23 PART C

24 Sec. 48. NEW SECTION. 493B.630 SHAREHOLDERS' PREEMPTIVE  
25 RIGHTS.

26 1. Unless section 493B.1704 is applicable to the  
27 corporation, the shareholders of a corporation do not have a  
28 preemptive right to acquire the corporation's unissued shares  
29 except to the extent the articles of incorporation so provide.

30 2. A statement included in the articles of incorporation  
31 that "the corporation elects to have preemptive rights", or  
32 words of similar import, means that the following principles  
33 apply except to the extent the articles of incorporation  
34 expressly provide otherwise:

35 a. The shareholders of the corporation have a preemptive

1 right, granted on uniform terms and conditions prescribed by  
2 the board of directors to provide a fair and reasonable  
3 opportunity to exercise the right, to acquire proportional  
4 amounts of the corporation's unissued shares upon the decision  
5 of the board of directors to issue them.

6 b. A shareholder may waive the shareholder's preemptive  
7 right. A waiver evidenced by a writing is irrevocable even  
8 though it is not supported by consideration.

9 c. There is no preemptive right with respect to:

10 (1) Shares issued as compensation to directors, officers,  
11 agents, or employees of the corporation, its subsidiaries, or  
12 its affiliates.

13 (2) Shares issued to satisfy conversion or option rights  
14 created to provide compensation to directors, officers,  
15 agents, or employees of the corporation, its subsidiaries, or  
16 its affiliates.

17 (3) Shares authorized in articles of incorporation that  
18 are issued within six months from the effective date of  
19 incorporation.

20 (4) Shares sold otherwise than for money.

21 d. Holders of shares of any class without general voting  
22 rights but with preferential rights to distributions or assets  
23 have no preemptive rights with respect to shares of any class.

24 e. Holders of shares of any class with general voting  
25 rights but without preferential rights to distributions or  
26 assets have no preemptive rights with respect to shares of any  
27 class with preferential rights to distributions or assets  
28 unless the shares with preferential rights are convertible  
29 into or carry a right to subscribe for or acquire shares  
30 without preferential rights.

31 f. Shares subject to preemptive rights that are not  
32 acquired by shareholders may be issued to any person for a  
33 period of one year after being offered to shareholders at a  
34 consideration set by the board of directors that is not lower  
35 than the consideration set for the exercise of preemptive

1 rights. An offer at a lower consideration or after the  
2 expiration of one year is subject to the shareholders'  
3 preemptive rights.

4 3. For purposes of this section, "shares" includes a  
5 security convertible into or carrying a right to subscribe for  
6 or acquire shares.

7 Sec. 49. NEW SECTION. 493B.631 CORPORATION'S ACQUISITION  
8 OF ITS OWN SHARES.

9 1. A corporation may acquire its own shares and shares so  
10 acquired constitute authorized but unissued shares.

11 2. If the articles of incorporation prohibit the reissue  
12 of acquired shares, the number of authorized shares is reduced  
13 by the number of shares acquired, effective upon amendment of  
14 the articles of incorporation.

15 3. The board of directors may adopt articles of amendment  
16 under this section without shareholder action, and deliver  
17 them to the secretary of state for filing. The articles must  
18 set forth all of the following:

19 a. The name of the corporation.

20 b. The reduction in the number of authorized shares,  
21 itemized by class and series.

22 c. The total number of authorized shares, itemized by  
23 class and series, remaining after reduction of the shares.

24 PART D

25 Sec. 50. NEW SECTION. 493B.640 DISTRIBUTION TO  
26 SHAREHOLDERS.

27 1. A board of directors may authorize and the corporation  
28 may make distributions to its shareholders subject to  
29 restriction by the articles of incorporation and the  
30 limitation in subsection 3.

31 2. If the board of directors does not fix the record date  
32 for determining shareholders entitled to a distribution, other  
33 than one involving a repurchase or reacquisition of shares, it  
34 is the date the board of directors authorizes the  
35 distribution.

1 3. No distribution may be made if, after giving it effect  
2 either of the following would result:

3 a. The corporation would not be able to pay its debts as  
4 they become due in the usual course of business.

5 b. The corporation's total assets would be less than the  
6 sum of its total liabilities plus, unless the articles of  
7 incorporation permit otherwise, the amount that would be  
8 needed, if the corporation were to be dissolved at the time of  
9 the distribution, to satisfy the preferential rights upon  
10 dissolution of shareholders whose preferential rights are  
11 superior to those receiving the distribution.

12 4. The board of directors may base a determination that a  
13 distribution is not prohibited under subsection 3 either on  
14 financial statements prepared on the basis of accounting  
15 practices and principles that are reasonable in the  
16 circumstances or on a fair valuation or other method that is  
17 reasonable in the circumstances.

18 5. The effect of a distribution under subsection 3 is  
19 measured:

20 a. In the case of distribution by purchase, redemption, or  
21 other acquisition of the corporation's shares, as of the  
22 earlier of:

23 (1) The date money or other property is transferred or  
24 debt incurred by the corporation.

25 (2) The date the shareholder ceases to be a shareholder  
26 with respect to the acquired shares.

27 b. In the case of any other distribution of indebtedness,  
28 as of the date the indebtedness is distributed.

29 c. In all other cases, as of:

30 (1) The date the distribution is authorized if the payment  
31 occurs within one hundred twenty days after the date of  
32 authorization.

33 (2) The date the payment is made if it occurs more than  
34 one hundred twenty days after the date of authorization.

35 6. A corporation's indebtedness to a shareholder incurred

1 by reason of a distribution made in accordance with this  
2 section is at parity with the corporation's indebtedness to  
3 its general, unsecured creditors except to the extent  
4 subordinated by agreement.

5 DIVISION VII  
6 MEETINGS -- NOTICE -- VOTING  
7 PART A

8 Sec. 51. NEW SECTION. 493B.701 ANNUAL MEETING.

9 1. A corporation shall hold annually, at a time stated in  
10 or fixed in accordance with the bylaws, a meeting of  
11 shareholders.

12 2. Annual shareholders' meetings may be held in or out of  
13 this state at the place stated in or fixed in accordance with  
14 the bylaws. If no place is stated in or fixed in accordance  
15 with the bylaws, annual meetings shall be held at the  
16 corporation's principal office.

17 3. The failure to hold an annual meeting at the time  
18 stated in or fixed in accordance with a corporation's bylaws  
19 does not affect the validity of any corporate action.

20 Sec. 52. NEW SECTION. 493B.702 SPECIAL MEETING.

21 1. A corporation shall hold a special meeting of  
22 shareholders either:

23 a. On call of its board of directors or the person or  
24 persons authorized to call a special meeting by the articles  
25 of incorporation or bylaws.

26 b. If the holders of at least ten percent of all the votes  
27 entitled to be cast on any issue proposed to be considered at  
28 the proposed special meeting sign, date, and deliver to the  
29 corporation's secretary one or more written demands for the  
30 meeting describing the purpose or purposes for which it is to  
31 be held.

32 2. If not otherwise fixed under sections 493B.703 or  
33 493B.707, the record date for determining shareholders  
34 entitled to demand a special meeting is the date the first  
35 shareholder signs the demand.

1 3. Special shareholders' meetings may be held in or out of  
2 this state at the place stated in or fixed in accordance with  
3 the bylaws. If no place is stated or fixed in accordance with  
4 the bylaws, special meetings shall be held at the  
5 corporation's principal office.

6 4. Only business with the purpose or purposes described in  
7 the meeting notice required by section 493B.705, subsection 3,  
8 may be conducted at a special shareholders' meeting.

9 Sec. 53. NEW SECTION. 493B.703 COURT-ORDERED MEETING.

10 1. The district court of the county where a corporation's  
11 principal office, or, if none in this state, its registered  
12 office, is located may summarily order a meeting to be held  
13 either:

14 a. On application of any shareholder of the corporation  
15 entitled to participate in an annual meeting if an annual  
16 meeting was not held within the earlier of six months after  
17 the end of the corporation's fiscal year or fifteen months  
18 after its last annual meeting.

19 b. On application of a shareholder who signed a demand for  
20 a special meeting valid under section 493B.702 if either:

21 (1) Notice of the special meeting was not given within  
22 thirty days after the date the demand was delivered to the  
23 corporation's secretary.

24 (2) The special meeting was not held in accordance with  
25 the notice.

26 2. The court may fix the time and place of the meeting,  
27 ascertain the shares entitled to participate in the meeting,  
28 specify a record date for ascertaining shareholders entitled  
29 to notice of and to vote at the meeting, prescribe the form  
30 and content of the meeting notice, fix the quorum required for  
31 specific matters to be considered at the meeting or direct  
32 that the votes represented at the meeting constitute a quorum  
33 for action on those matters, and enter other orders necessary  
34 to accomplish the purpose or purposes of the meeting.

35 Sec. 54. NEW SECTION. 493B.704 ACTION WITHOUT MEETING.

1 1. Unless otherwise provided in the articles of  
2 incorporation, any action required or permitted by this  
3 chapter to be taken at a shareholders' meeting may be taken  
4 without a meeting or vote, and, except as provided in  
5 subsection 5, without prior notice, if one or more written  
6 consents describing the action taken are signed by the holders  
7 of outstanding shares having not less than ninety percent of  
8 the votes entitled to be cast at a meeting at which all shares  
9 entitled to vote on the action were present and voted, and are  
10 delivered to the corporation for inclusion in the minutes or  
11 filing with the corporate records.

12 2. A written consent shall bear the date of signature of  
13 each shareholder who signs the consent and no written consent  
14 is effective to take the corporate action referred to in the  
15 consent unless, within sixty days of the earliest dated  
16 consent delivered in the manner required by this section to  
17 the corporation, written consents signed by a sufficient  
18 number of holders to take action are delivered to the  
19 corporation.

20 3. If not otherwise fixed under sections 493B.703 or  
21 493B.707, the record date for determining shareholders  
22 entitled to take action without a meeting is the date the  
23 first shareholder signs the consent under subsection 1.

24 4. A consent signed under this section has the effect of a  
25 meeting vote and may be described as such in any document.

26 5. If this chapter requires that notice of proposed action  
27 be given to shareholders not entitled to vote and the action  
28 is to be taken by consent of the voting shareholders, the  
29 corporation must give all shareholders written notice of the  
30 proposed action at least ten days before the action is taken.  
31 The notice must contain or be accompanied by the same material  
32 that, under this chapter, would have been required to be sent  
33 to shareholders not entitled to vote in a notice of meeting at  
34 which the proposed action would have been submitted to the  
35 shareholders for action.

1 6. Prompt notice of the taking of corporate action without  
2 a meeting by less than unanimous written consent shall be  
3 given to those shareholders who have not consented in writing.  
4 If the taking of that corporate action requires the giving of  
5 notice under 493B.1320, subsection 2, the notice of the action  
6 shall set forth the matters described in section 493B.1322.

7 Sec. 55. NEW SECTION. 493B.705 NOTICE OF MEETING.

8 1. A corporation shall notify shareholders of the date,  
9 time, and place of each annual and special shareholders'  
10 meeting no fewer than ten nor more than sixty days before the  
11 meeting date. Unless this chapter or the articles of  
12 incorporation require otherwise, the corporation is required  
13 to give notice only to shareholders entitled to vote at the  
14 meeting.

15 2. Unless this chapter or the articles of incorporation  
16 require otherwise, notice of an annual meeting need not  
17 include a description of the purpose or purposes for which the  
18 meeting is called.

19 3. Notice of a special meeting must include a description  
20 of the purpose or purposes for which the meeting is called.

21 4. If not otherwise fixed under section 493B.703 or  
22 493B.707, the record date for determining shareholders  
23 entitled to notice of and to vote at an annual or special  
24 shareholders' meeting is the close of business on the day  
25 before the first notice is delivered to shareholders.

26 5. Unless the bylaws require otherwise, if an annual or  
27 special shareholders' meeting is adjourned to a different  
28 date, time, or place, notice need not be given of the new  
29 date, time, or place if the new date, time, or place is  
30 announced at the meeting before adjournment. If a new record  
31 date for the adjourned meeting is or must be fixed under  
32 section 493B.707, however, notice of the adjourned meeting  
33 must be given under this section to persons who are  
34 shareholders as of the new record date.

35 Sec. 56. NEW SECTION. 493B.706 WAIVER OF NOTICE.

1 1. A shareholder may waive any notice required by this  
2 chapter, the articles of incorporation, or bylaws before or  
3 after the date and time stated in the notice. The waiver must  
4 be in writing, be signed by the shareholder entitled to the  
5 notice, and be delivered to the corporation for inclusion in  
6 the minutes or filing with the corporate records.

7 2. A shareholder's attendance at a meeting:

8 a. Waives objection to lack of notice or defective notice  
9 of the meeting, unless the shareholder at the beginning of the  
10 meeting or promptly upon the shareholder's arrival objects to  
11 holding the meeting or transacting business at the meeting.

12 b. Waives objection to consideration of a particular  
13 matter at the meeting that is not within the purpose or  
14 purposes described in the meeting notice, unless the  
15 shareholder objects to considering the matter when it is  
16 presented.

17 Sec. 57. NEW SECTION. 493B.707 RECORD DATE.

18 1. The bylaws may fix or provide the manner of fixing the  
19 record date for one or more voting groups in order to  
20 determine the shareholders entitled to notice of a  
21 shareholders' meeting, to demand a special meeting, to vote,  
22 or to take any other action. If the bylaws do not fix or  
23 provide for fixing a record date, the board of directors of  
24 the corporation may fix a future date as the record date.

25 2. A record date fixed under this section shall not be  
26 more than seventy days before the meeting or action requiring  
27 a determination of shareholders.

28 3. A determination of shareholders entitled to notice of  
29 or to vote at a shareholders' meeting is effective for any  
30 adjournment of the meeting unless the board of directors fixes  
31 a new record date, which it must do if the meeting is  
32 adjourned to a date more than one hundred twenty days after  
33 the date fixed for the original meeting.

34 4. If a court orders a meeting adjourned to a date more  
35 than one hundred twenty days after the date fixed for the

1 original meeting, it may provide that the original record date  
2 continues in effect or it may fix a new record date.

3 PART B

4 Sec. 58. NEW SECTION. 493B.720 SHAREHOLDERS' LIST FOR  
5 MEETING.

6 1. After fixing a record date for a meeting, a corporation  
7 shall prepare an alphabetical list of the names of all its  
8 shareholders who are entitled to notice of a shareholders'  
9 meeting. The list must be arranged by voting group and within  
10 each voting group by class or series of shares, and show the  
11 address of and number of shares held by each shareholder.

12 2. The shareholders' list must be available for inspection  
13 by any shareholder beginning two business days after notice of  
14 the meeting is given for which the list was prepared and  
15 continuing through the meeting, at the corporation's principal  
16 office or at a place identified in the meeting notice in the  
17 city where the meeting will be held. A shareholder, or a  
18 shareholder's agent or attorney, is entitled on written demand  
19 to inspect and, subject to the requirements of section  
20 493B.1602, subsection 3, to copy the list, during regular  
21 business hours and at the person's expense, during the period  
22 it is available for inspection.

23 3. The corporation shall make the shareholders' list  
24 available at the meeting, and any shareholder, or a  
25 shareholder's agent or attorney, is entitled to inspect the  
26 list at any time during the meeting or any adjournment.

27 4. If the corporation refuses to allow a shareholder, or a  
28 shareholder's agent or attorney, to inspect the shareholders'  
29 list before or at the meeting, or copy the list as permitted  
30 by subsection 3, the district court of the county where a  
31 corporation's principal office or, if none in this state, its  
32 registered office, is located, on application of the  
33 shareholder, may summarily order the inspection or copying at  
34 the corporation's expense and may postpone the meeting for  
35 which the list was prepared until the inspection or copying is

1 complete.

2 5. Refusal or failure to prepare or make available the  
3 shareholders' list does not affect the validity of action  
4 taken at the meeting.

5 Sec. 59. NEW SECTION. 493B.721 VOTING ENTITLEMENT OF  
6 SHARES.

7 1. Except as provided in subsections 2 and 3 or unless the  
8 articles of incorporation provide otherwise, each outstanding  
9 share, regardless of class, is entitled to one vote on each  
10 matter voted on at a shareholders' meeting. Only shares are  
11 entitled to vote.

12 2. Absent special circumstances, the shares of a  
13 corporation are not entitled to vote if they are owned,  
14 directly or indirectly, by a second corporation, domestic or  
15 foreign, and the first corporation owns, directly or  
16 indirectly, a majority of the shares entitled to vote for  
17 directors of the second corporation.

18 3. Subsection 2 does not limit the power of a corporation  
19 to vote any shares, including its own shares, held by it in a  
20 fiduciary capacity.

21 4. Redeemable shares are not entitled to vote after notice  
22 of redemption is mailed to the holders and a sum sufficient to  
23 redeem the shares has been deposited with a bank, trust  
24 company, or other financial institution under an irrevocable  
25 obligation to pay the holders the redemption price on  
26 surrender of the shares.

27 Sec. 60. NEW SECTION. 493B.722 PROXIES.

28 1. A shareholder may vote the shareholder's shares in  
29 person or by proxy.

30 2. A shareholder may appoint a proxy to vote or otherwise  
31 act for the shareholder by signing an appointment form, either  
32 personally or by the shareholder's attorney-in-fact.

33 3. An appointment of a proxy is effective when received by  
34 the secretary or other officer or agent authorized to tabulate  
35 votes. An appointment is valid for eleven months unless a

1 longer period is expressly provided in the appointment form.

2 4. An appointment of a proxy is revocable by the  
3 shareholder unless the appointment form conspicuously states  
4 that it is irrevocable and the appointment is coupled with an  
5 interest. Appointments coupled with an interest include, but  
6 are not limited to, the appointment of:

7 a. A pledgee.

8 b. A person who purchased or agreed to purchase the  
9 shares.

10 c. A creditor of the corporation who extended it credit  
11 under terms requiring the appointment.

12 d. An employee of the corporation whose employment  
13 contract requires the appointment.

14 e. A party to a voting agreement created under section  
15 493B.731.

16 5. The death or incapacity of the shareholder appointing a  
17 proxy does not affect the right of the corporation to accept  
18 the proxy's authority unless notice of the death or incapacity  
19 is received by the secretary or other officer or agent  
20 authorized to tabulate votes before the proxy exercises the  
21 proxy's authority under the appointment.

22 6. An appointment made irrevocable under subsection 4 is  
23 revoked when the interest with which it is coupled is  
24 extinguished.

25 7. A transferee for value of shares subject to an  
26 irrevocable appointment may revoke the appointment if the  
27 transferee did not know of its existence when the transferee  
28 acquired the shares and the existence of the irrevocable  
29 appointment was not noted conspicuously on the certificate  
30 representing the shares or on the information statement for  
31 shares without certificates.

32 8. Subject to section 493B.724 and to any express  
33 limitation on the proxy's authority appearing on the face of  
34 the appointment form, a corporation is entitled to accept the  
35 proxy's vote or other action as that of the shareholder making

1 the appointment.

2 Sec. 61. NEW SECTION. 493B.723 SHARES HELD BY NOMINEES.

3 1. A corporation may establish a procedure by which the  
4 beneficial owner of shares that are registered in the name of  
5 a nominee is recognized by the corporation as the shareholder.  
6 The extent of this recognition may be determined in the  
7 procedure.

8 2. The procedure may set forth:

9 a. The types of nominees to which it applies.

10 b. The rights or privileges that the corporation  
11 recognizes in a beneficial owner.

12 c. The manner in which the procedure is selected by the  
13 nominee.

14 d. The information that must be provided when the  
15 procedure is selected.

16 e. The period for which selection of the procedure is  
17 effective.

18 f. Other aspects of the rights and duties created.

19 Sec. 62. NEW SECTION. 493B.724 CORPORATION'S ACCEPTANCE  
20 OF VOTES.

21 1. If the name signed on a vote, consent, waiver, or proxy  
22 appointment corresponds to the name of a shareholder, the  
23 corporation if acting in good faith is entitled to accept the  
24 vote, consent, waiver, or proxy appointment and give it effect  
25 as the act of the shareholder.

26 2. If the name signed on a voted consent, waiver, or proxy  
27 appointment does not correspond to the name of its  
28 shareholder, the corporation if acting in good faith is  
29 nevertheless entitled to accept the vote, consent, waiver, or  
30 proxy appointment and give it effect as the act of the  
31 shareholder if:

32 a. The shareholder is an entity and the name signed  
33 purports to be that of an officer or agent of the entity.

34 b. The name signed purports to be that of an  
35 administrator, executor, guardian of the property, or

1 conservator representing the shareholder and, if the  
2 corporation requests, evidence of fiduciary status acceptable  
3 to the corporation has been presented with respect to the  
4 vote, consent, waiver, or proxy appointment.

5 c. The name signed purports to be that of a receiver or  
6 trustee in bankruptcy of the shareholder and, if the  
7 corporation requests, evidence of this status acceptable to  
8 the corporation has been presented with respect to the vote,  
9 consent, waiver, or proxy appointment.

10 d. The name signed purports to be that of a pledgee,  
11 beneficial owner, or attorney-in-fact of the shareholder and,  
12 if the corporation requests, evidence acceptable to the  
13 corporation of the signatory's authority to sign for the  
14 shareholder has been presented with respect to the vote,  
15 consent, waiver, or proxy appointment.

16 e. Two or more persons are the shareholder as co-tenants  
17 or fiduciaries and the name signed purports to be the name of  
18 at least one of the co-owners and the person signing appears  
19 to be acting on behalf of all the co-owners.

20 3. The corporation is entitled to reject a vote, consent,  
21 waiver, or proxy appointment if the secretary or other officer  
22 or agent authorized to tabulate votes, acting in good faith,  
23 has reasonable basis for doubt about the validity of the  
24 signature on it or about the signatory's authority to sign for  
25 the shareholder.

26 4. The corporation and its officer or agent who accepts or  
27 rejects a vote, consent, waiver, or proxy appointment in good  
28 faith and in accordance with the standards of this section are  
29 not liable in damages to the shareholder for the consequences  
30 of the acceptance or rejection.

31 5. Corporate action based on the acceptance or rejection  
32 of a vote, consent, waiver, or proxy appointment under this  
33 section is valid unless a court of competent jurisdiction  
34 determines otherwise.

35 Sec. 63. NEW SECTION. 493B.725 QUORUM AND VOTING

1 REQUIREMENTS FOR VOTING GROUPS.

2 1. Shares entitled to vote as a separate voting group may  
3 take action on a matter at a meeting only if a quorum of those  
4 shares exists with respect to that matter. Unless the  
5 articles of incorporation or this chapter provides otherwise,  
6 a majority of the votes entitled to be cast on the matter by  
7 the voting group constitutes a quorum of that voting group for  
8 action on that matter.

9 2. Once a share is represented for any purpose at a  
10 meeting, it is deemed present for quorum purposes for the  
11 remainder of the meeting and for any adjournment of that  
12 meeting unless a new record date is or must be set for that  
13 adjourned meeting.

14 3. If a quorum exists, action on a matter, other than the  
15 election of directors, by a voting group is approved if the  
16 votes cast within the voting group favoring the action exceed  
17 the votes cast opposing the action, unless the articles of  
18 incorporation or this chapter require a greater number of  
19 affirmative votes.

20 4. An amendment of articles of incorporation adding,  
21 changing, or deleting a quorum or voting requirement for a  
22 voting group greater than specified in subsection 2 or 3 is  
23 governed by section 493B.727.

24 5. The election of directors is governed by section  
25 493B.728.

26 Sec. 64. NEW SECTION. 493B.726 ACTION BY SINGLE OR  
27 MULTIPLE GROUPS.

28 1. If the articles of incorporation or this chapter  
29 provide for voting by a single voting group on a matter,  
30 action on that matter is taken when voted upon by that voting  
31 group as provided in section 493B.725.

32 2. If the articles of incorporation or this chapter  
33 provide for voting by two or more voting groups on a matter,  
34 action on that matter is taken only when voted upon by each of  
35 those voting groups counted separately as provided in section

1 493B.725. Action may be taken by one voting group on a matter  
2 even though no action is taken by another voting group  
3 entitled to vote on the matter.

4 Sec. 65. NEW SECTION. 493B.727 GREATER QUORUM OR VOTING  
5 REQUIREMENTS.

6 1. The articles of incorporation may provide for a greater  
7 quorum or voting requirement for shareholders or voting groups  
8 of shareholders than is provided for by this chapter.

9 2. An amendment to the articles of incorporation that  
10 adds, changes, or deletes a greater quorum or voting  
11 requirement must meet the same quorum requirement and be  
12 adopted by the same vote and voting groups required to take  
13 action under the quorum and voting requirements then in effect  
14 or proposed to be adopted, whichever is greater.

15 Sec. 66. NEW SECTION. 493B.728 VOTING FOR DIRECTORS --  
16 CUMULATIVE VOTING.

17 1. Unless otherwise provided in the articles of  
18 incorporation, directors are elected by a plurality of the  
19 votes cast by the shares entitled to vote in the election at a  
20 meeting at which a quorum is present.

21 2. Shareholders do not have a right to cumulate their  
22 votes for directors unless the articles of incorporation so  
23 provide.

24 3. A statement included in the articles of incorporation  
25 that "[all] [a designated voting group of] shareholders are  
26 entitled to cumulate their votes for directors", or words of  
27 similar import, means that the shareholders designated are  
28 entitled to multiply the number of votes they are entitled to  
29 cast by the number of directors for whom they are entitled to  
30 vote and cast the product for a single candidate or distribute  
31 the product among two or more candidates.

32 PART C

33 Sec. 67. NEW SECTION. 493B.730 VOTING TRUSTS.

34 1. One or more shareholders may create a voting trust,  
35 conferring on a trustee the right to vote or otherwise act for

1 them, by signing an agreement setting out the provisions of  
2 the trust, which may include anything consistent with its  
3 purpose, and transferring their shares to the trustee. When a  
4 voting trust agreement is signed, the trustee shall prepare a  
5 list of the names and addresses of all owners of beneficial  
6 interests in the trust, together with the number and class of  
7 shares each transferred to the trust, and deliver copies of  
8 the list and agreement to the corporation's principal office.

9 2. A voting trust becomes effective on the date the first  
10 shares subject to the trust are registered in the trustee's  
11 name. A voting trust is valid for not more than ten years  
12 after its effective date unless extended under subsection 3.

13 3. All or some of the parties to a voting trust may extend  
14 it for additional terms of not more than ten years each by  
15 signing an extension agreement and obtaining the voting  
16 trustee's written consent to the extension. An extension is  
17 valid for ten years from the date the first shareholder signs  
18 the extension agreement. The voting trustee must deliver  
19 copies of the extension agreement and list of beneficial  
20 owners to the corporation's principal office. An extension  
21 agreement binds only those parties signing it.

22 Sec. 68. NEW SECTION. 493B.731 VOTING AGREEMENTS.

23 1. Two or more shareholders may provide for the manner in  
24 which they will vote their shares by signing an agreement for  
25 that purpose. A voting agreement created under this section  
26 is not subject to section 493B.730.

27 2. A voting agreement created under this section is  
28 specifically enforceable.

29 PART D

30 Sec. 69. NEW SECTION. 493B.740 PROCEDURE IN DERIVATIVE  
31 PROCEEDINGS.

32 1. A person shall not commence a proceeding in the right  
33 of a domestic or foreign corporation unless that person was a  
34 shareholder of the corporation when the transaction complained  
35 of occurred or unless that person became a shareholder through

1 transfer by operation of law from one who was a shareholder at  
2 that time.

3 2. A complaint in a proceeding brought in the right of a  
4 corporation must be verified and allege with particularity the  
5 demand made, if any, to obtain action by the board of  
6 directors and either that the demand was refused or ignored or  
7 why the complainant did not make the demand. Whether or not a  
8 demand for action was made, if the corporation commences an  
9 investigation of the charges made in the demand or complaint,  
10 the court may stay any proceeding until the investigation is  
11 completed.

12 3. A proceeding commenced under this section shall not be  
13 discontinued or settled without the court's approval. If the  
14 court determines that a proposed discontinuance or settlement  
15 will substantially affect the interest of the corporation's  
16 shareholders or a class of shareholders, the court shall  
17 direct that notice be given the shareholders affected.

18 4. On termination of the proceeding the court may require  
19 the plaintiff to pay any defendant's reasonable expenses  
20 including attorney fees incurred in defending the proceeding  
21 if it finds that the proceeding was commenced without  
22 reasonable cause.

23 5. For purposes of this section, "shareholder" includes a  
24 beneficial owner whose shares are held in a voting trust or  
25 held by a nominee on the beneficial owner's behalf.

26 DIVISION VIII

27 DIRECTORS AND OFFICERS

28 PART A

29 Sec. 70. NEW SECTION. 493B.801 REQUIREMENT FOR AND  
30 DUTIES OF BOARD OF DIRECTORS.

31 1. Except as provided in subsection 3, each corporation  
32 must have a board of directors.

33 2. All corporate powers shall be exercised by or under the  
34 authority of, and the business and affairs of the corporation  
35 managed under the direction of, its board of directors,

1 subject to any limitation set forth in the articles of  
2 incorporation.

3 3. A corporation having fifty or fewer shareholders may  
4 dispense with or limit the authority of a board of directors  
5 by describing in its articles of incorporation who will  
6 perform some or all of the duties of a board of directors.

7 Sec. 71. NEW SECTION. 493B.802 QUALIFICATIONS OF  
8 DIRECTORS.

9 The articles of incorporation or bylaws may prescribe  
10 qualifications for directors. A director need not be a  
11 resident of this state or a shareholder of the corporation  
12 unless the articles of incorporation or bylaws so prescribe.

13 Sec. 72. NEW SECTION. 493B.803 NUMBER AND ELECTION OF  
14 DIRECTORS.

15 1. A board of directors must consist of one or more  
16 individuals, with the number specified in or fixed in  
17 accordance with the articles of incorporation or bylaws.

18 2. If a board of directors has power to fix or change the  
19 number of directors, the board may increase or decrease by  
20 thirty percent or less the number of directors last approved  
21 by the shareholders, but only the shareholders may increase or  
22 decrease by more than thirty percent the number of directors  
23 last approved by the shareholders.

24 3. The articles of incorporation or bylaws may establish a  
25 variable range for the size of the board of directors by  
26 fixing a minimum and maximum number of directors. If a  
27 variable range is established, the number of directors may be  
28 fixed or changed from time to time, within the minimum and  
29 maximum, by the shareholders or the board of directors. After  
30 shares are issued, only the shareholders may change the range  
31 for the size of the board or change from a fixed-range to a  
32 variable-range size board or vice versa.

33 4. Directors are elected at the first annual shareholders'  
34 meeting and at each annual meeting thereafter unless their  
35 terms are staggered under section 493B.806.

1     Sec. 73. NEW SECTION. 493B.804 ELECTION OF DIRECTORS BY  
2 CERTAIN CLASSES OF SHAREHOLDERS.

3     If the articles of incorporation authorize dividing the  
4 shares into classes, the articles may also authorize the  
5 election of all or a specified number of directors by the  
6 holders of one or more authorized classes of shares. Each  
7 class, or classes, of shares entitled to elect one or more  
8 directors is a separate voting group for purposes of the  
9 election of directors.

10    Sec. 74. NEW SECTION. 493B.805 TERMS OF DIRECTORS  
11 GENERALLY.

12    1. The terms of the initial directors of a corporation  
13 expire at the first shareholders' meeting at which directors  
14 are elected.

15    2. The terms of all other directors expire at the next  
16 annual shareholders' meeting following their election unless  
17 their terms are staggered under section 493B.806.

18    3. A decrease in the number of directors does not shorten  
19 an incumbent director's term.

20    4. The term of a director elected to fill a vacancy  
21 expires at the next shareholders' meeting at which directors  
22 are elected.

23    5. Despite the expiration of a director's term, the  
24 director continues to serve until a successor for that  
25 director is elected and qualifies or until there is a decrease  
26 in the number of directors.

27    Sec. 75. NEW SECTION. 493B.806 STAGGERED TERMS FOR  
28 DIRECTORS.

29    The articles of incorporation may provide for staggering  
30 the terms of directors by dividing the total number of  
31 directors into two or three groups, with each group containing  
32 one-half or one-third of the total, as near as may be. In  
33 that event, the terms of directors in the first group expire  
34 at the first annual shareholders' meeting after their  
35 election, the terms of the second group expire at the second

1 annual shareholders' meeting after their election, and the  
2 terms of the third group, if any, expire at the third annual  
3 shareholders' meeting after their election. At each annual  
4 shareholders' meeting held thereafter, directors shall be  
5 chosen for a term of two years or three years, as the case may  
6 be, to succeed those whose terms expire.

7 Sec. 76. NEW SECTION. 493B.807 RESIGNATION OF DIRECTORS.

8 1. A director may resign at any time by delivering written  
9 notice to the board of directors, its chairperson, or to the  
10 corporation.

11 2. A resignation is effective when the notice is delivered  
12 unless the notice specifies a later effective date.

13 Sec. 77. NEW SECTION. 493B.808 REMOVAL OF DIRECTORS BY  
14 SHAREHOLDERS.

15 1. The shareholders may remove one or more directors with  
16 or without cause unless the articles of incorporation provide  
17 that directors may be removed only for cause.

18 2. If a director is elected by a voting group of  
19 shareholders, only the shareholders of that voting group may  
20 participate in the vote to remove that director.

21 3. If cumulative voting is authorized, a director shall  
22 not be removed if the number of votes sufficient to elect that  
23 director under cumulative voting is voted against the  
24 director's removal. If cumulative voting is not authorized, a  
25 director may be removed only if the number of votes cast to  
26 remove that director exceeds the number of votes cast not to  
27 remove the director.

28 4. A director may be removed by the shareholders only at a  
29 meeting called for the purpose of removing the director and  
30 after notice stating that the purpose, or one of the purposes,  
31 of the meeting is removal of the director. A director shall  
32 not be removed pursuant to written consents under section  
33 493B.704 unless written consents are obtained from the holders  
34 of all the outstanding shares of the corporation.

35 Sec. 78. NEW SECTION. 493B.809 REMOVAL OF DIRECTORS BY

1 JUDICIAL PROCEEDING.

2 1. The district court of the county where a corporation's  
3 principal office or, if none in this state, its registered  
4 office is located may remove a director of the corporation  
5 from office in a proceeding commenced either by the  
6 corporation or by its shareholders holding at least twenty  
7 percent of the outstanding shares of any class if the court  
8 finds that both of the following apply:

9 a. The director engaged in fraudulent or dishonest conduct  
10 with respect to the corporation.

11 b. Removal is in the best interest of the corporation.

12 2. The court that removes a director may bar the director  
13 from reelection for a period prescribed by the court.

14 3. If shareholders commence a proceeding under subsection  
15 1, they shall make the corporation a party defendant.

16 Sec. 79. NEW SECTION. 493B.810 VACANCY ON BOARD.

17 1. Unless the articles of incorporation provide otherwise,  
18 if a vacancy occurs on a board of directors, including a  
19 vacancy resulting from an increase in the number of directors,  
20 the vacancy may be filled in any of the following manners:

21 a. The shareholders may fill the vacancy.

22 b. The board of directors may fill the vacancy.

23 c. If the directors remaining in office constitute fewer  
24 than a quorum of the board, they may fill the vacancy by the  
25 affirmative vote of a majority of all the directors remaining  
26 in office.

27 2. If the vacant office was held by a director elected by  
28 a voting group of shareholders, only the holders of shares of  
29 that voting group are entitled to vote to fill the vacancy if  
30 it is filled by the shareholders.

31 3. A vacancy that will occur at a specific later date, by  
32 reason of a resignation effective at a later date under  
33 section 493B.807, subsection 2 or otherwise, may be filled  
34 before the vacancy occurs but the new director shall not take  
35 office until the vacancy occurs.



1 the meeting.

2 2. Unless the articles of incorporation or bylaws provide  
3 for a longer or shorter period, special meetings of the board  
4 of directors must be preceded by at least two days' notice of  
5 the date, time, and place of the meeting. The notice need not  
6 describe the purpose of the special meeting unless required by  
7 the articles of incorporation or bylaws.

8 Sec. 84. NEW SECTION. 493B.823 WAIVER OF NOTICE.

9 1. A director may waive any notice required by this  
10 chapter, the articles of incorporation, or bylaws before or  
11 after the date and time stated in the notice. Except as  
12 provided by subsection 2, the waiver must be in writing,  
13 signed by the director entitled to the notice, and filed with  
14 the minutes or corporate records.

15 2. A director's attendance at or participation in a  
16 meeting waives any required notice to that director of the  
17 meeting unless the director at the beginning of the meeting or  
18 promptly upon the director's arrival objects to holding the  
19 meeting or transacting business at the meeting and does not  
20 thereafter vote for or assent to action taken at the meeting.

21 Sec. 85. NEW SECTION. 493B.824 QUORUM AND VOTING.

22 1. Unless the articles of incorporation or bylaws require  
23 a different number, a quorum of a board of directors consists  
24 of either:

25 a. A majority of the fixed number of directors if the  
26 corporation has a fixed board size.

27 b. A majority of the number of directors prescribed, or,  
28 if no number is prescribed the number in office immediately  
29 before the meeting begins, if the corporation has a variable-  
30 range size board.

31 2. The articles of incorporation or bylaws may authorize a  
32 quorum of a board of directors to consist of no fewer than  
33 one-third of the fixed or prescribed number of directors  
34 determined under subsection 1.

35 3. If a quorum is present when a vote is taken, the

1 affirmative vote of a majority of directors present is the act  
2 of the board of directors unless the articles of incorporation  
3 or bylaws require the vote of a greater number of directors.

4 4. A director who is present at a meeting of the board of  
5 directors or a committee of the board of directors when  
6 corporate action is taken is deemed to have assented to the  
7 action taken unless one or more of the following occurs:

8 a. The director objects at the beginning of the meeting or  
9 promptly upon the director's arrival to holding it or  
10 transacting business at the meeting.

11 b. The director's dissent or abstention from the action  
12 taken is entered in the minutes of the meeting.

13 c. The director delivers written notice of the director's  
14 dissent or abstention to the presiding officer of the meeting  
15 before its adjournment or to the corporation immediately after  
16 adjournment of the meeting.

17 The right of dissent or abstention is not available to a  
18 director who votes in favor of the action taken.

19 Sec. 86. NEW SECTION. 493B.825 COMMITTEES.

20 1. Unless the articles of incorporation or bylaws provide  
21 otherwise, a board of directors may create one or more  
22 committees and appoint members of the board of directors to  
23 serve on them. Each committee may have two or more members,  
24 who serve at the pleasure of the board of directors.

25 2. The creation of a committee and appointment of members  
26 to it must be approved by the greater of either:

27 a. A majority of all the directors in office when the  
28 action is taken.

29 b. The number of directors required by the articles of  
30 incorporation or bylaws to take action under section 493B.824.

31 3. Sections 493B.820 through 493B.824, which govern  
32 meetings, action without meetings, notice and waiver of  
33 notice, and quorum and voting requirements of the board of  
34 directors, apply to committees and their members as well.

35 4. To the extent specified by the board of directors or in

1 the articles of incorporation or bylaws, each committee may  
2 exercise the authority of the board of directors under section  
3 493B.801.

4 5. A committee shall not, however:

5 a. Authorize distributions.

6 b. Approve or propose to shareholders action that this  
7 chapter requires be approved by shareholders.

8 c. Fill vacancies on the board of directors or on any of  
9 its committees.

10 d. Amend articles of incorporation pursuant to section  
11 493B.1002.

12 e. Adopt, amend, or repeal bylaws.

13 f. Approve a plan of merger not requiring shareholder  
14 approval.

15 g. Authorize or approve reacquisition of shares, except  
16 according to a formula or method prescribed by the board of  
17 directors.

18 h. Authorize or approve the issuance or sale or contract  
19 for sale of shares, or determine the designation and relative  
20 rights, preferences, and limitations of a class or series of  
21 shares, except that the board of directors may authorize a  
22 committee or a senior executive officer of the corporation to  
23 do so within limits specifically prescribed by the board of  
24 directors.

25 6. The creation of, delegation of authority to, or action  
26 by a committee does not alone constitute compliance by a  
27 director with the standards of conduct described in section  
28 493B.830.

29 PART C

30 Sec. 87. NEW SECTION. 493B.830 GENERAL STANDARDS FOR  
31 DIRECTORS.

32 1. A director shall discharge that director's duties as a  
33 director, including the director's duties as a member of a  
34 committee in conformity with all of the following:

35 a. In good faith.

1 b. With the care an ordinarily prudent person in a like  
2 position would exercise under similar circumstances.

3 c. In a manner the director reasonably believes to be in  
4 the best interests of the corporation.

5 2. In discharging the director's duties a director is  
6 entitled to rely on information, opinions, reports, or  
7 statements, including financial statements and other financial  
8 data, if prepared or presented by any of the following:

9 a. One or more officers or employees of the corporation  
10 whom the director reasonably believes to be reliable and  
11 competent in the matters presented.

12 b. Legal counsel, public accountants, or other persons as  
13 to matters the director reasonably believes are within the  
14 person's professional or expert competence.

15 c. A committee of the board of directors of which the  
16 director is not a member if the director reasonably believes  
17 the committee merits confidence.

18 3. A director is not acting in good faith if the director  
19 has knowledge concerning the matter in question that makes  
20 reliance otherwise permitted by subsection 2 unwarranted.

21 4. A director is not liable for any action taken as a  
22 director, or any failure to take any action, if the director  
23 performed the duties of the director's office in compliance  
24 with this section, or if, and to the extent that, liability  
25 for any such action or failure to act has been limited by the  
26 articles of incorporation pursuant to section 493B.832.

27 Sec. 88. NEW SECTION. 493B.831 DIRECTOR CONFLICT OF  
28 INTEREST.

29 1. A conflict of interest transaction is a transaction  
30 with the corporation in which a director of the corporation  
31 has a direct or indirect interest. A conflict of interest  
32 transaction is not voidable by the corporation solely because  
33 of the director's interest in the transaction if any one of  
34 the following is true:

35 a. The material facts of the transaction and the

1 director's interest were disclosed or known to the board of  
2 directors or a committee of the board of directors and the  
3 board of directors or committee authorized, approved, or  
4 ratified the transaction.

5 b. The material facts of the transaction and the  
6 director's interest were disclosed or known to the  
7 shareholders entitled to vote and they authorized, approved,  
8 or ratified the transaction.

9 c. The transaction was fair to the corporation.

10 2. For purposes of this section, a director of the  
11 corporation has an indirect interest in a transaction if  
12 either:

13 a. Another entity in which the director has a material  
14 financial interest or in which the director is a general  
15 partner is a party to the transaction.

16 b. Another entity of which the director is a director,  
17 officer, or trustee is a party to the transaction and the  
18 transaction is or should be considered by the board of  
19 directors of the corporation.

20 3. For purposes of subsection 1, paragraph "a", a conflict  
21 of interest transaction is authorized, approved, or ratified  
22 if it receives the affirmative vote of a majority of the  
23 directors on the board of directors or on the committee, who  
24 have no direct or indirect interest in the transaction, but a  
25 transaction may not be authorized, approved, or ratified under  
26 this section by a single director. If a majority of the  
27 directors who have no direct or indirect interest in the  
28 transaction vote to authorize, approve, or ratify the  
29 transaction, a quorum is present for the purpose of taking  
30 action under this section. The presence of, or a vote cast  
31 by, a director with a direct or indirect interest in the  
32 transaction does not affect the validity of any action taken  
33 under subsection 1, paragraph "a", if the transaction is  
34 otherwise authorized, approved, or ratified as provided in  
35 that subsection.

1 4. For purposes of subsection 1, paragraph "b", a conflict  
2 of interest transaction is authorized, approved, or ratified  
3 if it receives the vote of a majority of the shares entitled  
4 to be counted under this subsection. Shares owned by or voted  
5 under the control of a director who has a direct or indirect  
6 interest in the transaction, and shares owned by or voted  
7 under the control of an entity described in subsection 2,  
8 paragraph "a", shall not be counted in a vote of shareholders  
9 to determine whether to authorize, approve, or ratify a  
10 conflict of interest transaction under subsection 1, paragraph  
11 "b". The vote of those shares, however, is counted in  
12 determining whether the transaction is approved under other  
13 sections of this chapter. A majority of the shares, whether  
14 or not present, that are entitled to be counted in a vote on  
15 the transaction under this subsection constitutes a quorum for  
16 the purpose of taking action under this section.

17 Sec. 89. NEW SECTION. 493B.832 INDEMNIFICATION OF  
18 DIRECTORS.

19 The articles of incorporation may contain a provision  
20 eliminating or limiting the personal liability of a director  
21 to the corporation or its shareholders for monetary damages  
22 for breach of fiduciary duty as a director, provided that the  
23 provision does not eliminate or limit the liability of a  
24 director for a breach of the director's duty of loyalty to the  
25 corporation or its shareholders, for acts or omissions not in  
26 good faith or which involve intentional misconduct or a  
27 knowing violation of law, for a transaction from which the  
28 director derives an improper personal benefit, or under  
29 section 493B.833. A provision shall not eliminate or limit  
30 the liability of a director for an act or omission occurring  
31 prior to the date when the provision in the articles of  
32 incorporation becomes effective.

33 Sec. 90. NEW SECTION. 493B.833 LIABILITY FOR UNLAWFUL  
34 DISTRIBUTION.

35 1. Unless the director complies with the applicable

1 standards of conduct described in section 493B.830, a director  
2 who votes for or assents to a distribution made in violation  
3 of this chapter or the articles of incorporation is personally  
4 liable to the corporation for the amount of the distribution  
5 that exceeds what could have been distributed without  
6 violating this chapter or the articles of incorporation.

7 2. A director held liable for an unlawful distribution  
8 under subsection 1 is entitled to contribution from both of  
9 the following:

10 a. Every other director who voted for or assented to the  
11 distribution without complying with the applicable standards  
12 of conduct described in section 493B.830.

13 b. Each shareholder for the amount the shareholder  
14 accepted knowing the distribution was made in violation of  
15 this chapter or the articles of incorporation.

16

PART D

17 Sec. 91. NEW SECTION. 493B.840 REQUIRED OFFICERS.

18 1. A corporation has the officers described in its bylaws  
19 or appointed by the board of directors in accordance with the  
20 bylaws.

21 2. A duly appointed officer may appoint one or more  
22 officers or assistant officers if authorized by the bylaws or  
23 the board of directors.

24 3. The bylaws or the board of directors shall delegate to  
25 one of the officers responsibility for preparing minutes of  
26 the directors' and shareholders' meetings and for  
27 authenticating records of the corporation.

28 4. The same individual may simultaneously hold more than  
29 one office in a corporation.

30 Sec. 92. NEW SECTION. 493B.841 DUTIES OF OFFICERS.

31 Each officer has the authority and shall perform the duties  
32 set forth in the bylaws or, to the extent consistent with the  
33 bylaws, the duties prescribed by the board of directors or by  
34 direction of an officer authorized by the board of directors  
35 to prescribe the duties of other officers.

1     Sec. 93. NEW SECTION. 493B.842 STANDARDS OF CONDUCT FOR  
2 OFFICERS.

3     1. An officer with discretionary authority shall discharge  
4 the officer's duties under that authority in conformity with  
5 all of the following:

6     a. In good faith.

7     b. With the care an ordinarily prudent person in a like  
8 position would exercise under similar circumstances.

9     c. In a manner the officer reasonably believes to be in  
10 the best interests of the corporation.

11    2. In discharging the person's duties an officer is  
12 entitled to rely on information, opinions, reports, or  
13 statements, including financial statements and other financial  
14 data, if prepared or presented by either:

15    a. One or more officers or employees of the corporation  
16 whom the officer reasonably believes to be reliable and  
17 competent in the matters presented.

18    b. Legal counsel, public accountants, or other persons as  
19 to matters the officer reasonably believes are within the  
20 person's professional or expert competence.

21    3. An officer is not acting in good faith if the officer  
22 has knowledge concerning the matter in question that makes  
23 reliance otherwise permitted by subsection 2 unwarranted.

24    4. An officer is not liable for any action taken as an  
25 officer, or any failure to take any action, if the officer  
26 performed the duties of the officer's office in compliance  
27 with this section.

28    Sec. 94. NEW SECTION. 493B.843 RESIGNATION AND REMOVAL  
29 OF OFFICERS.

30    1. An officer may resign at any time by delivering notice  
31 to the corporation. A resignation is effective when the  
32 notice is delivered unless the notice specifies a later  
33 effective date. If a resignation is made effective at a later  
34 date and the corporation accepts the future effective date,  
35 its board of directors may fill the pending vacancy before the

1 effective date if the board of directors provides that the  
2 successor does not take office until the effective date.

3 2. A board of directors may remove any officer at any time  
4 with or without cause.

5 Sec. 95. NEW SECTION. 493B.844 CONTRACT RIGHTS OF  
6 OFFICERS.

7 1. The appointment of an officer does not itself create  
8 contract rights.

9 2. An officer's removal does not affect the officer's  
10 contract rights, if any, with the corporation. An officer's  
11 resignation does not affect the corporation's contract rights,  
12 if any, with the officer.

13 PART E

14 Sec. 96. NEW SECTION. 493B.850 DEFINITIONS.

15 As used in this part of this chapter, unless the context  
16 otherwise requires:

17 1. "Corporation" includes any domestic or foreign  
18 predecessor entity of a corporation in a merger or other  
19 transaction in which the predecessor's existence ceased upon  
20 consummation of the transaction.

21 2. "Director" means an individual who is or was a director  
22 of a corporation or an individual who, while a director of a  
23 corporation, is or was serving at the corporation's request as  
24 a director, officer, partner, trustee, employee, or agent of  
25 another foreign or domestic corporation, partnership, joint  
26 venture, trust, employee benefit plan, or other enterprise. A  
27 director is considered to be serving an employee benefit plan  
28 at the corporation's request if the director's duties to the  
29 corporation also impose duties on, or otherwise involve  
30 services by, that director to the plan or to participants in  
31 or beneficiaries of the plan. "Director" includes, unless the  
32 context requires otherwise, the estate or personal  
33 representative of a director.

34 3. "Expenses" include counsel fees.

35 4. "Liability" means the obligation to pay a judgment,

1 settlement, penalty, fine, including an excise tax assessed  
2 with respect to an employee benefit plan, or reasonable  
3 expenses incurred with respect to a proceeding.

4 5. "Official capacity" means:

5 a. When used with respect to a director, the office of  
6 director in a corporation.

7 b. When used with respect to an individual other than a  
8 director, as contemplated in section 493B.856, the office in a  
9 corporation held by the officer or the employment or agency  
10 relationship undertaken by the employee or agent on behalf of  
11 the corporation.

12 "Official capacity" does not include service for any other  
13 foreign or domestic corporation or any partnership, joint  
14 venture, trust, employee benefit plan, or other enterprise.

15 6. "Party" includes an individual who was, is, or is  
16 threatened to be made a named defendant or respondent in a  
17 proceeding.

18 7. "Proceeding" means any threatened, pending, or  
19 completed action, suit, or proceeding, whether civil,  
20 criminal, administrative, or investigative and whether formal  
21 or informal.

22 Sec. 97. NEW SECTION. 493B.851 AUTHORITY TO INDEMNIFY.

23 1. Except as provided in subsection 4, a corporation may  
24 indemnify an individual made a party to a proceeding because  
25 the individual is or was a director against liability incurred  
26 in the proceeding if all of the following apply:

27 a. The individual acted in good faith.

28 b. The individual reasonably believed:

29 (1) In the case of conduct in the individual's official  
30 capacity with the corporation, that the individual's conduct  
31 was in the corporation's best interests.

32 (2) In all other cases, that the individual's conduct was  
33 at least not opposed to the corporation's best interests.

34 c. In the case of any criminal proceeding, the individual  
35 had no reasonable cause to believe the individual's conduct

1 was unlawful.

2 2. A director's conduct with respect to an employee  
3 benefit plan for a purpose the director reasonably believed to  
4 be in the interests of the participants in and beneficiaries  
5 of the plan is conduct that satisfies the requirement of  
6 subsection 1, paragraph "b", subparagraph (2).

7 3. The termination of a proceeding by judgment, order,  
8 settlement, conviction, or upon a plea of nolo contendere or  
9 its equivalent is not, of itself, determinative that the  
10 director did not meet the standard of conduct described in  
11 this section.

12 4. A corporation shall not indemnify a director under this  
13 section in either of the following circumstances:

14 a. In connection with a proceeding by or in the right of  
15 the corporation in which the director was adjudged liable to  
16 the corporation.

17 b. In connection with any other proceeding charging  
18 improper personal benefit to the director, whether or not  
19 involving action in the director's official capacity, in which  
20 the director was adjudged liable on the basis that personal  
21 benefit was improperly received by the director.

22 5. Indemnification permitted under this section in  
23 connection with a proceeding by or in the right of the  
24 corporation is limited to reasonable expenses incurred in  
25 connection with the proceeding.

26 Sec. 98. NEW SECTION. 493B.852 MANDATORY  
27 INDEMNIFICATION.

28 Unless limited by its articles of incorporation, a  
29 corporation shall indemnify a director who was wholly  
30 successful, on the merits or otherwise, in the defense of any  
31 proceeding to which the director was a party because the  
32 director is or was a director of the corporation against  
33 reasonable expenses incurred by the director in connection  
34 with the proceeding.

35 Sec. 99. NEW SECTION. 493B.853 ADVANCE FOR EXPENSES.

1 1. A corporation may pay for or reimburse the reasonable  
2 expenses incurred by a director who is a party to a proceeding  
3 in advance of final disposition of the proceeding if any of  
4 the following apply:

5 a. The director furnishes the corporation a written  
6 affirmation of the director's good faith belief that the  
7 director has met the standard of conduct described in section  
8 493B.851.

9 b. The director furnishes the corporation a written  
10 undertaking, executed personally or on the director's behalf,  
11 to repay the advance if it is ultimately determined that the  
12 director did not meet that standard of conduct.

13 c. A determination is made that the facts then known to  
14 those making the determination would not preclude  
15 indemnification under this part.

16 2. The undertaking required by subsection 1, paragraph  
17 "b", must be an unlimited general obligation of the director  
18 but need not be secured and may be accepted without reference  
19 to financial ability to make repayment.

20 3. Determinations and authorizations of payments under  
21 this section shall be made in the manner specified in section  
22 493B.855.

23 Sec. 100. NEW SECTION. 493B.854 COURT-ORDERED  
24 INDEMNIFICATION.

25 Unless a corporation's articles of incorporation provide  
26 otherwise, a director of the corporation who is a party to a  
27 proceeding may apply for indemnification to the court  
28 conducting the proceeding or to another court of competent  
29 jurisdiction. On receipt of an application, the court after  
30 giving any notice the court considers necessary may order  
31 indemnification if it determines either of the following:

32 1. The director is entitled to mandatory indemnification  
33 under section 493B.852, in which case the court shall also  
34 order the corporation to pay the directors reasonable expenses  
35 incurred to obtain court-ordered indemnification.

1     2. The director is fairly and reasonably entitled to  
2 indemnification in view of all the relevant circumstances,  
3 whether or not the director met the standard of conduct set  
4 forth in section 493B.851 or was adjudged liable as described  
5 in section 493B.851, subsection 4, but if the director was  
6 adjudged so liable the director's indemnification is limited  
7 to reasonable expenses incurred.

8     Sec. 101. NEW SECTION. 493B.855 DETERMINATION AND  
9 AUTHORIZATION OF INDEMNIFICATION.

10    1. A corporation shall not indemnify a director under  
11 section 493B.851 unless authorized in the specific case after  
12 a determination has been made that indemnification of the  
13 director is permissible in the circumstances because the  
14 director has met the standard of conduct set forth in section  
15 493B.851.

16    2. The determination shall be made by any of the  
17 following:

18    a. By the board of directors by majority vote of a quorum  
19 consisting of directors not at the time parties to the  
20 proceeding.

21    b. If a quorum cannot be obtained under paragraph "a", by  
22 majority vote of a committee duly designated by the board of  
23 directors, in which designation directors who are parties may  
24 participate, consisting solely of two or more directors not at  
25 the time parties to the proceeding.

26    c. By special legal counsel:

27    (1) Selected by the board of directors or its committee in  
28 the manner prescribed in paragraph "a" or "b".

29    (2) If a quorum of the board of directors cannot be  
30 obtained under paragraph "a" and a committee cannot be  
31 designated under paragraph "b", selected by majority vote of  
32 the full board of directors, in which selection directors who  
33 are parties may participate.

34    d. By the shareholders, but shares owned by or voted under  
35 the control of directors who are at the time parties to the

1 proceeding shall not be voted on the determination.

2 3. Authorization of indemnification and evaluation as to  
3 reasonableness of expenses shall be made in the same manner as  
4 the determination that indemnification is permissible, except  
5 that if the determination is made by special legal counsel,  
6 authorization of indemnification and evaluation as to  
7 reasonableness of expenses shall be made by those entitled  
8 under subsection 2, paragraph "c" to select counsel.

9 Sec. 102. NEW SECTION. 493B.856 INDEMNIFICATION OF  
10 OFFICERS, EMPLOYEES, AND AGENTS.

11 Unless a corporation's articles of incorporation provide  
12 otherwise all of the following apply:

13 1. An officer of the corporation who is not a director is  
14 entitled to mandatory indemnification under section 493B.852,  
15 and is entitled to apply for court-ordered indemnification  
16 under section 493B.854, in each case to the same extent as a  
17 director.

18 2. The corporation may indemnify and advance expenses  
19 under this part to an officer, employee, or agent of the  
20 corporation who is not a director to the same extent as to a  
21 director.

22 3. A corporation may also indemnify and advance expenses  
23 to an officer, employee, or agent who is not a director to the  
24 extent, consistent with law, that may be provided by its  
25 articles of incorporation, bylaws, general or specific action  
26 of its board of directors, or contract.

27 Sec. 103. NEW SECTION. 493B.857 INSURANCE.

28 A corporation may purchase and maintain insurance on behalf  
29 of an individual who is or was a director, officer, employee,  
30 or agent of the corporation, or who, while a director,  
31 officer, employee, or agent of the corporation, is or was  
32 serving at the request of the corporation as a director,  
33 officer, partner, trustee, employee, or agent of another  
34 foreign or domestic corporation, partnership, joint venture,  
35 trust, employee benefit plan, or other enterprise, against

1 liability asserted against or incurred by that individual in  
2 that capacity or arising from the individual's status as a  
3 director, officer, employee, or agent, whether or not the  
4 corporation would have power to indemnify that individual  
5 against the same liability under section 493B.851 or 493B.852.

6 Sec. 104. NEW SECTION. 493B.858 APPLICATION OF PART E.

7 Except as limited in section 493B.851, subsection 4,  
8 paragraph "a" and subsection 5 with respect to proceedings by  
9 or in the right of the corporation, the indemnification and  
10 advancement of expenses provided by, or granted pursuant to,  
11 sections 493B.850 through 493B.857 are not exclusive of any  
12 other rights to which persons seeking indemnification or  
13 advancement of expenses are entitled under a provision in the  
14 articles of incorporation or bylaws, agreements, vote of  
15 shareholders or disinterested directors, or otherwise, both as  
16 to action in a person's official capacity and as to action in  
17 another capacity while holding the office. However, such  
18 provisions, agreements, votes, or other actions shall not  
19 provide indemnification for a breach of a director's duty of  
20 loyalty to the corporation or its shareholders, for acts or  
21 omissions not in good faith or which involve intentional  
22 misconduct or knowing violation of the law, for a transaction  
23 from which the person seeking indemnification derives an  
24 improper personal benefit, or for liability under section  
25 493B.833.

26

DIVISION IX

27

SPECIAL CLASSES

28 Sec. 105. NEW SECTION. 493B.901 FOREIGN-TRADE ZONE  
29 CORPORATION.

30 A corporation may be organized under the laws of this state  
31 for the purpose of establishing, operating, and maintaining a  
32 foreign-trade zone as defined in 19 U.S.C. § 81(a). A  
33 corporation organized for the purposes set forth in this  
34 section has all powers necessary or convenient for applying  
35 for a grant of authority to establish, operate, and maintain a

1 foreign-trade zone under 19 U.S.C. § 81(a), et seq., and  
2 regulations promulgated under that law, and for establishing,  
3 operating, and maintaining a foreign-trade zone pursuant to  
4 that grant of authority.

5 Sec. 106. NEW SECTION. 493B.902 FOREIGN INSURANCE  
6 COMPANIES BECOMING DOMESTIC.

7 The secretary of state, upon a corporation complying with  
8 this section and upon the filing of articles of incorporation  
9 and upon receipt of the fees as provided in this chapter,  
10 shall issue a certificate of incorporation as of the date of  
11 the corporation's original incorporation in its state of  
12 original incorporation. The certificate of incorporation  
13 shall state on its face that it is issued in accordance with  
14 this section. The secretary of state shall forward the  
15 articles as provided in this chapter to the county recorder  
16 where the principal place of business of the corporation is to  
17 be located. The secretary of state shall then notify the  
18 appropriate officer of the state or country of the  
19 corporation's last domicile that the corporation is now a  
20 domestic corporation domiciled in this state. This section  
21 applies to life insurance companies, and to insurance  
22 companies doing business under chapter 515.

23

DIVISION X

24

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

25

PART A

26

27 Sec. 107. NEW SECTION. 493B.1001 AMENDMENT OF ARTICLES  
28 OF INCORPORATION -- AUTHORITY TO AMEND.

29

30 1. A corporation may amend its articles of incorporation  
31 at any time to add or change a provision that is required or  
32 permitted in the articles of incorporation or to delete a  
33 provision not required in the articles of incorporation.  
34 Whether a provision is required or permitted in the articles  
35 of incorporation is determined as of the effective date of the  
amendment.

36

2. A shareholder of the corporation does not have a vested

1 property right resulting from any provision in the articles of  
2 incorporation, including provisions relating to management,  
3 control, capital structure, dividend entitlement, or purpose  
4 or duration of the corporation.

5 Sec. 108. NEW SECTION. 493B.1002 AMENDMENT BY BOARD OF  
6 DIRECTORS.

7 Unless the articles of incorporation provide otherwise, a  
8 corporation's board of directors may adopt one or more  
9 amendments to the corporation's articles of incorporation  
10 without shareholder action for any of the following purposes:

11 1. To extend the duration of the corporation if it was  
12 incorporated at a time when limited duration was required by  
13 law.

14 2. To delete the names and addresses of the initial  
15 directors.

16 3. To delete the name and address of the initial  
17 registered agent or registered office, if a statement of  
18 change is on file with the secretary of state.

19 4. To change each issued and unissued authorized share of  
20 an outstanding class into a greater number of whole shares if  
21 the corporation has only shares of that class outstanding.

22 5. To change the corporate name by substituting the word  
23 "corporation", "incorporated", "company", "limited", or the  
24 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar  
25 word or abbreviation in the name, or by adding, deleting, or  
26 changing a geographical attribution for the name.

27 6. To make any other change expressly permitted by this  
28 chapter to be made without shareholder action.

29 Sec. 109. NEW SECTION. 493B.1003 AMENDMENT BY BOARD OF  
30 DIRECTORS AND SHAREHOLDERS.

31 1. A corporation's board of directors may propose one or  
32 more amendments to the articles of incorporation for  
33 submission to the shareholders.

34 2. For the amendment to be adopted both of the following  
35 must occur:

1 a. The board of directors must recommend the amendment to  
2 the shareholders unless the board of directors determines that  
3 because of conflict of interest or other special circumstances  
4 it should make no recommendation and communicates the basis  
5 for its determination to the shareholders with the amendment.

6 b. The shareholders entitled to vote on the amendment must  
7 approve the amendment as provided in subsection 5.

8 3. The board of directors may condition its submission of  
9 the proposed amendment on any basis.

10 4. The corporation shall notify each shareholder, whether  
11 or not entitled to vote, of the proposed shareholders' meeting  
12 in accordance with section 493B.705. The notice of meeting  
13 must also state that the purpose, or one of the purposes, of  
14 the meeting is to consider the proposed amendment and contain  
15 or be accompanied by a copy or summary of the amendment.

16 5. Unless this chapter, the articles of incorporation, or  
17 the board of directors acting pursuant to subsection 3 require  
18 a greater vote or a vote by voting groups, the amendment to be  
19 adopted must be approved by both of the following:

20 a. A majority of the votes entitled to be cast on the  
21 amendment by any voting group with respect to which the  
22 amendment would create dissenters' rights.

23 b. The votes required by sections 493B.725 and 493B.726 by  
24 every other voting group entitled to vote on the amendment.

25 Sec. 110. NEW SECTION. 493B.1004 VOTING ON AMENDMENTS BY  
26 VOTING GROUPS.

27 1. The holders of the outstanding shares of a class are  
28 entitled to vote as a separate voting group, if shareholder  
29 voting is otherwise required by this chapter, on a proposed  
30 amendment if the amendment would do any of the following:

31 a. Increase or decrease the aggregate number of authorized  
32 shares of the class.

33 b. Effect an exchange or reclassification of all or part  
34 of the shares of the class into shares of another class.

35 c. Effect an exchange or reclassification, or create the

1 right of exchange, of all or part of the shares of another  
2 class into shares of that class.

3 d. Change the designation, rights, preferences, or  
4 limitations of all or part of the shares of the class.

5 e. Change the shares of all or part of the class into a  
6 different number of shares of the same class.

7 f. Create a new class of shares having rights or  
8 preferences with respect to distributions or to dissolution  
9 that are prior, superior, or substantially equal to, the  
10 shares of the class.

11 g. Increase the rights, preferences, or number of  
12 authorized shares of any class that, after giving effect to  
13 the amendment, have rights or preferences with respect to  
14 distributions or to dissolution that are prior, superior, or  
15 substantially equal to the shares of the class.

16 h. Limit or deny an existing preemptive right of all or  
17 part of the shares of the class.

18 i. Cancel or otherwise affect rights to distributions or  
19 dividends that have accumulated but not yet been declared on  
20 all or part of the shares of the class.

21 2. If a proposed amendment would affect a series of a  
22 class of shares in one or more of the ways described in  
23 subsection i, the shares of that series are entitled to vote  
24 as a separate voting group on the proposed amendment.

25 3. If a proposed amendment that entitles two or more  
26 series of shares to vote as separate voting groups under this  
27 section would affect those two or more series in the same or a  
28 substantially similar way, the shares of all the series so  
29 affected must vote together as a single voting group on the  
30 proposed amendment.

31 4. A class or series of shares is entitled to the voting  
32 rights granted by this section although the articles of  
33 incorporation provide that the shares are nonvoting shares.

34 Sec. 111. NEW SECTION. 493B.1005 AMENDMENT BEFORE  
35 ISSUANCE OF SHARES.

1 If a corporation has not yet issued shares, its  
2 incorporators or board of directors may adopt one or more  
3 amendments to the corporation's articles of incorporation.

4 Sec. 112. NEW SECTION. 493B.1006 ARTICLES OF AMENDMENT.

5 A corporation amending its articles of incorporation shall  
6 deliver to the secretary of state for filing articles of  
7 amendment setting forth:

8 1. The name of the corporation.

9 2. The text of each amendment adopted.

10 3. If an amendment provides for an exchange,  
11 reclassification, or cancellation of issued shares, provisions  
12 for implementing the amendment if not contained in the  
13 amendment itself.

14 4. The date of each amendment's adoption.

15 5. If an amendment was adopted by the incorporators or  
16 board of directors without shareholder action, a statement to  
17 that effect and that shareholder action was not required.

18 6. If an amendment was approved by the shareholders:

19 a. The designation, number of outstanding shares, number  
20 of votes entitled to be cast by each voting group entitled to  
21 vote separately on the amendment, and number of votes of each  
22 voting group indisputably represented at the meeting.

23 b. Either the total number of votes cast for and against  
24 the amendment by each voting group entitled to vote separately  
25 on the amendment or the total number of undisputed votes cast  
26 for the amendment by each voting group and a statement that  
27 the number cast for the amendment by each voting group was  
28 sufficient for approval by that voting group.

29 Sec. 113. NEW SECTION. 493B.1007 RESTATED ARTICLES OF  
30 INCORPORATION.

31 1. A corporation's board of directors may restate its  
32 articles of incorporation at any time with or without  
33 shareholder action.

34 2. The restatement may include one or more amendments to  
35 the articles. If the restatement includes an amendment

1 requiring shareholder approval, it must be adopted as provided  
2 in section 493B.1003.

3 3. If the board of directors submits a restatement for  
4 shareholder action, the corporation shall notify each  
5 shareholder whether or not entitled to vote, of the proposed  
6 shareholders' meeting in accordance with section 493B.705.  
7 The notice must also state that the purpose, or one of the  
8 purposes, of the meeting is to consider the proposed  
9 restatement and contain or be accompanied by a copy of the  
10 restatement that identifies any amendment or other change it  
11 would make in the articles.

12 4. A corporation restating its articles of incorporation  
13 shall deliver to the secretary of state for filing articles of  
14 restatement setting forth the name of the corporation and the  
15 text of the restated articles of incorporation together with a  
16 certificate setting forth:

17 a. Whether the restatement contains an amendment to the  
18 articles requiring shareholder approval and, if it does not,  
19 that the board of directors adopted the restatement.

20 b. If the restatement contains an amendment to the  
21 articles requiring shareholder approval, the information  
22 required by section 493B.1006.

23 5. Duly adopted restated articles of incorporation  
24 supersede the original articles of incorporation and all  
25 amendments to them.

26 6. The secretary of state may certify restated articles of  
27 incorporation, as the articles of incorporation currently in  
28 effect, without including the certificate information required  
29 by subsection 4.

30 Sec. 114. NEW SECTION. 493B.1008 AMENDMENT PURSUANT TO  
31 REORGANIZATION.

32 1. A corporation's articles of incorporation may be  
33 amended without action by the board of directors or  
34 shareholders to carry out a plan of reorganization ordered or  
35 decreed by a court of competent jurisdiction under federal

1 statute if the articles of incorporation after amendment  
2 contain only provisions required or permitted by section  
3 493B.202.

4 2. The individual or individuals designated by the court  
5 shall deliver to the secretary of state for filing articles of  
6 amendment setting forth all of the following:

7 a. The name of the corporation.

8 b. The text of each amendment approved by the court.

9 c. The date of the court's order or decree approving the  
10 articles of amendment.

11 d. The title of the reorganization proceeding in which the  
12 order or decree was entered.

13 e. A statement that the court had jurisdiction of the  
14 proceeding under federal statute.

15 3. Shareholders of a corporation undergoing reorganization  
16 do not have dissenters' rights except as and to the extent  
17 provided in the reorganization plan.

18 4. This section does not apply after entry of a final  
19 decree in the reorganization proceeding even though the court  
20 retains jurisdiction of the proceeding for limited purposes  
21 unrelated to consummation of the reorganization plan.

22 Sec. 115. NEW SECTION. 493B.1009 EFFECT OF AMENDMENT.

23 An amendment to articles of incorporation does not affect a  
24 cause of action existing against or in favor of the  
25 corporation, a proceeding to which the corporation is a party,  
26 or the existing rights of persons other than shareholders of  
27 the corporation. An amendment changing a corporation's name  
28 does not abate a proceeding brought by or against the  
29 corporation in its former name.

30 PART B

31 Sec. 116. NEW SECTION. 493B.1020 AMENDMENT OF BYLAWS BY  
32 BOARD OF DIRECTORS OR SHAREHOLDERS.

33 1. A corporation's board of directors may amend or repeal  
34 the corporation's bylaws unless either of the following apply:

35 a. The articles of incorporation or this chapter reserve

1 this power exclusively to the shareholders in whole or part.

2 b. The shareholders in amending or repealing a particular  
3 bylaw provide expressly that the board of directors shall not  
4 amend or repeal that bylaw.

5 2. A corporation's shareholders may amend or repeal the  
6 corporation's bylaws even though the bylaws may also be  
7 amended or repealed by its board of directors.

8 Sec. 117. NEW SECTION. 493B.1021 BYLAW INCREASING QUORUM  
9 OR VOTING REQUIREMENT FOR SHAREHOLDERS.

10 1. If authorized by the articles of incorporation, the  
11 shareholders may adopt or amend a bylaw that fixes a greater  
12 quorum or voting requirement for shareholders or voting groups  
13 of shareholders than is required by this chapter. The  
14 adoption or amendment of a bylaw that adds, changes, or  
15 deletes a greater quorum or voting requirement for  
16 shareholders must meet the same quorum requirement and be  
17 adopted by the same vote and voting groups required to take  
18 action under the quorum and voting requirement then in effect  
19 or proposed to be adopted, whichever is greater.

20 2. A bylaw that fixes a greater quorum or voting  
21 requirement for shareholders under subsection 1 shall not be  
22 adopted, amended, or repealed by the board of directors.

23 Sec. 118. NEW SECTION. 493B.1022 BYLAW INCREASING QUORUM  
24 OR VOTING REQUIREMENT FOR DIRECTORS.

25 1. A bylaw that fixes a greater quorum or voting  
26 requirement for the board of directors may be amended or  
27 repealed:

28 a. If originally adopted by the shareholders, only by the  
29 shareholders.

30 b. If originally adopted by the board of directors, either  
31 by the shareholders or by the board of directors.

32 2. A bylaw adopted or amended by the shareholders that  
33 fixes a greater quorum or voting requirement for the board of  
34 directors may provide that it may be amended or repealed only  
35 by a specified vote of either the shareholders or the board of

1 directors.

2 3. Action by the board of directors under subsection 1,  
3 paragraph "b" to adopt or amend a bylaw that changes the  
4 quorum or voting requirement for the board of directors must  
5 meet the same quorum requirement and be adopted by the same  
6 vote required to take action under the quorum and voting  
7 requirement then in effect or proposed to be adopted,  
8 whichever is greater.

9

DIVISION XI

10

MERGER AND SHARE EXCHANGE

11 Sec. 119. NEW SECTION. 493B.1101 MERGER.

12 1. One or more corporations may merge into another  
13 corporation if the board of directors of each corporation  
14 adopts and its shareholders, if required by section 493B.1103,  
15 approve a plan of merger.

16 2. The plan of merger must set forth all of the following:

17 a. The name of each corporation planning to merge and the  
18 name of the surviving corporation into which each other  
19 corporation plans to merge.

20 b. The terms and conditions of the merger.

21 c. The manner and basis of converting the shares of each  
22 corporation into shares, obligations, or other securities of  
23 the surviving or any other corporation or into cash or other  
24 property in whole or part.

25 3. The plan of merger may set forth:

26 a. Restated articles or amendments to the articles of  
27 incorporation of the surviving corporation.

28 b. Other provisions relating to the merger.

29 Sec. 120. NEW SECTION. 493B.1102 SHARE EXCHANGE.

30 1. A corporation may acquire all of the outstanding shares  
31 of one or more classes or series of another corporation if the  
32 board of directors of each corporation adopts and its  
33 shareholders, if required by section 493B.1103, approve the  
34 exchange.

35 2. The plan of exchange must set forth all of the

1 following:

2 a. The name of the corporation whose shares will be  
3 acquired and the name of the acquiring corporation.

4 b. The terms and conditions of the exchange.

5 c. The manner and basis of exchanging the shares to be  
6 acquired for shares, obligations, or other securities of the  
7 acquiring or any other corporation or for cash or other  
8 property in whole or part.

9 3. The plan of exchange may set forth other provisions  
10 relating to the exchange.

11 4. This section does not limit the power of a corporation  
12 to acquire all or part of the shares of one or more classes or  
13 series of another corporation through a voluntary exchange or  
14 otherwise.

15 Sec. 121. NEW SECTION. 493B.1103 ACTION ON PLAN.

16 1. After adopting a plan of merger or share exchange, the  
17 board of directors of each corporation party to the merger,  
18 and the board of directors of the corporation whose shares  
19 will be acquired in the share exchange, shall submit the plan  
20 of merger, except as provided in subsection 7, or share  
21 exchange for approval by its shareholders.

22 2. For a plan of merger or share exchange to be approved  
23 both of the following must occur:

24 a. The board of directors must recommend the plan of  
25 merger or share exchange to the shareholders, unless the board  
26 of directors determines that because of conflict of interest  
27 or other special circumstances it should make no  
28 recommendation and communicates the basis for its  
29 determination to the shareholders with the plan.

30 b. The shareholders entitled to vote must approve the  
31 plan.

32 3. The board of directors may condition its submission of  
33 the proposed merger or share exchange on any basis.

34 4. The corporation shall notify each shareholder, whether  
35 or not entitled to vote, of the proposed shareholders' meeting

1 in accordance with section 493B.705. The notice must also  
2 state that the purpose, or one of the purposes, of the meeting  
3 is to consider the plan of merger or share exchange and  
4 contain or be accompanied by a copy or summary of the plan.

5 5. Unless this chapter, the articles of incorporation, or  
6 the board of directors acting pursuant to subsection 3 require  
7 a greater vote or a vote by voting groups, the plan of merger  
8 or share exchange to be authorized must be approved by each  
9 voting group entitled to vote separately on the plan by a  
10 majority of all the votes entitled to be cast on the plan by  
11 that voting group.

12 6. Separate voting by voting groups is required:

13 a. On a plan of merger if the plan contains a provision  
14 that, if contained in a proposed amendment to articles of  
15 incorporation, would require action by one or more separate  
16 voting groups on the proposed amendment under section  
17 493B.1004.

18 b. On a plan of share exchange, by each class or series of  
19 shares included in the exchange, with each class or series  
20 constituting a separate voting group.

21 7. Action by the shareholders of the surviving corporation  
22 on a plan of merger is not required if all of the following  
23 apply:

24 a. The articles of incorporation of the surviving  
25 corporation will not differ, except for amendments enumerated  
26 in section 493B.1002, from its articles before the merger.

27 b. Each shareholder of the surviving corporation whose  
28 shares were outstanding immediately before the effective date  
29 of the merger will hold the same number of shares, with  
30 identical designations, preferences, limitations, and relative  
31 rights, immediately after.

32 c. The number of voting shares outstanding immediately  
33 after the merger, plus the number of voting shares issuable as  
34 a result of the merger, either by the conversion of securities  
35 issued pursuant to the merger or the exercise of rights and

1 warrants issued pursuant to the merger, will not exceed by  
2 more than twenty percent the total number of voting shares of  
3 the surviving corporation outstanding immediately before the  
4 merger.

5 d. The number of participating shares outstanding  
6 immediately after the merger plus the number of participating  
7 shares issuable as a result of the merger, either by the  
8 conversion of securities issued pursuant to the merger or the  
9 exercise of rights and warrants issued pursuant to the merger,  
10 will not exceed by more than twenty percent the total number  
11 of participating shares outstanding immediately before the  
12 merger.

13 8. As used in subsection 7:

14 a. "Participating shares" means shares that entitle their  
15 holders to participate without limitation in distributions.

16 b. "Voting shares" means shares that entitle their holders  
17 to vote unconditionally in elections of directors.

18 9. After a merger or share exchange is authorized, and at  
19 any time before articles of merger or share exchange are  
20 filed, the planned merger or share exchange may be abandoned,  
21 subject to any contractual rights, without further shareholder  
22 action, in accordance with the procedure set forth in the plan  
23 of merger or share exchange or, if none is set forth, in the  
24 manner determined by the board of directors.

25 Sec. 122. NEW SECTION. 493B.1104 MERGER OF SUBSIDIARY.

26 1. A parent corporation owning at least ninety percent of  
27 the outstanding shares of each class of a subsidiary  
28 corporation may merge the subsidiary into itself without  
29 approval of the shareholders of the parent or subsidiary.

30 2. The board of directors of the parent shall adopt a plan  
31 of merger that sets forth both of the following:

32 a. The names of the parent and subsidiary.

33 b. The manner and basis of converting the shares of the  
34 subsidiary into shares, obligations, or other securities of  
35 the parent or any other corporation or into cash or other

1 property in whole or part.

2 3. The parent corporation shall mail a copy or summary of  
3 the plan of merger to each shareholder of the subsidiary who  
4 does not waive the mailing requirement in writing.

5 4. The parent corporation shall not deliver articles of  
6 merger to the secretary of state for filing until at least  
7 thirty days after the date it mailed a copy of the plan of  
8 merger to each shareholder of the subsidiary who did not waive  
9 the mailing requirement.

10 5. Articles of merger under this section shall not contain  
11 amendments to the articles of incorporation of the parent  
12 corporation except for amendments enumerated in section  
13 493B.1002.

14 Sec. 123. NEW SECTION. 493B.1105 ARTICLES OF MERGER OR  
15 SHARE EXCHANGE.

16 1. After a plan of merger or share exchange is approved by  
17 the shareholders, or adopted by the board of directors if  
18 shareholder approval is not required, the surviving or  
19 acquiring corporation shall deliver to the secretary of state  
20 for filing articles of merger or share exchange setting forth  
21 all of the following:

22 a. The plan of merger or share exchange.

23 b. If shareholder approval was not required, a statement  
24 to that effect.

25 c. If approval of the shareholders of one or more  
26 corporations party to the merger or share exchange was  
27 required, both of the following:

28 (1) The designation, number of outstanding shares, and  
29 number of votes entitled to be cast by each voting group  
30 entitled to vote separately on the plan as to each  
31 corporation.

32 (2) Either the total number of votes cast for and against  
33 the plan by each voting group entitled to vote separately on  
34 the plan or the total number of undisputed votes cast for the  
35 plan separately by each voting group and a statement that the

1 number cast for the plan by each voting group was sufficient  
2 for approval by that voting group.

3 2. A merger or share exchange takes effect upon the  
4 effective date of the articles of merger or share exchange.

5 Sec. 124. NEW SECTION. 493B.1106 EFFECT OF MERGER OR  
6 SHARE EXCHANGE.

7 1. When a merger takes effect all of the following apply:

8 a. Every other corporation party to the merger merges into  
9 the surviving corporation and the separate existence of every  
10 corporation except the surviving corporation ceases.

11 b. The title to all real estate and other property owned  
12 by each corporation party to the merger is vested in the  
13 surviving corporation without reversion or impairment.

14 c. The surviving corporation has all liabilities of each  
15 corporation party to the merger.

16 d. A proceeding pending against any corporation party to  
17 the merger may be continued as if the merger did not occur or  
18 the surviving corporation may be substituted in the proceeding  
19 for the corporation whose existence ceased.

20 e. The articles of incorporation of the surviving  
21 corporation are amended to the extent provided in the plan of  
22 merger.

23 f. The shares of each corporation party to the merger that  
24 are to be converted into shares, obligations, or other  
25 securities of the surviving or any other corporation or into  
26 cash or other property are converted, and the former holders  
27 of the shares are entitled only to the rights provided in the  
28 articles of merger or to their rights under division XIII.

29 2. When a share exchange takes effect, the shares of each  
30 acquired corporation are exchanged as provided in the plan,  
31 and the former holders of the shares are entitled only to the  
32 exchange rights provided in the articles of share exchange or  
33 to their rights under division XIII.

34 Sec. 125. NEW SECTION. 493B.1107 MERGER OR SHARE  
35 EXCHANGE WITH FOREIGN CORPORATION.

1 1. One or more foreign corporations may merge or enter  
2 into a share exchange with one or more domestic corporations  
3 if:

4 a. In a merger, the merger is permitted by the law of the  
5 state or country under whose law each foreign corporation is  
6 incorporated and each foreign corporation complies with that  
7 law in effecting the merger.

8 b. In a share exchange, the corporation whose shares will  
9 be acquired is a domestic corporation, whether or not a share  
10 exchange is permitted by the law of the state or country under  
11 whose law the acquiring corporation is incorporated.

12 c. The foreign corporation complies with section 493B.1105  
13 if it is the surviving corporation of the merger or acquiring  
14 corporation of the share exchange.

15 d. Each domestic corporation complies with the applicable  
16 provisions of sections 493B.1101 through 493B.1104 and, if it  
17 is the surviving corporation of the merger or acquiring  
18 corporation of the share exchange, with section 493B.1105.

19 2. Upon the merger or share exchange taking effect, the  
20 surviving foreign corporation of a merger and the acquiring  
21 foreign corporation of a share exchange is deemed:

22 a. To appoint the secretary of state as its agent for  
23 service of process in a proceeding to enforce any obligation  
24 or the rights of dissenting shareholders of each domestic  
25 corporation party to the merger or share exchange.

26 b. To agree that it will promptly pay to the dissenting  
27 shareholders of each domestic corporation party to the merger  
28 or share exchange the amount, if any, to which they are  
29 entitled under division XIII.

30 3. This section does not limit the power of a foreign  
31 corporation to acquire all or part of the shares of one or  
32 more classes or series of a domestic corporation through a  
33 voluntary exchange or otherwise.

34  
35

DIVISION XII  
SALE OF ASSETS

1     Sec. 126. NEW SECTION. 493B.1201 SALE OF ASSETS IN  
2 REGULAR COURSE OF BUSINESS AND MORTGAGE OF ASSETS.

3     1. A corporation may, on the terms and conditions and for  
4 the consideration determined by the board of directors do any  
5 of the following:

6     a. Sell, lease, exchange, or otherwise dispose of all, or  
7 substantially all, of its property in the usual and regular  
8 course of business.

9     b. Mortgage, pledge, dedicate to the repayment of  
10 indebtedness, whether with or without recourse, or otherwise  
11 encumber any or all of its property whether or not in the  
12 usual and regular course of business.

13     c. Transfer any or all of its property to a corporation  
14 all the shares of which are owned by the transferring  
15 corporation whether or not in the usual course of business.

16     2. Unless the articles of incorporation require it,  
17 approval by the shareholders of a transaction described in  
18 subsection 1 is not required.

19     Sec. 127. NEW SECTION. 493B.1202 SALE OF ASSETS OTHER  
20 THAN IN REGULAR COURSE OF BUSINESS.

21     1. A corporation may sell, lease, exchange, or otherwise  
22 dispose of all, or substantially all, of its property, with or  
23 without the good will, otherwise than in the usual and regular  
24 course of business, on the terms and conditions and for the  
25 consideration determined by the corporation's board of  
26 directors, if the board of directors proposes and its  
27 shareholders approve the proposed transaction.

28     2. For a transaction to be authorized both of the  
29 following must occur:

30     a. The board of directors must recommend the proposed  
31 transaction to the shareholders unless the board of directors  
32 determines that because of conflict of interest or other  
33 special circumstances it should make no recommendation and  
34 communicates the basis for its determination to the  
35 shareholders with the submission of the proposed transaction.

1 b. The shareholders entitled to vote must approve the  
2 transaction.

3 3. The board of directors may condition its submission of  
4 the proposed transaction on any basis.

5 4. The corporation shall notify each shareholder, whether  
6 or not entitled to vote, of the proposed shareholders' meeting  
7 in accordance with section 493B.705. The notice must also  
8 state that the purpose, or one of the purposes, of the meeting  
9 is to consider the sale, lease, exchange, or other disposition  
10 of all, or substantially all, the property of the corporation  
11 and contain or be accompanied by a description of the  
12 transaction.

13 5. Unless the articles of incorporation or the board of  
14 directors acting pursuant to subsection 3 require a greater  
15 vote or a vote by voting groups, the transaction to be  
16 authorized must be approved by a majority of all the votes  
17 entitled to be cast on the transaction.

18 6. After a sale, lease, exchange, or other disposition of  
19 property is authorized, the transaction may be abandoned  
20 subject to any contractual rights without further shareholder  
21 action.

22 7. A transaction that constitutes a distribution is  
23 governed by section 493B.640 and not by this section.

24 DIVISION XIII

25 DISSENTERS' RIGHTS

26 PART A

27 Sec. 128. NEW SECTION. 493B.1301 DEFINITIONS FOR  
28 DIVISION XIII.

29 In this division:

30 1. "Corporation" means the issuer of the shares held by a  
31 dissenter before the corporate action, or the surviving or  
32 acquiring corporation by merger or share exchange of that  
33 issuer.

34 2. "Dissenter" means a shareholder who is entitled to  
35 dissent from corporate action under section 493B.1302 and who

1 exercises that right when and in the manner required by  
2 sections 493B.1320 through 493B.1326.

3 3. "Fair value", with respect to a dissenter's shares,  
4 means the value of the shares immediately before the  
5 effectuation of the corporate action to which the dissenter  
6 objects, excluding any appreciation or depreciation in  
7 anticipation of the corporate action unless exclusion would be  
8 inequitable.

9 4. "Interest" means interest from the effective date of  
10 the corporate action until the date of payment, at the average  
11 rate currently paid by the corporation on its principal bank  
12 loans or, if none, at a rate that is fair and equitable under  
13 all the circumstances.

14 5. "Record shareholder" means the person in whose name  
15 shares are registered in the records of a corporation or the  
16 beneficial owner of shares to the extent of the rights granted  
17 by a nominee certificate on file with a corporation.

18 6. "Beneficial shareholder" means the person who is a  
19 beneficial owner of shares held by a nominee as the record  
20 shareholder.

21 7. "Shareholder" means the record shareholder or the  
22 beneficial shareholder.

23 Sec. 129. NEW SECTION. 493B.1302 SHAREHOLDERS' RIGHT TO  
24 DISSENT.

25 1. A shareholder is entitled to dissent from, and obtain  
26 payment of the fair value of the shareholder's shares in the  
27 event of, any of the following corporate actions:

28 a. Consummation of a plan of merger to which the  
29 corporation is a party if either of the following apply:

30 (1) Shareholder approval is required for the merger by  
31 section 493B.1103 or the articles of incorporation and the  
32 shareholder is entitled to vote on the merger.

33 (2) The corporation is a subsidiary that is merged with  
34 its parent under section 493B.1104.

35 b. Consummation of a plan of share exchange to which the

1 corporation is a party as the corporation whose shares will be  
2 acquired, if the shareholder is entitled to vote on the plan.

3 c. Consummation of a sale or exchange of all, or  
4 substantially all, of the property of the corporation other  
5 than in the usual and regular course of business, if the  
6 shareholder is entitled to vote on the sale or exchange,  
7 including a sale in dissolution, but not including a sale  
8 pursuant to court order or a sale for cash pursuant to a plan  
9 by which all or substantially all of the net proceeds of the  
10 sale will be distributed to the shareholders within one year  
11 after the date of sale.

12 d. An amendment of the articles of incorporation that  
13 materially and adversely affects rights in respect of a  
14 dissenter's shares because it does any or all of the  
15 following:

16 (1) Alters or abolishes a preferential right of the  
17 shares.

18 (2) Creates, alters, or abolishes a right in respect of  
19 redemption, including a provision respecting a sinking fund  
20 for the redemption or repurchase, of the shares.

21 (3) Alters or abolishes a preemptive right of the holder  
22 of the shares to acquire shares or other securities.

23 (4) Excludes or limits the right of the shares to vote on  
24 any matter, or to cumulate votes, other than a limitation by  
25 dilution through issuance of shares or other securities with  
26 similar voting rights.

27 (5) Reduces the number of shares owned by the shareholder  
28 to a fraction of a share if the fractional share so created is  
29 to be acquired for cash under section 493B.604.

30 (6) Extends, for the first time after being governed by  
31 this chapter, the period of duration of a corporation  
32 organized under chapter 491 or 496A and existing for a period  
33 of years on the day preceding the date the corporation is  
34 first governed by this chapter.

35 e. Any corporate action taken pursuant to a shareholder

1 vote to the extent the articles of incorporation, bylaws, or a  
2 resolution of the board of directors provides that voting or  
3 nonvoting shareholders are entitled to dissent and obtain  
4 payment for their shares.

5 2. A shareholder entitled to dissent and obtain payment  
6 for the shareholder's shares under this chapter is not  
7 entitled to challenge the corporate action creating the  
8 shareholder's entitlement unless the action is unlawful or  
9 fraudulent with respect to the shareholder or the corporation.

10 Sec. 130. NEW SECTION. 493E.1303 DISSENT BY NOMINEES AND  
11 BENEFICIAL OWNERS.

12 1. A record shareholder may assert dissenters' rights as  
13 to fewer than all the shares registered in that shareholder's  
14 name only if the shareholder dissents with respect to all  
15 shares beneficially owned by any one person and notifies the  
16 corporation in writing of the name and address of each person  
17 on whose behalf the shareholder asserts dissenters' rights.  
18 The rights of a partial dissenter under this subsection are  
19 determined as if the shares as to which the shareholder  
20 dissents and the shareholder's other shares were registered in  
21 the names of different shareholders.

22 2. A beneficial shareholder may assert dissenters' rights  
23 as to shares held on the shareholder's behalf only if the  
24 shareholder does both of the following:

25 a. Submits to the corporation the record shareholder's  
26 written consent to the dissent not later than the time the  
27 beneficial shareholder asserts dissenters' rights.

28 b. Does so with respect to all shares of which the  
29 shareholder is the beneficial shareholder or over which that  
30 beneficial shareholder has power to direct the vote.

31 PART B

32 Sec. 131. NEW SECTION. 493B.1320 NOTICE OF DISSENTERS'  
33 RIGHTS.

34 1. If proposed corporate action creating dissenters'  
35 rights under section 493B.1302 is submitted to a vote at a

1 shareholders' meeting, the meeting notice must state that  
2 shareholders are or may be entitled to assert dissenters'  
3 rights under this part and be accompanied by a copy of this  
4 part.

5 2. If corporate action creating dissenters' rights under  
6 section 493B.1302 is taken without a vote of shareholders, the  
7 corporation shall notify in writing all shareholders entitled  
8 to assert dissenters' rights that the action was taken and  
9 send them the dissenters' notice described in section  
10 493B.1322.

11 Sec. 132. NEW SECTION. 493B.1321 NOTICE OF INTENT TO  
12 DEMAND PAYMENT.

13 1. If proposed corporate action creating dissenters'  
14 rights under section 493B.1302 is submitted to a vote at a  
15 shareholders' meeting, a shareholder who wishes to assert  
16 dissenters' rights must do all of the following:

17 a. Deliver to the corporation before the vote is taken  
18 written notice of the shareholder's intent to demand payment  
19 for the shareholder's shares if the proposed action is  
20 effectuated.

21 b. Not vote the dissenting shareholder's shares in favor  
22 of the proposed action.

23 2. A shareholder who does not satisfy the requirements of  
24 subsection 1, is not entitled to payment for the shareholder's  
25 shares under this part.

26 Sec. 133. NEW SECTION. 493B.1322 DISSENTERS' NOTICE.

27 1. If proposed corporate action creating dissenters'  
28 rights under section 493B.1302 is authorized at a  
29 shareholders' meeting, the corporation shall deliver a written  
30 dissenters' notice to all shareholders who satisfied the  
31 requirements of section 493B.1321.

32 2. The dissenters' notice must be sent no later than ten  
33 days after the corporate action by the shareholders was taken  
34 and must do all of the following:

35 a. State where the payment demand must be sent and where

1 and when certificates for certificated shares must be  
2 deposited.

3 b. Inform holders of uncertificated shares to what extent  
4 transfer of the shares will be restricted after the payment  
5 demand is received.

6 c. Supply a form for demanding payment that includes the  
7 date of the first announcement to news media or to  
8 shareholders of the terms of the proposed corporate action and  
9 requires that the person asserting dissenters' rights certify  
10 whether or not the person acquired beneficial ownership of the  
11 shares before that date.

12 d. Set a date by which the corporation must receive the  
13 payment demand, which date shall not be fewer than thirty nor  
14 more than sixty days after the date the subsection 1 notice is  
15 delivered.

16 e. Be accompanied by a copy of this division.

17 Sec. 134. NEW SECTION. 493B.1323 DUTY TO DEMAND PAYMENT.

18 1. A shareholder sent a dissenters' notice described in  
19 section 493B.1322 must demand payment, certify whether the  
20 shareholder acquired beneficial ownership of the shares before  
21 the date required to be set forth in the dissenter's notice  
22 pursuant to section 493B.1322, subsection 2, paragraph "c",  
23 and deposit the shareholder's certificates in accordance with  
24 the terms of the notice.

25 2. The shareholder who demands payment and deposits the  
26 shareholder's shares under subsection 1 retains all other  
27 rights of a shareholder until these rights are canceled or  
28 modified by the taking of the proposed corporate action.

29 3. A shareholder who does not demand payment or deposit  
30 the shareholder's share certificates where required, each by  
31 the date set in the dissenters' notice, is not entitled to  
32 payment for the shareholder's shares under this division.

33 Sec. 135. NEW SECTION. 493B.1324 SHARE RESTRICTIONS.

34 1. The corporation may restrict the transfer of  
35 uncertificated shares from the date the demand for their

1 payment is received until the proposed corporate action is  
2 taken or the restrictions released under section 493B.1326.

3 2. The person for whom dissenters' rights are asserted as  
4 to uncertificated shares retains all other rights of a  
5 shareholder until these rights are canceled or modified by the  
6 taking of the proposed corporate action.

7 Sec. 136. NEW SECTION. 493B.1325 PAYMENT.

8 1. Except as provided in section 493B.1327, as soon as the  
9 proposed corporate action is taken, or upon receipt of a  
10 payment demand, the corporation shall pay each dissenter who  
11 complied with section 493B.1323 the amount the corporation  
12 estimates to be the fair value of the dissenter's shares, plus  
13 accrued interest.

14 2. The payment must be accompanied by all of the  
15 following:

16 a. The corporation's balance sheet as of the end of a  
17 fiscal year ending not more than sixteen months before the  
18 date of payment, an income statement for that year, a  
19 statement of changes in shareholders' equity for that year,  
20 and the latest available interim financial statements, if any.

21 b. A statement of the corporation's estimate of the fair  
22 value of the shares.

23 c. An explanation of how the interest was calculated.

24 d. A statement of the dissenter's right to demand payment  
25 under section 493B.1328.

26 e. A copy of this division.

27 Sec. 137. NEW SECTION. 493B.1326 FAILURE TO TAKE ACTION.

28 1. If the corporation does not take the proposed action  
29 within sixty days after the date set for demanding payment and  
30 depositing share certificates, the corporation shall return  
31 the deposited certificates and release the transfer  
32 restrictions imposed on uncertificated shares.

33 2. If after returning deposited certificates and releasing  
34 transfer restrictions, the corporation takes the proposed  
35 action, it must send a new dissenters' notice under section

1 493B.1322 and repeat the payment demand procedure.

2 Sec. 138. NEW SECTION. 493B.1327 AFTER-ACQUIRED SHARES.

3 1. A corporation may elect to withhold payment required by  
4 section 493B.1325 from a dissenter unless the dissenter was  
5 the beneficial owner of the shares before the date set forth  
6 in the dissenters' notice as the date of the first  
7 announcement to news media or to shareholders of the terms of  
8 the proposed corporate action.

9 2. To the extent the corporation elects to withhold  
10 payment under subsection 1, after taking the proposed  
11 corporate action, it shall estimate the fair value of the  
12 shares, plus accrued interest, and shall pay this amount to  
13 each dissenter who agrees to accept it in full satisfaction of  
14 the dissenter's demand. The corporation shall send with its  
15 offer a statement of its estimate of the fair value of the  
16 shares, an explanation of how the interest was calculated, and  
17 a statement of the dissenter's right to demand payment under  
18 section 493B.1328.

19 Sec. 139. NEW SECTION. 493B.1328 PROCEDURE IF  
20 SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER.

21 1. A dissenter may notify the corporation in writing of  
22 the dissenter's own estimate of the fair value of the  
23 dissenter's shares and amount of interest due, and demand  
24 payment of the dissenter's estimate, less any payment under  
25 section 493B.1325, or reject the corporation's offer under  
26 section 493B.1327 and demand payment of the fair value of the  
27 dissenter's shares and interest due, if any of the following  
28 apply:

29 a. The dissenter believes that the amount paid under  
30 section 493B.1325 or offered under section 493B.1327 is less  
31 than the fair value of the dissenter's shares or that the  
32 interest due is incorrectly calculated.

33 b. The corporation fails to make payment under section  
34 493B.1325 within sixty days after the date set for demanding  
35 payment.

1 c. The corporation, having failed to take the proposed  
2 action, does not return the deposited certificates or release  
3 the transfer restrictions imposed on uncertificated shares  
4 within sixty days after the date set for demanding payment.

5 2. A dissenter waives the dissenter's right to demand  
6 payment under this section unless the dissenter notifies the  
7 corporation of the dissenter's demand in writing under  
8 subsection 1 within thirty days after the corporation made or  
9 offered payment for the dissenter's shares.

10

PART C

11 Sec. 140. NEW SECTION. 493B.1330 COURT ACTION.

12 1. If a demand for payment under section 493B.1328 remains  
13 unsettled, the corporation shall commence a proceeding within  
14 sixty days after receiving the payment demand and petition the  
15 court to determine the fair value of the shares and accrued  
16 interest. If the corporation does not commence the proceeding  
17 within the sixty-day period, it shall pay each dissenter whose  
18 demand remains unsettled the amount demanded.

19 2. The corporation shall commence the proceeding in the  
20 district court of the county where a corporation's principal  
21 office or, if none in this state, its registered office is  
22 located. If the corporation is a foreign corporation without  
23 a registered office in this state, it shall commence the  
24 proceeding in the county in this state where the registered  
25 office of the domestic corporation merged with or whose shares  
26 were acquired by the foreign corporation was located.

27 3. The corporation shall make all dissenters, whether or  
28 not residents of this state, whose demands remain unsettled  
29 parties to the proceeding as in an action against their shares  
30 and all parties must be served with a copy of the petition.  
31 Nonresidents may be served by registered or certified mail or  
32 by publication as provided by law.

33 4. The jurisdiction of the court in which the proceeding  
34 is commenced under subsection 2 is plenary and exclusive. The  
35 court may appoint one or more persons as appraisers to receive

1 evidence and recommend decision on the question of fair value.  
2 The appraisers have the powers described in the order  
3 appointing them, or in any amendment to it. The dissenters  
4 are entitled to the same discovery rights as parties in other  
5 civil proceedings.

6 5. Each dissenter made a party to the proceeding is  
7 entitled to judgment for either of the following:

8 a. The amount, if any, by which the court finds the fair  
9 value of the dissenter's shares, plus interest, exceeds the  
10 amount paid by the corporation.

11 b. The fair value, plus accrued interest, of the  
12 dissenter's after-acquired shares for which the corporation  
13 elected to withhold payment under section 493B.1327.

14 Sec. 141. NEW SECTION. 493B.1331 COURT COSTS AND COUNSEL  
15 FEES.

16 1. The court in an appraisal proceeding commenced under  
17 section 493B.1330 shall determine all costs of the proceeding,  
18 including the reasonable compensation and expenses of  
19 appraisers appointed by the court. The court shall assess the  
20 costs against the corporation, except that the court may  
21 assess costs against all or some of the dissenters, in amounts  
22 the court finds equitable, to the extent the court finds the  
23 dissenters acted arbitrarily, vexatiously, or not in good  
24 faith in demanding payment under section 493B.1328.

25 2. The court may also assess the fees and expenses of  
26 counsel and experts for the respective parties, in amounts the  
27 court finds equitable, for either of the following:

28 a. Against the corporation and in favor of any or all  
29 dissenters if the court finds the corporation did not  
30 substantially comply with the requirements of sections  
31 493B.1320 through 493B.1328.

32 b. Against either the corporation or a dissenter, in favor  
33 of any other party, if the court finds that the party against  
34 whom the fees and expenses are assessed acted arbitrarily,  
35 vexatiously, or not in good faith with respect to the rights

1 provided by this chapter.

2 3. If the court finds that the services of counsel for any  
3 dissenter were of substantial benefit to other dissenters  
4 similarly situated, and that the fees for those services  
5 should not be assessed against the corporation, the court may  
6 award to these counsel reasonable fees to be paid out of the  
7 amounts awarded the dissenters who were benefited.

8 DIVISION XIV  
9 DISSOLUTION  
10 PART A

11 Sec. 142. NEW SECTION. 493B.1401 DISSOLUTION BY  
12 INCORPORATORS OR INITIAL DIRECTORS.

13 A majority of the incorporators or initial directors of a  
14 corporation that has not issued shares or has not commenced  
15 business may dissolve the corporation by delivering to the  
16 secretary of state for filing articles of dissolution that set  
17 forth all of the following:

- 18 1. The name of the corporation.
- 19 2. The date of its incorporation.
- 20 3. Either of the following:
  - 21 a. That none of the corporation's shares has been issued.
  - 22 b. That the corporation has not commenced business.
- 23 4. That no debt of the corporation remains unpaid.
- 24 5. That the net assets of the corporation remaining after  
25 winding up have been distributed to the shareholders, if  
26 shares were issued.
- 27 6. That a majority of the incorporators or initial  
28 directors authorized the dissolution.

29 Sec. 143. NEW SECTION. 493B.1402 DISSOLUTION BY BOARD OF  
30 DIRECTORS AND SHAREHOLDERS.

- 31 1. A corporation's board of directors may propose  
32 dissolution for submission to the shareholders.
- 33 2. For a proposal to dissolve to be adopted both of the  
34 following must apply:
  - 35 a. The board of directors must recommend dissolution to

1 the shareholders unless the board of directors determines that  
2 because of conflict of interest or other special circumstances  
3 it should make no recommendation and communicates the basis  
4 for its determination to the shareholders.

5 b. The shareholders entitled to vote must approve the  
6 proposal to dissolve as provided in subsection 5.

7 3. The board of directors may condition its submission of  
8 the proposal for dissolution on any basis.

9 4. The corporation shall notify each shareholder, whether  
10 or not entitled to vote, of the proposed shareholders' meeting  
11 in accordance with section 493B.705. The notice must also  
12 state that the purpose, or one of the purposes, of the meeting  
13 is to consider dissolving the corporation.

14 5. Unless the articles of incorporation or the board of  
15 directors acting pursuant to subsection 3 requires a greater  
16 vote or a vote by voting groups, the proposal to dissolve to  
17 be adopted must be approved by a majority of all the votes  
18 entitled to be cast on that proposal.

19 Sec. 144. NEW SECTION. 493B.1403 ARTICLES OF  
20 DISSOLUTION.

21 1. At any time after dissolution is authorized, the  
22 corporation may dissolve by delivering to the secretary of  
23 state for filing articles of dissolution setting forth all of  
24 the following:

25 a. The name of the corporation.

26 b. The date dissolution was authorized.

27 c. If dissolution was approved by the shareholders, both  
28 of the following:

29 (1) The number of votes entitled to be cast on the  
30 proposal to dissolve.

31 (2) Either the total number of votes cast for and against  
32 dissolution or the total number of undisputed votes cast for  
33 dissolution and a statement that the number cast for  
34 dissolution was sufficient for approval.

35 d. If voting by voting groups was required, the

1 information required by paragraph "c" must be separately  
2 provided for each voting group entitled to vote separately on  
3 the plan to dissolve.

4 2. A corporation is dissolved upon the effective date of  
5 its articles of dissolution.

6 Sec. 145. NEW SECTION. 493B.1404 REVOCATION OF  
7 DISSOLUTION.

8 1. A corporation may revoke its dissolution within one  
9 hundred twenty days of its effective date.

10 2. Revocation of dissolution must be authorized in the  
11 same manner as the dissolution was authorized unless that  
12 authorization permitted revocation by action of the board of  
13 directors alone, in which event the board of directors may  
14 revoke the dissolution without shareholder action.

15 3. After the revocation of dissolution is authorized, the  
16 corporation may revoke the dissolution by delivering to the  
17 secretary of state for filing articles of revocation of  
18 dissolution, together with a copy of its articles of  
19 dissolution, that set forth all of the following:

20 a. The name of the corporation.

21 b. The effective date of the dissolution that was revoked.

22 c. The date that the revocation of dissolution was  
23 authorized.

24 d. If the corporation's board of directors or  
25 incorporators revoked the dissolution, a statement to that  
26 effect.

27 e. If the corporation's board of directors revoked a  
28 dissolution authorized by the shareholders, a statement that  
29 revocation was permitted by action by the board of directors  
30 alone pursuant to that authorization.

31 f. If shareholder action was required to revoke the  
32 dissolution, the information required by section 493B.1403,  
33 subsection 1, paragraph "c" or "d".

34 4. Revocation of dissolution is effective upon the  
35 effective date of the articles of revocation of dissolution.

1 5. When the revocation of dissolution is effective, it  
2 relates back to and takes effect as of the effective date of  
3 the dissolution as if the dissolution had never occurred.

4 Sec. 146. NEW SECTION. 493B.1405 EFFECT OF DISSOLUTION.

5 1. A dissolved corporation continues its corporate  
6 existence but shall not carry on any business except that  
7 appropriate to wind up and liquidate its business and affairs,  
8 including any of the following:

9 a. Collecting its assets.

10 b. Disposing of its properties that will not be  
11 distributed in kind to its shareholders.

12 c. Discharging or making provision for discharging its  
13 liabilities.

14 d. Distributing its remaining property among its  
15 shareholders according to their interests.

16 e. Doing every other act necessary to wind up and  
17 liquidate its business and affairs.

18 2. Dissolution of a corporation does not do any of the  
19 following:

20 a. Transfer title to the corporation's property.

21 b. Prevent transfer of its shares or securities, although  
22 the authorization to dissolve may provide for closing the  
23 corporation's share transfer records.

24 c. Subject its directors or officers to standards of  
25 conduct different from those prescribed in division VIII.

26 d. Change quorum or voting requirements for its board of  
27 directors or shareholders; change provisions for selection,  
28 resignation, or removal of its directors or officers or both;  
29 or change provisions for amending its bylaws.

30 e. Prevent commencement of a proceeding by or against the  
31 corporation in its corporate name.

32 f. Abate or suspend a proceeding pending by or against the  
33 corporation on the effective date of dissolution.

34 g. Terminate the authority of the registered agent of the  
35 corporation.

1     Sec. 147. NEW SECTION. 493B.1406 KNOWN CLAIMS AGAINST  
2 DISSOLVED CORPORATION.

3     1. A dissolved corporation may dispose of the known claims  
4 against it by following the procedure described in this  
5 section.

6     2. The dissolved corporation shall notify its known  
7 claimants in writing of the dissolution at any time after its  
8 effective date. The written notice must do all of the  
9 following:

10    a. Describe information that must be included in a claim.

11    b. Provide a mailing address where a claim may be sent.

12    c. State the deadline, which may not be fewer than one  
13 hundred twenty days from the effective date of the written  
14 notice, by which the dissolved corporation must receive the  
15 claim.

16    d. State that the claim will be barred if not received by  
17 the deadline.

18     3. A claim against the dissolved corporation is barred if  
19 either of the following occur:

20    a. A claimant who was given written notice under  
21 subsection 2 does not deliver the claim to the dissolved  
22 corporation by the deadline.

23    b. A claimant whose claim was rejected by the dissolved  
24 corporation does not commence a proceeding to enforce the  
25 claim within ninety days from the effective date of the  
26 rejection notice.

27     4. For purposes of this section, "claim" does not include  
28 a contingent liability or a claim based on an event occurring  
29 after the effective date of dissolution.

30     Sec. 148. NEW SECTION. 493B.1407 UNKNOWN CLAIMS AGAINST  
31 DISSOLVED CORPORATION.

32     1. A dissolved corporation may also publish notice of its  
33 dissolution and request that persons with claims against the  
34 corporation present them in accordance with the notice.

35     2. The notice must meet all of the following requirements:

1 a. Be published one time in a newspaper of general  
2 circulation in the county where the dissolved corporation's  
3 principal office or, if none in this state, its registered  
4 office is or was last located.

5 b. Describe the information that must be included in a  
6 claim and provide a mailing address where the claim may be  
7 sent.

8 c. State that a claim against the corporation will be  
9 barred unless a proceeding to enforce the claim is commenced  
10 within five years after the publication of the notice.

11 3. If the dissolved corporation publishes a newspaper  
12 notice in accordance with subsection 2, the claim of each of  
13 the following claimants is barred unless the claimant  
14 commences a proceeding to enforce the claim against the  
15 dissolved corporation within five years after the publication  
16 date of the newspaper notice:

17 a. A claimant who did not receive written notice under  
18 section 493B.1406.

19 b. A claimant whose claim was timely sent to the dissolved  
20 corporation but not acted on.

21 c. A claimant whose claim is contingent or based on an  
22 event occurring after the effective date of dissolution.

23 4. A claim may be enforced under this section in either of  
24 the following ways:

25 a. Against the dissolved corporation, to the extent of its  
26 undistributed assets.

27 b. If the assets have been distributed in liquidation,  
28 against a shareholder of the dissolved corporation to the  
29 extent of the shareholder's pro rata share of the claim or the  
30 corporate assets distributed to the shareholder in  
31 liquidation, whichever is less, but a shareholder's total  
32 liability for all claims under this section shall not exceed  
33 the total amount of assets distributed to the shareholder in  
34 liquidation.

35

PART B

1     Sec. 149. NEW SECTION. 493B.1420 GROUNDS FOR  
2 ADMINISTRATIVE DISSOLUTION.

3     The secretary of state may commence a proceeding under  
4 section 493B.1421 to administratively dissolve a corporation  
5 if any of the following apply:

6     1. The corporation does not pay within sixty days after  
7 they are due any franchise taxes or penalties imposed by this  
8 chapter or other law.

9     2. The corporation has not delivered an annual report to  
10 the secretary of state in a form that meets the requirements  
11 of section 493B.1622, within sixty days after it is due.

12    3. The corporation is without a registered agent or  
13 registered office in this state for sixty days or more.

14    4. The corporation does not notify the secretary of state  
15 within sixty days that its registered agent or registered  
16 office has been changed, that its registered agent has  
17 resigned, or that its registered office has been discontinued.

18    5. The corporation's period of duration stated in its  
19 articles of incorporation expires.

20     Sec. 150. NEW SECTION. 493B.1421 PROCEDURE FOR AND  
21 EFFECT OF ADMINISTRATIVE DISSOLUTION.

22    1. If the secretary of state determines that one or more  
23 grounds exist under section 493B.1420 for dissolving a  
24 corporation, the secretary of state shall serve the  
25 corporation with written notice of the secretary of state's  
26 determination under section 493B.504.

27    2. If the corporation does not correct each ground for  
28 dissolution or demonstrate to the reasonable satisfaction of  
29 the secretary of state that each ground determined by the  
30 secretary of state does not exist within sixty days after  
31 service of the notice is perfected under section 493B.504, the  
32 secretary of state shall administratively dissolve the  
33 corporation by signing a certificate of dissolution that  
34 recites the ground or grounds for dissolution and its  
35 effective date. The secretary of state shall file the

1 original of the certificate and serve a copy on the  
2 corporation under section 493B.504.

3 3. A corporation administratively dissolved continues its  
4 corporate existence but shall not carry on any business except  
5 that necessary to wind up and liquidate its business and  
6 affairs under section 493B.1405 and notify claimants under  
7 sections 493B.1406 and 493B.1407.

8 4. The administrative dissolution of a corporation does  
9 not terminate the authority of its registered agent.

10 Sec. 151. NEW SECTION. 493B.1422 REINSTATEMENT FOLLOWING  
11 ADMINISTRATIVE DISSOLUTION.

12 1. A corporation administratively dissolved under section  
13 493B.1421 may apply to the secretary of state for  
14 reinstatement within two years after the effective date of  
15 dissolution. The application must meet all of the following  
16 requirements:

17 a. Recite the name of the corporation at its date of  
18 dissolution and the effective date of its administrative  
19 dissolution.

20 b. State that the ground or grounds for dissolution either  
21 did not exist or have been eliminated.

22 c. State a corporate name that satisfies the requirements  
23 of section 493B.401.

24 d. Contain a certificate from the department of revenue  
25 and finance reciting that all taxes owed by the corporation  
26 have been paid.

27 2. If the secretary of state determines that the  
28 application contains the information required by subsection 1  
29 and that the information is correct, the secretary of state  
30 shall cancel the certificate of dissolution and prepare a  
31 certificate of reinstatement that recites the secretary of  
32 state's determination and the effective date of reinstatement,  
33 file the original of the certificate, and serve a copy on the  
34 corporation under section 493B.504. If the corporate name in  
35 subsection 1, paragraph "c" is different than the corporate

1 name in subsection 1, paragraph "a", the certificate of  
2 reinstatement shall constitute an amendment to the articles of  
3 incorporation insofar as it pertains to the corporate name.

4 3. When the reinstatement is effective, it relates back to  
5 and takes effect as of the effective date of the  
6 administrative dissolution as if the administrative  
7 dissolution had never occurred.

8 Sec. 152. NEW SECTION. 493B.1423 APPEAL FROM DENIAL OF  
9 REINSTATEMENT.

10 1. If the secretary of state denies a corporation's  
11 application for reinstatement following administrative  
12 dissolution, the secretary of state shall serve the  
13 corporation under section 493B.504 with a written notice that  
14 explains the reason or reasons for denial.

15 2. The corporation may appeal the denial of reinstatement  
16 to the district court within thirty days after service of the  
17 notice of denial is perfected. The corporation appeals by  
18 petitioning the court to set aside the dissolution and  
19 attaching to the petition copies of the secretary of state's  
20 certificate of dissolution, the corporation's application for  
21 reinstatement, and the secretary of state's notice of denial.

22 3. The court may summarily order the secretary of state to  
23 reinstate the dissolved corporation or may take other action  
24 the court considers appropriate.

25 4. The court's final decision may be appealed as in other  
26 civil proceedings.

27 PART C

28 Sec. 153. NEW SECTION. 493B.1430 GROUNDS FOR JUDICIAL  
29 DISSOLUTION.

30 The district court may dissolve a corporation in any of the  
31 following ways:

32 1. A proceeding by the attorney general, if it is  
33 established that either of the following apply:

34 a. The corporation obtained its articles of incorporation  
35 through fraud.

1 b. The corporation has continued to exceed or abuse the  
2 authority conferred upon it by law.

3 2. A proceeding by a shareholder if it is established that  
4 any of the following conditions exist:

5 a. The directors are deadlocked in the management of the  
6 corporate affairs, the shareholders are unable to break the  
7 deadlock, and either irreparable injury to the corporation is  
8 threatened or being suffered, or the business and affairs of  
9 the corporation can no longer be conducted to the advantage of  
10 the shareholders generally, because of the deadlock.

11 b. The directors or those in control of the corporation  
12 have acted, are acting, or will act in a manner that is  
13 illegal, oppressive, or fraudulent.

14 c. The shareholders are deadlocked in voting power and  
15 have failed, for a period that includes at least two  
16 consecutive annual meeting dates, to elect successors to  
17 directors whose terms have expired.

18 d. The corporate assets are being misapplied or wasted.

19 3. A proceeding by a creditor if it is established that  
20 either of the following apply:

21 a. The creditors claim has been reduced to judgment, the  
22 execution on the judgment returned unsatisfied, and the  
23 corporation is insolvent.

24 b. The corporation has admitted in writing that the  
25 creditors claim is due and owing and the corporation is  
26 insolvent.

27 4. A proceeding by the corporation to have its voluntary  
28 dissolution continued under court supervision.

29 Sec. 154. NEW SECTION. 4938.1431 PROCEDURE FOR JUDICIAL  
30 DISSOLUTION.

31 1. Venue for a proceeding by the attorney general to  
32 dissolve a corporation lies in Polk County. Venue for a  
33 proceeding brought by any other party named in section  
34 4938.1430 lies in the county where a corporation's principal  
35 office or, if none in this state, its registered office is or

1 was last located.

2 2. It is not necessary to make shareholders parties to a  
3 proceeding to dissolve a corporation unless relief is sought  
4 against them individually.

5 3. A court in a proceeding brought to dissolve a  
6 corporation may issue injunctions, appoint a receiver or  
7 custodian pendente lite with all powers and duties the court  
8 directs, take other action required to preserve the corporate  
9 assets wherever located, and carry on the business of the  
10 corporation until a full hearing can be held.

11 Sec. 155. NEW SECTION. 493E.1432 RECEIVERSHIP OR  
12 CUSTODIANSHIP.

13 1. A court in a judicial proceeding brought to dissolve a  
14 corporation may appoint one or more receivers to wind up and  
15 liquidate, or one or more custodians to manage, the business  
16 and affairs of the corporation. The court shall hold a  
17 hearing, after notifying all parties to the proceeding and any  
18 interested persons designated by the court, before appointing  
19 a receiver or custodian. The court appointing a receiver or  
20 custodian has exclusive jurisdiction over the corporation and  
21 all its property wherever located.

22 2. The court may appoint an individual or a domestic or  
23 foreign corporation authorized to transact business in this  
24 state as a receiver or custodian. The court may require the  
25 receiver or custodian to post bond, with or without sureties,  
26 in an amount the court directs.

27 3. The court shall describe the powers and duties of the  
28 receiver or custodian in its appointing order, which may be  
29 amended from time to time. Among other powers:

30 a. The receiver may do either or both of the following:

31 (1) Dispose of all or any part of the assets of the  
32 corporation wherever located, at a public or private sale, if  
33 authorized by the court.

34 (2) Sue and defend in the receiver's own name as receiver  
35 of the corporation in all courts of this state.

1 b. The custodian may exercise all of the powers of the  
2 corporation, through or in place of its board of directors or  
3 officers, to the extent necessary to manage the affairs of the  
4 corporation in the best interests of its shareholders and  
5 creditors.

6 4. The court during a receivership may redesignate the  
7 receiver a custodian, and during a custodianship may  
8 redesignate the custodian a receiver, if doing so is in the  
9 best interests of the corporation, its shareholders, and  
10 creditors.

11 5. The court from time to time during the receivership or  
12 custodianship may order compensation paid and expense  
13 disbursements or reimbursements made to the receiver or  
14 custodian and the receiver's or custodian's counsel from the  
15 assets of the corporation or proceeds from the sale of the  
16 assets.

17 Sec. 156. NEW SECTION. 493B.1433 DECREE OF DISSOLUTION.

18 1. If after a hearing the court determines that one or  
19 more grounds for judicial dissolution described in section  
20 493B.1430 exist, it may enter a decree dissolving the  
21 corporation and specifying the effective date of the  
22 dissolution, and the clerk of the court shall deliver a  
23 certified copy of the decree to the secretary of state, who  
24 shall file it.

25 2. After entering the decree of dissolution, the court  
26 shall direct the winding up and liquidation of the  
27 corporation's business and affairs in accordance with section  
28 493B.1405 and the notification of claimants in accordance with  
29 sections 493B.1406 and 493B.1407.

30

PART D

31 Sec. 157. NEW SECTION. 493B.1440 DEPOSIT WITH STATE  
32 TREASURER.

33 Assets of a dissolved corporation that should be  
34 transferred to a creditor, claimant, or shareholder of the  
35 corporation who cannot be found or who is not competent to

1 receive them shall be reduced to cash and deposited with the  
2 treasurer of state or other appropriate state official for  
3 safekeeping. When the creditor, claimant, or shareholder  
4 furnishes satisfactory proof of entitlement to the amount  
5 deposited, the treasurer of state or other appropriate state  
6 official shall pay the creditor, claimant, or shareholder or  
7 that person's representative that amount.

8

DIVISION XV

9

FOREIGN CORPORATIONS

10

PART A

11 Sec. 158. NEW SECTION. 493B.1501 AUTHORITY TO TRANSACT  
12 BUSINESS REQUIRED.

13 1. A foreign corporation shall not transact business in  
14 this state until it obtains a certificate of authority from  
15 the secretary of state.

16 2. The following activities, among others, do not  
17 constitute transacting business within the meaning of  
18 subsection 1:

19 a. Maintaining, defending, or settling any proceeding.

20 b. Holding meetings of the board of directors or  
21 shareholders or carrying on other activities concerning  
22 internal corporate affairs.

23 c. Maintaining bank accounts.

24 d. Maintaining offices or agencies for the transfer,  
25 exchange, and registration of the corporation's own securities  
26 or maintaining trustees or depositories with respect to those  
27 securities.

28 e. Selling through independent contractors.

29 f. Soliciting or obtaining orders, whether by mail or  
30 through employees or agents or otherwise, if the orders  
31 require acceptance outside this state before they become  
32 contracts.

33 g. Creating or acquiring indebtedness, mortgages, and  
34 security interests in real or personal property.

35 h. Securing or collecting debts or enforcing mortgages and

1 security interests in property securing the debts.

2 i. Owning, without more, real or personal property.

3 j. Conducting an isolated transaction that is completed  
4 within thirty days and that is not one in the course of  
5 repeated transactions of a like nature.

6 k. Transacting business in interstate commerce.

7 3. The list of activities in subsection 2 is not  
8 exhaustive.

9 Sec. 159. NEW SECTION. 493B.1502 CONSEQUENCES OF  
10 TRANSACTING BUSINESS WITHOUT AUTHORITY.

11 1. A foreign corporation transacting business in this  
12 state without a certificate of authority shall not maintain a  
13 proceeding in any court in this state until it obtains a  
14 certificate of authority.

15 2. The successor to a foreign corporation that transacted  
16 business in this state without a certificate of authority and  
17 the assignee of a cause of action arising out of that business  
18 shall not maintain a proceeding based on that cause of action  
19 in any court in this state until the foreign corporation or  
20 its successor obtains a certificate of authority.

21 3. A court may stay a proceeding commenced by a foreign  
22 corporation, its successor, or assignee until it determines  
23 whether the foreign corporation or its successor requires a  
24 certificate of authority. If it so determines, the court may  
25 further stay the proceeding until the foreign corporation or  
26 its successor obtains the certificate.

27 4. A foreign corporation is liable for a civil penalty of  
28 not to exceed a total of one thousand dollars if it transacts  
29 business in this state without a certificate of authority.  
30 The attorney general may collect all penalties due under this  
31 subsection.

32 5. Notwithstanding subsections 1 and 2, the failure of a  
33 foreign corporation to obtain a certificate of authority does  
34 not impair the validity of its corporate acts or prevent it  
35 from defending any proceeding in this state.

1     Sec. 160. NEW SECTION. 493B.1503 APPLICATION FOR  
2 CERTIFICATE OF AUTHORITY.

3     1. A foreign corporation may apply for a certificate of  
4 authority to transact business in this state by delivering an  
5 application to the secretary of state for filing. The  
6 application must set forth all of the following:

7     a. The name of the foreign corporation or, if its name is  
8 unavailable for use in this state, a corporate name that  
9 satisfies the requirements of section 493B.1506.

10    b. The name of the state or country under whose law it is  
11 incorporated.

12    c. Its date of incorporation and period of duration.

13    d. The street address of its principal office.

14    e. The address of its registered office in this state and  
15 the name of its registered agent at that office.

16    f. The names and usual business addresses of its current  
17 directors and officers.

18    2. The foreign corporation shall deliver with the  
19 completed application a certificate of existence or a document  
20 of similar import duly authenticated by the secretary of state  
21 or other official having custody of corporate records in the  
22 state or country under whose law it is incorporated.

23     Sec. 161. NEW SECTION. 493B.1504 AMENDED CERTIFICATE OF  
24 AUTHORITY.

25     1. A foreign corporation authorized to transact business  
26 in this state must obtain an amended certificate of authority  
27 from the secretary of state if it changes any of the  
28 following:

29     a. Its corporate name.

30     b. The period of its duration.

31     c. The state or country of its incorporation.

32     2. The requirements of section 493B.1503 for obtaining an  
33 original certificate of authority apply to obtaining an  
34 amended certificate under this section.

35     Sec. 162. NEW SECTION. 493B.1505 EFFECT OF CERTIFICATE

1 OF AUTHORITY.

2 1. A certificate of authority authorizes the foreign  
3 corporation to which it is issued to transact business in this  
4 state subject, however, to the right of the state to revoke  
5 the certificate as provided in this chapter.

6 2. A foreign corporation with a valid certificate of  
7 authority has the same but no greater rights and has the same  
8 but no greater privileges as, and except as otherwise provided  
9 in this chapter is subject to the same duties, restrictions,  
10 penalties, and liabilities now or later imposed on, a domestic  
11 corporation of like character.

12 3. This chapter does not authorize this state to regulate  
13 the organization or internal affairs of a foreign corporation  
14 authorized to transact business in this state.

15 Sec. 163. NEW SECTION. 493B.1506 CORPORATE NAME OF  
16 FOREIGN CORPORATION.

17 1. If the corporate name of a foreign corporation does not  
18 satisfy the requirements of section 493B.401, the foreign  
19 corporation, to obtain or maintain a certificate of authority  
20 to transact business in this state, may do either of the  
21 following:

22 a. Add the word "corporation", "incorporated", "company",  
23 or "limited", or the abbreviation "corp.", "inc.", "co.", or  
24 "ltd.", to its corporate name for use in this state.

25 b. Use a fictitious name to transact business in this  
26 state if its real name is unavailable and it delivers to the  
27 secretary of state for filing a copy of the resolution of its  
28 board of directors, certified by its secretary, adopting the  
29 fictitious name.

30 2. Except as authorized by subsections 3 and 4, the  
31 corporate name, including a fictitious name, of a foreign  
32 corporation must be distinguishable upon the records of the  
33 secretary of state from all of the following:

34 a. The corporate name of a corporation incorporated or  
35 authorized to transact business in this state.

1     b. A corporate name reserved or registered under section  
2 493B.402 or 493B.403.

3     c. The fictitious name of another foreign corporation  
4 authorized to transact business in this state.

5     d. The corporate name of a not-for-profit corporation  
6 incorporated or authorized to transact business in this state.

7     3. A foreign corporation may apply to the secretary of  
8 state for authorization to use in this state the name of  
9 another corporation incorporated or authorized to transact  
10 business in this state that is not distinguishable upon the  
11 secretary of state's records from the name applied for. The  
12 secretary of state shall authorize use of the name applied for  
13 if either of the following apply:

14     a. The other corporation consents to the use in writing  
15 and submits an undertaking in form satisfactory to the  
16 secretary of state to change its name to a name that is  
17 distinguishable upon the records of the secretary of state  
18 from the name of the applying corporation.

19     b. The applicant delivers to the secretary of state a  
20 certified copy of a final judgment of a court of competent  
21 jurisdiction establishing the applicant's right to use the  
22 name applied for in this state.

23     4. A foreign corporation may use in this state the name,  
24 including the fictitious name, of another domestic or foreign  
25 corporation that is used in this state if the other  
26 corporation is incorporated or authorized to transact business  
27 in this state and the foreign corporation has done any of the  
28 following:

29     a. Merged with the other corporation.

30     b. Been formed by reorganization of the other corporation.

31     c. Acquired all or substantially all of the assets,  
32 including the corporate name, of the other corporation.

33     5. If a foreign corporation authorized to transact  
34 business in this state changes its corporate name to one that  
35 does not satisfy the requirements of section 493B.401, it

1 shall not transact business in this state under the changed  
2 name until it adopts a name satisfying the requirements of  
3 section 493B.401 and obtains an amended certificate of  
4 authority under section 493B.1504.

5 Sec. 164. NEW SECTION. 493B.1507 REGISTERED OFFICE AND  
6 REGISTERED AGENT OF FOREIGN CORPORATION.

7 A foreign corporation authorized to transact business in  
8 this state must continuously maintain in this state both of  
9 the following:

10 1. A registered office that may be the same as any of its  
11 places of business.

12 2. A registered agent, who may be any of the following:

13 a. An individual who resides in this state and whose  
14 business office is identical with the registered office.

15 b. A domestic corporation or not-for-profit domestic  
16 corporation whose business office is identical with the  
17 registered office.

18 c. A foreign corporation or foreign not-for-profit  
19 corporation authorized to transact business in this state  
20 whose business office is identical with the registered office.

21 Sec. 165. NEW SECTION. 493B.1508 CHANGE OF REGISTERED  
22 OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.

23 1. A foreign corporation authorized to transact business  
24 in this state may change its registered office or registered  
25 agent by delivering to the secretary of state for filing a  
26 statement of change that sets forth:

27 a. Its name.

28 b. The street address of its current registered office.

29 c. If the current registered office is to be changed, the  
30 street address of its new registered office.

31 d. The name of its current registered agent.

32 e. If the current registered agent is to be changed, the  
33 name of its new registered agent and the new agent's written  
34 consent, either on the statement or attached to it, to the  
35 appointment.

1 f. That after the change or changes are made, the street  
2 addresses of its registered office and the business office of  
3 its registered agent will be identical.

4 2. If a registered agent changes the street address of the  
5 registered agent's business office, the registered agent may  
6 change the street address of the registered office of any  
7 foreign corporation for which the agent is the registered  
8 agent by notifying the corporation in writing of the change  
9 and signing, either manually or in facsimile, and delivering  
10 to the secretary of state for filing a statement of change  
11 that complies with the requirements of subsection 1 and  
12 recites that the corporation has been notified of the change.

13 3. A corporation may also change its registered office or  
14 registered agent in its annual report as provided in section  
15 493B.1622.

16 Sec. 166. NEW SECTION. 493B.1509 RESIGNATION OF  
17 REGISTERED AGENT OF FOREIGN CORPORATION.

18 1. The registered agent of a foreign corporation may  
19 resign the agency appointment by signing and delivering to the  
20 secretary of state for filing the original and two exact or  
21 conformed copies of a statement of resignation. The statement  
22 of resignation may include a statement that the registered  
23 office is also discontinued.

24 2. After filing the statement, the secretary of state  
25 shall attach the filing receipt to one copy and mail the copy  
26 and receipt to the registered office if not discontinued. The  
27 secretary of state shall mail the other copy of the foreign  
28 corporation to its principal office address shown in its most  
29 recent annual report.

30 3. The agency appointment is terminated, and the  
31 registered office discontinued if so provided, on the thirty-  
32 first day after the date on which the statement was filed.

33 Sec. 167. NEW SECTION. 493B.1510 SERVICE ON FOREIGN  
34 CORPORATION.

35 1. The registered agent of a foreign corporation

1 authorized to transact business in this state is the  
2 corporation's agent for service of process, notice, or demand  
3 required or permitted by law to be served on the foreign  
4 corporation.

5 2. A foreign corporation may be served by registered or  
6 certified mail, return receipt requested, addressed to the  
7 secretary of the foreign corporation at its principal office  
8 shown in its application for a certificate of authority or in  
9 its most recent annual report if the foreign corporation meets  
10 any of the following conditions:

11 a. Has no registered agent or its registered agent cannot  
12 with reasonable diligence be served.

13 b. Has withdrawn from transacting business in this state  
14 under section 493B.1520.

15 c. Has had its certificate of authority revoked under  
16 section 493B.1531.

17 3. Service is perfected under subsection 2 at the earliest  
18 of:

19 a. The date the foreign corporation receives the mail.

20 b. The date shown on the return receipt, if signed on  
21 behalf of the foreign corporation.

22 c. Five days after its deposit in the United States mail,  
23 as evidenced by the postmark, if mailed postpaid and correctly  
24 addressed.

25 4. A foreign corporation may also be served in any other  
26 manner permitted by law.

27 PART B

28 Sec. 168. NEW SECTION. 493B.1520 WITHDRAWAL OF FOREIGN  
29 CORPORATION.

30 1. A foreign corporation authorized to transact business  
31 in this state shall not withdraw from this state until it  
32 obtains a certificate of withdrawal from the secretary of  
33 state.

34 2. A foreign corporation authorized to transact business  
35 in this state may apply for a certificate of withdrawal by

1 delivering an application to the secretary of state for  
2 filing. The application must set forth all of the following:

3 a. The name of the foreign corporation and the name of the  
4 state or country under whose law it is incorporated.

5 b. That it is not transacting business in this state and  
6 that it surrenders its authority to transact business in this  
7 state.

8 c. That it revokes the authority of its registered agent  
9 to accept service on its behalf and appoints the secretary of  
10 state as its agent for service of process in any proceeding  
11 based on a cause of action arising during the time it was  
12 authorized to transact business in this state.

13 d. A mailing address to which the secretary of state may  
14 mail a copy of any process served on the secretary of state  
15 under paragraph "c".

16 e. A commitment to notify the secretary of state in the  
17 future of any change in its mailing address.

18 3. After the withdrawal of the corporation is effective,  
19 service of process on the secretary of state under this  
20 section is service on the foreign corporation. Upon receipt  
21 of process, the secretary of state shall mail a copy of the  
22 process to the foreign corporation at the mailing address set  
23 forth under subsection 2.

24 PART C

25 Sec. 169. NEW SECTION. 493B.1530 GROUNDS FOR REVOCATION.

26 The secretary of state may commence a proceeding under  
27 section 493B.1531 to revoke the certificate of authority of a  
28 foreign corporation authorized to transact business in this  
29 state if:

30 1. The foreign corporation does not deliver its annual  
31 report to the secretary of state within sixty days after it is  
32 due.

33 2. The foreign corporation does not pay within sixty days  
34 after they are due any franchise taxes or penalties imposed by  
35 this chapter or other laws.

1 3. The foreign corporation is without a registered agent  
2 or registered office in this state for sixty days or more.

3 4. The foreign corporation does not inform the secretary  
4 of state under section 493B.1508 or 493B.1509 that its  
5 registered agent or registered office has changed, that its  
6 registered agent has resigned, or that its registered office  
7 has been discontinued within sixty days of the change,  
8 resignation, or discontinuance.

9 5. An incorporator, director, officer, or agent of the  
10 foreign corporation signed a document that person knew was  
11 false in any material respect with intent that the document be  
12 delivered to the secretary of state for filing.

13 6. The secretary of state receives a duly authenticated  
14 certificate from the secretary of state or other official  
15 having custody of corporate records in the state or country  
16 under whose law the foreign corporation is incorporated  
17 stating that it has been dissolved or disappeared as the  
18 result of a merger.

19 Sec. 170. NEW SECTION. 493B.1531 PROCEDURE FOR AND  
20 EFFECT OF REVOCATION.

21 1. If the secretary of state determines that one or more  
22 grounds exist under section 493B.1530 for revocation of a  
23 certificate of authority, the secretary of state shall serve  
24 the foreign corporation with written notice of the secretary's  
25 determination under section 493B.1510.

26 2. If the foreign corporation does not correct each ground  
27 for revocation or demonstrate to the reasonable satisfaction  
28 of the secretary of state that each ground determined by the  
29 secretary of state does not exist within sixty days after  
30 service of the notice is perfected under section 493B.1510,  
31 the secretary of state may revoke the foreign corporation's  
32 certificate of authority by signing a certificate of  
33 revocation that recites the ground or grounds for revocation  
34 and its effective date. The secretary of state shall file the  
35 original of the certificate and serve a copy on the foreign

1 corporation under section 493B.1510.

2 3. The authority of a foreign corporation to transact  
3 business in this state ceases on the date shown on the  
4 certificate revoking its certificate of authority.

5 4. The secretary of state's revocation of a foreign  
6 corporation's certificate of authority appoints the secretary  
7 of state the foreign corporation's agent for service of  
8 process in any proceeding based on a cause of action which  
9 arose during the time the foreign corporation was authorized  
10 to transact business in this state. Service of process on the  
11 secretary of state under this subsection is service on the  
12 foreign corporation. Upon receipt of process, the secretary  
13 of state shall mail a copy of the process to the secretary of  
14 the foreign corporation at its principal office shown in its  
15 most recent annual report or in any subsequent communication  
16 received from the corporation stating the current mailing  
17 address of its principal office, or, if none is on file, in  
18 its application for a certificate of authority.

19 5. Revocation of a foreign corporation's certificate of  
20 authority does not terminate the authority of the registered  
21 agent of the corporation.

22 Sec. 171. NEW SECTION. 493B.1532 APPEAL FROM REVOCATION.

23 1. A foreign corporation may appeal the secretary of  
24 state's revocation of its certificate of authority to the  
25 district court within thirty days after service of the  
26 certificate of revocation is perfected under section  
27 493B.1510. The foreign corporation appeals by petitioning the  
28 court to set aside the revocation and attaching to the  
29 petition copies of its certificate of authority and the  
30 secretary of state's certificate of revocation.

31 2. The court may summarily order the secretary of state to  
32 reinstate the certificate of authority or may take any other  
33 action the court considers appropriate.

34 3. The court's final decision may be appealed as in other  
35 civil proceedings.

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DIVISION XVI  
RECORDS AND REPORTS  
PART A

Sec. 172. NEW SECTION. 493B.1601 CORPORATE RECORDS.

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of the following records:

a. Its articles or restated articles of incorporation and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

d. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years.

e. All written communications to shareholders generally within the past three years, including the financial

1 statements furnished for the past three years under section  
2 493B.1620.

3 f. A list of the names and business addresses of its  
4 current directors and officers.

5 g. Its most recent annual report delivered to the  
6 secretary of state under section 493B.1622.

7 Sec. 173. NEW SECTION. 493B.1602 INSPECTION OF RECORDS  
8 BY SHAREHOLDERS.

9 1. A shareholder of a corporation is entitled to inspect  
10 and copy, during regular business hours at the corporation's  
11 principal office, any of the records of the corporation  
12 described in section 493B.1601, subsection 5, if the  
13 shareholder gives the corporation written notice of the  
14 shareholder's demand at least five business days before the  
15 date on which the shareholder wishes to inspect and copy.

16 2. A shareholder of a corporation is entitled to inspect  
17 and copy, during regular business hours at a reasonable  
18 location specified by the corporation, any of the following  
19 records of the corporation if the shareholder meets the  
20 requirements of subsection 3 and gives the corporation written  
21 notice of the shareholder's demand at least five business days  
22 before the date on which the shareholder wishes to inspect and  
23 copy any of the following:

24 a. Excerpts from minutes of any meeting of the board of  
25 directors, records of any action of a committee of the board  
26 of directors while acting in place of the board of directors  
27 on behalf of the corporation, minutes of any meeting of the  
28 shareholders, and records of action taken by the shareholders  
29 or board of directors without a meeting, to the extent not  
30 subject to inspection under section 493B.1602, subsection 1.

31 b. Accounting records of the corporation.

32 c. The record of shareholders.

33 3. A shareholder may inspect and copy the records  
34 described in subsection 2 only if:

35 a. The shareholder's demand is made in good faith and for

1 a proper purpose.

2 b. The shareholder describes with reasonable particularity  
3 the shareholder's purpose and the records the shareholder  
4 desires to inspect.

5 c. The records are directly connected with the  
6 shareholder's purpose.

7 4. The right of inspection granted by this section shall  
8 not be abolished or limited by a corporation's articles of  
9 incorporation or bylaws.

10 5. This section does not affect either of the following:

11 a. The right of a shareholder to inspect records under  
12 section 493B.720 or, if the shareholder is in litigation with  
13 the corporation, to the same extent as any other litigant.

14 b. The power of a court, independently of this chapter, to  
15 compel the production of corporate records for examination.

16 Sec. 174. NEW SECTION. 493B.1603 SCOPE OF INSPECTION  
17 RIGHT.

18 1. A shareholder's agent or attorney has the same  
19 inspection and copying rights as the shareholder the agent or  
20 attorney represents.

21 2. The right to copy records under section 493B.1602  
22 includes, if reasonable, the right to receive copies made by  
23 photographic, xerographic, or other technological means.

24 3. The corporation may impose a reasonable charge,  
25 covering the costs of labor and material, for copies of any  
26 documents provided to the shareholder. The charge shall not  
27 exceed the estimated cost of production or reproduction of the  
28 records.

29 4. The corporation may comply with a shareholder's demand  
30 to inspect the record of shareholders under section 493B.1602,  
31 subsection 2, paragraph "c" by providing the shareholder with  
32 a list of its shareholders that was compiled no earlier than  
33 the date of the shareholder's demand.

34 Sec. 175. NEW SECTION. 493B.1604 COURT-ORDERED  
35 INSPECTION.

1 1. If a corporation does not allow a shareholder who  
2 complies with section 493B.1602, subsection 1, to inspect and  
3 copy any records required by that subsection to be available  
4 for inspection, the district court of the county where the  
5 corporation's principal office or, if none in this state, its  
6 registered office is located may summarily order inspection  
7 and copying of the records demanded at the corporation's  
8 expense upon application of the shareholder.

9 2. If a corporation does not within a reasonable time  
10 allow a shareholder to inspect and copy any other records, the  
11 shareholder who complies with section 493B.1602, subsections 2  
12 and 3 may apply to the district court in the county where the  
13 corporation's principal office or, if none in this state, its  
14 registered office is located for an order to permit inspection  
15 and copying of the records demanded. The court shall dispose  
16 of an application under this subsection on an expedited basis.

17 3. If the court orders inspection and copying of the  
18 records demanded, it shall also order the corporation to pay  
19 the shareholder's costs, including reasonable counsel fees,  
20 incurred to obtain the order unless the corporation proves  
21 that it refused inspection in good faith because it had a  
22 reasonable basis for doubt about the right of the shareholder  
23 to inspect the records demanded.

24 4. If the court orders inspection and copying of the  
25 records demanded, it may impose reasonable restrictions on the  
26 use or distribution of the records by the demanding  
27 shareholder.

28

PART B

29 Sec. 176. NEW SECTION. 493B.1620 FINANCIAL STATEMENTS  
30 FOR SHAREHOLDERS.

31 A corporation shall prepare annual financial statements,  
32 which may be consolidated or combined statements of the  
33 corporation and one or more of its subsidiaries, as  
34 appropriate, that include a balance sheet as of the end of the  
35 fiscal year and an income statement for that year. Upon

1 written request from a shareholder, a corporation, at its  
2 expense, shall furnish to that shareholder the financial  
3 statements requested. If the annual financial statements are  
4 reported upon by a public accountant, that report must  
5 accompany them.

6 Sec. 177. NEW SECTION. 493B.1621 OTHER REPORTS TO  
7 SHAREHOLDERS.

8 1. If a corporation indemnifies or advances expenses to a  
9 director under section 493B.851 through 493B.854 in connection  
10 with a proceeding by or in the right of the corporation, the  
11 corporation shall report the indemnification or advance in  
12 writing to the shareholders with or before the notice of the  
13 next shareholders' meeting.

14 2. If a corporation issues or authorizes the issuance of  
15 shares for promissory notes or for promises to render services  
16 in the future, the corporation shall report in writing to the  
17 shareholders the number of shares authorized or issued, and  
18 the consideration received by the corporation, with or before  
19 the notice of the next shareholders' meeting.

20 Sec. 178. NEW SECTION. 493B.1622 ANNUAL REPORT FOR  
21 SECRETARY OF STATE.

22 1. Each domestic corporation, and each foreign corporation  
23 authorized to transact business in this state, shall deliver  
24 to the secretary of state for filing an annual report that  
25 sets forth all of the following:

26 a. The name of the corporation and the state or country  
27 under whose law it is incorporated.

28 b. The address of its registered office and the name of  
29 its registered agent at that office in this state, together  
30 with the consent of any new registered agent.

31 c. The address of its principal office.

32 d. The names and business addresses of its directors and  
33 principal officers.

34 e. The total number of authorized shares, itemized by  
35 class and series, if any, within each class.

1 f. The total number of issued and outstanding shares,  
2 itemized by class and series, if any, within each class.

3 g. A statement of the amount of agricultural land in this  
4 state owned by the corporation.

5 h. A statement that the corporation is or is not a family  
6 farm corporation as defined in section 172C.1.

7 2. Information in the annual report must be current as of  
8 the first day of January of the year in which the report is  
9 due. The annual report shall be executed on behalf of the  
10 corporation and signed as provided in section 493B.120 or by  
11 any other person authorized by the board of directors of the  
12 corporation.

13 3. The first annual report shall be delivered to the  
14 secretary of state between January 1 and April 1 of the year  
15 following the calendar year in which a domestic corporation  
16 was incorporated or a foreign corporation was authorized to  
17 transact business. Subsequent annual reports must be  
18 delivered to the secretary of state between January 1 and  
19 April 1 of the following calendar years.

20 4. If an annual report does not contain the information  
21 required by this section, the secretary of state shall  
22 promptly notify the reporting domestic or foreign corporation  
23 in writing and return the report to it for correction. If the  
24 report is corrected to contain the information required by  
25 this section and delivered to the secretary of state within  
26 thirty days after the effective date of notice, it is deemed  
27 to be timely filed.

28 5. The secretary of state may provide for the change of  
29 registered office or registered agent on the form prescribed  
30 by the secretary of state for the annual report, provided that  
31 the form contains the information required in section 493B.502  
32 or 493B.1508. If the secretary of state determines that an  
33 annual report does not contain the information required by  
34 this section but otherwise meets the requirements of section  
35 493B.502 or 493B.1508 for the purpose of changing the

1 registered office or registered agent, the secretary of state  
2 shall file the statement of change of registered office or  
3 registered agent, effective as provided in section 493B.123,  
4 before returning the annual report to the corporation as  
5 provided in this section. A statement of change of registered  
6 office or agent pursuant to this subsection shall be executed  
7 by a person authorized to execute the annual report.

8 DIVISION XVII

9 TRANSITION PROVISIONS

10 Sec. 179. NEW SECTION. 493B.1701 APPLICATION TO EXISTING  
11 CORPORATIONS.

12 1. Except as provided in this subsection or chapters 504  
13 or 504A, this chapter does not apply to or affect entities  
14 subject to chapters 504 or 504A. Such entities continue to be  
15 governed by all laws of this state applicable to them before  
16 the effective date of this Act as those laws are amended.  
17 This chapter does not derogate or limit the powers to which  
18 such entities are entitled.

H-378219 2. Unless otherwise provided, this chapter does not apply  
19 to an entity subject to chapter 174, 175, 497, 498, 499, 499A,  
20 524, 533, or 534 or a corporation organized on the mutual plan  
H-3714 21 under chapter 491, unless such entity voluntarily elects to  
H-3714 22 adopt the provisions of this chapter and complies with the  
23 procedure prescribed by subsection 3 of this section.

24  
25 3. The procedure for the voluntary election referred to in  
26 subsection 2 is as follows:

27 a. A resolution reciting that the corporation voluntarily  
28 adopts this chapter and designating the address of its initial  
29 registered office and the name of its registered agent or  
30 agents at that office and, if the name of the corporation is  
31 not in compliance with the requirements of this chapter,  
32 amending the articles of incorporation of the corporation to  
33 change the name of the corporation to one complying with the  
34 requirements of this chapter, shall be adopted by the board of  
35 directors and shareholders by the procedure prescribed by this

1 chapter for the amendment of articles of incorporation.

2     b. Upon adoption of the required resolution or  
3 resolutions, an instrument shall be executed by the  
4 corporation by its president or a vice president and by its  
5 secretary or an assistant secretary and verified by one of the  
6 officers signing the instrument, which shall set forth all of  
7 the following:

8       (1) The name of the corporation.

9       (2) Each such resolution adopted by the corporation and  
10 the date of adoption of each resolution.

11       (3) The address of its registered office and the name of  
12 its registered agent.

13     c. The instrument shall be delivered to the secretary of  
14 state for filing and recording in the secretary of state's  
15 office, and shall be filed and recorded in the office of the  
16 county recorder. The corporation shall at the time it files  
17 the instrument with the secretary of state deliver also to the  
18 secretary of state for filing in the secretary of state's  
19 office any annual report which is then due.

20     If the county of the initial registered office as stated in  
21 the instrument is one which is other than the county where the  
22 principal place of business of the corporation, as designated  
23 in its articles of incorporation, was located, the secretary  
24 of state shall forward also to the county recorder of the  
25 county in which the principal place of business of the  
26 corporation was located a copy of the instrument and the  
27 secretary of state shall forward to the recorder of the county  
28 in which the initial registered office of the corporation is  
29 located, in addition to the original of the instrument, a copy  
30 of the articles of incorporation of the corporation together  
31 with all amendments to them as then on file in the secretary  
32 of state's office.

33     d. Upon the filing of the instrument by a corporation all  
34 of the following apply:

35       (1) All of the provisions of this chapter apply to the

1 corporation.

2 (2) The secretary of state shall issue a certificate as to  
3 the filing of the instrument and deliver the certificate to  
4 the corporation or its representative.

5 (3) The secretary of state shall not file the instrument  
6 with respect to a corporation unless at the time of filing the  
7 corporation is validly existing and in good standing in that  
8 office under the chapter under which it is incorporated. The  
9 corporation shall be considered validly existing and in good  
10 standing for the purpose of this chapter for a period of three  
11 months following the expiration date of the corporation,  
12 provided all annual reports due have been filed and all fees  
13 due in connection with the annual reports have been paid.

14 e. The provisions of this chapter becoming applicable to a  
15 corporation voluntarily electing to be governed by this  
16 chapter do not affect any right accrued or established, or any  
17 liability or penalty incurred, under the chapter under which  
18 it is incorporated prior to the filing by the secretary of  
19 state in the secretary of state's office of the instrument  
20 manifesting the election by the corporation to adopt the  
21 provisions of this chapter as provided in subsection 3.

22 4. Except as specifically provided in this chapter, this  
23 chapter applies to all domestic corporations in existence on  
24 the effective date of this Act that were incorporated under  
25 any general statute of this state providing for incorporation  
26 of corporations for profit if power to amend or repeal the  
27 statute under which the corporation was reserved.

28 5. A corporation subject to this chapter which does not  
29 have a registered office or registered agent or both  
30 designated on the records of the secretary of state is subject  
31 to all of the following provisions:

32 a. The office of the corporation set forth in its first  
33 annual report filed under this chapter shall be deemed its  
34 registered office until December 31, 1990, or until it files a  
35 designation of registered office with the secretary of state.

1 whichever is earlier.

2     b. The person signing the first annual report of the  
3 corporation filed under this chapter shall be deemed the  
4 registered agent until December 31, 1990, or a statement  
5 designating a registered agent has been filed with the  
6 secretary of state, whichever is earlier.

7     c. Section 502 does not apply to the corporation until  
8 December 31, 1990, or until the corporation files a  
9 designation of registered office and registered agent at that  
10 office with the secretary of state, whichever is earlier.

11     6. A corporation subject to this chapter is not subject to  
12 chapter 491, 492, 493, 494, 495, or 496.

13     Sec. 180. NEW SECTION. 493B.1702 APPLICATION TO  
14 QUALIFIED FOREIGN CORPORATIONS.

15     A foreign corporation authorized to transact business in  
16 this state on the effective date of this Act is subject to  
17 this chapter but is not required to obtain a new certificate  
18 of authority to transact business under this chapter.

19     Sec. 181. NEW SECTION. 493B.1703 SAVINGS PROVISIONS.

20     i. Except as provided in subsection 2, the repeal of a  
21 statute by this chapter does not affect:

22     a. The operation of the statute or any action taken under  
23 it before its repeal.

24     b. Any ratification, right, remedy, privilege, obligation,  
25 or liability acquired, accrued, or incurred under the statute  
26 before its repeal.

27     c. Any violation of the statute, or any penalty,  
28 forfeiture, or punishment incurred because of the violation,  
29 before its repeal.

30     d. Any proceeding, reorganization, or dissolution  
31 commenced under the statute before its repeal, and the  
32 proceeding, reorganization, or dissolution may be completed in  
33 accordance with the statute as if it had not been repealed.

34     2. If a penalty or punishment imposed for violation of a  
35 statute repealed by this Act is reduced by this Act, the

1 penalty or punishment if not already imposed shall be imposed  
2 in accordance with this chapter.

3 Sec. 182. NEW SECTION. 493B.1704 PREEMPTIVE RIGHTS FOR  
4 EXISTING CORPORATIONS.

5 Notwithstanding any other provision of this chapter, a  
6 corporation which was incorporated under, or which elected to  
SSS-7 be governed by, chapter 496A prior to December 31, 1989, shall  
8 be governed by the following until December 31, 1992:

9 Except to the extent limited or denied by this section or  
10 by the articles of incorporation, shareholders have a  
11 preemptive right to acquire unissued shares or securities  
12 convertible into such shares or carrying a right to subscribe  
13 to or acquire shares.

14 Unless otherwise provided in the articles of incorporation:

15 1. No preemptive right exists:

16 a. To acquire any shares issued to directors, officers, or  
17 employees pursuant to approval by the affirmative vote of the  
18 holders of a majority of the shares entitled to vote thereon  
19 or when authorized by and consistent with a plan approved by  
20 such a vote of shareholders.

21 b. To acquire any shares sold otherwise than for cash.

22 c. To acquire treasury shares of the corporation.

23 2. Holders of shares of any class that is preferred or  
24 limited as to dividends or assets are not entitled to any  
25 preemptive right.

26 3. Holders of shares of common stock are not entitled to  
27 any preemptive right to shares of any class that is preferred  
28 or limited as to dividends or assets or to any obligations,  
29 unless convertible into shares of common stock or carrying a  
30 right to subscribe to or acquire shares of common stock.

31 4. Holders of common stock without voting power have no  
32 preemptive right to shares of common stock with voting power.

33 5. The preemptive right is only an opportunity to acquire  
34 shares or other securities under such terms and conditions as  
35 the board of directors may fix for the purpose of providing a

1 fair and reasonable opportunity for the exercise of the right.

2 Sec. 183. Section 491.1, Code 1989, is amended to read as  
3 follows:

4 491.1 WHO MAY INCORPORATE.

5 Any number of persons may become incorporated under this  
6 chapter prior to July 1, 1971 for the transaction of any  
7 lawful business, but the incorporation confers no power or  
8 privilege not possessed by natural persons, except as provided  
9 in this chapter. ~~All domestic corporations shall be organized~~  
10 ~~under chapter 496A only, except for corporations which are to~~  
11 ~~become subject to one or more of the following chapters:--174,~~  
12 ~~176, 499, 499A, 504A, 506, 508, 510, 512, 514, 515, 515A,~~  
13 ~~518, 518A, 519, 524, 533, and 534.~~ All domestic corporations  
14 shall be organized under chapter 493B, except as expressly  
15 provided otherwise in chapter 493B.

3960

16 Sec. 184. NEW SECTION. 491.116 ELIMINATION OF FILING  
17 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

3883

18 Effective December 31, 1989, the provisions of this chapter  
19 relating to the filing and recording of documents in the  
20 office of the county recorder have no effect.

3960

21 Sec. 185. NEW SECTION. 496C.23 ELIMINATION OF FILING  
22 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

3883

23 Effective December 31, 1989, the provisions of this chapter  
24 relating to the filing and recording of documents in the  
25 office of the county recorder have no effect.

4077

3960

26 Sec. 186. NEW SECTION. 497.35 ELIMINATION OF FILING  
27 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

3883

28 Effective December 31, 1989, the provisions of this chapter  
29 relating to the filing and recording of documents in the  
30 office of the county recorder have no effect.

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3960

31 Sec. 187. NEW SECTION. 498.37 ELIMINATION OF FILING  
32 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

3883

33 Effective December 31, 1989, the provisions of this chapter  
34 relating to the filing and recording of documents in the  
35 office of the county recorder have no effect.

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3760-1 Sec. 188. NEW SECTION. 499.79 ELIMINATION OF FILING  
2 CORPORATE DOCUMENTS WITH COUNTY RECORDER.  
3883-3 Effective December 31, 1989, the provisions of this chapter  
4 relating to the filing and recording of documents in the  
5 office of the county recorder have no effect.  
3760-5 Sec. 189. NEW SECTION. 499A.22 ELIMINATION OF FILING  
7 CORPORATE DOCUMENTS WITH COUNTY RECORDER.  
3883-8 Effective December 31, 1989, the provisions of this chapter  
9 relating to the filing and recording of documents in the  
10 office of the county recorder have no effect.  
3760-11 Sec. 190. NEW SECTION. 499B.20 ELIMINATION OF FILING  
12 CORPORATE DOCUMENTS WITH COUNTY RECORDER.  
3883-13 Effective December 31, 1989, the provisions of this chapter  
14 relating to the filing and recording of documents in the  
15 office of the county recorder have no effect.  
3760-16 Sec. 191. NEW SECTION. 504.33 ELIMINATION OF FILING  
17 CORPORATE DOCUMENTS WITH COUNTY RECORDER.  
3883-18 Effective December 31, 1989, the provisions of this chapter  
19 relating to the filing and recording of documents in the  
20 office of the county recorder have no effect.  
21 Sec. 192. Section 504A.6, Code 1989, is amended by  
22 striking the section and inserting in lieu thereof the  
23 following:  
24 504A.6 CORPORATE NAME.  
25 1. A corporate name shall not contain language stating or  
26 implying that the corporation is organized for a purpose other  
27 than that permitted by its articles of incorporation.  
28 2. Except as authorized by subsections 3 and 4, a  
29 corporate name must be distinguishable upon the records of the  
30 secretary of state from all of the following:  
31 a. The corporate name of a nonprofit corporation or  
32 business corporation incorporated or authorized to conduct  
33 affairs or do business in this state.  
34 b. A corporate name reserved under section 504A.7, or  
35 reserved or registered under the Iowa business corporation

1 Act.

2 c. The fictitious name of a foreign business or nonprofit  
3 corporation authorized to transact business or conduct affairs  
4 in this state because its real name is unavailable.

5 3. A corporation may apply to the secretary of state for  
6 authorization to use a name that is not distinguishable upon  
7 the secretary's records from one or more of the names  
8 described in subsection 2. The secretary of state shall  
9 authorize use of the name applied for if one of the following  
10 conditions applies:

11 a. The other corporation consents to the use in writing  
12 and submits an undertaking in a form satisfactory to the  
13 secretary of state to change its name to a name that is  
14 distinguishable upon the records of the secretary of state  
15 from the name of the applying corporation.

16 b. The applicant delivers to the secretary of state a  
17 certified copy of the final judgment of a court of competent  
18 jurisdiction establishing the applicant's right to use the  
19 name applied for in this state.

20 4. A corporation may use the name, including the  
21 fictitious name, of another domestic or foreign corporation  
22 that is used in this state if the other corporation is  
23 incorporated or authorized to conduct affairs or transact  
24 business in this state and the proposed user corporation meets  
25 one of the following conditions:

26 a. Has merged with the other corporation.

27 b. Has been formed by reorganization of the other  
28 corporation.

29 c. Has acquired all or substantially all of the assets,  
30 including the corporate name, of the other corporation.

31 5. This chapter does not control the use of fictitious  
32 names; however, if a corporation uses a fictitious name in  
33 this state it shall deliver to the secretary of state for  
34 filing a copy of the resolution of its board of directors,  
35 certified by its secretary, adopting the fictitious name.

1     Sec. 193. Section 504A.67, Code 1989, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4     504A.67 NAME OF A FOREIGN CORPORATION.

5     1. If the corporate name of a foreign corporation does not  
6 satisfy the requirements of section 504A.6, the foreign  
7 corporation, to obtain or maintain a certificate of authority  
8 to conduct affairs in this state, may use a fictitious name to  
9 transact business in this state if its real name is  
10 unavailable and it delivers to the secretary of state for  
11 filing a copy of the resolution of its board of directors,  
12 certified by its secretary, adopting the fictitious name.

13     2. Except as authorized by subsections 3 and 4, the  
14 corporate name, including a fictitious name, of a corporation  
15 must be distinguishable upon the records of the secretary of  
16 state from all of the following:

17     a. The corporate name of a nonprofit or business  
18 corporation incorporated or authorized to conduct affairs or  
19 to transact business in this state.

20     b. A corporate name reserved under section 504A.7 or  
21 section 493B.402, or registered under section 493B.403.

22     c. The fictitious name of another foreign business or  
23 nonprofit corporation authorized to transact business or  
24 conduct affairs in this state.

25     3. A foreign corporation may apply to the secretary of  
26 state for authorization to use in this state the name of  
27 another corporation, incorporated or authorized to transact  
28 business or conduct affairs in this state, that is not  
29 distinguishable upon the records of the secretary of state  
30 from the name applied for. The secretary of state shall  
31 authorize use of the name applied for if one of the following  
32 conditions applies:

33     a. The other corporation consents to the use in writing  
34 and submits an undertaking in a form satisfactory to the  
35 secretary of state to change its name to a name that is

1 distinguishable upon the records of the secretary of state  
2 from the name of the applying corporation.

3 b. The applicant delivers to the secretary of state a  
4 certified copy of a final judgment of a court of competent  
5 jurisdiction establishing the applicant's right to use the  
6 name applied for in this state.

7 4. A foreign corporation may use in this state the name,  
8 including a fictitious name, of another domestic or foreign  
9 business or nonprofit corporation that is used in this state  
10 if the other corporation is incorporated or authorized to  
11 transact business or conduct affairs in this state and the  
12 foreign corporation meets one of the following conditions:

13 a. Has merged with the other corporation.

14 b. Has been formed by reorganization of the other  
15 corporation.

16 c. Has acquired all or substantially all of the assets,  
17 including the corporate name, of the other corporation.

18 5. If a foreign corporation authorized to conduct affairs  
19 in this state changes its corporate name to one that does not  
20 satisfy the requirements of section 504A.6, it shall not  
21 conduct affairs in this state under the changed name until it  
22 adopts a name satisfying the requirements of section 504A.6  
23 and obtains an amended certificate of authority.

3485, 3887-  
3160

24 Sec. 194. NEW SECTION. 504A.102 ELIMINATION OF FILING  
25 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

26 Effective December 31, 1989, the provisions of this chapter  
27 relating to the filing and recording of documents in the  
28 office of the county recorder have no effect.

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29 Sec. 195. Section 508.12, Code 1989, is amended to read as  
30 follows:

31 508.12 REDOMESTICATION OF INSURERS.

32 An insurer which is organized under the laws of any state,  
33 and is admitted to do business in this state for the purpose  
34 of writing insurance authorized by this chapter may become a  
35 domestic insurer by complying with section 491.33 or 493B.902

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1 and with all of the requirements of law relative to the  
2 organization and licensing of a domestic insurer of the same  
3 type and by designating its principal place of business in  
4 this state, and, upon payment to the commissioner of insurance  
5 of a transfer tax in a sum equal to twenty-five percent of the  
6 premium tax paid pursuant to the provisions of chapter 432 for  
7 the last calendar year immediately preceding its becoming a  
8 domestic corporation or the sum of ten thousand dollars,  
9 whichever is the lesser but not less than one thousand  
10 dollars, may become a domestic corporation and be entitled to  
11 like certificates of its corporate existence and license to  
12 transact business in this state, and be subject in all  
13 respects to the authority and jurisdiction thereof.

14 The certificates of authority, agent's appointments and  
15 licenses, rates, and other items which are in existence at the  
16 time any insurer transfers its corporate domicile to this  
17 state, pursuant to this section, shall continue in full force  
18 and effect upon such transfer. For purposes of existing  
19 authorizations and all other corporate purposes, the insurer  
20 is deemed the same entity as it was prior to the transfer of  
21 its domicile. All outstanding policies of any transferring  
22 insurer shall remain in full force and effect and need not be  
23 endorsed as to any new name of the company or its new location  
24 unless so ordered by the commissioner of insurance.

25 Sec. 196. Section 515.1, Code 1989, is amended to read as  
26 follows:

27 515.1 APPLICABILITY.

28 Corporations formed for the purpose of insurance, other  
29 than life insurance, shall be governed by the provisions of  
30 ~~H-399~~ chapter 491, chapter 493B, or chapter 504A, except as modified  
31 by the provisions of this chapter.

32 Sec. 197. Section 515.99, Code 1989, is amended by  
33 striking the section and inserting the following in lieu  
34 thereof:

35 515.99 FOREIGN COMPANIES MAY BECOME DOMESTIC.

1 An insurer which is organized under the laws of any state,  
2 and is admitted to do business in this state for the purpose  
3 of writing insurance authorized by this chapter may become a  
H-39834 4 domestic insurer by complying with section 491.33 or 493B.902  
5 and with all of the requirements of law relative to the  
6 organization and licensing of a domestic insurer of the same  
7 type and by designating its principal place of business in  
8 this state, and, upon payment to the commissioner of insurance  
9 of a transfer tax in a sum equal to twenty-five percent of the  
10 premium tax paid pursuant to the provisions of chapter 432 for  
11 the last calendar year immediately preceding its becoming a  
12 domestic corporation or the sum of ten thousand dollars,  
13 whichever is the lesser but not less than one thousand  
14 dollars, may become a domestic corporation and be entitled to  
15 like certificates of its corporate existence and license to  
16 transact business in this state, and be subject in all  
17 respects to the authority and jurisdiction thereof.

18 The certificates of authority, agent's appointments and  
19 licenses, rates, and other items which are in existence at the  
20 time any insurer transfers its corporate domicile to this  
21 state, pursuant to this section, shall continue in full force  
22 and effect upon such transfer. For purposes of existing  
23 authorizations and all other corporate purposes, the insurer  
24 is deemed the same entity as it was prior to the transfer of  
25 its domicile. All outstanding policies of any transferring  
26 insurer shall remain in full force and effect and need not be  
27 endorsed as to any new name of the company or its new location  
28 unless so ordered by the commissioner of insurance.

29 Sec. 198. Section 545.102, subsection 4, Code 1989, is  
30 amended by striking the subsection and inserting the  
31 following:

32 4. Shall be distinguishable upon the records of the  
33 secretary of state from the name of a corporation or limited  
34 partnership organized under the law of this state or licensed  
35 or registered as a foreign corporation or foreign limited

1 partnership in this state or a name the exclusive right to  
2 which is, at the time, reserved in the manner provided in this  
3 chapter, without the written consent of the corporation or  
4 limited partnership, which consent shall be filed with the  
5 secretary of state, and provided the name is not identical.

6 Sec. 199. NEW SECTION. 545.1107 ELIMINATION OF FILING  
7 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

8 Effective December 31, 1989, the provisions of this chapter  
9 relating to the filing and recording of documents in the  
10 office of the county recorder have no effect.

11 Sec. 200. Chapter 496A is repealed.

12 Sec. 201. This Act is effective December 31, 1989.

13 EXPLANATION

14 The bill enacts a new general business corporation law.  
15 The existing law was adopted in 1959 and was based on the  
16 then-existing Model Business Corporation Act. In 1984 the  
17 committee on corporate laws of the American bar association  
18 adopted a total revision of the Model Act and the bill is  
19 based on that revised Act, with minor variations for existing  
20 Iowa law.

21 The bill codifies many of the developments in corporate  
22 laws since the enactment of the Model Act. It will reorganize  
23 the sections of the corporate law so as to group the  
24 provisions by subject matter.

25 The bill repeals existing corporate laws and requires that  
26 all corporations must be incorporated under the new chapter  
27 except some specific regulated corporations such as banks and  
28 mutual insurance companies. All foreign corporations are  
29 required to become admitted to do business under the new law.

30 Among the major substantive changes are the following:

31 The bill simplifies many corporate procedures. One of the  
32 simplifications permits a corporation to file corporate  
33 documents only with the secretary of state's office and  
34 deletes requirements for corporate documents to also be  
35 recorded at the county recorder's office.

1 The bill eliminates the concept of par value of shares of  
2 stock. While a corporation could continue to provide that its  
3 stock have a par value, the legal effect of par value is  
4 deleted.

5 The bill permits corporations to issue shares of stock for  
6 whatever consideration is deemed appropriate by its board of  
7 directors. It would not be necessary to receive the par value  
8 for the shares and contracts for future services and  
9 promissory notes could be used to make payment for the shares.

10 Under the bill all forms of distributions to shareholders  
11 will be governed by the same standards. Under current law  
12 differing standards exist in areas of dividends, partial  
13 liquidations, redemptions and repurchases. The bill  
14 specifies that any such distributions may not take place if  
15 the corporation would thereby be insolvent or would not pay  
16 its liabilities or make distributions to shares with a  
17 liquidation preference.

18 Under the bill corporate action can be taken without a  
19 meeting by consent of the holders of ninety percent of the  
20 stock, while existing law requires that such consents be  
21 unanimous.

22 The bill provides that a quorum of shareholders can be such  
23 number as specified in the articles and does not require that  
24 it be any specific minimum. The bill would limit the ability  
25 of directors to increase or decrease the number of members on  
26 the board by more than thirty percent.

27 The bill provides a method by which a corporation, by vote  
28 of its shareholders, could agree to a mandatory exchange of  
29 shares with another corporation. The bill also eliminates the  
30 concept of consolidation of two corporations into a third.

31 The bill changes many of the procedures to be used in a  
32 merger and permits the merger to be approved by a majority of  
33 the shareholders.

34 The bill permits involuntary dissolutions of a corporation  
35 to be done by administrative actions by the secretary of state

1 if the corporation has failed to meet its reporting  
2 requirements. The bill will permit reinstatement of a  
3 dissolved corporation for a two-year period after the  
4 secretary of state's involuntary dissolution of the  
5 corporation for failure to report.

6 The bill provides a special effective date of December 31,  
7 1989.

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SENATE FILE 502  
FISCAL NOTE

A fiscal note for **SENATE FILE 502** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 502 repeals the general business corporation law found in Chapter 496A and enacts the "Iowa Business Corporation Act" as Chapter 493B to become effective December 31, 1989. This bill is based on the 1984 total revision of the Model Business Corporation Act adopted by the American Bar Association. The bill makes numerous changes including simplifying many corporate procedures, permitting corporations to file only with the Secretary of State and deleting the requirements for filing at the County Recorder's Office, and permitting involuntary dissolutions of a corporation by administrative action of the Secretary of State if a corporation fails to meet its reporting requirements.

Assumptions:

- A. Current income from business corporation law.  
Eighty percent of the annual income from corporate filings is attributable to the Business Corporation act.
1. Total corporate filings:  $\$850,000 \times 80\% = \$680,000$
  2. Total annual report filings:  $\$1,500,000 \times 80\% = \$1,200,000$
  3. Total current income (#1 + #2):  $\$1,880,000$
- B. Revenue neutral features of New Business Corporation Act.  
Fifteen percent of the income from current corporate filing fees is generated from fees that are eliminated under the new law. Under the new law, the annual report filing fee will be \$30; the previous variable fee averaged \$30; therefore the same revenue will be produced by annual report filings.
1. Current corporate filing revenues:  $\$680,000$  (see above)
  2. Decreased corporate filing revenues:  $\$680,000 \times 15\% = \$102,000$
  3. Unaffected corporate filing revenues (#1 - #2):  $\$578,000$
  4. Unaffected corporate annual report revenue:  $\$1,200,000$
  5. Total unaffected revenue (#3 + #4):  $\$1,778,000$
- C. New income generated by the proposed law.
1. Articles of correction: 6,000 at \$5 =  $\$30,000$
  2. Applications for use of indistinguishable name: 100 at \$10 =  $\$1,000$
  3. Additional corporations required to file annual report:  
700 at \$30 =  $\$21,000$
  4. Total new income (#1 + #2 + #3):  $\$52,000$
- D. Total revenue for FY 1990.

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Half the year will be under the old law; half will be under the new law.

1. FY 1990 Revenues under old law: \$1,880,000 x 50% = \$940,000
2. FY 1990 Revenues under new law: \$1,830,000 x 50% = \$915,000
3. Total: FY 1990 Revenues (#1 + #2): \$1,855,000

E. Change in expenditures.

1. A programmer will be needed through FY 1992 to revise the corporations computer programs and make improvements to the Uniform Commercial Code programs: \$41,000.
2. Systems support: \$30,000
3. Total additional annual expenditures: \$71,000

F. Effects on county revenue.

The proposed law eliminates the recording of all corporate documents at the County Recorder's Office.

1. Estimated 17,200 documents averaging 2 pages each are filed annually at all County Recorder's Offices: 34,400 pages total
2. Total revenue loss for all counties: \$5 per page x 34,400 pages = \$172,000

Fiscal Impact:

A. Effect on the General Fund:

(dollars in thousands)

	Fiscal Year 1990			Fiscal Year 1991		
	Current Law	Proposed Law	Increase (Decrease)	Current Law	Proposed Law	Increase (Decrease)
<b>REVENUE</b>						
Fees	\$ 1,880.0	\$ 1,855.0	\$ (25.0)	\$ 1,880.0	\$ 1,830.0	\$ (50.0)
<b>EXPENDITURES</b>						
Salaries (FTE's)	\$ 1,170.0	\$ 1,211.4	\$ 41.4	\$ 1,170.0	\$ 1,211.4	\$ 41.4
Support	( 46.0)	( 47.0)	( 1.0)	( 46.0)	( 47.0)	( 1.0)
Total	100.0	130.0	30.0	100.0	130.0	30.0
	\$ 1,270.0	\$ 1,341.4	\$ 71.4	\$ 1,270.0	\$ 1,341.4	\$ 71.4
<b>NET EFFECT</b>	\$ <u>610.0</u>	\$ <u>513.6</u>	\$ <u>(96.4)</u>	\$ <u>610.0</u>	\$ <u>488.6</u>	\$ <u>(121.4)</u>

## 8. Effect on counties revenues:

There will be a loss of \$172,000 across all counties. This loss will not be evenly distributed since more corporations are located in the counties with large cities.

Source: Secretary of State

(LSB 1231sv, MDF)

FILED APRIL 4, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

## SENATE FILE 502

H-3883

1 Amend Senate File 502, as passed by the Senate, as  
2 follows:

4#17 3 1. Page 29, by inserting after line 33, the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 493B.624A POISON PILL  
6 DEFENSE AUTHORIZED.

7 The terms and conditions of stock rights or options  
8 issued by the corporation may include, without  
9 limitation, restrictions, or conditions that preclude  
10 or limit the exercise, transfer, or receipt of such  
11 rights or options by a person, or group of persons,  
12 owning or offering to acquire a specified number or  
13 percentage of the outstanding common shares or other  
14 securities of the corporation, or a transferee of the  
15 offeror, or that invalidate or void such stock rights  
16 or options held by an offeror or a transferee of the  
17 offeror."

18 2. Page 84, by inserting after line 33, the  
19 following:

20 "Sec. \_\_\_\_ . NEW SECTION. 493B.1108 CONSIDERATION  
21 OF COMMUNITY INTERESTS IN CONSIDERATION OF ACQUISITION  
22 PROPOSALS.

23 1. A director, in determining what is in the best  
24 interest of the corporation when considering a tender  
25 offer or proposal of acquisition, merger,  
26 consolidation, or similar proposal, may consider any  
27 or all of the following community interest factors, in  
28 addition to consideration of the effects of any action  
29 on shareholders:

30 a. The effects of the action on the corporation's  
31 employees, suppliers, creditors, and customers.

32 b. The effects of the action on the communities in  
33 which the corporation operates.

34 c. The long-term as well as short-term interests  
35 of the corporation and its shareholders, including the  
36 possibility that these interests may be best served by  
37 the continued independence of the corporation.

38 2. If on the basis of the community interest  
39 factors described in paragraph 1, the board of  
40 directors determines that a proposal or offer to  
41 acquire or merge the corporation is not in the best  
42 interests of the corporation, it may reject the  
43 proposal or offer. If the board of directors  
44 determines to reject any such proposal or offer, the  
45 board of directors has no obligation to facilitate, to  
46 remove any barriers to, or to refrain from impeding,  
47 the proposal or offer. Consideration of any or all of  
48 the community interest factors is not a violation of  
49 the business judgment rule or of any duty of the  
50 director to the shareholders, or a group of

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1 shareholders, even if the director reasonably  
2 determines that a community interest factor or factors  
3 outweigh the financial or other benefits to the  
4 corporation or a shareholder or group of  
5 shareholders."

4017  
4017-6 3. Page 129, line 7, by striking the figure  
7 "1989" and inserting the following: "1990".

8 4. Page 130, by inserting after line 15, the  
9 following:

10 "Sec. \_\_\_\_ . NEW SECTION. 491.101A POISON PILL  
11 DEFENSE AUTHORIZED.

12 The terms and conditions of stock rights or options  
13 issued by the corporation may include, without  
14 limitation, restrictions, or conditions that preclude  
15 or limit the exercise, transfer, or receipt of such  
16 rights or options by a person, or group of persons,  
17 owning or offering to acquire a specified number or  
18 percentage of the outstanding common shares or other  
19 securities of the corporation, or a transferee of the  
20 offeror, or that invalidate or void such stock rights  
21 or options held by an offeror or a transferee of the  
22 offeror.

23 Sec. \_\_\_\_ . NEW SECTION. 491.101B CONSIDERATION OF  
24 COMMUNITY INTERESTS IN CONSIDERATION OF ACQUISITION  
25 PROPOSALS.

26 1. A director, in determining what is in the best  
27 interest of the corporation when considering a tender  
28 offer or proposal of acquisition, merger,  
29 consolidation, or similar proposal, may consider any  
30 or all of the following community interest factors, in  
31 addition to consideration of the effects of any action  
32 on shareholders:

33 a. The effects of the action on the corporation's  
34 employees, suppliers, creditors, and customers.

35 b. The effects of the action on the communities in  
36 which the corporation operates.

37 c. The long-term as well as short-term interests  
38 of the corporation and its shareholders, including the  
39 possibility that these interests may be best served by  
40 the continued independence of the corporation.

41 2. If on the basis of the community interest  
42 factors described in paragraph 1, the board of  
43 directors determines that a proposal or offer to  
44 acquire or merge the corporation is not in the best  
45 interests of the corporation, it may reject the  
46 proposal or offer. If the board of directors  
47 determines to reject any such proposal or offer, the  
48 board of directors has no obligation to facilitate, to  
49 remove any barriers to, or to refrain from impeding,  
50 the proposal or offer. Consideration of any or all of

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1 the community interest factors is not a violation of  
 2 the business judgment rule or of any duty of the  
 3 director to the shareholders, or a group of  
 4 shareholders, even if the director reasonably  
 5 determines that a community interest factor or factors  
 6 outweigh the financial or other benefits to the  
 7 corporation or a shareholder or group of  
 8 shareholders."

- 40179 5. Page 130, line 18, by striking the figure  
 10 "1989" and inserting the following: "1990".  
 11 6. Page 130, line 23, by striking the figure  
 12 "1989" and inserting the following: "1990".  
 13 7. Page 130, line 28, by striking the figure  
 14 "1989" and inserting the following: "1990".  
 15 8. Page 130, line 33, by striking the figure  
 16 "1989" and inserting the following: "1990".  
 17 9. Page 131, line 3, by striking the figure  
 18 "1989" and inserting the following: "1990".  
 19 10. Page 131, line 8, by striking the figure  
 20 "1989" and inserting the following: "1990".  
 21 11. Page 131, line 13, by striking the figure  
 22 "1989" and inserting the following: "1990".  
 23 12. Page 131, line 18, by striking the figure  
 24 "1989" and inserting the following: "1990".  
 25 13. Page 137, line 12, by striking the figure  
 26 "1989" and inserting the following: "1990".  
 27 14. By renumbering as necessary.

By COMMITTEE ON JUDICIARY AND  
 LAW ENFORCEMENT

JAY of Appanoose, Chairperson

H-3883 FILED APRIL 6, 1989

*adopted 4-21-89 (p. 185)*

SENATE FILE 502

H-3887

- 1 Amend Senate File 502, as passed by the Senate, as  
 2 follows:  
 3 1. By striking page 134, line 24, through page  
 4 137, line 10.  
 5 2. By renumbering as necessary.

By SCHNEKLOTH of Scott

H-3887 FILED APRIL 6, 1989

*Withdrawn 4-24-89 (p. 1830)*

## SENATE FILE 502

H-3982

- 1 Amend Senate File 502, as passed by the Senate, as  
2 follows:
- 3 1. Page 24, line 7, by inserting after the word  
4 "issue." the following: "For a mutual insurance  
5 company, in which shares are policies, the articles of  
6 incorporation do not need to prescribe the classes of  
7 shares or policies and the number of authorized  
8 shares."
- 9 2. Page 125, lines 21 and 22, by striking the  
10 words "or a corporation organized on the mutual plan  
11 under chapter 491".
- 12 3. Page 134, line 35, by striking the word and  
13 figure "491.33 or" and inserting the following:  
14 "491.33".
- 15 4. Page 135, line 30, by striking the word and  
16 figures "491, chapter 493B," and inserting the  
17 following: "491 493B".
- 18 5. Page 136, line 4, by striking the word and  
19 figure "491.33 or".

By BRAMMER of Linn

H-3982, FILED APRIL 12, 1989

lost 4-24-89 (p. 1806)

SENATE FILE 502

H-3940

1 Amend Senate File 502, as passed by the Senate, as  
2 follows:

3 1. Page 125, line 22, by inserting after the  
4 figure "491," the following: "a telephone company  
5 organized as a corporation under chapter 491  
6 qualifying pursuant to an internal revenue service  
7 letter ruling under I.R.C. § 501(c)(12) as a nonprofit  
8 corporation entitled to distribute profits in the same  
9 manner as a chapter 499 corporation,".

By KREMER of Buchanan

H-3940 FILED APRIL 10, 1989

*withdrawn 4-24-89 (p.1826)*  
SENATE FILE 502

H-3945

1 Amend Senate File 502, as passed by the Senate, as  
2 follows:

3 1. By striking page 134, line 24, through page  
4 137, line 10.

5 2. By renumbering as necessary.

By VAN MAANEN of Mahaska

H-3945 FILED APRIL 10, 1989

*withdrawn 4-24-89 (p.1830)*

SENATE FILE 502

H-3960

1 Amend Senate File 502, as passed by the Senate, as  
2 follows:

3 1. Page 1, line 19, by inserting after the word  
4 "state" the following: "and filed and recorded in the  
5 office of the county recorder".

6 2. By striking page 130, line 16, through page  
7 131, line 20.

8 3. Page 134, by striking lines 24 through 28.

9 4. Page 137, by striking lines 6 through 10.

10 5. By renumbering as necessary.

By VAN MAANEN of Mahaska

H-3960 FILED APRIL 11, 1989

*withdrawn 4-24-89 (p.1820)*

SENATE FILE 502

H-3972

1 Amend Senate File 502, as passed by the Senate, as  
2 follows:

3 1. Page 125, line 22, by inserting after the  
4 figure "491," the following: "a telephone company  
5 organized as a corporation under chapter 491  
6 qualifying pursuant to an internal revenue service  
7 letter ruling under I.R.C. § 501(c)(12) as a nonprofit  
8 corporation entitled to distribute profits in a manner  
9 similar to a chapter 499 corporation,".

By KREMER of Buchanan

H-3972 FILED APRIL 12, 1989

*withdrawn 4-24-89 (p.1826)*

SENATE FILE 502

H-4017

1 Amend amendment, H-3883, to Senate File 502, as  
2 passed by the Senate, as follows:

3 1. Page 1, by inserting after line 2, the  
4 following:

5 " . Page 8, by inserting after line 6, the  
6 following:

7 "Sec. . NEW SECTION. 493B.130 RECORDING OF  
8 DOCUMENTS WITH COUNTY RECORDER.

9 A domestic corporation shall provide the secretary  
10 of state with a copy of each document, except an  
11 annual report which does not change the registered  
12 office or registered agent of the corporation,  
13 delivered by the corporation for filing with the  
14 secretary of state. A registered agent who delivers  
15 to the secretary of state for filing a statement  
16 pursuant to section 493B.502, subsection 2, or files a  
17 statement pursuant to section 493B.502, subsection 3,  
18 shall provide a copy of the statement to the secretary  
19 of state. A registered agent who delivers to the  
20 secretary of state for filing a statement pursuant to  
21 section 493B.503, subsection 1, shall provide an  
22 additional copy pursuant to this section. If a  
23 registered agent delivers for filing with the  
24 secretary of state a statement changing the  
25 operation's business address from one county to  
26 another county or the corporation delivers for filing  
27 with the secretary of state a statement changing its  
28 registered office from one county to another county,  
29 two copies of the statement shall be provided to the  
30 secretary of state. The secretary of state shall  
31 stamp the copy or copies provided by the corporation  
32 or registered agent indicating receipt by the  
33 secretary of state and shall send the copy or copies  
34 to the county recorder. Upon receipt of the copy and  
35 upon receipt of the recording fees due the county  
36 recorder, the county recorder shall record and index  
37 the copy and return the copy to the corporation or  
38 registered agent who provided the copy.  
39 Notwithstanding section 331.602, subsection 1,  
40 original signatures and typed or printed names of  
41 signatories are not required on the copy to be  
42 recorded pursuant to this section. For purposes of  
43 this section, "county recorder" means the county  
44 recorder of the county in which the registered office  
45 of the corporation is located as shown on the records  
46 of the secretary of state, except that with respect to  
47 a change of registered office changing the location of  
48 the registered office from one county to another,  
49 "county recorder" means the county recorder for the  
50 county in which the registered office is located

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Page 2

1 before the change and the county recorder for the  
2 county in which the registered office is located after  
3 the change."

4 2. Page 2, by inserting after line 5 the  
5 following:

6 "\_\_\_\_\_. Page 127, line 27, by inserting after the  
7 word "corporation" the following: "was  
8 incorporated"."

9 3. Page 2, by striking lines 6 and 7.

10 4. Page 3, by striking lines 9 through 26, and  
11 inserting the following:

12 "\_\_\_\_\_. Page 130, by striking lines 16 through 35.  
13 \_\_\_\_\_ Page 131, by striking lines 1 through 20.

14 \_\_\_\_\_ Page 134, by striking lines 24 through 28.  
15 \_\_\_\_\_ Page 137, by striking lines 6 through 10."

16 5. By renumbering as necessary.

By JAY of Appanoose

PETERSON of Carroll

SCHNEKLOTH of Scott  
VAN MAANEN of Mahaska

H-4017 FILED APRIL 13, 1989

adopted 4-24-89 (p.1835)

## SENATE FILE 502

H-4047

1 Amend Senate File 502, as passed by the Senate, as  
2 follows:

3 1. Page 125, line 22, by inserting after the  
4 figure "491," the following: "or a telephone company  
5 organized as a corporation under chapter 491  
6 qualifying pursuant to an internal revenue service  
7 letter ruling under I.R.C. § 501(c)(12) as a nonprofit  
8 corporation entitled to distribute profits in a manner  
9 similar to a chapter 499 corporation,".

By KREMER of Buchanan

H-4047 FILED APRIL 14, 1989

*adopted 4-24-89 (p. 1826)*

## SENATE FILE 502

H-4048

1 Amend Senate File 502, as passed by the Senate, as  
2 follows:

3 1. Page 131, by inserting after line 5, the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 499.81 VOLUNTARY  
6 CONVERSION.

7 A telephone company organized as a corporation  
8 under chapter 491 qualifying pursuant to an internal  
9 revenue service letter ruling under I.R.C. §  
10 501(c)(12) as a nonprofit corporation entitled to  
11 distribute profits in a manner similar to a chapter  
12 499 corporation, may voluntarily convert to a chapter  
13 499 corporation by adoption of a resolution of the  
14 board of directors endorsing the conversion and by  
15 action of the board and shareholders adopting articles  
16 of incorporation under chapter 499 in the same manner  
17 as required for an amendment of the telephone  
18 company's chapter 491 articles of incorporation."  
19 2. By renumbering as necessary.

By KREMER of Buchanan

H-4048 FILED APRIL 14, 1989

*withdrawn 4-24-89 (p. 1826)*

SENATE FILE 502

H-4172

1 Amend Senate File 502, as passed by the Senate as  
2 follows:

3 1. Title page, by striking lines 2 and 3 and  
4 inserting the following: "including the filing of  
5 corporate documents with county recorders".

By PETERSON of Carroll

H-4172 FILED APRIL 24, 1989

ADOPTED BY UNANIMOUS CONSENT

424-89 (p.1831)

## SENATE FILE 502

H-4097

1 Amend Senate File 502, as passed by the Senate, as  
2 follows:

3 1. Page 130, by inserting after line 25 the  
4 following:

5 "Sec. \_\_\_\_ . Section 497.33, Code 1989, is amended  
6 to read as follows:

7 497.33 PERSONAL LIABILITY.

8 Except as otherwise provided in this chapter, a  
9 director, officer, employee, or member stockholder of  
10 the corporation is not liable on the corporation's  
11 debts or obligations and a director, officer, member  
12 employee, stockholder, or other volunteer is not  
13 personally liable in that capacity, for a claim based  
14 upon an act or omission of the person performed in the  
15 discharge of the person's duties, except for a breach  
16 of the duty of loyalty to the corporation, for acts or  
17 omissions not in good faith or which involve  
18 intentional misconduct or knowing violation of the  
19 law, or for a transaction from which the person  
20 derives an improper personal benefit.

21 Sec. \_\_\_\_ . Section 497.34, Code 1989, is amended to  
22 read as follows:

23 497.34 INDEMNIFICATION.

24 A cooperative association operating under this  
25 chapter may indemnify any present or former director,  
26 officer, employee, member stockholder, or volunteer in  
27 the manner and in the instances authorized in section  
28 496A.4A, provided that where section 496A.4A provides  
29 for action by shareholders the section is applicable  
30 to action by voting-members stockholders of the  
31 cooperative association, and where section 496A.4A  
32 refers to the corporation organized under chapter 496A  
33 the section is applicable to the cooperative  
34 association organized under this chapter, and where  
35 section 496A.4A refers to the director the section is  
36 applicable to a director, officer, employee, member  
37 stockholder, or volunteer of the cooperative  
38 association organized under this chapter.

39 Sec. \_\_\_\_ . NEW SECTION. 497.34A LIABILITY OF  
40 ASSOCIATION LIMITED.

41 Except as otherwise provided in this chapter, an  
42 association is not liable to any person, whether a  
43 stockholder of the association or another person, for  
44 a claim based upon an act or omission of the  
45 association, or a director, officer, employee,  
46 stockholder, or volunteer of the association in  
47 providing advisory services to or on behalf of a  
48 stockholder of the association, other than advice  
49 directly related to goods sold to the stockholder by  
50 the association, to the extent provided in a written

E-4087

Page 2

1 agreement entered into between the stockholder and the  
2 association for the performance of those services  
3 where the agreement eliminates or limits such  
4 liability, except that liability for acts or omissions  
5 not in good faith or which involve intentional mis-  
6 conduct or knowing violation of the law, or for a  
7 transaction from which the person derives an improper  
8 personal benefit, shall not be eliminated or limited."

9 2. Page 130, by inserting after line 30 the  
10 following:

11 "Sec. \_\_\_\_ . Section 498.35, Code 1989, is amended  
12 to read as follows:

13 498.35 PERSONAL LIABILITY.

14 Except as otherwise provided in this chapter, a  
15 director, officer, employee, or member of the  
16 association is not liable on the association's debts  
17 or obligations and a director, officer, member,  
18 employee, or other volunteer is not personally liable  
19 in that capacity, for a claim based upon an act or  
20 omission of the person performed in the discharge of  
21 the person's duties, except for a breach of the duty  
22 of loyalty to the association, for acts or omissions  
23 not in good faith or which involve intentional  
24 misconduct or knowing violation of the law, or for a  
25 transaction from which the person derives an improper  
26 personal benefit.

27 Sec. \_\_\_\_ . NEW SECTION. 498.36A LIABILITY OF  
28 CORPORATION LIMITED.

29 Except as otherwise provided in this chapter, an  
30 association is not liable to any person, whether a  
31 member of the association or another person, for a  
32 claim based upon an act or omission of the  
33 association, or a director, officer, employee, member,  
34 or volunteer of the association in providing advisory  
35 services to or on behalf of a member of the  
36 association, other than advice directly related to  
37 goods sold to the member by the association, to the  
38 extent provided in a written agreement entered into  
39 between the member and the association for the  
40 performance of those services where the agreement  
41 eliminates or limits such liability, except that  
42 liability for acts or omissions not in good faith or  
43 which involve intentional misconduct or knowing  
44 violation of the law, or for a transaction from which  
45 the person derives an improper personal benefit shall  
46 not be eliminated or limited."

47 3. Page 131, by inserting before line 1 the fol-  
48 lowing:

49 "Sec. \_\_\_\_ . Section 499.59, Code 1989, is amended  
50 to read as follows:

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1 499.59 PERSONAL LIABILITY.

2 Except as otherwise provided in this chapter, a  
3 director, officer, employee, or member of the  
4 association is not liable on the association's debts  
5 or obligations, and a director, officer, member,  
6 employee, or other volunteer is not personally liable  
7 in that capacity, for a claim based upon an act or  
8 omission of the person performed in the discharge of  
9 the person's duties, except for a breach of the duty  
10 of loyalty to the association, for acts or omissions  
11 not in good faith or which involve intentional  
12 misconduct or knowing violation of the law, or for a  
13 transaction from which the person derives an improper  
14 personal benefit.

15 Sec. \_\_\_\_ . NEW SECTION. 499.59B LIABILITY OF  
16 COOPERATIVE ASSOCIATION LIMITED.

17 Except as otherwise provided in this chapter, a  
18 cooperative association is not liable to any person,  
19 whether a member of the association or any other  
20 person, for a claim based upon an act or omission of  
21 the cooperative association, or a director, officer,  
22 employee, member, or volunteer of the association in  
23 providing advisory services to or on behalf of a  
24 member of the cooperative association, other than  
25 advice directly related to goods sold to the member by  
26 the cooperative association, to the extent provided in  
27 a written agreement entered into between the member  
28 and the cooperative association for the performance of  
29 those services which eliminates or limits such  
30 liability, except that liability for acts or omissions  
31 not in good faith or which involve intentional  
32 misconduct or knowing violation of the law, or for a  
33 transaction which the person derives an improper  
34 personal benefit, shall be eliminated or limited."

35 4. Page 134, by inserting after line 28 the  
36 following:

37 "Sec. \_\_\_\_ . NEW SECTION. 504A.103 LIABILITY OF  
38 CORPORATION LIMITED.

39 Except as otherwise provided in this chapter, an  
40 agricultural trade association or any employee of the  
41 agricultural trade association is not liable to any  
42 person, whether a member of the agricultural trade  
43 association or any other person, for a claim based  
44 upon an act or omission of the agricultural trade  
45 association, or of any director, officer, employee,  
46 agent, member, or volunteer of the agricultural trade  
47 association, in providing advisory services to or on  
48 behalf of a member of the agricultural trade  
49 association to the extent provided in a written  
50 agreement entered into between the member and the

1 1989

2 Page 4

3 those services where the agreement eliminates or  
4 limits such liability, except that liability for acts  
5 or omissions not in good faith or which involve  
6 intentional misconduct or knowing violation of the  
7 law, or for a transaction from which the person  
8 derives an improper personal benefit, shall not be  
9 eliminated or limited. For purposes of this section  
10 an "agricultural trade association" means a  
11 corporation organized under this chapter for the  
12 purpose of promoting or serving the business or  
13 profession of one or more classes of its members who  
14 are agricultural businesses. For purposes of this  
15 section, an agricultural business means a business  
16 formed to produce, grade, blend, preserve, process,  
17 store, warehouse, market, sell, or handle an  
18 agricultural product or a byproduct of an agricultural  
19 product; to purchase, sell, or supply machinery,  
20 petroleum products, equipment, fertilizer, supplies,  
21 business services, or educational service to or for  
22 those engaged as bona fide producers of agricultural  
23 products; to furnish electric energy, water, or  
24 provide telecommunications service to persons in rural  
25 areas; or to finance such activities or any activity  
26 connected with or for any number of these purposes.  
27 For purposes of this section, agricultural product  
28 includes horticultural, viticultural, forestry, dairy,  
29 livestock, poultry, fish, shellfish, bee, and other  
30 farm products. For purposes of this section, an  
31 agricultural trade association also includes a  
32 cooperative association organized under chapter 497,  
33 498, or 499, or a domestic or foreign organization  
34 which is an organization described in section 1381(a)  
35 of the Internal Revenue Code as defined in section  
36 422.3, an organization operating on a cooperative  
37 basis which is engaged in furnishing electric energy,  
38 or providing telephone service, to persons in rural  
39 areas, or an organization which is a cooperative  
40 association as defined in the federal Agricultural  
41 Marketing Act, 12 U.S.C. § 1141j(a)."

42 5. By renumbering relettering, redesignating, and  
correcting internal references as required.

By KREMER of Buchanan

H-4097 FILED APRIL 19, 1989

*NOT germane 4-24-89 (p.1830)*

HOUSE AMENDMENT TO  
SENATE FILE 502

S-3900

1 Amend Senate File 502, as passed by the Senate, as  
2 follows:

3 1. Page 8, by inserting after line 6, the  
4 following:

5 "Sec. \_\_\_\_ . NEW SECTION. 493B.130 RECORDING OF  
6 DOCUMENTS WITH COUNTY RECORDER.

7 A domestic corporation shall provide the secretary  
8 of state with a copy of each document, except an  
9 annual report which does not change the registered  
10 office or registered agent of the corporation,  
11 delivered by the corporation for filing with the  
12 secretary of state. A registered agent who delivers  
13 to the secretary of state for filing a statement  
14 pursuant to section 493B.502, subsection 2, or files a  
15 statement pursuant to section 493B.502, subsection 3,  
16 shall provide a copy of the statement to the secretary  
17 of state. A registered agent who delivers to the  
18 secretary of state for filing a statement pursuant to  
19 section 493B.503, subsection 1, shall provide an  
20 additional copy pursuant to this section. If a  
21 registered agent delivers for filing with the  
22 secretary of state a statement changing the  
23 operation's business address from one county to  
24 another county or the corporation delivers for filing  
25 with the secretary of state a statement changing its  
26 registered office from one county to another county,  
27 two copies of the statement shall be provided to the  
28 secretary of state. The secretary of state shall  
29 stamp the copy or copies provided by the corporation  
30 or registered agent indicating receipt by the  
31 secretary of state and shall send the copy or copies  
32 to the county recorder. Upon receipt of the copy and  
33 upon receipt of the recording fees due the county  
34 recorder, the county recorder shall record and index  
35 the copy and return the copy to the corporation or  
36 registered agent who provided the copy.

37 Notwithstanding section 331.602, subsection 1,  
38 original signatures and typed or printed names of  
39 signatories are not required on the copy to be  
40 recorded pursuant to this section. For purposes of  
41 this section, "county recorder" means the county  
42 recorder of the county in which the registered office  
43 of the corporation is located as shown on the records  
44 of the secretary of state, except that with respect to  
45 a change of registered office changing the location of  
46 the registered office from one county to another,  
47 "county recorder" means the county recorder for the  
48 county in which the registered office is located  
49 before the change and the county recorder for the  
50 county in which the registered office is located after

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Page 2

1 the change."

2 2. Page 29, by inserting after line 33, the  
3 following:

4 "Sec. \_\_\_\_ . NEW SECTION. 493B.624A POISON PILL  
5 DEFENSE AUTHORIZED.

6 The terms and conditions of stock rights or options  
7 issued by the corporation may include, without  
8 limitation, restrictions, or conditions that preclude  
9 or limit the exercise, transfer, or receipt of such  
10 rights or options by a person, or group of persons,  
11 owning or offering to acquire a specified number or  
12 percentage of the outstanding common shares or other  
13 securities of the corporation, or a transferee of the  
14 offeror, or that invalidate or void such stock rights  
15 or options held by an offeror or a transferee of the  
16 offeror."

17 3. Page 84, by inserting after line 33, the  
18 following:

19 "Sec. \_\_\_\_ . NEW SECTION. 493B.1108 CONSIDERATION  
20 OF COMMUNITY INTERESTS IN CONSIDERATION OF ACQUISITION  
21 PROPOSALS.

22 1. A director, in determining what is in the best  
23 interest of the corporation when considering a tender  
24 offer or proposal of acquisition, merger,  
25 consolidation, or similar proposal, may consider any  
26 or all of the following community interest factors, in  
27 addition to consideration of the effects of any action  
28 on shareholders:

29 a. The effects of the action on the corporation's  
30 employees, suppliers, creditors, and customers.

31 b. The effects of the action on the communities in  
32 which the corporation operates.

33 c. The long-term as well as short-term interests  
34 of the corporation and its shareholders, including the  
35 possibility that these interests may be best served by  
36 the continued independence of the corporation.

37 2. If on the basis of the community interest  
38 factors described in paragraph 1, the board of  
39 directors determines that a proposal or offer to  
40 acquire or merge the corporation is not in the best  
41 interests of the corporation, it may reject the  
42 proposal or offer. If the board of directors  
43 determines to reject any such proposal or offer, the  
44 board of directors has no obligation to facilitate, to  
45 remove any barriers to, or to refrain from impeding,  
46 the proposal or offer. Consideration of any or all of  
47 the community interest factors is not a violation of  
48 the business judgment rule or of any duty of the  
49 director to the shareholders, or a group of  
50 shareholders, even if the director reasonably

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Page 3

1 determines that a community interest factor or factors  
2 outweigh the financial or other benefits to the  
3 corporation or a shareholder or group of  
4 shareholders."

5 4. Page 125, line 22, by inserting after the  
6 figure "491," the following: "or a telephone company  
7 organized as a corporation under chapter 491  
8 qualifying pursuant to an internal revenue service  
9 letter ruling under I.R.C. § 501(c)(12) as a nonprofit  
10 corporation entitled to distribute profits in a manner  
11 similar to a chapter 499 corporation,".

12 5. Page 127, line 27, by inserting after the word  
13 "corporation" the following: "was incorporated".

14 6. Page 130, by inserting after line 15, the  
15 following:

16 "Sec. \_\_\_\_ . NEW SECTION. 491.101A POISON PILL  
17 DEFENSE AUTHORIZED.

18 The terms and conditions of stock rights or options  
19 issued by the corporation may include, without  
20 limitation, restrictions, or conditions that preclude  
21 or limit the exercise, transfer, or receipt of such  
22 rights or options by a person, or group of persons,  
23 owning or offering to acquire a specified number or  
24 percentage of the outstanding common shares or other  
25 securities of the corporation, or a transferee of the  
26 offeror, or that invalidate or void such stock rights  
27 or options held by an offeror or a transferee of the  
28 offeror.

29 Sec. \_\_\_\_ . NEW SECTION. 491.101B CONSIDERATION OF  
30 COMMUNITY INTERESTS IN CONSIDERATION OF ACQUISITION  
31 PROPOSALS.

32 1. A director, in determining what is in the best  
33 interest of the corporation when considering a tender  
34 offer or proposal of acquisition, merger,  
35 consolidation, or similar proposal, may consider any  
36 or all of the following community interest factors, in  
37 addition to consideration of the effects of any action  
38 on shareholders:

39 a. The effects of the action on the corporation's  
40 employees, suppliers, creditors, and customers.

41 b. The effects of the action on the communities in  
42 which the corporation operates.

43 c. The long-term as well as short-term interests  
44 of the corporation and its shareholders, including the  
45 possibility that these interests may be best served by  
46 the continued independence of the corporation.

47 2. If on the basis of the community interest  
48 factors described in paragraph 1, the board of  
49 directors determines that a proposal or offer to  
50 acquire or merge the corporation is not in the best

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Page 4

1 interests of the corporation, it may reject the  
2 proposal or offer. If the board of directors  
3 determines to reject any such proposal or offer, the  
4 board of directors has no obligation to facilitate, to  
5 remove any barriers to, or to refrain from impeding,  
6 the proposal or offer. Consideration of any or all of  
7 the community interest factors is not a violation of  
8 the business judgment rule or of any duty of the  
9 director to the shareholders, or a group of  
10 shareholders, even if the director reasonably  
11 determines that a community interest factor or factors  
12 outweigh the financial or other benefits to the  
13 corporation or a shareholder or group of  
14 shareholders."

15 7. Page 130, by striking lines 16 through 35.

16 8. Page 131, by striking lines 1 through 20.

17 9. Page 134, by striking lines 24 through 28.

18 10. Page 137, by striking lines 6 through 10.

19 11. Title page, by striking lines 2 and 3 and  
20 inserting the following: "including the filing of  
21 corporate documents with county recorders".

22 12. By renumbering, relettering, or redesignating  
23 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3900 FILED APRIL 25, 1989

Senate Concurred 5-1-89 (p. 1784)

SSB 354

JUDICIARY

VARI. CH.  
HORN  
GENTLEMAN

SENATE FILE 562  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to business corporations, and related matters  
2 including the elimination of filing of corporate documents  
3 with the county recorder for all forms of corporate entities,  
4 and providing a special effective date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I  
GENERAL PROVISIONS  
PART A

Section 1. NEW SECTION. 493B.101 SHORT TITLE.

This Act is entitled and may be cited as the "Iowa Business Corporation Act".

Sec. 2. NEW SECTION. 493B.102 RESERVATION OF POWER TO AMEND OR REPEAL.

The general assembly has the power to amend or repeal all or part of this Act at any time and all domestic and foreign corporations subject to this Act are governed by an amendment or repeal.

PART B

Sec. 3. NEW SECTION. 493B.120 FILING REQUIREMENTS.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be filed in the office of the secretary of state.

3. The document must contain the information required by this chapter. It may contain other information as well.

4. The document must be typewritten or printed.

5. The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. Except as provided in section 493B.1622, subsection 2, the document must be executed by one of the following methods:

a. The chairperson of the board of directors of a domestic or foreign corporation, its president, or another of its officers.

b. If directors have not been selected or the corporation has not been formed, by an incorporator.

1 c. If the corporation is in the hands of a receiver,  
2 trustee, or other court-appointed fiduciary, by that  
3 fiduciary.

4 7. The person executing the document shall sign it and  
5 state beneath or opposite the person's signature, the person's  
6 name and the capacity in which the person signs. The document  
7 may, but need not, contain:

8 a. The corporate seals.

9 b. An attestation by the secretary or an assistant  
10 secretary.

11 c. An acknowledgment, verification, or proof.

12 The secretary of state may accept for filing a document  
13 containing a copy of a signature, however made.

14 8. If the secretary of state has prescribed a mandatory  
15 form for the document under section 493B.121, the document  
16 must be in or on the prescribed form.

17 9. The document must be delivered to the office of the  
18 secretary of state for filing and must be accompanied by the  
19 correct filing fee.

20 Sec. 4. NEW SECTION. 493B.121 FORMS.

21 1. The secretary of state may prescribe and furnish on  
22 request forms including but not limited to the following:

23 a. An application for a certificate of existence.

24 b. A foreign corporation's application for a certificate  
25 of authority to transact business in this state.

26 c. A foreign corporation's application for a certificate  
27 of withdrawal.

28 d. The annual report.

29 If the secretary of state so requires, use of these listed  
30 forms prescribed by the secretary of state is mandatory.

31 2. The secretary of state may prescribe and furnish on  
32 request forms for other documents required or permitted to be  
33 filed by this chapter but their use is not mandatory.

34 Sec. 5. NEW SECTION. 493B.122 FILING, SERVICE, AND  
35 COPYING FEES.

1 1. The secretary of state shall collect the following fees  
 2 when the documents described in this subsection are delivered  
 3 to the secretary's office for filing:

4 <u>Document</u>	5 <u>Fee</u>
6 a. Articles of incorporation .....	\$ 50
7 b. Application for use of indistinguishable 7 name .....	\$ 10
8 c. Application for reserved name .....	\$ 10
9 d. Notice of transfer of reserved name .....	\$ 10
10 e. Application for registered name .....	\$ 2
11	per month or part thereof
12 f. Application for renewal of registered name ....	\$ 20
13 g. Corporation's statement of change of 14 registered agent or registered office or both .....	No fee
15 h. Agent's statement of change of registered 16 office for each affected corporation .....	No fee
17 i. Agent's statement of resignation .....	No fee
18 j. Amendment of articles of incorporation .....	\$ 50
19 k. Restatement of articles of incorporation 20 with amendment of articles .....	\$ 50
21 l. Articles of merger or share exchange .....	\$ 50
22 m. Articles of dissolution .....	\$ 5
23 n. Articles of revocation of dissolution .....	\$ 5
24 o. Certificate of administrative dissolution ....	No fee
25 p. Application for reinstatement following 26 administrative dissolution .....	\$ 5
27 q. Certificate of reinstatement .....	No fee
28 r. Certificate of judicial dissolution .....	No fee
29 s. Application for certificate of authority .....	\$100
30 t. Application for amended certificate of 31 authority .....	\$100
32 u. Application for certificate of withdrawal .....	\$ 10
33 v. Certificate of revocation of authority 34 to transact business .....	No fee
35 w. Annual report .....	\$ 30

- 1 x. Articles of correction ..... \$ 5
- 2 y. Application for certificate of existence
- 3 or authorization ..... \$ 5
- 4 z. Any other document required or permitted
- 5 to be filed by this chapter ..... \$ 5

6 2. The secretary of state shall collect a fee of five  
 7 dollars each time process is served on the secretary under  
 8 this chapter. The party to a proceeding causing service of  
 9 process is entitled to recover this fee as costs if the party  
 10 prevails in the proceeding.

11 3. The secretary of state shall collect the following fees  
 12 for copying and certifying the copy of any filed document  
 13 relating to a domestic or foreign corporation:

- 14 a. \$ .50 a page for copying.
- 15 b. \$5.00 for the certificate.

16 Sec. 6. NEW SECTION. 493B.123 EFFECTIVE TIME AND DATE OF  
 17 DOCUMENTS.

18 1. Except as provided in subsection 2 and section  
 19 493A.124, subsection 3, a document accepted for filing is  
 20 effective at the later of the following times:

- 21 a. At the time of filing on the date it is filed, as  
 22 evidenced by the secretary of state's date and time  
 23 endorsement on the original document.
- 24 b. At the time specified in the document as its effective  
 25 time on the date it is filed.

26 2. A document may specify a delayed effective time and  
 27 date, and if it does so the document becomes effective at the  
 28 time and date specified. If a delayed effective date but no  
 29 time is specified, the document is effective at the close of  
 30 business on that date. A delayed effective date for a  
 31 document shall not be later than the ninetieth day after the  
 32 date it is filed.

33 Sec. 7. NEW SECTION. 493B.124 CORRECTING FILED  
 34 DOCUMENTS.

35 1. A domestic or foreign corporation may correct a

1 document filed by the secretary of state if the document  
2 satisfies one or both of the following requirements:

- 3 a. Contains an incorrect statement.
- 4 b. Was defectively executed, attested, sealed, verified,  
5 or acknowledged.

6 2. A document is corrected by complying with both of the  
7 following:

8 a. By preparing articles of correction that satisfy all of  
9 the following requirements:

10 (1) Describe the document, including its filing date, or  
11 attach a copy of it to the articles.

12 (2) Specify the incorrect statement and the reason it is  
13 incorrect or the manner in which the execution was defective.

14 (3) Correct the incorrect statement or defective  
15 execution.

16 b. By delivering the articles to the secretary of state  
17 for filing.

18 3. Articles of correction are effective on the effective  
19 date of the document they correct except as to persons relying  
20 on the uncorrected document and adversely affected by the  
21 correction. As to those persons, articles of correction are  
22 effective when filed.

23 Sec. 8. NEW SECTION. 493B.125 FILING DUTY OF SECRETARY  
24 OF STATE.

25 1. If a document delivered to the office of the secretary  
26 of state for filing satisfies the requirements of section  
27 493B.120, the secretary of state shall file it.

28 2. The secretary of state files a document by stamping or  
29 otherwise endorsing "filed", together with the secretary's  
30 name and official title and the date and time of receipt, on  
31 both the document and the receipt for the filing fee. After  
32 filing a document, except the annual report required by  
33 section 493B.1622, and except as provided in sections 493B.503  
34 and 493B.1509, the secretary of state shall deliver the  
35 document, with the filing fee receipt, or acknowledgment of

1 receipt if no fee is required, attached, to the domestic or  
2 foreign corporation or its representative.

3 3. If the secretary of state refuses to file a document,  
4 the secretary of state shall return it to the domestic or  
5 foreign corporation or its representative within ten days  
6 after the document was received by the secretary of state,  
7 together with a brief, written explanation of the reason for  
8 the refusal.

9 4. The secretary of state's duty to file documents under  
10 this section is ministerial. Filing or refusing to file a  
11 document does not:

12 a. Affect the validity or invalidity of the document in  
13 whole or part.

14 b. Relate to the correctness or incorrectness of  
15 information contained in the document.

16 c. Create a presumption that the document is valid or  
17 invalid or that information contained in the document is  
18 correct or incorrect.

19 Sec. 9. NEW SECTION. 493B.126 APPEAL FROM SECRETARY OF  
20 STATE'S REFUSAL TO FILE DOCUMENT.

21 1. If the secretary of state refuses to file a document  
22 delivered to the secretary's office for filing, the domestic  
23 or foreign corporation may appeal the refusal, within thirty  
24 days after the return of the document, to the district court  
25 for the county in which the corporation's principal office or,  
26 if none in this state, its registered office is or will be  
27 located. The appeal is commenced by petitioning the court to  
28 compel filing the document and by attaching to the petition  
29 the document and the secretary of state's explanation of the  
30 refusal to file.

31 2. The court may summarily order the secretary of state to  
32 file the document or take other action the court considers  
33 appropriate.

34 3. The court's final decision may be appealed as in other  
35 civil proceedings.

1     Sec. 10. NEW SECTION. 493B.127 EVIDENTIARY EFFECT OF  
2 COPY OF FILED DOCUMENT.

3     A certificate attached to a copy of a document filed by the  
4 secretary of state, bearing the secretary of state's  
5 signature, which may be in facsimile, and the seal of this  
6 state, is conclusive evidence that the original document is on  
7 file with the secretary of state.

8     Sec. 11. NEW SECTION. 493B.128 CERTIFICATE OF EXISTENCE.

9     1. Anyone may apply to the secretary of state to furnish a  
10 certificate of existence for a domestic corporation or a  
11 certificate of authorization for a foreign corporation.

12     2. A certificate of existence or authorization must set  
13 forth all of the following:

14     a. The domestic corporation's corporate name or the  
15 foreign corporation's corporate name used in this state.

16     b. That one of the following apply:

17         (1) If it is a domestic corporation, that it is duly  
18 incorporated under the law of this state, the date of its  
19 incorporation, and the period of its duration if less than  
20 perpetual.

21         (2) If it is a foreign corporation, that it is authorized  
22 to transact business in this state.

23     c. That all fees required by this chapter have been paid.

24     d. That its most recent annual report required by section  
25 493B.1622 has been filed by the secretary of state.

26     e. That articles of dissolution have not been filed.

27     f. Other facts of record in the office of the secretary of  
28 state that may be requested by the applicant.

29     3. Subject to any qualification stated in the certificate,  
30 a certificate of existence or authorization issued by the  
31 secretary of state may be relied upon as conclusive evidence  
32 that the domestic or foreign corporation is in existence or is  
33 authorized to transact business in this state.

34     Sec. 12. NEW SECTION. 493B.129 PENALTY FOR SIGNING FALSE  
35 DOCUMENT.

1 1. A person commits an offense if that person signs a  
2 document the person knows is false in any material respect  
3 with intent that the document be delivered to the secretary of  
4 state for filing.

5 2. An offense under this section is a serious misdemeanor  
6 punishable by a fine of not to exceed one thousand dollars.

7 PART C

8 Sec. 13. NEW SECTION. 493B.135 SECRETARY OF STATE --  
9 POWERS.

10 The secretary of state has the power reasonably necessary  
11 to perform the duties required of the secretary of state by  
12 this chapter.

13 PART D

14 Sec. 14. NEW SECTION. 493B.140 DEFINITIONS.

15 In this chapter, unless the context requires otherwise:

16 1. "Articles of incorporation" include amended and  
17 restated articles of incorporation and articles of merger.

18 2. "Authorized shares" means the shares of all classes a  
19 domestic or foreign corporation is authorized to issue.

20 3. "Conspicuous" means so written that a reasonable person  
21 against whom the writing is to operate should have noticed it.  
22 For example, printing in italics or boldface or contrasting  
23 color, or typing in capitals or underlined, is conspicuous.

24 4. "Corporation" or "domestic corporation" means a  
25 corporation for profit, which is not a foreign corporation,  
26 incorporated under or subject to this chapter.

27 5. "Deliver" includes mail delivery.

28 6. "Distribution" means a direct or indirect transfer of  
29 money or other property, except its own shares, or incurrence  
30 of indebtedness by a corporation to or for the benefit of its  
31 shareholders in respect of any of its shares. A distribution  
32 may be in the form of a declaration or payment of a dividend;  
33 a purchase, redemption, or other acquisition of shares; a  
34 distribution of indebtedness; or otherwise.

35 7. "Effective date of notice" is defined in section

1 493B.141.

2 8. "Employee" includes an officer but not a director. A  
3 director may accept duties that make the director also an  
4 employee.

5 9. "Entity" includes corporation and foreign corporation;  
6 not-for-profit corporation; profit and not-for-profit  
7 unincorporated association; business trust, estate,  
8 partnership, trust, and two or more persons having a joint or  
9 common economic interest; and state, United States, and  
10 foreign government.

11 10. "Foreign corporation" means a corporation for profit  
12 incorporated under a law other than the law of this state.

13 11. "Governmental subdivision" includes authority, city,  
14 county, district, township, and other political subdivision.

15 12. "Includes" denotes a partial definition.

16 13. "Individual" includes the estate of an incompetent, a  
17 ward, or a deceased individual.

18 14. "Means" denotes an exhaustive definition.

19 15. "Notice" is defined in section 493B.141.

20 16. "Person" means a person as defined in section 4.1 and  
21 includes an individual and an entity.

22 17. "Principal office" means the office, in or out of this  
23 state, so designated in the annual report, where the principal  
24 executive offices of a domestic or foreign corporation are  
25 located.

26 18. "Proceeding" includes civil suit and criminal,  
27 administrative, and investigatory action.

28 19. "Record date" means the date established under  
29 division 6 or 7 on which a corporation determines the identity  
30 of its shareholders for purposes of this chapter.

31 20. "Secretary" means the corporate officer to whom the  
32 board of directors has delegated responsibility under section  
33 493B.840, subsection 3, for custody of the minutes of the  
34 meetings of the board of directors and of the shareholders and  
35 for authenticating records of the corporation.

1 21. "Share" means the unit into which the proprietary  
2 interests in a corporation are divided.

3 22. "Shareholder" means the person in whose name shares  
4 are registered in the records of a corporation or the  
5 beneficial owner of shares to the extent of the rights granted  
6 by a nominee certificate on file with a corporation.

7 23. "State", when referring to a part of the United  
8 States, includes a state and commonwealth and their agencies  
9 and governmental subdivisions, and a territory and insular  
10 possession and their agencies and governmental subdivisions,  
11 of the United States.

12 24. "Subscriber" means a person who subscribes for shares  
13 in a corporation, whether before or after incorporation.

14 25. "United States" includes a district, authority,  
15 bureau, commission, department, and any other agency of the  
16 United States.

17 26. "Voting group" means all shares of one or more classes  
18 or series that under the articles of incorporation or this  
19 chapter are entitled to vote and be counted together  
20 collectively on a matter at a meeting of shareholders. All  
21 shares entitled by the articles of incorporation or this  
22 chapter to vote generally on the matter are for that purpose a  
23 single voting group.

24 Sec. 15. NEW SECTION. 493B.141 NOTICE.

25 1. Notice under this chapter must be in writing unless  
26 oral notice is reasonable under the circumstances.

27 2. Notice may be communicated in person; by telephone,  
28 telegraph, teletype, or other form of wire or wireless  
29 communication; or by mail or private carrier. If these forms  
30 of personal notice are impracticable, notice may be  
31 communicated by a newspaper of general circulation in the area  
32 where published; or by radio, television, or other form of  
33 public broadcast communication.

34 3. Written notice by a domestic or foreign corporation to  
35 its shareholder, if in a comprehensible form, is effective

1 when mailed, if mailed postpaid and correctly addressed to the  
2 shareholder's address shown in the corporation's current  
3 record of shareholders.

4 4. Written notice to a domestic or foreign corporation  
5 authorized to transact business in this state may be addressed  
6 to its registered agent at its registered office or to the  
7 corporation or its secretary at its principal office shown in  
8 its most recent annual report or, in the case of a foreign  
9 corporation that has not yet delivered an annual report, in  
10 its application for a certificate of authority.

11 5. Except as provided in subsection 3, written notice, if  
12 in a comprehensible form, is effective at the earliest of the  
13 following:

14 a. When received.

15 b. Five days after its deposit in the United States mail,  
16 as evidenced by the postmark, if mailed postpaid and correctly  
17 addressed.

18 c. On the date shown on the return receipt, if sent by  
19 registered or certified mail, return receipt requested, and  
20 the receipt is signed by or on behalf of the addressee.

21 6. Oral notice is effective when communicated if  
22 communicated in a comprehensible manner.

23 7. If this chapter prescribes notice requirements for  
24 particular circumstances, those requirements govern. If  
25 articles of incorporation or bylaws prescribe notice  
26 requirements not inconsistent with this section or other  
27 provisions of this chapter, those requirements govern.

28 Sec. 16. NEW SECTION. 493B.142 NUMBER OF SHAREHOLDERS.

29 1. For purposes of this chapter, any of the following  
30 identified as a shareholder in a corporation's current record  
31 of shareholders constitutes one shareholder:

32 a. Three or fewer co-owners.

33 b. A corporation, partnership, trust, estate, or other  
34 entity.

35 c. The trustees, guardians of the property, custodians, or

1 other fiduciaries of a single trust, estate, or account.

2 2. For purposes of this chapter, shareholdings registered  
3 in substantially similar names constitute one shareholder if  
4 it is reasonable to believe that the names represent the same  
5 person.

6 DIVISION II  
7 INCORPORATION

8 Sec. 17. NEW SECTION. 493B.201 INCORPORATORS.

9 One or more persons may act as the incorporator or  
10 incorporators of a corporation by executing and delivering  
11 articles of incorporation to the secretary of state for  
12 filing.

13 Sec. 18. NEW SECTION. 493B.202 ARTICLES OF  
14 INCORPORATION.

15 1. The articles of incorporation must set forth all of the  
16 following:

17 a. A corporate name for the corporation that satisfies the  
18 requirements of section 493B.401.

19 b. The number of shares the corporation is authorized to  
20 issue.

21 c. The street address of the corporation's initial  
22 registered office and the name of its initial registered agent  
23 at that office.

24 d. The name and address of each incorporator.

25 2. The articles of incorporation may set forth any or all  
26 of the following:

27 a. The names and addresses of the individuals who are to  
28 serve as the initial directors.

29 b. Provisions not inconsistent with law regarding:

30 (1) The purpose or purposes for which the corporation is  
31 organized.

32 (2) Managing the business and regulating the affairs of  
33 the corporation.

34 (3) Defining, limiting, and regulating the powers of the  
35 corporation, its board of directors, and shareholders.

1 (4) A par value for authorized shares or classes of  
2 shares.

3 (5) The imposition of personal liability on shareholders  
4 for the debts of the corporation to a specified extent and  
5 upon specified conditions.

6 c. Any provision that under this chapter is required or  
7 permitted to be set forth in the bylaws.

8 d. A provision consistent with section 493B.832.

9 3. The articles of incorporation need not set forth any of  
10 the corporate powers enumerated in this chapter.

11 Sec. 19. NEW SECTION. 493B.203 INCORPORATION.

12 1. Unless a delayed effective date or time is specified,  
13 the corporate existence begins when the articles of  
14 incorporation are filed.

15 2. The secretary of state's filing of the articles of  
16 incorporation is conclusive proof that the incorporators  
17 satisfied all conditions precedent to incorporation except in  
18 a proceeding by the state to cancel or revoke the  
19 incorporation or involuntarily dissolve the corporation.

20 Sec. 20. NEW SECTION. 493B.204 LIABILITY FOR  
21 PREINCORPORATION TRANSACTIONS.

22 All persons purporting to act as or on behalf of a  
23 corporation, knowing there was no incorporation under this  
24 chapter, are jointly and severally liable for all liabilities  
25 created while so acting.

26 Sec. 21. NEW SECTION. 493B.205 ORGANIZATION OF  
27 CORPORATION.

28 1. After incorporation:

29 a. If initial directors are named in the articles of  
30 incorporation, the initial directors shall hold an  
31 organizational meeting, at the call of a majority of the  
32 directors, to complete the organization of the corporation by  
33 appointing officers, adopting bylaws and carrying on any other  
34 business brought before the meeting.

35 b. If initial directors are not named in the articles, the

1 incorporator or incorporators shall hold an organizational  
2 meeting at the call of a majority of the incorporators to do  
3 one of the following:

4 (1) Elect directors and complete the organization of the  
5 corporation.

6 (2) Elect a board of directors who shall complete the  
7 organization of the corporation.

8 2. Action required or permitted by this chapter to be  
9 taken by incorporators at an organizational meeting may be  
10 taken without a meeting if the action taken is evidenced by  
11 one or more written consents describing the action taken and  
12 signed by each incorporator.

13 3. An organizational meeting may be held in or out of this  
14 state.

15 Sec. 22. NEW SECTION. 493B.206 BYLAWS.

16 1. The incorporators or board of directors of a  
17 corporation shall adopt initial bylaws for the corporation.

18 2. The bylaws of a corporation may contain any provision  
19 for managing the business and regulating the affairs of the  
20 corporation that is not inconsistent with law or the articles  
21 of incorporation.

22 Sec. 23. NEW SECTION. 493B.207 EMERGENCY BYLAWS.

23 1. Unless the articles of incorporation provide otherwise,  
24 the board of directors of a corporation may adopt bylaws to be  
25 effective only in an emergency defined in subsection 4. The  
26 emergency bylaws, which are subject to amendment or repeal by  
27 the shareholders, may make all provisions necessary for  
28 managing the corporation during the emergency, including:

29 a. Procedures for calling a meeting of the board of  
30 directors.

31 b. Quorum requirements for the meeting.

32 c. Designation of additional or substitute directors.

33 2. All provisions of the regular bylaws consistent with  
34 the emergency bylaws remain effective during the emergency.

35 The emergency bylaws are not effective after the emergency

1 ends.

2 3. Corporate action taken in good faith in accordance with  
3 the emergency bylaws has both of the following effects:

4 a. The action binds the corporation.

5 b. The action shall not be used to impose liability on a  
6 corporate director, officer, employee, or agent.

7 4. An emergency exists for purposes of this section if a  
8 quorum of the corporation's directors cannot readily be  
9 assembled because of some catastrophic event.

10

DIVISION III

11

PURPOSES AND POWERS

12 Sec. 24. NEW SECTION. 493B.301 PURPOSES.

13 1. A corporation incorporated under this chapter has the  
14 purpose of engaging in any lawful business unless a more  
15 limited purpose is set forth in the articles of incorporation.

16 2. A corporation engaging in a business that is subject to  
17 regulation under another statute of this state may incorporate  
18 under this chapter only if permitted by, and subject to all  
19 limitations of, the other statute.

20 Sec. 25. NEW SECTION. 493B.302 GENERAL POWERS.

21 Unless its articles of incorporation provide otherwise, a  
22 corporation has perpetual duration and succession in its  
23 corporate name and has the same powers as an individual to do  
24 all things necessary or convenient to carry out its business  
25 and affairs, including without limitation power to do all of  
26 the following:

27 1. Sue and be sued, complain, and defend in its corporate  
28 name.

29 2. Have a corporate seal, which may be altered at will,  
30 and use it, or a facsimile of it, by impressing or affixing it  
31 or in any other manner reproducing it.

32 3. Make and amend bylaws, not inconsistent with its  
33 articles of incorporation or with the laws of this state, for  
34 managing the business and regulating the affairs of the  
35 corporation.

- 1 4. Purchase, receive, lease, or otherwise acquire, and  
2 own, hold, improve, use, and otherwise deal with, real or  
3 personal property, or any legal or equitable interest in  
4 property, wherever located.
- 5 5. Sell, convey, mortgage, pledge, lease, exchange, and  
6 otherwise dispose of all or any part of its property.
- 7 6. Purchase, receive, subscribe for, or otherwise acquire,  
8 own, hold, vote, use, sell, mortgage, lend, pledge, or  
9 otherwise dispose of, and deal in and with shares or other  
10 interests in, or obligations of, any other entity.
- 11 7. Make contracts and guarantees, incur liabilities,  
12 borrow money, issue its notes, bonds, and other obligations,  
13 which may be convertible into or include the option to  
14 purchase other securities of the corporation, and secure any  
15 of its obligations by mortgage or pledge of any of its  
16 property, franchises, or income.
- 17 8. Lend money, invest and reinvest its funds, and receive  
18 and hold real and personal property as security for repayment.
- 19 9. Be a promoter, partner, member, associate, or manager  
20 of any partnership, joint venture, trust, or other entity.
- 21 10. Conduct its business, locate offices, and exercise the  
22 powers granted by this chapter within or without this state.
- 23 11. Elect directors and appoint officers, employees, and  
24 agents of the corporation, define their duties, fix their  
25 compensation, and lend them money and credit.
- 26 12. Pay pensions and establish pension plans, pension  
27 trusts, profit sharing plans, share bonus plans, share option  
28 plans, and benefit or incentive plans for any or all of its  
29 current or former directors, officers, employees, and agents.
- 30 13. Make donations for the public welfare or for  
31 charitable, scientific, or educational purposes.
- 32 14. Transact any lawful business that will aid  
33 governmental policy.
- 34 15. Make payments or donations, or do any other act, not  
35 inconsistent with law, that furthers the business and affairs

1 of the corporation.

2 Sec. 26. NEW SECTION. 493B.303 EMERGENCY POWERS.

3 1. In anticipation of or during an emergency as defined in  
4 subsection 4, the board of directors of a corporation may do  
5 either or both of the following:

6 a. Modify lines of succession to accommodate the  
7 incapacity of any director, officer, employee, or agent.

8 b. Relocate the principal office, designate alternative  
9 principal offices or regional offices, or authorize the  
10 officers to do so.

11 2. During an emergency defined in subsection 4, unless  
12 emergency bylaws provide otherwise:

13 a. Notice of a meeting of the board of directors need be  
14 given only to those directors whom it is practicable to reach  
15 and may be given in any practicable manner, including by  
16 publication and radio.

17 b. One or more officers of the corporation present at a  
18 meeting of the board of directors may be deemed to be  
19 directors for the meeting, in order of rank and within the  
20 same rank in order of seniority, as necessary to achieve a  
21 quorum.

22 3. Corporate action taken in good faith during an  
23 emergency under this section to further the ordinary business  
24 affairs of the corporation shall both:

25 a. Bind the corporation.

26 b. Not be used to impose liability on a corporate  
27 director, officer, employee, or agent.

28 4. An emergency exists for purposes of this section if a  
29 quorum of the corporation's directors cannot readily be  
30 assembled because of some catastrophic event.

31 Sec. 27. NEW SECTION. 493B.304 ULTRA VIRES.

32 1. Except as provided in subsection 2, the validity of  
33 corporate action is not challengeable on the ground that the  
34 corporation lacks or lacked power to act.

35 2. A corporation's power to act may be challenged in any

1 of the following proceedings:

2 a. By a shareholder against the corporation to enjoin the  
3 act.

4 b. By the corporation, directly, derivatively, or through  
5 a receiver, trustee, or other legal representative, against an  
6 incumbent or former director, officer, employee, or agent of  
7 the corporation.

8 c. By the attorney general under section 493B.1430.

9 3. In a shareholder's proceeding under subsection 2,  
10 paragraph "a", to enjoin an unauthorized corporate act, the  
11 court may enjoin or set aside the act, if equitable and if all  
12 affected persons are parties to the proceeding, and may award  
13 damages for loss, other than anticipated profits, suffered by  
14 the corporation or another party because of enjoining the  
15 unauthorized act.

16 DIVISION IV

17 NAMES

18 Sec. 28. NEW SECTION. 493B.401 CORPORATE NAME.

19 1. A corporate name:

20 a. Must contain the word "corporation", "incorporated",  
21 "company", or "limited", or the abbreviation "corp.", "inc.",  
22 "co.", or "ltd.", or words or abbreviations of like import in  
23 another language.

24 b. Shall not contain language stating or implying that the  
25 corporation is organized for a purpose other than that  
26 permitted by section 493B.301 and its articles of  
27 incorporation.

28 2. Except as authorized by subsections 3 and 4, a  
29 corporate name must be distinguishable upon the records of the  
30 secretary of state from all of the following:

31 a. The corporate name of a corporation incorporated or  
32 authorized to transact business in this state.

33 b. A corporate name reserved or registered under section  
34 493B.402 or 493B.403.

35 c. The fictitious name adopted by a foreign corporation

1 authorized to transact business in this state because its real  
2 name is unavailable.

3 d. The corporate name of a not-for-profit corporation  
4 incorporated or authorized to transact business in this state.

5 3. A corporation may apply to the secretary of state for  
6 authorization to use a name that is not distinguishable upon  
7 the secretary's records from one or more of the names  
8 described in subsection 2. The secretary of state shall  
9 authorize use of the name applied for if one of the following  
10 conditions applies:

11 a. The other corporation consents to the use in writing  
12 and submits an undertaking in form satisfactory to the  
13 secretary of state to change its name to a name that is  
14 distinguishable upon the records of the secretary of state  
15 from the name of the applying corporation.

16 b. The applicant delivers to the secretary of state a  
17 certified copy of the final judgment of a court of competent  
18 jurisdiction establishing the applicant's right to use the  
19 name applied for in this state.

20 4. A corporation may use the name, including the  
21 fictitious name, of another domestic or foreign corporation  
22 that is used in this state if the other corporation is  
23 incorporated or authorized to transact business in this state  
24 and the proposed user corporation meets one of the following  
25 conditions:

26 a. Has merged with the other corporation.

27 b. Has been formed by reorganization of the other  
28 corporation.

29 c. Has acquired all or substantially all of the assets,  
30 including the corporate name, of the other corporation.

31 5. This chapter does not control the use of fictitious  
32 names; however, if a corporation uses a fictitious name in  
33 this state it shall deliver to the secretary of state for  
34 filing a copy of the resolution of its board of directors,  
35 certified by its secretary, adopting the fictitious name.

1     Sec. 29. NEW SECTION. 493B.402 RESERVED NAME.

2     1. A person may reserve the exclusive use of a corporate  
3 name, including a fictitious name for a foreign corporation  
4 whose corporate name is not available, by delivering an  
5 application to the secretary of state for filing. The  
6 application must set forth the name and address of the  
7 applicant and the name proposed to be reserved. If the  
8 secretary of state finds that the corporate name applied for  
9 is available, the secretary of state shall reserve the name  
10 for the applicant's exclusive use for a nonrenewable one  
11 hundred twenty-day period.

12    2. The owner of a reserved corporate name may transfer the  
13 reservation to another person by delivering to the secretary  
14 of state a signed notice of the transfer that states the name  
15 and address of the transferee.

16    Sec. 30. NEW SECTION. 493B.403 REGISTERED NAME.

17    1. A foreign corporation may register its corporate name,  
18 or its corporate name with any addition required by section  
19 493B.1506, if the name is distinguishable upon the records of  
20 the secretary of state from the corporate names that are not  
21 available under section 493B.401, subsection 2, paragraph "b".

22    2. A foreign corporation registers its corporate name, or  
23 its corporate name with any addition required by section  
24 493B.1506, by delivering to the secretary of state for filing  
25 an application:

26    a. Setting forth its corporate name, or its corporate name  
27 with any addition required by section 493B.1506, the state or  
28 country and date of its incorporation, and a brief description  
29 of the nature of the business in which it is engaged.

30    b. Accompanied by a certificate of existence, or a  
31 document of similar import, from the state or country of  
32 incorporation.

33    3. The name is registered for the applicant's exclusive  
34 use upon the effective date of the application.

35    4. A foreign corporation whose registration is effective

1 may renew it for successive years by delivering to the  
2 secretary of state for filing a renewal application which  
3 complies with the requirements of subsection 2 between October  
4 1 and December 31 of the preceding year. The renewal  
5 application renews the registration for the following calendar  
6 year.

7 5. A foreign corporation whose registration is effective  
8 may thereafter qualify as a foreign corporation under that  
9 name or consent in writing to the use of that name by a  
10 corporation thereafter incorporated under this chapter or by  
11 another foreign corporation thereafter authorized to transact  
12 business in this state. The first registration terminates  
13 when the domestic corporation is incorporated with that name  
14 or the foreign corporation qualifies or consents to the  
15 qualification of another foreign corporation under the  
16 registered name.

17 DIVISION V

18 REGISTERED OFFICE AND AGENT -- SERVICE

19 Sec. 31. NEW SECTION. 493B.501 REGISTERED OFFICE AND  
20 REGISTERED AGENT.

21 Each corporation must continuously maintain in this state  
22 both of the following:

23 1. A registered office that may be the same as any of its  
24 places of business.

25 2. A registered agent, who may be any of the following:

26 a. An individual who resides in this state and whose  
27 business office is identical with the registered office.

28 b. A domestic corporation or not-for-profit domestic  
29 corporation whose business office is identical with the  
30 registered office.

31 c. A foreign corporation or not-for-profit foreign  
32 corporation authorized to transact business in this state  
33 whose business office is identical with the registered office.

34 Sec. 32. NEW SECTION. 493B.502 CHANGE OF REGISTERED  
35 OFFICE OR REGISTERED AGENT.

1 1. A corporation may change its registered office or  
2 registered agent by delivering to the secretary of state for  
3 filing a statement of change that sets forth all of the  
4 following:

5 a. The name of the corporation.

6 b. The street address of its current registered office.

7 c. If the current registered office is to be changed, the  
8 street address of the new registered office.

9 d. The name of its current registered agent.

10 e. If the current registered agent is to be changed, the  
11 name of the new registered agent and the new agent's written  
12 consent, either on the statement or attached to it, to the  
13 appointment.

14 f. That after the change or changes are made, the street  
15 addresses of its registered office and the business office of  
16 its registered agent will be identical.

17 2. If a registered agent changes the street address of the  
18 registered agent's business office, the registered agent may  
19 change the street address of the registered office of any  
20 corporation for which the person is the registered agent by  
21 notifying the corporation in writing of the change and  
22 signing, either manually or in facsimile, and delivering to  
23 the secretary of state for filing a statement that complies  
24 with the requirements of subsection 1 and recites that the  
25 corporation has been notified of the change.

26 3. If a registered agent changes the registered agent's  
27 business address to another place, the registered agent may  
28 change the business address and the address of the registered  
29 agent by filing a statement as required in subsection 2 for  
30 each corporation, or a single statement for all corporations  
31 named in the notice, except that it need be signed only by the  
32 registered agent or agents and need not be responsive to  
33 subsection 1, paragraph "e", and must recite that a copy of  
34 the statement has been mailed to each corporation named in the  
35 notice.

1 4. A corporation may also change its registered office or  
2 registered agent in its annual report as provided in section  
3 493B.1622.

4 Sec. 33. NEW SECTION. 493B.503 RESIGNATION OF REGISTERED  
5 AGENT.

6 1. A registered agent may resign the agent's agency  
7 appointment by signing and delivering to the secretary of  
8 state for filing the signed original and two exact or  
9 conformed copies of a statement of resignation. The statement  
10 may include a statement that the registered office is also  
11 discontinued.

12 2. After filing the statement the secretary of state shall  
13 mail one copy to the registered office, if not discontinued,  
14 and the other copy to the corporation at its principal office.

15 3. The agency appointment is terminated, and the  
16 registered office discontinued if so provided, on the thirty-  
17 first day after the date on which the statement was filed.

18 Sec. 34. NEW SECTION. 493B.504 SERVICE ON CORPORATION.

19 1. A corporation's registered agent is the corporation's  
20 agent for service of process, notice, or demand required or  
21 permitted by law to be served on the corporation.

22 2. If a corporation has no registered agent, or the agent  
23 cannot with reasonable diligence be served, the corporation  
24 may be served by registered or certified mail, return receipt  
25 requested, addressed to the secretary of the corporation at  
26 its principal office. Service is perfected under this  
27 subsection at the earliest of:

28 a. The date the corporation receives the mail.

29 b. The date shown on the return receipt, if signed on  
30 behalf of the corporation.

31 c. Five days after its deposit in the United States mail,  
32 as evidenced by the postmark, if mailed postpaid and correctly  
33 addressed.

34 3. This section does not prescribe the only means, or  
35 necessarily the required means, of serving a corporation.

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DIVISION VI  
SHARES AND SHAREHOLDERS' RIGHTS  
PART A

Sec. 35. NEW SECTION. 493B.601 AUTHORIZED SHARES.

1. The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 493B.602.

2. The articles of incorporation must authorize both of the following:

a. One or more classes of shares that together have unlimited voting rights.

b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

3. The articles of incorporation may authorize one or more classes of shares that have any of the following qualities:

a. Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.

b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:

(1) At the option of the corporation, the shareholders, or another person or upon the occurrence of a designated event.

(2) For cash, indebtedness, securities, or other property.

(3) In a designated amount or in an amount determined in

1 accordance with a designated formula or by reference to  
2 extrinsic data or events.

3 c. Entitle the holders to distributions calculated in any  
4 manner, including dividends that may be cumulative,  
5 noncumulative, or partially cumulative.

6 d. Have preference over any other class of shares with  
7 respect to distributions, including dividends and  
8 distributions upon the dissolution of the corporation.

9 4. The description of the designations, preferences,  
10 limitations, and relative rights of share classes in  
11 subsection 3 is not exhaustive.

12 Sec. 36. NEW SECTION. 493B.602 TERMS OF CLASS OR SERIES  
13 DETERMINED BY BOARD OF DIRECTORS.

14 1. If the articles of incorporation so provide, the board  
15 of directors may determine, in whole or part, the preferences,  
16 limitations, and relative rights, within the limits set forth  
17 in section 493B.601, of either of the following:

18 a. Any class of shares before the issuance of any shares  
19 of that class.

20 b. One or more series within a class before the issuance  
21 of any shares of that series.

22 2. Each series of a class must be given a distinguishing  
23 designation.

24 3. All shares of a series must have preferences,  
25 limitations, and relative rights identical with those of other  
26 shares of the same series and, except to the extent otherwise  
27 provided in the description of the series, with those of other  
28 series of the same class.

29 4. Before issuing any shares of a class or series created  
30 under this section, the corporation must deliver to the  
31 secretary of state for filing articles of amendment, which are  
32 effective without shareholder action, that set forth all of  
33 the following:

34 a. The name of the corporation.

35 b. The text of the amendment determining the terms of the

1 class or series of shares.

2 c. The date it was adopted.

3 d. A statement that the amendment was duly adopted by the  
4 board of directors.

5 Sec. 37. NEW SECTION. 493B.603 ISSUED AND OUTSTANDING  
6 SHARES.

7 1. A corporation may issue the number of shares of each  
8 class or series authorized by the articles of incorporation.  
9 Shares that are issued are outstanding shares until they are  
10 reacquired, redeemed, converted, or canceled.

11 2. The reacquisition, redemption, or conversion of  
12 outstanding shares is subject to the limitations of subsection  
13 3 and to section 493B.640.

14 3. At all times that shares of the corporation are  
15 outstanding, one or more shares that together have unlimited  
16 voting rights and one or more shares that together are  
17 entitled to receive the net assets of the corporation upon  
18 dissolution must be outstanding.

19 Sec. 38. NEW SECTION. 493B.604 FRACTIONAL SHARES.

20 1. A corporation may:

21 a. Issue fractions of a share or pay in money the value of  
22 fractions of a share.

23 b. Arrange for disposition of fractional shares by the  
24 shareholders.

25 c. Issue scrip in registered or bearer form entitling the  
26 holder to receive a full share upon surrendering enough scrip  
27 to equal a full share.

28 2. Each certificate representing scrip must be  
29 conspicuously labeled "scrip" and must contain the information  
30 required by section 493B.625, subsection 2.

31 3. The holder of a fractional share is entitled to  
32 exercise the rights of a shareholder, including the right to  
33 vote, to receive dividends, and to participate in the assets  
34 of the corporation upon liquidation. The holder of scrip is  
35 not entitled to any of these rights unless the scrip provides

1 for them.

2 4. The board of directors may authorize the issuance of  
3 scrip subject to any condition considered desirable,  
4 including:

5 a. That the scrip will become void if not exchanged for  
6 full shares before a specified date.

7 b. That the shares for which the scrip is exchangeable may  
8 be sold and the proceeds paid to the scrip holders.

9 PART B

10 Sec. 39. NEW SECTION. 493B.620 SUBSCRIPTION FOR SHARES  
11 BEFORE INCORPORATION.

12 1. A subscription for shares entered into before  
13 incorporation is irrevocable for six months unless the  
14 subscription agreement provides a longer or shorter period or  
15 all the subscribers agree to revocation.

16 2. The board of directors may determine the payment terms  
17 of subscriptions for shares that were entered into before  
18 incorporation unless the subscription agreement specifies  
19 them. A call for payment by the board of directors must be  
20 uniform so far as practicable as to all shares of the same  
21 class or series, unless the subscription agreement specifies  
22 otherwise.

23 3. Shares issued pursuant to subscriptions entered into  
24 before incorporation are fully paid and nonassessable when the  
25 corporation receives the consideration specified in the  
26 subscription agreement.

27 4. If a subscriber defaults in payment of money or  
28 property under a subscription agreement entered into before  
29 incorporation, the corporation may collect the amount owed as  
30 any other debt. Alternatively, unless the subscription  
31 agreement provides otherwise, the corporation may rescind the  
32 agreement and may sell the shares if the debt remains unpaid  
33 more than twenty days after the corporation sends written  
34 demand for payment to the subscriber.

35 5. A subscription agreement entered into after

1 incorporation is a contract between the subscriber and the  
2 corporation subject to section 493B.621.

3 Sec. 40. NEW SECTION. 493B.621 ISSUANCE OF SHARES.

4 1. The powers granted in this section to the board of  
5 directors may be reserved to the shareholders by the articles  
6 of incorporation.

7 2. The board of directors may authorize shares to be  
8 issued for consideration consisting of any tangible or  
9 intangible property or benefit to the corporation, including  
10 cash, promissory notes, services performed, contracts for  
11 services to be performed, or other securities of the  
12 corporation.

13 3. Before the corporation issues shares, the board of  
14 directors must determine that the consideration received or to  
15 be received for shares to be issued is adequate. That  
16 determination by the board of directors is conclusive insofar  
17 as the adequacy of consideration for the issuance of shares  
18 relates to whether the shares are validly issued, fully paid,  
19 and nonassessable.

20 4. When the corporation receives the consideration for  
21 which the board of directors authorized the issuance of  
22 shares, the shares issued for that consideration are fully  
23 paid and nonassessable.

24 5. The corporation may place in escrow shares issued for a  
25 contract for future services or benefits or a promissory note,  
26 or make other arrangements to restrict the transfer of the  
27 shares, and may credit distributions in respect of the shares  
28 against their purchase price, until the services are  
29 performed, the note is paid, or the benefits received. If the  
30 services are not performed, the note is not paid, or the  
31 benefits are not received, the shares escrowed or restricted  
32 and the distributions credited may be canceled in whole or in  
33 part.

34 Sec. 41. NEW SECTION. 493B.622 LIABILITY OF  
35 SHAREHOLDERS.

1 1. A purchaser from a corporation of its own shares is not  
2 liable to the corporation or its creditors with respect to the  
3 shares except to pay the consideration for which the shares  
4 were authorized to be issued under section 493B.621, or  
5 specified in the subscription agreement authorized under  
6 section 493B.620.

7 2. Unless otherwise provided in the articles of  
8 incorporation, a shareholder of a corporation is not  
9 personally liable for the acts or debts of the corporation.

10 Sec. 42. NEW SECTION. 493B.623 SHARE DIVIDENDS.

11 1. Unless the articles of incorporation provide otherwise,  
12 shares may be issued pro rata and without consideration to the  
13 corporation's shareholders or to the shareholders of one or  
14 more classes or series. An issuance of shares under this  
15 subsection is a share dividend.

16 2. Shares of one class or series shall not be issued as a  
17 share dividend in respect of shares of another class or series  
18 unless one or more of the following conditions are met:

19 a. The articles of incorporation so authorize.

20 b. A majority of the votes entitled to be cast by the  
21 class or series to be issued approve the issue.

22 c. There are no outstanding shares of the class or series  
23 to be issued.

24 3. If the board of directors does not fix the record date  
25 for determining shareholders entitled to a share dividend, it  
26 is the date the board of directors authorizes the share  
27 dividend.

28 Sec. 43. NEW SECTION. 493B.624 SHARE OPTIONS.

29 A corporation may issue rights, options, or warrants for  
30 the purchase of shares of the corporation. The board of  
31 directors shall determine the terms upon which the rights,  
32 options, or warrants are issued, their form and content, and  
33 the consideration for which the shares are to be issued.

34 Sec. 44. NEW SECTION. 493B.625 CONTENT OF CERTIFICATES.

35 1. Shares may be, but need not be, represented by

1 certificates. Unless this chapter or another section  
2 expressly provides otherwise, the rights and obligations of  
3 shareholders are identical whether or not their shares are  
4 represented by certificates.

5 2. At a minimum each share certificate must state on its  
6 face all of the following:

7 a. The name of the issuing corporation and that it is  
8 organized under the law of this state.

9 b. The name of the person to whom issued.

10 c. The number and class of shares and the designation of  
11 the series, if any, the certificate represents.

12 3. If the issuing corporation is authorized to issue  
13 different classes of shares or different series within a  
14 class, the designations, relative rights, preferences, and  
15 limitations applicable to each class, the variations in  
16 rights, preferences, and limitations determined for each  
17 series, and the authority of the board of directors to  
18 determine variations for future series must be summarized on  
19 the front or back of each certificate. Alternatively, each  
20 certificate may state conspicuously on its front or back that  
21 the corporation will furnish the shareholder this information  
22 on request in writing and without charge.

23 4. Each share certificate:

24 a. Must be signed either manually or in facsimile by two  
25 officers designated in the bylaws or by the board of  
26 directors.

27 b. May bear the corporate seal or its facsimile.

28 5. If the person who signed, either manually or in  
29 facsimile, a share certificate no longer holds office when the  
30 certificate is issued, the certificate is nevertheless valid.

31 Sec. 45. NEW SECTION. 493B.626 SHARES WITHOUT  
32 CERTIFICATES.

33 1. Unless the articles of incorporation or bylaws provide  
34 otherwise, the board of directors of a corporation may  
35 authorize the issue of some or all of the shares of any or all

1 of its classes or series without certificates. The  
2 authorization does not affect shares already represented by  
3 certificates until they are surrendered to the corporation.

4 2. Within a reasonable time after the issue or transfer of  
5 shares without certificates, the corporation shall send the  
6 shareholder a written statement of the information required on  
7 certificates by section 493B.625, subsections 2 and 3, and, if  
8 applicable, section 493B.627.

9 Sec. 46. NEW SECTION. 493B.627 RESTRICTION ON TRANSFER  
10 OF SHARES AND OTHER SECURITIES.

11 1. The articles of incorporation, bylaws, an agreement  
12 among shareholders, or an agreement between shareholders and  
13 the corporation may impose restrictions on the transfer or  
14 registration of transfer of shares of the corporation. A  
15 restriction does not affect shares issued before the  
16 restriction was adopted unless the holders of the shares are  
17 parties to the restriction agreement or voted in favor of the  
18 restriction.

19 2. A restriction on the transfer or registration of  
20 transfer of shares is valid and enforceable against the holder  
21 or a transferee of the holder if the restriction is authorized  
22 by this section and its existence is noted conspicuously on  
23 the front or back of the certificate or is contained in the  
24 information statement required by section 493B.626, subsection

25 2. Unless so noted, a restriction is not enforceable against  
26 a person without knowledge of the restriction.

27 3. A restriction on the transfer or registration of  
28 transfer of shares is authorized for any of the following  
29 purposes:

30 a. To maintain the corporation's status when it is  
31 dependent on the number or identity of its shareholders.

32 b. To preserve exemptions under federal or state  
33 securities law.

34 c. For any other reasonable purpose.

35 4. A restriction on the transfer or registration of

1 transfer of shares may do any of the following:

2 a. Obligate the shareholder first to offer the corporation  
3 or other persons, separately, consecutively, or  
4 simultaneously, an opportunity to acquire the restricted  
5 shares.

6 b. Obligate the corporation or other persons, separately,  
7 consecutively, or simultaneously, to acquire the restricted  
8 shares.

9 c. Require the corporation, the holders of any class of  
10 its shares, or another person to approve the transfer of the  
11 restricted shares, if the requirement is not manifestly  
12 unreasonable.

13 d. Prohibit the transfer of the restricted shares to  
14 designated persons or classes of persons, if the prohibition  
15 is not manifestly unreasonable.

16 5. For purposes of this section, "shares" includes a  
17 security convertible into or carrying a right to subscribe for  
18 or acquire shares.

19 Sec. 47. NEW SECTION. 493B.628 EXPENSE OF ISSUE.

20 A corporation may pay the expenses of selling or  
21 underwriting its shares, and of organizing or reorganizing the  
22 corporation, from the consideration received for shares.

23 PART C

24 Sec. 48. NEW SECTION. 493B.630 SHAREHOLDERS' PREEMPTIVE  
25 RIGHTS.

26 1. Unless section 493B.1704 is applicable to the  
27 corporation, the shareholders of a corporation do not have a  
28 preemptive right to acquire the corporation's unissued shares  
29 except to the extent the articles of incorporation so provide.

30 2. A statement included in the articles of incorporation  
31 that "the corporation elects to have preemptive rights", or  
32 words of similar import, means that the following principles  
33 apply except to the extent the articles of incorporation  
34 expressly provide otherwise:

35 a. The shareholders of the corporation have a preemptive

1 right, granted on uniform terms and conditions prescribed by  
2 the board of directors to provide a fair and reasonable  
3 opportunity to exercise the right, to acquire proportional  
4 amounts of the corporation's unissued shares upon the decision  
5 of the board of directors to issue them.

6 b. A shareholder may waive the shareholder's preemptive  
7 right. A waiver evidenced by a writing is irrevocable even  
8 though it is not supported by consideration.

9 c. There is no preemptive right with respect to:

10 (1) Shares issued as compensation to directors, officers,  
11 agents, or employees of the corporation, its subsidiaries, or  
12 its affiliates.

13 (2) Shares issued to satisfy conversion or option rights  
14 created to provide compensation to directors, officers,  
15 agents, or employees of the corporation, its subsidiaries, or  
16 its affiliates.

17 (3) Shares authorized in articles of incorporation that  
18 are issued within six months from the effective date of  
19 incorporation.

20 (4) Shares sold otherwise than for money.

21 d. Holders of shares of any class without general voting  
22 rights but with preferential rights to distributions or assets  
23 have no preemptive rights with respect to shares of any class.

24 e. Holders of shares of any class with general voting  
25 rights but without preferential rights to distributions or  
26 assets have no preemptive rights with respect to shares of any  
27 class with preferential rights to distributions or assets  
28 unless the shares with preferential rights are convertible  
29 into or carry a right to subscribe for or acquire shares  
30 without preferential rights.

31 f. Shares subject to preemptive rights that are not  
32 acquired by shareholders may be issued to any person for a  
33 period of one year after being offered to shareholders at a  
34 consideration set by the board of directors that is not lower  
35 than the consideration set for the exercise of preemptive

1 rights. An offer at a lower consideration or after the  
2 expiration of one year is subject to the shareholders'  
3 preemptive rights.

4 3. For purposes of this section, "shares" includes a  
5 security convertible into or carrying a right to subscribe for  
6 or acquire shares.

7 Sec. 49. NEW SECTION. 493B.631 CORPORATION'S ACQUISITION  
8 OF ITS OWN SHARES.

9 1. A corporation may acquire its own shares and shares so  
10 acquired constitute authorized but unissued shares.

11 2. If the articles of incorporation prohibit the reissue  
12 of acquired shares, the number of authorized shares is reduced  
13 by the number of shares acquired, effective upon amendment of  
14 the articles of incorporation.

15 3. The board of directors may adopt articles of amendment  
16 under this section without shareholder action, and deliver  
17 them to the secretary of state for filing. The articles must  
18 set forth all of the following:

19 a. The name of the corporation.

20 b. The reduction in the number of authorized shares,  
21 itemized by class and series.

22 c. The total number of authorized shares, itemized by  
23 class and series, remaining after reduction of the shares.

24 PART D

25 Sec. 50. NEW SECTION. 493B.640 DISTRIBUTION TO  
26 SHAREHOLDERS.

27 1. A board of directors may authorize and the corporation  
28 may make distributions to its shareholders subject to  
29 restriction by the articles of incorporation and the  
30 limitation in subsection 3.

31 2. If the board of directors does not fix the record date  
32 for determining shareholders entitled to a distribution, other  
33 than one involving a repurchase or reacquisition of shares, it  
34 is the date the board of directors authorizes the  
35 distribution.

1 3. No distribution may be made if, after giving it effect  
2 either of the following would result:

3 a. The corporation would not be able to pay its debts as  
4 they become due in the usual course of business.

5 b. The corporation's total assets would be less than the  
6 sum of its total liabilities plus, unless the articles of  
7 incorporation permit otherwise, the amount that would be  
8 needed, if the corporation were to be dissolved at the time of  
9 the distribution, to satisfy the preferential rights upon  
10 dissolution of shareholders whose preferential rights are  
11 superior to those receiving the distribution.

12 4. The board of directors may base a determination that a  
13 distribution is not prohibited under subsection 3 either on  
14 financial statements prepared on the basis of accounting  
15 practices and principles that are reasonable in the  
16 circumstances or on a fair valuation or other method that is  
17 reasonable in the circumstances.

18 5. The effect of a distribution under subsection 3 is  
19 measured:

20 a. In the case of distribution by purchase, redemption, or  
21 other acquisition of the corporation's shares, as of the  
22 earlier of:

23 (1) The date money or other property is transferred or  
24 debt incurred by the corporation.

25 (2) The date the shareholder ceases to be a shareholder  
26 with respect to the acquired shares.

27 b. In the case of any other distribution of indebtedness,  
28 as of the date the indebtedness is distributed.

29 c. In all other cases, as of:

30 (1) The date the distribution is authorized if the payment  
31 occurs within one hundred twenty days after the date of  
32 authorization.

33 (2) The date the payment is made if it occurs more than  
34 one hundred twenty days after the date of authorization.

35 6. A corporation's indebtedness to a shareholder incurred

1 by reason of a distribution made in accordance with this  
2 section is at parity with the corporation's indebtedness to  
3 its general, unsecured creditors except to the extent  
4 subordinated by agreement.

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DIVISION VII

6

MEETINGS -- NOTICE -- VOTING

7

PART A

8

Sec. 51. NEW SECTION. 493B.701 ANNUAL MEETING.

9 1. A corporation shall hold annually, at a time stated in  
10 or fixed in accordance with the bylaws, a meeting of  
11 shareholders.

12 2. Annual shareholders' meetings may be held in or out of  
13 this state at the place stated in or fixed in accordance with  
14 the bylaws. If no place is stated in or fixed in accordance  
15 with the bylaws, annual meetings shall be held at the  
16 corporation's principal office.

17 3. The failure to hold an annual meeting at the time  
18 stated in or fixed in accordance with a corporation's bylaws  
19 does not affect the validity of any corporate action.

20 Sec. 52. NEW SECTION. 493B.702 SPECIAL MEETING.

21 1. A corporation shall hold a special meeting of  
22 shareholders either:

23 a. On call of its board of directors or the person or  
24 persons authorized to call a special meeting by the articles  
25 of incorporation or bylaws.

26 b. If the holders of at least ten percent of all the votes  
27 entitled to be cast on any issue proposed to be considered at  
28 the proposed special meeting sign, date, and deliver to the  
29 corporation's secretary one or more written demands for the  
30 meeting describing the purpose or purposes for which it is to  
31 be held.

32 2. If not otherwise fixed under sections 493B.703 or  
33 493B.707, the record date for determining shareholders  
34 entitled to demand a special meeting is the date the first  
35 shareholder signs the demand.

1 3. Special shareholders' meetings may be held in or out of  
2 this state at the place stated in or fixed in accordance with  
3 the bylaws. If no place is stated or fixed in accordance with  
4 the bylaws, special meetings shall be held at the  
5 corporation's principal office.

6 4. Only business with the purpose or purposes described in  
7 the meeting notice required by section 493B.705, subsection 3,  
8 may be conducted at a special shareholders' meeting.

9 Sec. 53. NEW SECTION. 493B.703 COURT-ORDERED MEETING.

10 1. The district court of the county where a corporation's  
11 principal office, or, if none in this state, its registered  
12 office, is located may summarily order a meeting to be held  
13 either:

14 a. On application of any shareholder of the corporation  
15 entitled to participate in an annual meeting if an annual  
16 meeting was not held within the earlier of six months after  
17 the end of the corporation's fiscal year or fifteen months  
18 after its last annual meeting.

19 b. On application of a shareholder who signed a demand for  
20 a special meeting valid under section 493B.702 if either:

21 (1) Notice of the special meeting was not given within  
22 thirty days after the date the demand was delivered to the  
23 corporation's secretary.

24 (2) The special meeting was not held in accordance with  
25 the notice.

26 2. The court may fix the time and place of the meeting,  
27 ascertain the shares entitled to participate in the meeting,  
28 specify a record date for ascertaining shareholders entitled  
29 to notice of and to vote at the meeting, prescribe the form  
30 and content of the meeting notice, fix the quorum required for  
31 specific matters to be considered at the meeting or direct  
32 that the votes represented at the meeting constitute a quorum  
33 for action on those matters, and enter other orders necessary  
34 to accomplish the purpose or purposes of the meeting.

35 Sec. 54. NEW SECTION. 493B.704 ACTION WITHOUT MEETING.

1 1. Unless otherwise provided in the articles of  
2 incorporation, any action required or permitted by this  
3 chapter to be taken at a shareholders' meeting may be taken  
4 without a meeting or vote, and, except as provided in  
5 subsection 5, without prior notice, if one or more written  
6 consents describing the action taken are signed by the holders  
7 of outstanding shares having not less than ninety percent of  
8 the votes entitled to be cast at a meeting at which all shares  
9 entitled to vote on the action were present and voted, and are  
10 delivered to the corporation for inclusion in the minutes or  
11 filing with the corporate records.

12 2. A written consent shall bear the date of signature of  
13 each shareholder who signs the consent and no written consent  
14 is effective to take the corporate action referred to in the  
15 consent unless, within sixty days of the earliest dated  
16 consent delivered in the manner required by this section to  
17 the corporation, written consents signed by a sufficient  
18 number of holders to take action are delivered to the  
19 corporation.

20 3. If not otherwise fixed under sections 493B.703 or  
21 493B.707, the record date for determining shareholders  
22 entitled to take action without a meeting is the date the  
23 first shareholder signs the consent under subsection 1.

24 4. A consent signed under this section has the effect of a  
25 meeting vote and may be described as such in any document.

26 5. If this chapter requires that notice of proposed action  
27 be given to shareholders not entitled to vote and the action  
28 is to be taken by consent of the voting shareholders, the  
29 corporation must give all shareholders written notice of the  
30 proposed action at least ten days before the action is taken.  
31 The notice must contain or be accompanied by the same material  
32 that, under this chapter, would have been required to be sent  
33 to shareholders not entitled to vote in a notice of meeting at  
34 which the proposed action would have been submitted to the  
35 shareholders for action.

1 6. Prompt notice of the taking of corporate action without  
2 a meeting by less than unanimous written consent shall be  
3 given to those shareholders who have not consented in writing.  
4 If the taking of that corporate action requires the giving of  
5 notice under 493B.1320, subsection 2, the notice of the action  
6 shall set forth the matters described in section 493B.1322.

7 Sec. 55. NEW SECTION. 493B.705 NOTICE OF MEETING.

8 1. A corporation shall notify shareholders of the date,  
9 time, and place of each annual and special shareholders'  
10 meeting no fewer than ten nor more than sixty days before the  
11 meeting date. Unless this chapter or the articles of  
12 incorporation require otherwise, the corporation is required  
13 to give notice only to shareholders entitled to vote at the  
14 meeting.

15 2. Unless this chapter or the articles of incorporation  
16 require otherwise, notice of an annual meeting need not  
17 include a description of the purpose or purposes for which the  
18 meeting is called.

19 3. Notice of a special meeting must include a description  
20 of the purpose or purposes for which the meeting is called.

21 4. If not otherwise fixed under section 493B.703 or  
22 493B.707, the record date for determining shareholders  
23 entitled to notice of and to vote at an annual or special  
24 shareholders' meeting is the close of business on the day  
25 before the first notice is delivered to shareholders.

26 5. Unless the bylaws require otherwise, if an annual or  
27 special shareholders' meeting is adjourned to a different  
28 date, time, or place, notice need not be given of the new  
29 date, time, or place if the new date, time, or place is  
30 announced at the meeting before adjournment. If a new record  
31 date for the adjourned meeting is or must be fixed under  
32 section 493B.7207, however, notice of the adjourned meeting  
33 must be given under this section to persons who are  
34 shareholders as of the new record date.

35 Sec. 56. NEW SECTION. 493B.706 WAIVER OF NOTICE.

1 1. A shareholder may waive any notice required by this  
2 chapter, the articles of incorporation, or bylaws before or  
3 after the date and time stated in the notice. The waiver must  
4 be in writing, be signed by the shareholder entitled to the  
5 notice, and be delivered to the corporation for inclusion in  
6 the minutes or filing with the corporate records.

7 2. A shareholder's attendance at a meeting:

8 a. Waives objection to lack of notice or defective notice  
9 of the meeting, unless the shareholder at the beginning of the  
10 meeting or promptly upon the shareholder's arrival objects to  
11 holding the meeting or transacting business at the meeting.

12 b. Waives objection to consideration of a particular  
13 matter at the meeting that is not within the purpose or  
14 purposes described in the meeting notice, unless the  
15 shareholder objects to considering the matter when it is  
16 presented.

17 Sec. 57. NEW SECTION. 493B.707 RECORD DATE.

18 1. The bylaws may fix or provide the manner of fixing the  
19 record date for one or more voting groups in order to  
20 determine the shareholders entitled to notice of a  
21 shareholders' meeting, to demand a special meeting, to vote,  
22 or to take any other action. If the bylaws do not fix or  
23 provide for fixing a record date, the board of directors of  
24 the corporation may fix a future date as the record date.

25 2. A record date fixed under this section shall not be  
26 more than seventy days before the meeting or action requiring  
27 a determination of shareholders.

28 3. A determination of shareholders entitled to notice of  
29 or to vote at a shareholders' meeting is effective for any  
30 adjournment of the meeting unless the board of directors fixes  
31 a new record date, which it must do if the meeting is  
32 adjourned to a date more than one hundred twenty days after  
33 the date fixed for the original meeting.

34 4. If a court orders a meeting adjourned to a date more  
35 than one hundred twenty days after the date fixed for the

1 original meeting, it may provide that the original record date  
2 continues in effect or it may fix a new record date.

3 PART B

4 Sec. 58. NEW SECTION. 493B.720 SHAREHOLDERS' LIST FOR  
5 MEETING.

6 1. After fixing a record date for a meeting, a corporation  
7 shall prepare an alphabetical list of the names of all its  
8 shareholders who are entitled to notice of a shareholders'  
9 meeting. The list must be arranged by voting group and within  
10 each voting group by class or series of shares, and show the  
11 address of and number of shares held by each shareholder.

12 2. The shareholders' list must be available for inspection  
13 by any shareholder beginning two business days after notice of  
14 the meeting is given for which the list was prepared and  
15 continuing through the meeting, at the corporation's principal  
16 office or at a place identified in the meeting notice in the  
17 city where the meeting will be held. A shareholder, or a  
18 shareholder's agent or attorney, is entitled on written demand  
19 to inspect and, subject to the requirements of section  
20 493B.1602, subsection 3, to copy the list, during regular  
21 business hours and at the person's expense, during the period  
22 it is available for inspection.

23 3. The corporation shall make the shareholders' list  
24 available at the meeting, and any shareholder, or a  
25 shareholder's agent or attorney, is entitled to inspect the  
26 list at any time during the meeting or any adjournment.

27 4. If the corporation refuses to allow a shareholder, or a  
28 shareholder's agent or attorney, to inspect the shareholders'  
29 list before or at the meeting, or copy the list as permitted  
30 by subsection 3, the district court of the county where a  
31 corporation's principal office or, if none in this state, its  
32 registered office, is located, on application of the  
33 shareholder, may summarily order the inspection or copying at  
34 the corporation's expense and may postpone the meeting for  
35 which the list was prepared until the inspection or copying is

1 complete.

2 5. Refusal or failure to prepare or make available the  
3 shareholders' list does not affect the validity of action  
4 taken at the meeting.

5 Sec. 59. NEW SECTION. 493B.721 VOTING ENTITLEMENT OF  
6 SHARES.

7 1. Except as provided in subsections 2 and 3 or unless the  
8 articles of incorporation provide otherwise, each outstanding  
9 share, regardless of class, is entitled to one vote on each  
10 matter voted on at a shareholders' meeting. Only shares are  
11 entitled to vote.

12 2. Absent special circumstances, the shares of a  
13 corporation are not entitled to vote if they are owned,  
14 directly or indirectly, by a second corporation, domestic or  
15 foreign, and the first corporation owns, directly or  
16 indirectly, a majority of the shares entitled to vote for  
17 directors of the second corporation.

18 3. Subsection 2 does not limit the power of a corporation  
19 to vote any shares, including its own shares, held by it in a  
20 fiduciary capacity.

21 4. Redeemable shares are not entitled to vote after notice  
22 of redemption is mailed to the holders and a sum sufficient to  
23 redeem the shares has been deposited with a bank, trust  
24 company, or other financial institution under an irrevocable  
25 obligation to pay the holders the redemption price on  
26 surrender of the shares.

27 Sec. 60. NEW SECTION. 493B.722 PROXIES.

28 1. A shareholder may vote the shareholder's shares in  
29 person or by proxy.

30 2. A shareholder may appoint a proxy to vote or otherwise  
31 act for the shareholder by signing an appointment form, either  
32 personally or by the shareholder's attorney-in-fact.

33 3. An appointment of a proxy is effective when received by  
34 the secretary or other officer or agent authorized to tabulate  
35 votes. An appointment is valid for eleven months unless a

1 longer period is expressly provided in the appointment form.

2 4. An appointment of a proxy is revocable by the  
3 shareholder unless the appointment form conspicuously states  
4 that it is irrevocable and the appointment is coupled with an  
5 interest. Appointments coupled with an interest include, but  
6 are not limited to, the appointment of:

7 a. A pledgee.

8 b. A person who purchased or agreed to purchase the  
9 shares.

10 c. A creditor of the corporation who extended it credit  
11 under terms requiring the appointment.

12 d. An employee of the corporation whose employment  
13 contract requires the appointment.

14 e. A party to a voting agreement created under section  
15 493B.731.

16 5. The death or incapacity of the shareholder appointing a  
17 proxy does not affect the right of the corporation to accept  
18 the proxy's authority unless notice of the death or incapacity  
19 is received by the secretary or other officer or agent  
20 authorized to tabulate votes before the proxy exercises the  
21 proxy's authority under the appointment.

22 6. An appointment made irrevocable under subsection 4 is  
23 revoked when the interest with which it is coupled is  
24 extinguished.

25 7. A transferee for value of shares subject to an  
26 irrevocable appointment may revoke the appointment if the  
27 transferee did not know of its existence when the transferee  
28 acquired the shares and the existence of the irrevocable  
29 appointment was not noted conspicuously on the certificate  
30 representing the shares or on the information statement for  
31 shares without certificates.

32 8. Subject to section 493B.724 and to any express  
33 limitation on the proxy's authority appearing on the face of  
34 the appointment form, a corporation is entitled to accept the  
35 proxy's vote or other action as that of the shareholder making

1 the appointment.

2 Sec. 61. NEW SECTION. 493B.723 SHARES HELD BY NOMINEES.

3 1. A corporation may establish a procedure by which the  
4 beneficial owner of shares that are registered in the name of  
5 a nominee is recognized by the corporation as the shareholder.  
6 The extent of this recognition may be determined in the  
7 procedure.

8 2. The procedure may set forth:

9 a. The types of nominees to which it applies.

10 b. The rights or privileges that the corporation  
11 recognizes in a beneficial owner.

12 c. The manner in which the procedure is selected by the  
13 nominee.

14 d. The information that must be provided when the  
15 procedure is selected.

16 e. The period for which selection of the procedure is  
17 effective.

18 f. Other aspects of the rights and duties created.

19 Sec. 62. NEW SECTION. 493B.724 CORPORATION'S ACCEPTANCE  
20 OF VOTES.

21 1. If the name signed on a vote, consent, waiver, or proxy  
22 appointment corresponds to the name of a shareholder, the  
23 corporation if acting in good faith is entitled to accept the  
24 vote, consent, waiver, or proxy appointment and give it effect  
25 as the act of the shareholder.

26 2. If the name signed on a voted consent, waiver, or proxy  
27 appointment does not correspond to the name of its  
28 shareholder, the corporation if acting in good faith is  
29 nevertheless entitled to accept the vote, consent, waiver, or  
30 proxy appointment and give it effect as the act of the  
31 shareholder if:

32 a. The shareholder is an entity and the name signed  
33 purports to be that of an officer or agent of the entity.

34 b. The name signed purports to be that of an  
35 administrator, executor, guardian of the property, or

1 conservator representing the shareholder and, if the  
2 corporation requests, evidence of fiduciary status acceptable  
3 to the corporation has been presented with respect to the  
4 vote, consent, waiver, or proxy appointment.

5 c. The name signed purports to be that of a receiver or  
6 trustee in bankruptcy of the shareholder and, if the  
7 corporation requests, evidence of this status acceptable to  
8 the corporation has been presented with respect to the vote,  
9 consent, waiver, or proxy appointment.

10 d. The name signed purports to be that of a pledgee,  
11 beneficial owner, or attorney-in-fact of the shareholder and,  
12 if the corporation requests, evidence acceptable to the  
13 corporation of the signatory's authority to sign for the  
14 shareholder has been presented with respect to the vote,  
15 consent, waiver, or proxy appointment.

16 e. Two or more persons are the shareholder as co-tenants  
17 or fiduciaries and the name signed purports to be the name of  
18 at least one of the co-owners and the person signing appears  
19 to be acting on behalf of all the co-owners.

20 3. The corporation is entitled to reject a vote, consent,  
21 waiver, or proxy appointment if the secretary or other officer  
22 or agent authorized to tabulate votes, acting in good faith,  
23 has reasonable basis for doubt about the validity of the  
24 signature on it or about the signatory's authority to sign for  
25 the shareholder.

26 4. The corporation and its officer or agent who accepts or  
27 rejects a vote, consent, waiver, or proxy appointment in good  
28 faith and in accordance with the standards of this section are  
29 not liable in damages to the shareholder for the consequences  
30 of the acceptance or rejection.

31 5. Corporate action based on the acceptance or rejection  
32 of a vote, consent, waiver, or proxy appointment under this  
33 section is valid unless a court of competent jurisdiction  
34 determines otherwise.

35 Sec. 63. NEW SECTION. 493B.725 QUORUM AND VOTING

1 REQUIREMENTS FOR VOTING GROUPS.

2 1. Shares entitled to vote as a separate voting group may  
3 take action on a matter at a meeting only if a quorum of those  
4 shares exists with respect to that matter. Unless the  
5 articles of incorporation or this chapter provides otherwise,  
6 a majority of the votes entitled to be cast on the matter by  
7 the voting group constitutes a quorum of that voting group for  
8 action on that matter.

9 2. Once a share is represented for any purpose at a  
10 meeting, it is deemed present for quorum purposes for the  
11 remainder of the meeting and for any adjournment of that  
12 meeting unless a new record date is or must be set for that  
13 adjourned meeting.

14 3. If a quorum exists, action on a matter, other than the  
15 election of directors, by a voting group is approved if the  
16 votes cast within the voting group favoring the action exceed  
17 the votes cast opposing the action, unless the articles of  
18 incorporation or this chapter require a greater number of  
19 affirmative votes.

20 4. An amendment of articles of incorporation adding,  
21 changing, or deleting a quorum or voting requirement for a  
22 voting group greater than specified in subsection 2 or 3 is  
23 governed by section 493B.727.

24 5. The election of directors is governed by section  
25 493B.728.

26 Sec. 64. NEW SECTION. 493B.726 ACTION BY SINGLE OR  
27 MULTIPLE GROUPS.

28 1. If the articles of incorporation or this chapter  
29 provide for voting by a single voting group on a matter,  
30 action on that matter is taken when voted upon by that voting  
31 group as provided in section 493B.725.

32 2. If the articles of incorporation or this chapter  
33 provide for voting by two or more voting groups on a matter,  
34 action on that matter is taken only when voted upon by each of  
35 those voting groups counted separately as provided in section

1 493B.725. Action may be taken by one voting group on a matter  
2 even though no action is taken by another voting group  
3 entitled to vote on the matter.

4 Sec. 65. NEW SECTION. 493B.727 GREATER QUORUM OR VOTING  
5 REQUIREMENTS.

6 1. The articles of incorporation may provide for a greater  
7 quorum or voting requirement for shareholders or voting groups  
8 of shareholders than is provided for by this chapter.

9 2. An amendment to the articles of incorporation that  
10 adds, changes, or deletes a greater quorum or voting  
11 requirement must meet the same quorum requirement and be  
12 adopted by the same vote and voting groups required to take  
13 action under the quorum and voting requirements then in effect  
14 or proposed to be adopted, whichever is greater.

15 Sec. 66. NEW SECTION. 493B.728 VOTING FOR DIRECTORS --  
16 CUMULATIVE VOTING.

17 1. Unless otherwise provided in the articles of  
18 incorporation, directors are elected by a plurality of the  
19 votes cast by the shares entitled to vote in the election at a  
20 meeting at which a quorum is present.

21 2. Shareholders do not have a right to cumulate their  
22 votes for directors unless the articles of incorporation so  
23 provide.

24 3. A statement included in the articles of incorporation  
25 that "[all] [a designated voting group of] shareholders are  
26 entitled to cumulate their votes for directors", or words of  
27 similar import, means that the shareholders designated are  
28 entitled to multiply the number of votes they are entitled to  
29 cast by the number of directors for whom they are entitled to  
30 vote and cast the product for a single candidate or distribute  
31 the product among two or more candidates.

32 PART C

33 Sec. 67. NEW SECTION. 493B.730 VOTING TRUSTS.

34 1. One or more shareholders may create a voting trust,  
35 conferring on a trustee the right to vote or otherwise act for

1 them, by signing an agreement setting out the provisions of  
2 the trust, which may include anything consistent with its  
3 purpose, and transferring their shares to the trustee. When a  
4 voting trust agreement is signed, the trustee shall prepare a  
5 list of the names and addresses of all owners of beneficial  
6 interests in the trust, together with the number and class of  
7 shares each transferred to the trust, and deliver copies of  
8 the list and agreement to the corporation's principal office.

9 2. A voting trust becomes effective on the date the first  
10 shares subject to the trust are registered in the trustee's  
11 name. A voting trust is valid for not more than ten years  
12 after its effective date unless extended under subsection 3.

13 3. All or some of the parties to a voting trust may extend  
14 it for additional terms of not more than ten years each by  
15 signing an extension agreement and obtaining the voting  
16 trustee's written consent to the extension. An extension is  
17 valid for ten years from the date the first shareholder signs  
18 the extension agreement. The voting trustee must deliver  
19 copies of the extension agreement and list of beneficial  
20 owners to the corporation's principal office. An extension  
21 agreement binds only those parties signing it.

22 Sec. 68. NEW SECTION. 493B.731 VOTING AGREEMENTS.

23 1. Two or more shareholders may provide for the manner in  
24 which they will vote their shares by signing an agreement for  
25 that purpose. A voting agreement created under this section  
26 is not subject to section 493B.730.

27 2. A voting agreement created under this section is  
28 specifically enforceable.

29 PART D

30 Sec. 69. NEW SECTION. 493B.740 PROCEDURE IN DERIVATIVE  
31 PROCEEDINGS.

32 1. A person shall not commence a proceeding in the right  
33 of a domestic or foreign corporation unless that person was a  
34 shareholder of the corporation when the transaction complained  
35 of occurred or unless that person became a shareholder through

1 transfer by operation of law from one who was a shareholder at  
2 that time.

3 2. A complaint in a proceeding brought in the right of a  
4 corporation must be verified and allege with particularity the  
5 demand made, if any, to obtain action by the board of  
6 directors and either that the demand was refused or ignored or  
7 why the complainant did not make the demand. Whether or not a  
8 demand for action was made, if the corporation commences an  
9 investigation of the charges made in the demand or complaint,  
10 the court may stay any proceeding until the investigation is  
11 completed.

12 3. A proceeding commenced under this section shall not be  
13 discontinued or settled without the court's approval. If the  
14 court determines that a proposed discontinuance or settlement  
15 will substantially affect the interest of the corporation's  
16 shareholders or a class of shareholders, the court shall  
17 direct that notice be given the shareholders affected.

18 4. On termination of the proceeding the court may require  
19 the plaintiff to pay any defendant's reasonable expenses  
20 including attorney fees incurred in defending the proceeding  
21 if it finds that the proceeding was commenced without  
22 reasonable cause.

23 5. For purposes of this section, "shareholder" includes a  
24 beneficial owner whose shares are held in a voting trust or  
25 held by a nominee on the beneficial owner's behalf.

26 DIVISION VIII

27 DIRECTORS AND OFFICERS

28 PART A

29 Sec. 70. NEW SECTION. 493B.801 REQUIREMENT FOR AND  
30 DUTIES OF BOARD OF DIRECTORS.

31 1. Except as provided in subsection 3, each corporation  
32 must have a board of directors.

33 2. All corporate powers shall be exercised by or under the  
34 authority of, and the business and affairs of the corporation  
35 managed under the direction of, its board of directors,

1 subject to any limitation set forth in the articles of  
2 incorporation.

3 3. A corporation having fifty or fewer shareholders may  
4 dispense with or limit the authority of a board of directors  
5 by describing in its articles of incorporation who will  
6 perform some or all of the duties of a board of directors.

7 Sec. 71. NEW SECTION. 493B.802 QUALIFICATIONS OF  
8 DIRECTORS.

9 The articles of incorporation or bylaws may prescribe  
10 qualifications for directors. A director need not be a  
11 resident of this state or a shareholder of the corporation  
12 unless the articles of incorporation or bylaws so prescribe.

13 Sec. 72. NEW SECTION. 493B.803 NUMBER AND ELECTION OF  
14 DIRECTORS.

15 1. A board of directors must consist of one or more  
16 individuals, with the number specified in or fixed in  
17 accordance with the articles of incorporation or bylaws.

18 2. If a board of directors has power to fix or change the  
19 number of directors, the board may increase or decrease by  
20 thirty percent or less the number of directors last approved  
21 by the shareholders, but only the shareholders may increase or  
22 decrease by more than thirty percent the number of directors  
23 last approved by the shareholders.

24 3. The articles of incorporation or bylaws may establish a  
25 variable range for the size of the board of directors by  
26 fixing a minimum and maximum number of directors. If a  
27 variable range is established, the number of directors may be  
28 fixed or changed from time to time, within the minimum and  
29 maximum, by the shareholders or the board of directors. After  
30 shares are issued, only the shareholders may change the range  
31 for the size of the board or change from a fixed-range to a  
32 variable-range size board or vice versa.

33 4. Directors are elected at the first annual  
34 shareholders' meeting and at each annual meeting thereafter  
35 unless their terms are staggered under section 493B.806.

1       Sec. 73. NEW SECTION. 493B.804 ELECTION OF DIRECTORS BY  
2 CERTAIN CLASSES OF SHAREHOLDERS.

3       If the articles of incorporation authorize dividing the  
4 shares into classes, the articles may also authorize the  
5 election of all or a specified number of directors by the  
6 holders of one or more authorized classes of shares. Each  
7 class, or classes, of shares entitled to elect one or more  
8 directors is a separate voting group for purposes of the  
9 election of directors.

10       Sec. 74. NEW SECTION. 493B.805 TERMS OF DIRECTORS  
11 GENERALLY.

12       1. The terms of the initial directors of a corporation  
13 expire at the first shareholders' meeting at which directors  
14 are elected.

15       2. The terms of all other directors expire at the next  
16 annual shareholders' meeting following their election unless  
17 their terms are staggered under section 493B.806.

18       3. A decrease in the number of directors does not shorten  
19 an incumbent director's term.

20       4. The term of a director elected to fill a vacancy  
21 expires at the next shareholders' meeting at which directors  
22 are elected.

23       5. Despite the expiration of a director's term, the  
24 director continues to serve until a successor for that  
25 director is elected and qualifies or until there is a decrease  
26 in the number of directors.

27       Sec. 75. NEW SECTION. 493B.806 STAGGERED TERMS FOR  
28 DIRECTORS.

29       The articles of incorporation may provide for staggering  
30 the terms of directors by dividing the total number of  
31 directors into two or three groups, with each group containing  
32 one-half or one-third of the total, as near as may be. In  
33 that event, the terms of directors in the first group expire  
34 at the first annual shareholders' meeting after their  
35 election, the terms of the second group expire at the second

1 annual shareholders' meeting after their election, and the  
2 terms of the third group, if any, expire at the third annual  
3 shareholders' meeting after their election. At each annual  
4 shareholders' meeting held thereafter, directors shall be  
5 chosen for a term of two years or three years, as the case may  
6 be, to succeed those whose terms expire.

7 Sec. 76. NEW SECTION. 493B.807 RESIGNATION OF DIRECTORS.

8 1. A director may resign at any time by delivering written  
9 notice to the board of directors, its chairperson, or to the  
10 corporation.

11 2. A resignation is effective when the notice is delivered  
12 unless the notice specifies a later effective date.

13 Sec. 77. NEW SECTION. 493B.808 REMOVAL OF DIRECTORS BY  
14 SHAREHOLDERS.

15 1. The shareholders may remove one or more directors with  
16 or without cause unless the articles of incorporation provide  
17 that directors may be removed only for cause.

18 2. If a director is elected by a voting group of  
19 shareholders, only the shareholders of that voting group may  
20 participate in the vote to remove that director.

21 3. If cumulative voting is authorized, a director shall  
22 not be removed if the number of votes sufficient to elect that  
23 director under cumulative voting is voted against the  
24 director's removal. If cumulative voting is not authorized, a  
25 director may be removed only if the number of votes cast to  
26 remove that director exceeds the number of votes cast not to  
27 remove the director.

28 4. A director may be removed by the shareholders only at a  
29 meeting called for the purpose of removing the director and  
30 after notice stating that the purpose, or one of the purposes,  
31 of the meeting is removal of the director. A director shall  
32 not be removed pursuant to written consents under section  
33 493B.704 unless written consents are obtained from the holders  
34 of all the outstanding shares of the corporation.

35 Sec. 78. NEW SECTION. 493B.809 REMOVAL OF DIRECTORS BY

1 JUDICIAL PROCEEDING.

2 1. The district court of the county where a corporation's  
3 principal office or, if none in this state, its registered  
4 office is located may remove a director of the corporation  
5 from office in a proceeding commenced either by the  
6 corporation or by its shareholders holding at least twenty  
7 percent of the outstanding shares of any class if the court  
8 finds that both of the following apply:

9 a. The director engaged in fraudulent or dishonest conduct  
10 with respect to the corporation.

11 b. Removal is in the best interest of the corporation.

12 2. The court that removes a director may bar the director  
13 from reelection for a period prescribed by the court.

14 3. If shareholders commence a proceeding under subsection  
15 1, they shall make the corporation a party defendant.

16 Sec. 79. NEW SECTION. 493B.810 VACANCY ON BOARD.

17 1. Unless the articles of incorporation provide otherwise,  
18 if a vacancy occurs on a board of directors, including a  
19 vacancy resulting from an increase in the number of directors,  
20 the vacancy may be filled in any of the following manners:

21 a. The shareholders may fill the vacancy.

22 b. The board of directors may fill the vacancy.

23 c. If the directors remaining in office constitute fewer  
24 than a quorum of the board, they may fill the vacancy by the  
25 affirmative vote of a majority of all the directors remaining  
26 in office.

27 2. If the vacant office was held by a director elected by  
28 a voting group of shareholders, only the holders of shares of  
29 that voting group are entitled to vote to fill the vacancy if  
30 it is filled by the shareholders.

31 3. A vacancy that will occur at a specific later date, by  
32 reason of a resignation effective at a later date under  
33 section 493B.807, subsection 2 or otherwise, may be filled  
34 before the vacancy occurs but the new director shall not take  
35 office until the vacancy occurs.



1 the meeting.

2 2. Unless the articles of incorporation or bylaws provide  
3 for a longer or shorter period, special meetings of the board  
4 of directors must be preceded by at least two days' notice of  
5 the date, time, and place of the meeting. The notice need not  
6 describe the purpose of the special meeting unless required by  
7 the articles of incorporation or bylaws.

8 Sec. 84. NEW SECTION. 493B.823 WAIVER OF NOTICE.

9 1. A director may waive any notice required by this  
10 chapter, the articles of incorporation, or bylaws before or  
11 after the date and time stated in the notice. Except as  
12 provided by subsection 2, the waiver must be in writing,  
13 signed by the director entitled to the notice, and filed with  
14 the minutes or corporate records.

15 2. A director's attendance at or participation in a  
16 meeting waives any required notice to that director of the  
17 meeting unless the director at the beginning of the meeting or  
18 promptly upon the director's arrival objects to holding the  
19 meeting or transacting business at the meeting and does not  
20 thereafter vote for or assent to action taken at the meeting.

21 Sec. 85. NEW SECTION. 493B.824 QUORUM AND VOTING.

22 1. Unless the articles of incorporation or bylaws require  
23 a different number, a quorum of a board of directors consists  
24 of either:

25 a. A majority of the fixed number of directors if the  
26 corporation has a fixed board size.

27 b. A majority of the number of directors prescribed, or,  
28 if no number is prescribed the number in office immediately  
29 before the meeting begins, if the corporation has a variable-  
30 range size board.

31 2. The articles of incorporation or bylaws may authorize a  
32 quorum of a board of directors to consist of no fewer than  
33 one-third of the fixed or prescribed number of directors  
34 determined under subsection 1.

35 3. If a quorum is present when a vote is taken, the

1 affirmative vote of a majority of directors present is the act  
2 of the board of directors unless the articles of incorporation  
3 or bylaws require the vote of a greater number of directors.

4 4. A director who is present at a meeting of the board of  
5 directors or a committee of the board of directors when  
6 corporate action is taken is deemed to have assented to the  
7 action taken unless one or more of the following occurs:

8 a. The director objects at the beginning of the meeting or  
9 promptly upon the director's arrival to holding it or  
10 transacting business at the meeting.

11 b. The director's dissent or abstention from the action  
12 taken is entered in the minutes of the meeting.

13 c. The director delivers written notice of the director's  
14 dissent or abstention to the presiding officer of the meeting  
15 before its adjournment or to the corporation immediately after  
16 adjournment of the meeting.

17 The right of dissent or abstention is not available to a  
18 director who votes in favor of the action taken.

19 Sec. 86. NEW SECTION. 493B.825 COMMITTEES.

20 1. Unless the articles of incorporation or bylaws provide  
21 otherwise, a board of directors may create one or more  
22 committees and appoint members of the board of directors to  
23 serve on them. Each committee may have two or more members,  
24 who serve at the pleasure of the board of directors.

25 2. The creation of a committee and appointment of members  
26 to it must be approved by the greater of either:

27 a. A majority of all the directors in office when the  
28 action is taken.

29 b. The number of directors required by the articles of  
30 incorporation or bylaws to take action under section 493B.824.

31 3. Sections 493B.820 through 493B.824, which govern  
32 meetings, action without meetings, notice and waiver of  
33 notice, and quorum and voting requirements of the board of  
34 directors, apply to committees and their members as well.

35 4. To the extent specified by the board of directors or in

1 the articles of incorporation or bylaws, each committee may  
2 exercise the authority of the board of directors under section  
3 493B.801.

4 5. A committee shall not, however:

5 a. Authorize distributions.

6 b. Approve or propose to shareholders action that this  
7 chapter requires be approved by shareholders.

8 c. Fill vacancies on the board of directors or on any of  
9 its committees.

10 d. Amend articles of incorporation pursuant to section  
11 493B.1002.

12 e. Adopt, amend, or repeal bylaws.

13 f. Approve a plan of merger not requiring shareholder  
14 approval.

15 g. Authorize or approve reacquisition of shares, except  
16 according to a formula or method prescribed by the board of  
17 directors.

18 h. Authorize or approve the issuance or sale or contract  
19 for sale of shares, or determine the designation and relative  
20 rights, preferences, and limitations of a class or series of  
21 shares, except that the board of directors may authorize a  
22 committee or a senior executive officer of the corporation to  
23 do so within limits specifically prescribed by the board of  
24 directors.

25 6. The creation of, delegation of authority to, or action  
26 by a committee does not alone constitute compliance by a  
27 director with the standards of conduct described in section  
28 493B.830.

29 PART C

30 Sec. 87. NEW SECTION. 493B.830 GENERAL STANDARDS FOR  
31 DIRECTORS.

32 1. A director shall discharge that director's duties as a  
33 director, including the director's duties as a member of a  
34 committee in conformity with all of the following:

35 a. In good faith.

1 b. With the care an ordinarily prudent person in a like  
2 position would exercise under similar circumstances.

3 c. In a manner the director reasonably believes to be in  
4 the best interests of the corporation.

5 2. In discharging the director's duties a director is  
6 entitled to rely on information, opinions, reports, or  
7 statements, including financial statements and other financial  
8 data, if prepared or presented by any of the following:

9 a. One or more officers or employees of the corporation  
10 whom the director reasonably believes to be reliable and  
11 competent in the matters presented.

12 b. Legal counsel, public accountants, or other persons as  
13 to matters the director reasonably believes are within the  
14 person's professional or expert competence.

15 c. A committee of the board of directors of which the  
16 director is not a member if the director reasonably believes  
17 the committee merits confidence.

18 3. A director is not acting in good faith if the director  
19 has knowledge concerning the matter in question that makes  
20 reliance otherwise permitted by subsection 2 unwarranted.

21 4. A director is not liable for any action taken as a  
22 director, or any failure to take any action, if the director  
23 performed the duties of the director's office in compliance  
24 with this section, or if, and to the extent that, liability  
25 for any such action or failure to act has been limited by the  
26 articles of incorporation pursuant to section 493B.832.

27 Sec. 88. NEW SECTION. 493B.831 DIRECTOR CONFLICT OF  
28 INTEREST.

29 1. A conflict of interest transaction is a transaction  
30 with the corporation in which a director of the corporation  
31 has a direct or indirect interest. A conflict of interest  
32 transaction is not voidable by the corporation solely because  
33 of the director's interest in the transaction if any one of  
34 the following is true:

35 a. The material facts of the transaction and the

1 director's interest were disclosed or known to the board of  
2 directors or a committee of the board of directors and the  
3 board of directors or committee authorized, approved, or  
4 ratified the transaction.

5 b. The material facts of the transaction and the  
6 director's interest were disclosed or known to the  
7 shareholders entitled to vote and they authorized, approved,  
8 or ratified the transaction.

9 c. The transaction was fair to the corporation.

10 2. For purposes of this section, a director of the  
11 corporation has an indirect interest in a transaction if  
12 either:

13 a. Another entity in which the director has a material  
14 financial interest or in which the director is a general  
15 partner is a party to the transaction.

16 b. Another entity of which the director is a director,  
17 officer, or trustee is a party to the transaction and the  
18 transaction is or should be considered by the board of  
19 directors of the corporation.

20 3. For purposes of subsection 1, paragraph "a", a conflict  
21 of interest transaction is authorized, approved, or ratified  
22 if it receives the affirmative vote of a majority of the  
23 directors on the board of directors or on the committee, who  
24 have no direct or indirect interest in the transaction, but a  
25 transaction may not be authorized, approved, or ratified under  
26 this section by a single director. If a majority of the  
27 directors who have no direct or indirect interest in the  
28 transaction vote to authorize, approve, or ratify the  
29 transaction, a quorum is present for the purpose of taking  
30 action under this section. The presence of, or a vote cast  
31 by, a director with a direct or indirect interest in the  
32 transaction does not affect the validity of any action taken  
33 under subsection 1, paragraph "a", if the transaction is  
34 otherwise authorized, approved, or ratified as provided in  
35 that subsection.

1 4. For purposes of subsection 1, paragraph "b", a conflict  
2 of interest transaction is authorized, approved, or ratified  
3 if it receives the vote of a majority of the shares entitled  
4 to be counted under this subsection. Shares owned by or voted  
5 under the control of a director who has a direct or indirect  
6 interest in the transaction, and shares owned by or voted  
7 under the control of an entity described in subsection 2,  
8 paragraph "a", shall not be counted in a vote of shareholders  
9 to determine whether to authorize, approve, or ratify a  
10 conflict of interest transaction under subsection 1, paragraph  
11 "b". The vote of those shares, however, is counted in  
12 determining whether the transaction is approved under other  
13 sections of this chapter. A majority of the shares, whether  
14 or not present, that are entitled to be counted in a vote on  
15 the transaction under this subsection constitutes a quorum for  
16 the purpose of taking action under this section.

17 Sec. 89. NEW SECTION. 493B.832 INDEMNIFICATION OF  
18 DIRECTORS.

19 The articles of incorporation may contain a provision  
20 eliminating or limiting the personal liability of a director  
21 to the corporation or its shareholders for monetary damages  
22 for breach of fiduciary duty as a director, provided that the  
23 provision does not eliminate or limit the liability of a  
24 director for a breach of the director's duty of loyalty to the  
25 corporation or its shareholders, for acts or omissions not in  
26 good faith or which involve intentional misconduct or a  
27 knowing violation of law, for a transaction from which the  
28 director derives an improper personal benefit, or under  
29 section 493B.833. A provision shall not eliminate or limit  
30 the liability of a director for an act or omission occurring  
31 prior to the date when the provision in the articles of  
32 incorporation becomes effective.

33 Sec. 90. NEW SECTION. 493B.833 LIABILITY FOR UNLAWFUL  
34 DISTRIBUTION.

35 1. Unless the director complies with the applicable

1 standards of conduct described in section 493B.830, a director  
2 who votes for or assents to a distribution made in violation  
3 of this chapter or the articles of incorporation is personally  
4 liable to the corporation for the amount of the distribution  
5 that exceeds what could have been distributed without  
6 violating this chapter or the articles of incorporation.

7 2. A director held liable for an unlawful distribution  
8 under subsection 1 is entitled to contribution from both of  
9 the following:

10 a. Every other director who voted for or assented to the  
11 distribution without complying with the applicable standards  
12 of conduct described in section 493B.830.

13 b. Each shareholder for the amount the shareholder  
14 accepted knowing the distribution was made in violation of  
15 this chapter or the articles of incorporation.

16 PART D

17 Sec. 91. NEW SECTION. 493B.840 REQUIRED OFFICERS.

18 1. A corporation has the officers described in its bylaws  
19 or appointed by the board of directors in accordance with the  
20 bylaws.

21 2. A duly appointed officer may appoint one or more  
22 officers or assistant officers if authorized by the bylaws or  
23 the board of directors.

24 3. The bylaws or the board of directors shall delegate to  
25 one of the officers responsibility for preparing minutes of  
26 the directors' and shareholders' meetings and for  
27 authenticating records of the corporation.

28 4. The same individual may simultaneously hold more than  
29 one office in a corporation.

30 Sec. 92. NEW SECTION. 493B.841 DUTIES OF OFFICERS.

31 Each officer has the authority and shall perform the duties  
32 set forth in the bylaws or, to the extent consistent with the  
33 bylaws, the duties prescribed by the board of directors or by  
34 direction of an officer authorized by the board of directors  
35 to prescribe the duties of other officers.

1     Sec. 93. NEW SECTION. 493B.842 STANDARDS OF CONDUCT FOR  
2 OFFICERS.

3     1. An officer with discretionary authority shall discharge  
4 the officer's duties under that authority in conformity with  
5 all of the following:

6     a. In good faith.

7     b. With the care an ordinarily prudent person in a like  
8 position would exercise under similar circumstances.

9     c. In a manner the officer reasonably believes to be in  
10 the best interests of the corporation.

11    2. In discharging the person's duties an officer is  
12 entitled to rely on information, opinions, reports, or  
13 statements, including financial statements and other financial  
14 data, if prepared or presented by either:

15    a. One or more officers or employees of the corporation  
16 whom the officer reasonably believes to be reliable and  
17 competent in the matters presented.

18    b. Legal counsel, public accountants, or other persons as  
19 to matters the officer reasonably believes are within the  
20 person's professional or expert competence.

21    3. An officer is not acting in good faith if the officer  
22 has knowledge concerning the matter in question that makes  
23 reliance otherwise permitted by subsection 2 unwarranted.

24    4. An officer is not liable for any action taken as an  
25 officer, or any failure to take any action, if the officer  
26 performed the duties of the officer's office in compliance  
27 with this section.

28    Sec. 94. NEW SECTION. 493B.843 RESIGNATION AND REMOVAL  
29 OF OFFICERS.

30    1. An officer may resign at any time by delivering notice  
31 to the corporation. A resignation is effective when the  
32 notice is delivered unless the notice specifies a later  
33 effective date. If a resignation is made effective at a later  
34 date and the corporation accepts the future effective date,  
35 its board of directors may fill the pending vacancy before the

1 effective date if the board of directors provides that the  
2 successor does not take office until the effective date.

3 2. A board of directors may remove any officer at any time  
4 with or without cause.

5 Sec. 95. NEW SECTION. 493B.844 CONTRACT RIGHTS OF  
6 OFFICERS.

7 1. The appointment of an officer does not itself create  
8 contract rights.

9 2. An officer's removal does not affect the officer's  
10 contract rights, if any, with the corporation. An officer's  
11 resignation does not affect the corporation's contract rights,  
12 if any, with the officer.

13 PART E

14 Sec. 96. NEW SECTION. 493B.850 DEFINITIONS.

15 As used in this part of this chapter, unless the context  
16 otherwise requires:

17 1. "Corporation" includes any domestic or foreign  
18 predecessor entity of a corporation in a merger or other  
19 transaction in which the predecessor's existence ceased upon  
20 consummation of the transaction.

21 2. "Director" means an individual who is or was a director  
22 of a corporation or an individual who, while a director of a  
23 corporation, is or was serving at the corporation's request as  
24 a director, officer, partner, trustee, employee, or agent of  
25 another foreign or domestic corporation, partnership, joint  
26 venture, trust, employee benefit plan, or other enterprise. A  
27 director is considered to be serving an employee benefit plan  
28 at the corporation's request if the director's duties to the  
29 corporation also impose duties on, or otherwise involve  
30 services by, that director to the plan or to participants in  
31 or beneficiaries of the plan. "Director" includes, unless the  
32 context requires otherwise, the estate or personal  
33 representative of a director.

34 3. "Expenses" include counsel fees.

35 4. "Liability" means the obligation to pay a judgment,

1 settlement, penalty, fine, including an excise tax assessed  
2 with respect to an employee benefit plan, or reasonable  
3 expenses incurred with respect to a proceeding.

4 5. "Official capacity" means:

5 a. When used with respect to a director, the office of  
6 director in a corporation.

7 b. When used with respect to an individual other than a  
8 director, as contemplated in section 493B.856, the office in a  
9 corporation held by the officer or the employment or agency  
10 relationship undertaken by the employee or agent on behalf of  
11 the corporation.

12 "Official capacity" does not include service for any other  
13 foreign or domestic corporation or any partnership, joint  
14 venture, trust, employee benefit plan, or other enterprise.

15 6. "Party" includes an individual who was, is, or is  
16 threatened to be made a named defendant or respondent in a  
17 proceeding.

18 7. "Proceeding" means any threatened, pending, or  
19 completed action, suit, or proceeding, whether civil,  
20 criminal, administrative, or investigative and whether formal  
21 or informal.

22 Sec. 97. NEW SECTION. 493B.851 AUTHORITY TO INDEMNIFY.

23 1. Except as provided in subsection 4, a corporation may  
24 indemnify an individual made a party to a proceeding because  
25 the individual is or was a director against liability incurred  
26 in the proceeding if all of the following apply:

27 a. The individual acted in good faith.

28 b. The individual reasonably believed:

29 (1) In the case of conduct in the individual's official  
30 capacity with the corporation, that the individual's conduct  
31 was in the corporation's best interests.

32 (2) In all other cases, that the individual's conduct was  
33 at least not opposed to the corporation's best interests.

34 c. In the case of any criminal proceeding, the individual  
35 had no reasonable cause to believe the individual's conduct

1 was unlawful.

2 2. A director's conduct with respect to an employee  
3 benefit plan for a purpose the director reasonably believed to  
4 be in the interests of the participants in and beneficiaries  
5 of the plan is conduct that satisfies the requirement of  
6 subsection 1, paragraph "b", subparagraph (2).

7 3. The termination of a proceeding by judgment, order,  
8 settlement, conviction, or upon a plea of nolo contendere or  
9 its equivalent is not, of itself, determinative that the  
10 director did not meet the standard of conduct described in  
11 this section.

12 4. A corporation shall not indemnify a director under this  
13 section in either of the following circumstances:

14 a. In connection with a proceeding by or in the right of  
15 the corporation in which the director was adjudged liable to  
16 the corporation.

17 b. In connection with any other proceeding charging  
18 improper personal benefit to the director, whether or not  
19 involving action in the director's official capacity, in which  
20 the director was adjudged liable on the basis that personal  
21 benefit was improperly received by the director.

22 5. Indemnification permitted under this section in  
23 connection with a proceeding by or in the right of the  
24 corporation is limited to reasonable expenses incurred in  
25 connection with the proceeding.

26 Sec. 98. NEW SECTION. 493B.852 MANDATORY  
27 INDEMNIFICATION.

28 Unless limited by its articles of incorporation, a  
29 corporation shall indemnify a director who was wholly  
30 successful, on the merits or otherwise, in the defense of any  
31 proceeding to which the director was a party because the  
32 director is or was a director of the corporation against  
33 reasonable expenses incurred by the director in connection  
34 with the proceeding.

35 Sec. 99. NEW SECTION. 493B.853 ADVANCE FOR EXPENSES.

1 1. A corporation may pay for or reimburse the reasonable  
2 expenses incurred by a director who is a party to a proceeding  
3 in advance of final disposition of the proceeding if any of  
4 the following apply:

5 a. The director furnishes the corporation a written  
6 affirmation of the director's good faith belief that the  
7 director has met the standard of conduct described in section  
8 493B.851.

9 b. The director furnishes the corporation a written  
10 undertaking, executed personally or on the director's behalf,  
11 to repay the advance if it is ultimately determined that the  
12 director did not meet that standard of conduct.

13 c. A determination is made that the facts then known to  
14 those making the determination would not preclude  
15 indemnification under this part.

16 2. The undertaking required by subsection 1, paragraph  
17 "b", must be an unlimited general obligation of the director  
18 but need not be secured and may be accepted without reference  
19 to financial ability to make repayment.

20 3. Determinations and authorizations of payments under  
21 this section shall be made in the manner specified in section  
22 493B.855.

23 Sec. 100. NEW SECTION. 493B.854 COURT-ORDERED  
24 INDEMNIFICATION.

25 Unless a corporation's articles of incorporation provide  
26 otherwise, a director of the corporation who is a party to a  
27 proceeding may apply for indemnification to the court  
28 conducting the proceeding or to another court of competent  
29 jurisdiction. On receipt of an application, the court after  
30 giving any notice the court considers necessary may order  
31 indemnification if it determines either of the following:

32 1. The director is entitled to mandatory indemnification  
33 under section 493B.852, in which case the court shall also  
34 order the corporation to pay the directors reasonable expenses  
35 incurred to obtain court-ordered indemnification.

1     2. The director is fairly and reasonably entitled to  
2 indemnification in view of all the relevant circumstances,  
3 whether or not the director met the standard of conduct set  
4 forth in section 493B.851 or was adjudged liable as described  
5 in section 493B.851, subsection 4, but if the director was  
6 adjudged so liable the director's indemnification is limited  
7 to reasonable expenses incurred.

8     Sec. 101. NEW SECTION. 493B.855 DETERMINATION AND  
9 AUTHORIZATION OF INDEMNIFICATION.

10    1. A corporation shall not indemnify a director under  
11 section 493B.851 unless authorized in the specific case after  
12 a determination has been made that indemnification of the  
13 director is permissible in the circumstances because the  
14 director has met the standard of conduct set forth in section  
15 493B.851.

16    2. The determination shall be made by any of the  
17 following:

18    a. By the board of directors by majority vote of a quorum  
19 consisting of directors not at the time parties to the  
20 proceeding.

21    b. If a quorum cannot be obtained under paragraph "a", by  
22 majority vote of a committee duly designated by the board of  
23 directors, in which designation directors who are parties may  
24 participate, consisting solely of two or more directors not at  
25 the time parties to the proceeding.

26    c. By special legal counsel:

27    (1) Selected by the board of directors or its committee in  
28 the manner prescribed in paragraph "a" or "b".

29    (2) If a quorum of the board of directors cannot be  
30 obtained under paragraph "a" and a committee cannot be  
31 designated under paragraph "b", selected by majority vote of  
32 the full board of directors, in which selection directors who  
33 are parties may participate.

34    d. By the shareholders, but shares owned by or voted under  
35 the control of directors who are at the time parties to the

1 proceeding shall not be voted on the determination.

2 3. Authorization of indemnification and evaluation as to  
3 reasonableness of expenses shall be made in the same manner as  
4 the determination that indemnification is permissible, except  
5 that if the determination is made by special legal counsel,  
6 authorization of indemnification and evaluation as to  
7 reasonableness of expenses shall be made by those entitled  
8 under subsection 2, paragraph "c" to select counsel.

9 Sec. 102. NEW SECTION. 493B.856 INDEMNIFICATION OF  
10 OFFICERS, EMPLOYEES, AND AGENTS.

11 Unless a corporation's articles of incorporation provide  
12 otherwise all of the following apply:

13 1. An officer of the corporation who is not a director is  
14 entitled to mandatory indemnification under section 493B.852,  
15 and is entitled to apply for court-ordered indemnification  
16 under section 493B.854, in each case to the same extent as a  
17 director.

18 2. The corporation may indemnify and advance expenses  
19 under this part to an officer, employee, or agent of the  
20 corporation who is not a director to the same extent as to a  
21 director.

22 3. A corporation may also indemnify and advance expenses  
23 to an officer, employee, or agent who is not a director to the  
24 extent, consistent with law, that may be provided by its  
25 articles of incorporation, bylaws, general or specific action  
26 of its board of directors, or contract.

27 Sec. 103. NEW SECTION. 493B.857 INSURANCE.

28 A corporation may purchase and maintain insurance on behalf  
29 of an individual who is or was a director, officer, employee,  
30 or agent of the corporation, or who, while a director,  
31 officer, employee, or agent of the corporation, is or was  
32 serving at the request of the corporation as a director,  
33 officer, partner, trustee, employee, or agent of another  
34 foreign or domestic corporation, partnership, joint venture,  
35 trust, employee benefit plan, or other enterprise, against

1 liability asserted against or incurred by that individual in  
2 that capacity or arising from the individual's status as a  
3 director, officer, employee, or agent, whether or not the  
4 corporation would have power to indemnify that individual  
5 against the same liability under section 493B.851 or 493B.852.

6 Sec. 104. NEW SECTION. 493B.858 APPLICATION OF PART E.

7 Except as limited in section 493B.851, subsection 4,  
8 paragraph "a" and subsection 5 with respect to proceedings by  
9 or in the right of the corporation, the indemnification and  
10 advancement of expenses provided by, or granted pursuant to,  
11 sections 493B.850 through 493B.857 are not exclusive of any  
12 other rights to which persons seeking indemnification or  
13 advancement of expenses are entitled under a provision in the  
14 articles of incorporation or bylaws, agreements, vote of  
15 shareholders or disinterested directors, or otherwise, both as  
16 to action in a person's official capacity and as to action in  
17 another capacity while holding the office. However, such  
18 provisions, agreements, votes, or other actions shall not  
19 provide indemnification for a breach of a director's duty of  
20 loyalty to the corporation or its shareholders, for acts or  
21 omissions not in good faith or which involve intentional  
22 misconduct or knowing violation of the law, for a transaction  
23 from which the person seeking indemnification derives an  
24 improper personal benefit, or for liability under section  
25 493B.833.

26

#### DIVISION IX

27

#### SPECIAL CLASSES

28 Sec. 105. NEW SECTION. 493B.901 FOREIGN-TRADE ZONE  
29 CORPORATION.

30 A corporation may be organized under the laws of this state  
31 for the purpose of establishing, operating, and maintaining a  
32 foreign-trade zone as defined in 19 U.S.C. § 81(a). A  
33 corporation organized for the purposes set forth in this  
34 section has all powers necessary or convenient for applying  
35 for a grant of authority to establish, operate, and maintain a

1 foreign-trade zone under 19 U.S.C. § 81(a), et seq., and  
2 regulations promulgated under that law, and for establishing,  
3 operating, and maintaining a foreign-trade zone pursuant to  
4 that grant of authority.

5 Sec. 106. NEW SECTION. 493B.902 FOREIGN INSURANCE  
6 COMPANIES BECOMING DOMESTIC.

7 The secretary of state, upon a corporation complying with  
8 this section and upon the filing of articles of incorporation  
9 and upon receipt of the fees as provided in this chapter,  
10 shall issue a certificate of incorporation as of the date of  
11 the corporation's original incorporation in its state of  
12 original incorporation. The certificate of incorporation  
13 shall state on its face that it is issued in accordance with  
14 this section. The secretary of state shall forward the  
15 articles as provided in this chapter to the county recorder  
16 where the principal place of business of the corporation is to  
17 be located. The secretary of state shall then notify the  
18 appropriate officer of the state or country of the  
19 corporation's last domicile that the corporation is now a  
20 domestic corporation domiciled in this state. This section  
21 applies to life insurance companies, and to insurance  
22 companies doing business under chapter 515.

23 DIVISION X

24 AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

25 PART A

26 Sec. 107. NEW SECTION. 493B.1001 AMENDMENT OF ARTICLES  
27 OF INCORPORATION -- AUTHORITY TO AMEND.

28 1. A corporation may amend its articles of incorporation  
29 at any time to add or change a provision that is required or  
30 permitted in the articles of incorporation or to delete a  
31 provision not required in the articles of incorporation.  
32 Whether a provision is required or permitted in the articles  
33 of incorporation is determined as of the effective date of the  
34 amendment.

35 2. A shareholder of the corporation does not have a vested

1 property right resulting from any provision in the articles of  
2 incorporation, including provisions relating to management,  
3 control, capital structure, dividend entitlement, or purpose  
4 or duration of the corporation.

5 Sec. 108. NEW SECTION. 493B.1002 AMENDMENT BY BOARD OF  
6 DIRECTORS.

7 Unless the articles of incorporation provide otherwise, a  
8 corporation's board of directors may adopt one or more  
9 amendments to the corporation's articles of incorporation  
10 without shareholder action for any of the following purposes:

11 1. To extend the duration of the corporation if it was  
12 incorporated at a time when limited duration was required by  
13 law.

14 2. To delete the names and addresses of the initial  
15 directors.

16 3. To delete the name and address of the initial  
17 registered agent or registered office, if a statement of  
18 change is on file with the secretary of state.

19 4. To change each issued and unissued authorized share of  
20 an outstanding class into a greater number of whole shares if  
21 the corporation has only shares of that class outstanding.

22 5. To change the corporate name by substituting the word  
23 "corporation", "incorporated", "company", "limited", or the  
24 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar  
25 word or abbreviation in the name, or by adding, deleting, or  
26 changing a geographical attribution for the name.

27 6. To make any other change expressly permitted by this  
28 chapter to be made without shareholder action.

29 Sec. 109. NEW SECTION. 493B.1003 AMENDMENT BY BOARD OF  
30 DIRECTORS AND SHAREHOLDERS.

31 1. A corporation's board of directors may propose one or  
32 more amendments to the articles of incorporation for  
33 submission to the shareholders.

34 2. For the amendment to be adopted both of the following  
35 must occur:

1 a. The board of directors must recommend the amendment to  
2 the shareholders unless the board of directors determines that  
3 because of conflict of interest or other special circumstances  
4 it should make no recommendation and communicates the basis  
5 for its determination to the shareholders with the amendment.

6 b. The shareholders entitled to vote on the amendment must  
7 approve the amendment as provided in subsection 5.

8 3. The board of directors may condition its submission of  
9 the proposed amendment on any basis.

10 4. The corporation shall notify each shareholder, whether  
11 or not entitled to vote, of the proposed shareholders' meeting  
12 in accordance with section 493B.705. The notice of meeting  
13 must also state that the purpose, or one of the purposes, of  
14 the meeting is to consider the proposed amendment and contain  
15 or be accompanied by a copy or summary of the amendment.

16 5. Unless this chapter, the articles of incorporation, or  
17 the board of directors acting pursuant to subsection 3 require  
18 a greater vote or a vote by voting groups, the amendment to be  
19 adopted must be approved by both of the following:

20 a. A majority of the votes entitled to be cast on the  
21 amendment by any voting group with respect to which the  
22 amendment would create dissenters' rights.

23 b. The votes required by sections 493B.725 and 493B.726 by  
24 every other voting group entitled to vote on the amendment.

25 Sec. 110. NEW SECTION. 493B.1004 VOTING ON AMENDMENTS BY  
26 VOTING GROUPS.

27 1. The holders of the outstanding shares of a class are  
28 entitled to vote as a separate voting group, if shareholder  
29 voting is otherwise required by this chapter, on a proposed  
30 amendment if the amendment would do any of the following:

31 a. Increase or decrease the aggregate number of authorized  
32 shares of the class.

33 b. Effect an exchange or reclassification of all or part  
34 of the shares of the class into shares of another class.

35 c. Effect an exchange or reclassification, or create the

1 right of exchange, of all or part of the shares of another  
2 class into shares of that class.

3 d. Change the designation, rights, preferences, or  
4 limitations of all or part of the shares of the class.

5 e. Change the shares of all or part of the class into a  
6 different number of shares of the same class.

7 f. Create a new class of shares having rights or  
8 preferences with respect to distributions or to dissolution  
9 that are prior, superior, or substantially equal to, the  
10 shares of the class.

11 g. Increase the rights, preferences, or number of  
12 authorized shares of any class that, after giving effect to  
13 the amendment, have rights or preferences with respect to  
14 distributions or to dissolution that are prior, superior, or  
15 substantially equal to the shares of the class.

16 h. Limit or deny an existing preemptive right of all or  
17 part of the shares of the class.

18 i. Cancel or otherwise affect rights to distributions or  
19 dividends that have accumulated but not yet been declared on  
20 all or part of the shares of the class.

21 2. If a proposed amendment would affect a series of a  
22 class of shares in one or more of the ways described in  
23 subsection 1, the shares of that series are entitled to vote  
24 as a separate voting group on the proposed amendment.

25 3. If a proposed amendment that entitles two or more  
26 series of shares to vote as separate voting groups under this  
27 section would affect those two or more series in the same or a  
28 substantially similar way, the shares of all the series so  
29 affected must vote together as a single voting group on the  
30 proposed amendment.

31 4. A class or series of shares is entitled to the voting  
32 rights granted by this section although the articles of  
33 incorporation provide that the shares are nonvoting shares.

34 Sec. 111. NEW SECTION. 493B.1005 AMENDMENT BEFORE  
35 ISSUANCE OF SHARES.

1 If a corporation has not yet issued shares, its  
2 incorporators or board of directors may adopt one or more  
3 amendments to the corporation's articles of incorporation.

4 Sec. 112. NEW SECTION. 493B.1006 ARTICLES OF AMENDMENT.

5 A corporation amending its articles of incorporation shall  
6 deliver to the secretary of state for filing articles of  
7 amendment setting forth:

8 1. The name of the corporation.

9 2. The text of each amendment adopted.

10 3. If an amendment provides for an exchange,  
11 reclassification, or cancellation of issued shares, provisions  
12 for implementing the amendment if not contained in the  
13 amendment itself.

14 4. The date of each amendment's adoption.

15 5. If an amendment was adopted by the incorporators or  
16 board of directors without shareholder action, a statement to  
17 that effect and that shareholder action was not required.

18 6. If an amendment was approved by the shareholders:

19 a. The designation, number of outstanding shares, number  
20 of votes entitled to be cast by each voting group entitled to  
21 vote separately on the amendment, and number of votes of each  
22 voting group indisputably represented at the meeting.

23 b. Either the total number of votes cast for and against  
24 the amendment by each voting group entitled to vote separately  
25 on the amendment or the total number of undisputed votes cast  
26 for the amendment by each voting group and a statement that  
27 the number cast for the amendment by each voting group was  
28 sufficient for approval by that voting group.

29 Sec. 113. NEW SECTION. 493B.1007 RESTATED ARTICLES OF  
30 INCORPORATION.

31 1. A corporation's board of directors may restate its  
32 articles of incorporation at any time with or without  
33 shareholder action.

34 2. The restatement may include one or more amendments to  
35 the articles. If the restatement includes an amendment

1 requiring shareholder approval, it must be adopted as provided  
2 in section 493B.1003.

3 3. If the board of directors submits a restatement for  
4 shareholder action, the corporation shall notify each  
5 shareholder whether or not entitled to vote, of the proposed  
6 shareholders' meeting in accordance with section 493B.705.  
7 The notice must also state that the purpose, or one of the  
8 purposes, of the meeting is to consider the proposed  
9 restatement and contain or be accompanied by a copy of the  
10 restatement that identifies any amendment or other change it  
11 would make in the articles.

12 4. A corporation restating its articles of incorporation  
13 shall deliver to the secretary of state for filing articles of  
14 restatement setting forth the name of the corporation and the  
15 text of the restated articles of incorporation together with a  
16 certificate setting forth:

17 a. Whether the restatement contains an amendment to the  
18 articles requiring shareholder approval and, if it does not,  
19 that the board of directors adopted the restatement.

20 b. If the restatement contains an amendment to the  
21 articles requiring shareholder approval, the information  
22 required by section 493B.1006.

23 5. Duly adopted restated articles of incorporation  
24 supersede the original articles of incorporation and all  
25 amendments to them.

26 6. The secretary of state may certify restated articles of  
27 incorporation, as the articles of incorporation currently in  
28 effect, without including the certificate information required  
29 by subsection 4.

30 Sec. 114. NEW SECTION. 493B.1008 AMENDMENT PURSUANT TO  
31 REORGANIZATION.

32 1. A corporation's articles of incorporation may be  
33 amended without action by the board of directors or  
34 shareholders to carry out a plan of reorganization ordered or  
35 decreed by a court of competent jurisdiction under federal

1 statute if the articles of incorporation after amendment  
2 contain only provisions required or permitted by section  
3 493B.202.

4 2. The individual or individuals designated by the court  
5 shall deliver to the secretary of state for filing articles of  
6 amendment setting forth all of the following:

7 a. The name of the corporation.

8 b. The text of each amendment approved by the court.

9 c. The date of the court's order or decree approving the  
10 articles of amendment.

11 d. The title of the reorganization proceeding in which the  
12 order or decree was entered.

13 e. A statement that the court had jurisdiction of the  
14 proceeding under federal statute.

15 4. Shareholders of a corporation undergoing reorganization  
16 do not have dissenters' rights except as and to the extent  
17 provided in the reorganization plan.

18 5. This section does not apply after entry of a final  
19 decree in the reorganization proceeding even though the court  
20 retains jurisdiction of the proceeding for limited purposes  
21 unrelated to consummation of the reorganization plan.

22 Sec. 115. NEW SECTION. 493B.1009 EFFECT OF AMENDMENT.

23 An amendment to articles of incorporation does not affect a  
24 cause of action existing against or in favor of the  
25 corporation, a proceeding to which the corporation is a party,  
26 or the existing rights of persons other than shareholders of  
27 the corporation. An amendment changing a corporation's name  
28 does not abate a proceeding brought by or against the  
29 corporation in its former name.

30 PART B

31 Sec. 116. NEW SECTION. 493B.1020 AMENDMENT OF BYLAWS BY  
32 BOARD OF DIRECTORS OR SHAREHOLDERS.

33 1. A corporation's board of directors may amend or repeal  
34 the corporation's bylaws unless either of the following apply:

35 a. The articles of incorporation or this chapter reserve

1 this power exclusively to the shareholders in whole or part.

2 b. The shareholders in amending or repealing a particular  
3 bylaw provide expressly that the board of directors shall not  
4 amend or repeal that bylaw.

5 2. A corporation's shareholders may amend or repeal the  
6 corporation's bylaws even though the bylaws may also be  
7 amended or repealed by its board of directors.

8 Sec. 117. NEW SECTION. 493B.1021 BYLAW INCREASING QUORUM  
9 OR VOTING REQUIREMENT FOR SHAREHOLDERS.

10 1. If authorized by the articles of incorporation, the  
11 shareholders may adopt or amend a bylaw that fixes a greater  
12 quorum or voting requirement for shareholders or voting groups  
13 of shareholders than is required by this chapter. The  
14 adoption or amendment of a bylaw that adds, changes, or  
15 deletes a greater quorum or voting requirement for  
16 shareholders must meet the same quorum requirement and be  
17 adopted by the same vote and voting groups required to take  
18 action under the quorum and voting requirement then in effect  
19 or proposed to be adopted, whichever is greater.

20 2. A bylaw that fixes a greater quorum or voting  
21 requirement for shareholders under subsection 1 shall not be  
22 adopted, amended, or repealed by the board of directors.

23 Sec. 118. NEW SECTION. 493B.1022 BYLAW INCREASING QUORUM  
24 OR VOTING REQUIREMENT FOR DIRECTORS.

25 1. A bylaw that fixes a greater quorum or voting  
26 requirement for the board of directors may be amended or  
27 repealed:

28 a. If originally adopted by the shareholders, only by the  
29 shareholders.

30 b. If originally adopted by the board of directors, either  
31 by the shareholders or by the board of directors.

32 2. A bylaw adopted or amended by the shareholders that  
33 fixes a greater quorum or voting requirement for the board of  
34 directors may provide that it may be amended or repealed only  
35 by a specified vote of either the shareholders or the board of

1 directors.

2 3. Action by the board of directors under subsection 1,  
3 paragraph "b" to adopt or amend a bylaw that changes the  
4 quorum or voting requirement for the board of directors must  
5 meet the same quorum requirement and be adopted by the same  
6 vote required to take action under the quorum and voting  
7 requirement then in effect or proposed to be adopted,  
8 whichever is greater.

9

DIVISION XI

10

MERGER AND SHARE EXCHANGE

11

Sec. 119. NEW SECTION. 493B.1101 MERGER.

12

1. One or more corporations may merge into another  
13 corporation if the board of directors of each corporation  
14 adopts and its shareholders, if required by section 493B.1103,  
15 approve a plan of merger.

16 2. The plan of merger must set forth all of the following:

17 a. The name of each corporation planning to merge and the  
18 name of the surviving corporation into which each other  
19 corporation plans to merge.

20 b. The terms and conditions of the merger.

21 c. The manner and basis of converting the shares of each  
22 corporation into shares, obligations, or other securities of  
23 the surviving or any other corporation or into cash or other  
24 property in whole or part.

25 3. The plan of merger may set forth:

26 a. Restated articles or amendments to the articles of  
27 incorporation of the surviving corporation.

28 b. Other provisions relating to the merger.

29 Sec. 120. NEW SECTION. 493B.1102 SHARE EXCHANGE.

30 1. A corporation may acquire all of the outstanding shares  
31 of one or more classes or series of another corporation if the  
32 board of directors of each corporation adopts and its  
33 shareholders, if required by section 493B.1103, approve the  
34 exchange.

35 2. The plan of exchange must set forth all of the

1 following:

2 a. The name of the corporation whose shares will be  
3 acquired and the name of the acquiring corporation.

4 b. The terms and conditions of the exchange.

5 c. The manner and basis of exchanging the shares to be  
6 acquired for shares, obligations, or other securities of the  
7 acquiring or any other corporation or for cash or other  
8 property in whole or part.

9 3. The plan of exchange may set forth other provisions  
10 relating to the exchange.

11 4. This section does not limit the power of a corporation  
12 to acquire all or part of the shares of one or more classes or  
13 series of another corporation through a voluntary exchange or  
14 otherwise.

15 Sec. 121. NEW SECTION. 493B.1103 ACTION ON PLAN.

16 1. After adopting a plan of merger or share exchange, the  
17 board of directors of each corporation party to the merger,  
18 and the board of directors of the corporation whose shares  
19 will be acquired in the share exchange, shall submit the plan  
20 of merger, except as provided in subsection 7, or share  
21 exchange for approval by its shareholders.

22 2. For a plan of merger or share exchange to be approved  
23 both of the following must occur:

24 a. The board of directors must recommend the plan of  
25 merger or share exchange to the shareholders, unless the board  
26 of directors determines that because of conflict of interest  
27 or other special circumstances it should make no  
28 recommendation and communicates the basis for its  
29 determination to the shareholders with the plan.

30 b. The shareholders entitled to vote must approve the  
31 plan.

32 3. The board of directors may condition its submission of  
33 the proposed merger or share exchange on any basis.

34 4. The corporation shall notify each shareholder, whether  
35 or not entitled to vote, of the proposed shareholders' meeting

1 in accordance with section 493B.705. The notice must also  
2 state that the purpose, or one of the purposes, of the meeting  
3 is to consider the plan of merger or share exchange and  
4 contain or be accompanied by a copy or summary of the plan.

5 5. Unless this chapter, the articles of incorporation, or  
6 the board of directors acting pursuant to subsection 3 require  
7 a greater vote or a vote by voting groups, the plan of merger  
8 or share exchange to be authorized must be approved by each  
9 voting group entitled to vote separately on the plan by a  
10 majority of all the votes entitled to be cast on the plan by  
11 that voting group.

12 6. Separate voting by voting groups is required:

13 a. On a plan of merger if the plan contains a provision  
14 that, if contained in a proposed amendment to articles of  
15 incorporation, would require action by one or more separate  
16 voting groups on the proposed amendment under section  
17 493B.1004.

18 b. On a plan of share exchange, by each class or series of  
19 shares included in the exchange, with each class or series  
20 constituting a separate voting group.

21 7. Action by the shareholders of the surviving corporation  
22 on a plan of merger is not required if all of the following  
23 apply:

24 a. The articles of incorporation of the surviving  
25 corporation will not differ, except for amendments enumerated  
26 in section 493B.1002, from its articles before the merger.

27 b. Each shareholder of the surviving corporation whose  
28 shares were outstanding immediately before the effective date  
29 of the merger will hold the same number of shares, with  
30 identical designations, preferences, limitations, and relative  
31 rights, immediately after.

32 c. The number of voting shares outstanding immediately  
33 after the merger, plus the number of voting shares issuable as  
34 a result of the merger, either by the conversion of securities  
35 issued pursuant to the merger or the exercise of rights and

1 warrants issued pursuant to the merger, will not exceed by  
2 more than twenty percent the total number of voting shares of  
3 the surviving corporation outstanding immediately before the  
4 merger.

5 d. The number of participating shares outstanding  
6 immediately after the merger plus the number of participating  
7 shares issuable as a result of the merger, either by the  
8 conversion of securities issued pursuant to the merger or the  
9 exercise of rights and warrants issued pursuant to the merger,  
10 will not exceed by more than twenty percent the total number  
11 of participating shares outstanding immediately before the  
12 merger.

13 8. As used in subsection 7:

14 a. "Participating shares" means shares that entitle their  
15 holders to participate without limitation in distributions.

16 b. "Voting shares" means shares that entitle their holders  
17 to vote unconditionally in elections of directors.

18 9. After a merger or share exchange is authorized, and at  
19 any time before articles of merger or share exchange are  
20 filed, the planned merger or share exchange may be abandoned,  
21 subject to any contractual rights, without further shareholder  
22 action, in accordance with the procedure set forth in the plan  
23 of merger or share exchange or, if none is set forth, in the  
24 manner determined by the board of directors.

25 Sec. 122. NEW SECTION. 493B.1104 MERGER OF SUBSIDIARY.

26 1. A parent corporation owning at least ninety percent of  
27 the outstanding shares of each class of a subsidiary  
28 corporation may merge the subsidiary into itself without  
29 approval of the shareholders of the parent or subsidiary.

30 2. The board of directors of the parent shall adopt a plan  
31 of merger that sets forth both of the following:

32 a. The names of the parent and subsidiary.

33 b. The manner and basis of converting the shares of the  
34 subsidiary into shares, obligations, or other securities of  
35 the parent or any other corporation or into cash or other

1 property in whole or part.

2 3. The parent corporation shall mail a copy or summary of  
3 the plan of merger to each shareholder of the subsidiary who  
4 does not waive the mailing requirement in writing.

5 4. The parent corporation shall not deliver articles of  
6 merger to the secretary of state for filing until at least  
7 thirty days after the date it mailed a copy of the plan of  
8 merger to each shareholder of the subsidiary who did not waive  
9 the mailing requirement.

10 5. Articles of merger under this section shall not contain  
11 amendments to the articles of incorporation of the parent  
12 corporation except for amendments enumerated in section  
13 493B.1002.

14 Sec. 123. NEW SECTION. 493B.1105 ARTICLES OF MERGER OR  
15 SHARE EXCHANGE.

16 1. After a plan of merger or share exchange is approved by  
17 the shareholders, or adopted by the board of directors if  
18 shareholder approval is not required, the surviving or  
19 acquiring corporation shall deliver to the secretary of state  
20 for filing articles of merger or share exchange setting forth  
21 all of the following:

22 a. The plan of merger or share exchange.

23 b. If shareholder approval was not required, a statement  
24 to that effect.

25 c. If approval of the shareholders of one or more  
26 corporations party to the merger or share exchange was  
27 required, both of the following:

28 (1) The designation, number of outstanding shares, and  
29 number of votes entitled to be cast by each voting group  
30 entitled to vote separately on the plan as to each  
31 corporation.

32 (2) Either the total number of votes cast for and against  
33 the plan by each voting group entitled to vote separately on  
34 the plan or the total number of undisputed votes cast for the  
35 plan separately by each voting group and a statement that the

1 number cast for the plan by each voting group was sufficient  
2 for approval by that voting group.

3 2. A merger or share exchange takes effect upon the  
4 effective date of the articles of merger or share exchange.

5 Sec. 124. NEW SECTION. 493B.1106 EFFECT OF MERGER OR  
6 SHARE EXCHANGE.

7 1. When a merger takes effect all of the following apply:

8 a. Every other corporation party to the merger merges into  
9 the surviving corporation and the separate existence of every  
10 corporation except the surviving corporation ceases.

11 b. The title to all real estate and other property owned  
12 by each corporation party to the merger is vested in the  
13 surviving corporation without reversion or impairment.

14 c. The surviving corporation has all liabilities of each  
15 corporation party to the merger.

16 d. A proceeding pending against any corporation party to  
17 the merger may be continued as if the merger did not occur or  
18 the surviving corporation may be substituted in the proceeding  
19 for the corporation whose existence ceased.

20 e. The articles of incorporation of the surviving  
21 corporation are amended to the extent provided in the plan of  
22 merger.

23 f. The shares of each corporation party to the merger that  
24 are to be converted into shares, obligations, or other  
25 securities of the surviving or any other corporation or into  
26 cash or other property are converted, and the former holders  
27 of the shares are entitled only to the rights provided in the  
28 articles of merger or to their rights under division XIII.

29 2. When a share exchange takes effect, the shares of each  
30 acquired corporation are exchanged as provided in the plan,  
31 and the former holders of the shares are entitled only to the  
32 exchange rights provided in the articles of share exchange or  
33 to their rights under division XIII.

34 Sec. 125. NEW SECTION. 493B.1107 MERGER OR SHARE  
35 EXCHANGE WITH FOREIGN CORPORATION.

1 1. One or more foreign corporations may merge or enter  
2 into a share exchange with one or more domestic corporations  
3 if:

4 a. In a merger, the merger is permitted by the law of the  
5 state or country under whose law each foreign corporation is  
6 incorporated and each foreign corporation complies with that  
7 law in effecting the merger.

8 b. In a share exchange, the corporation whose shares will  
9 be acquired is a domestic corporation, whether or not a share  
10 exchange is permitted by the law of the state or country under  
11 whose law the acquiring corporation is incorporated.

12 c. The foreign corporation complies with section 493B.1105  
13 if it is the surviving corporation of the merger or acquiring  
14 corporation of the share exchange.

15 d. Each domestic corporation complies with the applicable  
16 provisions of sections 493B.1101 through 493B.1104 and, if it  
17 is the surviving corporation of the merger or acquiring  
18 corporation of the share exchange, with section 493B.1105.

19 2. Upon the merger or share exchange taking effect, the  
20 surviving foreign corporation of a merger and the acquiring  
21 foreign corporation of a share exchange is deemed:

22 a. To appoint the secretary of state as its agent for  
23 service of process in a proceeding to enforce any obligation  
24 or the rights of dissenting shareholders of each domestic  
25 corporation party to the merger or share exchange.

26 b. To agree that it will promptly pay to the dissenting  
27 shareholders of each domestic corporation party to the merger  
28 or share exchange the amount, if any, to which they are  
29 entitled under division XIII.

30 3. This section does not limit the power of a foreign  
31 corporation to acquire all or part of the shares of one or  
32 more classes or series of a domestic corporation through a  
33 voluntary exchange or otherwise.

34  
35

DIVISION XII  
SALE OF ASSETS

1     Sec. 126. NEW SECTION. 493B.1201 SALE OF ASSETS IN  
2 REGULAR COURSE OF BUSINESS AND MORTGAGE OF ASSETS.

3     1. A corporation may, on the terms and conditions and for  
4 the consideration determined by the board of directors do any  
5 of the following:

6     a. Sell, lease, exchange, or otherwise dispose of all, or  
7 substantially all, of its property in the usual and regular  
8 course of business.

9     b. Mortgage, pledge, dedicate to the repayment of  
10 indebtedness, whether with or without recourse, or otherwise  
11 encumber any or all of its property whether or not in the  
12 usual and regular course of business.

13     c. Transfer any or all of its property to a corporation  
14 all the shares of which are owned by the transferring  
15 corporation whether or not in the usual course of business.

16     2. Unless the articles of incorporation require it,  
17 approval by the shareholders of a transaction described in  
18 subsection 1 is not required.

19     Sec. 127. NEW SECTION. 493B.1202 SALE OF ASSETS OTHER  
20 THAN IN REGULAR COURSE OF BUSINESS.

21     1. A corporation may sell, lease, exchange, or otherwise  
22 dispose of all, or substantially all, of its property, with or  
23 without the good will, otherwise than in the usual and regular  
24 course of business, on the terms and conditions and for the  
25 consideration determined by the corporation's board of  
26 directors, if the board of directors proposes and its  
27 shareholders approve the proposed transaction.

28     2. For a transaction to be authorized both of the  
29 following must occur:

30     a. The board of directors must recommend the proposed  
31 transaction to the shareholders unless the board of directors  
32 determines that because of conflict of interest or other  
33 special circumstances it should make no recommendation and  
34 communicates the basis for its determination to the  
35 shareholders with the submission of the proposed transaction.

1 b. The shareholders entitled to vote must approve the  
2 transaction.

3 3. The board of directors may condition its submission of  
4 the proposed transaction on any basis.

5 4. The corporation shall notify each shareholder, whether  
6 or not entitled to vote, of the proposed shareholders' meeting  
7 in accordance with section 493B.705. The notice must also  
8 state that the purpose, or one of the purposes, of the meeting  
9 is to consider the sale, lease, exchange, or other disposition  
10 of all, or substantially all, the property of the corporation  
11 and contain or be accompanied by a description of the  
12 transaction.

13 5. Unless the articles of incorporation or the board of  
14 directors acting pursuant to subsection 3 require a greater  
15 vote or a vote by voting groups, the transaction to be  
16 authorized must be approved by a majority of all the votes  
17 entitled to be cast on the transaction.

18 6. After a sale, lease, exchange, or other disposition of  
19 property is authorized, the transaction may be abandoned  
20 subject to any contractual rights without further shareholder  
21 action.

22 7. A transaction that constitutes a distribution is  
23 governed by section 493B.640 and not by this section.

24 DIVISION XIII

25 DISSENTERS' RIGHTS

26 PART A

27 Sec. 128. NEW SECTION. 493B.1301 DEFINITIONS FOR  
28 DIVISION XIII.

29 In this division:

30 1. "Corporation" means the issuer of the shares held by a  
31 dissenter before the corporate action, or the surviving or  
32 acquiring corporation by merger or share exchange of that  
33 issuer.

34 2. "Dissenter" means a shareholder who is entitled to  
35 dissent from corporate action under section 493B.1302 and who

1 exercises that right when and in the manner required by  
2 sections 493B.1320 through 493B.1328.

3 3. "Fair value", with respect to a dissenter's shares,  
4 means the value of the shares immediately before the  
5 effectuation of the corporate action to which the dissenter  
6 objects, excluding any appreciation or depreciation in  
7 anticipation of the corporate action unless exclusion would be  
8 inequitable.

9 4. "Interest" means interest from the effective date of  
10 the corporate action until the date of payment, at the average  
11 rate currently paid by the corporation on its principal bank  
12 loans or, if none, at a rate that is fair and equitable under  
13 all the circumstances.

14 5. "Record shareholder" means the person in whose name  
15 shares are registered in the records of a corporation or the  
16 beneficial owner of shares to the extent of the rights granted  
17 by a nominee certificate on file with a corporation.

18 6. "Beneficial shareholder" means the person who is a  
19 beneficial owner of shares held by a nominee as the record  
20 shareholder.

21 7. "Shareholder" means the record shareholder or the  
22 beneficial shareholder.

23 Sec. 129. NEW SECTION. 493B.1302 SHAREHOLDERS' RIGHT TO  
24 DISSENT.

25 1. A shareholder is entitled to dissent from, and obtain  
26 payment of the fair value of the shareholder's shares in the  
27 event of, any of the following corporate actions:

28 a. Consummation of a plan of merger to which the  
29 corporation is a party if either of the following apply:

30 (1) Shareholder approval is required for the merger by  
31 section 493B.1103 or the articles of incorporation and the  
32 shareholder is entitled to vote on the merger.

33 (2) The corporation is a subsidiary that is merged with  
34 its parent under section 493B.1104.

35 b. Consummation of a plan of share exchange to which the

1 corporation is a party as the corporation whose shares will be  
2 acquired, if the shareholder is entitled to vote on the plan.

3 c. Consummation of a sale or exchange of all, or  
4 substantially all, of the property of the corporation other  
5 than in the usual and regular course of business, if the  
6 shareholder is entitled to vote on the sale or exchange,  
7 including a sale in dissolution, but not including a sale  
8 pursuant to court order or a sale for cash pursuant to a plan  
9 by which all or substantially all of the net proceeds of the  
10 sale will be distributed to the shareholders within one year  
11 after the date of sale.

12 d. An amendment of the articles of incorporation that  
13 materially and adversely affects rights in respect of a  
14 dissenter's shares because it does any or all of the  
15 following:

16 (1) Alters or abolishes a preferential right of the  
17 shares.

18 (2) Creates, alters, or abolishes a right in respect of  
19 redemption, including a provision respecting a sinking fund  
20 for the redemption or repurchase, of the shares.

21 (3) Alters or abolishes a preemptive right of the holder  
22 of the shares to acquire shares or other securities.

23 (4) Excludes or limits the right of the shares to vote on  
24 any matter, or to cumulate votes, other than a limitation by  
25 dilution through issuance of shares or other securities with  
26 similar voting rights.

27 (5) Reduces the number of shares owned by the shareholder  
28 to a fraction of a share if the fractional share so created is  
29 to be acquired for cash under section 493B.604.

30 (6) Extends, for the first time after being governed by  
31 this chapter, the period of duration of a corporation  
32 organized under chapter 491 or 496A and existing for a period  
33 of years on the day preceding the date the corporation is  
34 first governed by this chapter.

35 e. Any corporate action taken pursuant to a shareholder

1 vote to the extent the articles of incorporation, bylaws, or a  
2 resolution of the board of directors provides that voting or  
3 nonvoting shareholders are entitled to dissent and obtain  
4 payment for their shares.

5 2. A shareholder entitled to dissent and obtain payment  
6 for the shareholder's shares under this chapter is not  
7 entitled to challenge the corporate action creating the  
8 shareholder's entitlement unless the action is unlawful or  
9 fraudulent with respect to the shareholder or the corporation.  
10 Sec. 130. NEW SECTION. 493B.1303 DISSENT BY NOMINEES AND  
11 BENEFICIAL OWNERS.

12 1. A record shareholder may assert dissenters' rights as  
13 to fewer than all the shares registered in that shareholder's  
14 name only if the shareholder dissents with respect to all  
15 shares beneficially owned by any one person and notifies the  
16 corporation in writing of the name and address of each person  
17 on whose behalf the shareholder asserts dissenters' rights.  
18 The rights of a partial dissenter under this subsection are  
19 determined as if the shares as to which the shareholder  
20 dissents and the shareholder's other shares were registered in  
21 the names of different shareholders.

22 2. A beneficial shareholder may assert dissenters' rights  
23 as to shares held on the shareholder's behalf only if the  
24 shareholder does both of the following:

25 a. Submits to the corporation the record shareholder's  
26 written consent to the dissent not later than the time the  
27 beneficial shareholder asserts dissenters' rights.

28 b. Does so with respect to all shares of which the  
29 shareholder is the beneficial shareholder or over which that  
30 beneficial shareholder has power to direct the vote.

31

PART B

32 Sec. 131. NEW SECTION. 493B.1320 NOTICE OF DISSENTERS'  
33 RIGHTS.

34 1. If proposed corporate action creating dissenters'  
35 rights under section 493B.1302 is submitted to a vote at a

1 shareholders' meeting, the meeting notice must state that  
2 shareholders are or may be entitled to assert dissenters'  
3 rights under this part and be accompanied by a copy of this  
4 part.

5 2. If corporate action creating dissenters' rights under  
6 section 493B.1302 is taken without a vote of shareholders, the  
7 corporation shall notify in writing all shareholders entitled  
8 to assert dissenters' rights that the action was taken and  
9 send them the dissenters' notice described in section  
10 493B.1322.

11 Sec. 132. NEW SECTION. 493B.1321 NOTICE OF INTENT TO  
12 DEMAND PAYMENT.

13 1. If proposed corporate action creating dissenters'  
14 rights under section 493B.1302 is submitted to a vote at a  
15 shareholders' meeting, a shareholder who wishes to assert  
16 dissenters' rights must do all of the following:

17 a. Deliver to the corporation before the vote is taken  
18 written notice of the shareholder's intent to demand payment  
19 for the shareholder's shares if the proposed action is  
20 effectuated.

21 b. Not vote the dissenting shareholder's shares in favor  
22 of the proposed action.

23 2. A shareholder who does not satisfy the requirements of  
24 subsection 1, is not entitled to payment for the shareholder's  
25 shares under this part.

26 Sec. 133. NEW SECTION. 493B.1322 DISSENTERS' NOTICE.

27 1. If proposed corporate action creating dissenters'  
28 rights under section 493B.1302 is authorized at a  
29 shareholders' meeting, the corporation shall deliver a written  
30 dissenters' notice to all shareholders who satisfied the  
31 requirements of section 493B.1321.

32 2. The dissenters' notice must be sent no later than ten  
33 days after the corporate action by the shareholders was taken  
34 and must do all of the following:

35 a. State where the payment demand must be sent and where

1 and when certificates for certificated shares must be  
2 deposited.

3 b. Inform holders of uncertificated shares to what extent  
4 transfer of the shares will be restricted after the payment  
5 demand is received.

6 c. Supply a form for demanding payment that includes the  
7 date of the first announcement to news media or to  
8 shareholders of the terms of the proposed corporate action and  
9 requires that the person asserting dissenters' rights certify  
10 whether or not the person acquired beneficial ownership of the  
11 shares before that date.

12 d. Set a date by which the corporation must receive the  
13 payment demand, which date shall not be fewer than thirty nor  
14 more than sixty days after the date the subsection 1 notice is  
15 delivered.

16 e. Be accompanied by a copy of this division.

17 Sec. 134. NEW SECTION. 493B.1323 DUTY TO DEMAND PAYMENT.

18 1. A shareholder sent a dissenters' notice described in  
19 section 493B.1322 must demand payment, certify whether the  
20 shareholder acquired beneficial ownership of the shares before  
21 the date required to be set forth in the dissenter's notice  
22 pursuant to section 493B.1322, subsection 2, paragraph "c",  
23 and deposit the shareholder's certificates in accordance with  
24 the terms of the notice.

25 2. The shareholder who demands payment and deposits the  
26 shareholder's shares under subsection 1 retains all other  
27 rights of a shareholder until these rights are canceled or  
28 modified by the taking of the proposed corporate action.

29 3. A shareholder who does not demand payment or deposit  
30 the shareholder's share certificates where required, each by  
31 the date set in the dissenters' notice, is not entitled to  
32 payment for the shareholder's shares under this division.

33 Sec. 135. NEW SECTION. 493B.1324 SHARE RESTRICTIONS.

34 1. The corporation may restrict the transfer of  
35 uncertificated shares from the date the demand for their

1 payment is received until the proposed corporate action is  
2 taken or the restrictions released under section 493B.1326.

3 2. The person for whom dissenters' rights are asserted as  
4 to uncertificated shares retains all other rights of a  
5 shareholder until these rights are canceled or modified by the  
6 taking of the proposed corporate action.

7 Sec. 136. NEW SECTION. 493B.1325 PAYMENT.

8 1. Except as provided in section 493B.1327, as soon as the  
9 proposed corporate action is taken, or upon receipt of a  
10 payment demand, the corporation shall pay each dissenter who  
11 complied with section 493B.1323 the amount the corporation  
12 estimates to be the fair value of the dissenter's shares, plus  
13 accrued interest.

14 2. The payment must be accompanied by all of the  
15 following:

16 a. The corporation's balance sheet as of the end of a  
17 fiscal year ending not more than sixteen months before the  
18 date of payment, an income statement for that year, a  
19 statement of changes in shareholders' equity for that year,  
20 and the latest available interim financial statements, if any.

21 b. A statement of the corporation's estimate of the fair  
22 value of the shares.

23 c. An explanation of how the interest was calculated.

24 d. A statement of the dissenter's right to demand payment  
25 under section 493B.1328.

26 e. A copy of this division.

27 Sec. 137. NEW SECTION. 493B.1326 FAILURE TO TAKE ACTION.

28 1. If the corporation does not take the proposed action  
29 within sixty days after the date set for demanding payment and  
30 depositing share certificates, the corporation shall return  
31 the deposited certificates and release the transfer  
32 restrictions imposed on uncertificated shares.

33 2. If after returning deposited certificates and releasing  
34 transfer restrictions, the corporation takes the proposed  
35 action, it must send a new dissenters' notice under section

1 493B.1322 and repeat the payment demand procedure.

2 Sec. 138. NEW SECTION. 493B.1327 AFTER-ACQUIRED SHARES.

3 1. A corporation may elect to withhold payment required by  
4 section 493B.1325 from a dissenter unless the dissenter was  
5 the beneficial owner of the shares before the date set forth  
6 in the dissenters' notice as the date of the first  
7 announcement to news media or to shareholders of the terms of  
8 the proposed corporate action.

9 2. To the extent the corporation elects to withhold  
10 payment under subsection 1, after taking the proposed  
11 corporate action, it shall estimate the fair value of the  
12 shares, plus accrued interest, and shall pay this amount to  
13 each dissenter who agrees to accept it in full satisfaction of  
14 the dissenter's demand. The corporation shall send with its  
15 offer a statement of its estimate of the fair value of the  
16 shares, an explanation of how the interest was calculated, and  
17 a statement of the dissenter's right to demand payment under  
18 section 493B.1328.

19 Sec. 139. NEW SECTION. 493B.1328 PROCEDURE IF  
20 SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER.

21 1. A dissenter may notify the corporation in writing of  
22 the dissenter's own estimate of the fair value of the  
23 dissenter's shares and amount of interest due, and demand  
24 payment of the dissenter's estimate, less any payment under  
25 section 493B.1325, or reject the corporation's offer under  
26 section 493B.1327 and demand payment of the fair value of the  
27 dissenter's shares and interest due, if any of the following  
28 apply:

29 a. The dissenter believes that the amount paid under  
30 section 493B.1325 or offered under section 493B.1327 is less  
31 than the fair value of the dissenter's shares or that the  
32 interest due is incorrectly calculated.

33 b. The corporation fails to make payment under section  
34 493B.1325 within sixty days after the date set for demanding  
35 payment.

1 c. The corporation, having failed to take the proposed  
2 action, does not return the deposited certificates or release  
3 the transfer restrictions imposed on uncertificated shares  
4 within sixty days after the date set for demanding payment.

5 2. A dissenter waives the dissenter's right to demand  
6 payment under this section unless the dissenter notifies the  
7 corporation of the dissenter's demand in writing under  
8 subsection 1 within thirty days after the corporation made or  
9 offered payment for the dissenter's shares.

10 PART C

11 Sec. 140. NEW SECTION. 493B.1330 COURT ACTION.

12 1. If a demand for payment under section 493B.1328 remains  
13 unsettled, the corporation shall commence a proceeding within  
14 sixty days after receiving the payment demand and petition the  
15 court to determine the fair value of the shares and accrued  
16 interest. If the corporation does not commence the proceeding  
17 within the sixty-day period, it shall pay each dissenter whose  
18 demand remains unsettled the amount demanded.

19 2. The corporation shall commence the proceeding in the  
20 district court of the county where a corporation's principal  
21 office or, if none in this state, its registered office is  
22 located. If the corporation is a foreign corporation without  
23 a registered office in this state, it shall commence the  
24 proceeding in the county in this state where the registered  
25 office of the domestic corporation merged with or whose shares  
26 were acquired by the foreign corporation was located.

27 3. The corporation shall make all dissenters, whether or  
28 not residents of this state, whose demands remain unsettled  
29 parties to the proceeding as in an action against their shares  
30 and all parties must be served with a copy of the petition.  
31 Nonresidents may be served by registered or certified mail or  
32 by publication as provided by law.

33 4. The jurisdiction of the court in which the proceeding  
34 is commenced under subsection 2 is plenary and exclusive. The  
35 court may appoint one or more persons as appraisers to receive

1 evidence and recommend decision on the question of fair value.  
2 The appraisers have the powers described in the order  
3 appointing them, or in any amendment to it. The dissenters  
4 are entitled to the same discovery rights as parties in other  
5 civil proceedings.

6 5. Each dissenter made a party to the proceeding is  
7 entitled to judgment for either of the following:

8 a. The amount, if any, by which the court finds the fair  
9 value of the dissenter's shares, plus interest, exceeds the  
10 amount paid by the corporation.

11 b. The fair value, plus accrued interest, of the  
12 dissenter's after-acquired shares for which the corporation  
13 elected to withhold payment under section 493B.1327.

14 Sec. 141. NEW SECTION. 493B.1331 COURT COSTS AND COUNSEL  
15 FEES.

16 1. The court in an appraisal proceeding commenced under  
17 section 493B.1330 shall determine all costs of the proceeding,  
18 including the reasonable compensation and expenses of  
19 appraisers appointed by the court. The court shall assess the  
20 costs against the corporation, except that the court may  
21 assess costs against all or some of the dissenters, in amounts  
22 the court finds equitable, to the extent the court finds the  
23 dissenters acted arbitrarily, vexatiously, or not in good  
24 faith in demanding payment under section 493B.1328.

25 2. The court may also assess the fees and expenses of  
26 counsel and experts for the respective parties, in amounts the  
27 court finds equitable, for either of the following:

28 a. Against the corporation and in favor of any or all  
29 dissenters if the court finds the corporation did not  
30 substantially comply with the requirements of sections  
31 493B.1320 through 493B.1328.

32 b. Against either the corporation or a dissenter, in favor  
33 of any other party, if the court finds that the party against  
34 whom the fees and expenses are assessed acted arbitrarily,  
35 vexatiously, or not in good faith with respect to the rights

1 provided by this chapter.

2 3. If the court finds that the services of counsel for any  
3 dissenter were of substantial benefit to other dissenters  
4 similarly situated, and that the fees for those services  
5 should not be assessed against the corporation, the court may  
6 award to these counsel reasonable fees to be paid out of the  
7 amounts awarded the dissenters who were benefited.

8 DIVISION XIV

9 DISSOLUTION

10 PART A

11 Sec. 142. NEW SECTION. 493B.1401 DISSOLUTION BY  
12 INCORPORATORS OR INITIAL DIRECTORS.

13 A majority of the incorporators or initial directors of a  
14 corporation that has not issued shares or has not commenced  
15 business may dissolve the corporation by delivering to the  
16 secretary of state for filing articles of dissolution that set  
17 forth all of the following:

- 18 1. The name of the corporation.
- 19 2. The date of its incorporation.
- 20 3. Either of the following:
  - 21 a. That none of the corporation's shares has been issued.
  - 22 b. That the corporation has not commenced business.
- 23 4. That no debt of the corporation remains unpaid.
- 24 5. That the net assets of the corporation remaining after  
25 winding up have been distributed to the shareholders, if  
26 shares were issued.
- 27 6. That a majority of the incorporators or initial  
28 directors authorized the dissolution.

29 Sec. 143. NEW SECTION. 493B.1402 DISSOLUTION BY BOARD OF  
30 DIRECTORS AND SHAREHOLDERS.

- 31 1. A corporation's board of directors may propose  
32 dissolution for submission to the shareholders.
- 33 2. For a proposal to dissolve to be adopted both of the  
34 following must apply:
  - 35 a. The board of directors must recommend dissolution to

1 the shareholders unless the board of directors determines that  
2 because of conflict of interest or other special circumstances  
3 it should make no recommendation and communicates the basis  
4 for its determination to the shareholders.

5 b. The shareholders entitled to vote must approve the  
6 proposal to dissolve as provided in subsection 5.

7 3. The board of directors may condition its submission of  
8 the proposal for dissolution on any basis.

9 4. The corporation shall notify each shareholder, whether  
10 or not entitled to vote, of the proposed shareholders' meeting  
11 in accordance with section 493B.705. The notice must also  
12 state that the purpose, or one of the purposes, of the meeting  
13 is to consider dissolving the corporation.

14 5. Unless the articles of incorporation or the board of  
15 directors acting pursuant to subsection 3 requires a greater  
16 vote or a vote by voting groups, the proposal to dissolve to  
17 be adopted must be approved by a majority of all the votes  
18 entitled to be cast on that proposal for.

19 Sec. 144. NEW SECTION. 493B.1403 ARTICLES OF  
20 DISSOLUTION.

21 1. At any time after dissolution is authorized, the  
22 corporation may dissolve by delivering to the secretary of  
23 state for filing articles of dissolution setting forth all of  
24 the following:

25 a. The name of the corporation.

26 b. The date dissolution was authorized.

27 c. If dissolution was approved by the shareholders, both  
28 of the following:

29 (1) The number of votes entitled to be cast on the  
30 proposal to dissolve.

31 (2) Either the total number of votes cast for and against  
32 dissolution or the total number of undisputed votes cast for  
33 dissolution and a statement that the number cost for  
34 dissolution was sufficient for approval.

35 d. If voting by voting groups was required, the

1 information required by paragraph "c" must be separately  
2 provided for each voting group entitled to vote separately on  
3 the plan to dissolve.

4 2. A corporation is dissolved upon the effective date of  
5 its articles of dissolution.

6 Sec. 145. NEW SECTION. 493B.1404 REVOCATION OF  
7 DISSOLUTION.

8 1. A corporation may revoke its dissolution within one  
9 hundred twenty days of its effective date.

10 2. Revocation of dissolution must be authorized in the  
11 same manner as the dissolution was authorized unless that  
12 authorization permitted revocation by action of the board of  
13 directors alone, in which event the board of directors may  
14 revoke the dissolution without shareholder action.

15 3. After the revocation of dissolution is authorized, the  
16 corporation may revoke the dissolution by delivering to the  
17 secretary of state for filing articles of revocation of  
18 dissolution, together with a copy of its articles of  
19 dissolution, that set forth all of the following:

20 a. The name of the corporation.

21 b. The effective date of the dissolution that was revoked.

22 c. The data that the revocation of dissolution was  
23 authorized.

24 d. If the corporation's board of directors or  
25 incorporators revoked the dissolutions, a statement to that  
26 effect.

27 e. If the corporation's board of directors revoked a  
28 dissolution authorized by the shareholders, a statement that  
29 revocation was permitted by action by the board of directors  
30 alone pursuant to that authorization.

31 f. If shareholder action was required to revoke the  
32 dissolution, the information required by section 493B.1403,  
33 subsection 1, paragraph "c" or "d".

34 4. Revocation of dissolution is effective upon the  
35 effective date of the articles of revocation of dissolution.

1 5. When the revocation of dissolution is effective, it  
2 relates back to and takes effect as of the effective date of  
3 the dissolution as if the dissolution had never occurred.

4 Sec. 146. NEW SECTION. 493B.1405 EFFECT OF DISSOLUTION.

5 1. A dissolved corporation continues its corporate  
6 existence but shall not carry on any business except that  
7 appropriate to wind up and liquidate its business and affairs,  
8 including any of the following:

9 a. Collecting its assets.

10 b. Disposing of its properties that will not be  
11 distributed in kind to its shareholders.

12 c. Discharging or making provision for discharging its  
13 liabilities.

14 d. Distributing its remaining property among its  
15 shareholders according to their interests.

16 e. Doing every other act necessary to wind up and  
17 liquidate its business and affairs.

18 2. Dissolution of a corporation does not do any of the  
19 following:

20 a. Transfer title to the corporation's property.

21 b. Prevent transfer of its shares or securities, although  
22 the authorization to dissolve may provide for closing the  
23 corporation's share transfer records.

24 c. Subject its directors or officers to standards of  
25 conduct different from those prescribed in division VIII.

26 d. Change quorum or voting requirements for its board of  
27 directors or shareholders; change provisions for selection,  
28 resignation, or removal of its directors or officers or both;  
29 or change provisions for amending its bylaws.

30 e. Prevent commencement of a proceeding by or against the  
31 corporation in its corporate name.

32 f. Abate or suspend a proceeding pending by or against the  
33 corporation on the effective date of dissolution.

34 g. Terminate the authority of the registered agent of the  
35 corporation.

1     Sec. 147. NEW SECTION. 493B.1406 KNOWN CLAIMS AGAINST  
2 DISSOLVED CORPORATION.

3     1. A dissolved corporation may dispose of the known claims  
4 against it by following the procedure described in this  
5 section.

6     2. The dissolved corporation shall notify its known  
7 claimants in writing of the dissolution at any time after its  
8 effective date. The written notice must do all of the  
9 following:

10    a. Describe information that must be included in a claim.

11    b. Provide a mailing address where a claim may be sent.

12    c. State the deadline, which may not be fewer than one  
13 hundred twenty days from the effective date of the written  
14 notice, by which the dissolved corporation must receive the  
15 claim.

16    d. State that the claim will be barred if not received by  
17 the deadline.

18    3. A claim against the dissolved corporation is barred if  
19 either of the following occur:

20    a. A claimant who was given written notice under  
21 subsection 2 does not deliver the claim to the dissolved  
22 corporation by the deadline.

23    b. A claimant whose claim was rejected by the dissolved  
24 corporation does not commence a proceeding to enforce the  
25 claim within ninety days from the effective date of the  
26 rejection notice.

27    4. For purposes of this section, "claim" does not include  
28 a contingent liability or a claim based on an event occurring  
29 after the effective date of dissolution.

30     Sec. 148. NEW SECTION. 493B.1407 UNKNOWN CLAIMS AGAINST  
31 DISSOLVED CORPORATION.

32    1. A dissolved corporation may also publish notice of its  
33 dissolution and request that persons with claims against the  
34 corporation present them in accordance with the notice.

35    2. The notice must meet all of the following requirements:

1 a. Be published one time in a newspaper of general  
2 circulation in the county where the dissolved corporation's  
3 principal office or, if none in this state, its registered  
4 office is or was last located.

5 b. Describe the information that must be included in a  
6 claim and provide a mailing address where the claim may be  
7 sent.

8 c. State that a claim against the corporation will be  
9 barred unless a proceeding to enforce the claim is commenced  
10 within five years after the publication of the notice.

11 3. If the dissolved corporation publishes a newspaper  
12 notice in accordance with subsection 2, the claim of each of  
13 the following claimants is barred unless the claimant  
14 commences a proceeding to enforce the claim against the  
15 dissolved corporation within five years after the publication  
16 date of the newspaper notice:

17 a. A claimant who did not receive written notice under  
18 section 493B.1406.

19 b. A claimant whose claim was timely sent to the dissolved  
20 corporation but not acted on.

21 c. A claimant whose claim is contingent or based on an  
22 event occurring after the effective date of dissolution.

23 4. A claim may be enforced under this section in either of  
24 the following ways:

25 a. Against the dissolved corporation, to the extent of its  
26 undistributed assets.

27 b. If the assets have been distributed in liquidation,  
28 against a shareholder of the dissolved corporation to the  
29 extent of the shareholder's pro rata share of the claim or the  
30 corporate assets distributed to the shareholder in  
31 liquidation, whichever is less, but a shareholder's total  
32 liability for all claims under this section shall not exceed  
33 the total amount of assets distributed to the shareholder in  
34 liquidation.

35

PART B

1     Sec. 149. NEW SECTION. 493B.1420 GROUNDS FOR  
2 ADMINISTRATIVE DISSOLUTION.

3     The secretary of state may commence a proceeding under  
4 section 493B.1421 to administratively dissolve a corporation  
5 if any of the following apply:

6     1. The corporation does not pay within sixty days after  
7 they are due any franchise taxes or penalties imposed by this  
8 chapter or other law.

9     2. The corporation has not delivered an annual report to  
10 the secretary of state in a form that meets the requirements  
11 of section 493B.1622, within sixty days after it is due.

12    3. The corporation is without a registered agent or  
13 registered office in this state for sixty days or more.

14    4. The corporation does not notify the secretary of state  
15 within sixty days that its registered agent or registered  
16 office has been changed, that its registered agent has  
17 resigned, or that its registered office has been discontinued.

18    5. The corporation's period of duration stated in its  
19 articles of incorporation expires.

20     Sec. 150. NEW SECTION. 493B.1421 PROCEDURE FOR AND  
21 EFFECT OF ADMINISTRATIVE DISSOLUTION.

22    1. If the secretary of state determines that one or more  
23 grounds exist under section 493B.1420 for dissolving a  
24 corporation, the secretary of state shall serve the  
25 corporation with written notice of the secretary of state's  
26 determination under section 493B.504.

27    2. If the corporation does not correct each ground for  
28 dissolution or demonstrate to the reasonable satisfaction of  
29 the secretary of state that each ground determined by the  
30 secretary of state does not exist within sixty days after  
31 service of the notice is perfected under section 493B.504, the  
32 secretary of state shall administratively dissolve the  
33 corporation by signing a certificate of dissolution that  
34 recites the ground or grounds for dissolution and its  
35 effective date. The secretary of state shall file the

1 original of the certificate and serve a copy on the  
2 corporation under section 493B.504.

3 3. A corporation administratively dissolved continues its  
4 corporate existence but shall not carry on any business except  
5 that necessary to wind up and liquidate its business and  
6 affairs under section 493B.1405 and notify claimants under  
7 sections 493B.1406 and 493B.1407.

8 4. The administrative dissolution of a corporation does  
9 not terminate the authority of its registered agent.

10 Sec. 151. NEW SECTION. 493B.1422 REINSTATEMENT FOLLOWING  
11 ADMINISTRATIVE DISSOLUTION.

12 1. A corporation administratively dissolved under section  
13 493B.1421 may apply to the secretary of state for  
14 reinstatement within two years after the effective date of  
15 dissolution. The application must meet all of the following  
16 requirements:

17 a. Recite the name of the corporation at its date of  
18 dissolution and the effective date of its administrative  
19 dissolution.

20 b. State that the ground or grounds for dissolution either  
21 did not exist or have been eliminated.

22 c. State a corporate name that satisfies the requirements  
23 of section 493B.401.

24 d. Contain a certificate from the department of revenue  
25 and finance reciting that all taxes owed by the corporation  
26 have been paid.

27 2. If the secretary of state determines that the  
28 application contains the information required by subsection 1  
29 and that the information is correct, the secretary of state  
30 shall cancel the certificate of dissolution and prepare a  
31 certificate of reinstatement that recites the secretary of  
32 state's determination and the effective date of reinstatement,  
33 file the original of the certificate, and serve a copy on the  
34 corporation under section 493B.504. If the corporate name in  
35 subsection 1, paragraph "c" is different than the corporate

1 name in subsection 1, paragraph "a", the certificate of  
2 reinstatement shall constitute an amendment to the articles of  
3 incorporation insofar as it pertains to the corporate name.

4 3. When the reinstatement is effective, it relates back to  
5 and takes effect as of the effective date of the  
6 administrative dissolution as if the administrative  
7 dissolution had never occurred.

8 Sec. 152. NEW SECTION. 493B.1423 APPEAL FROM DENIAL OF  
9 REINSTATEMENT.

10 1. If the secretary of state denies a corporation's  
11 application for reinstatement following administrative  
12 dissolution, the secretary of state shall serve the  
13 corporation under section 493B.504 with a written notice that  
14 explains the reason or reasons for denial.

15 2. The corporation may appeal the denial of reinstatement  
16 to the district court within thirty days after service of the  
17 notice of denial is perfected. The corporation appeals by  
18 petitioning the court to set aside the dissolution and  
19 attaching to the petition copies of the secretary of state's  
20 certificate of dissolution, the corporation's application for  
21 reinstatement, and the secretary of state's notice of denial.

22 3. The court may summarily order the secretary of state to  
23 reinstate the dissolved corporation or may take other action  
24 the court considers appropriate.

25 4. The court's final decision may be appealed as in other  
26 civil proceedings.

27 

PART C

28 Sec. 153. NEW SECTION. 493B.1430 GROUNDS FOR JUDICIAL  
29 DISSOLUTION.

30 The district court may dissolve a corporation in any of the  
31 following ways:

32 1. A proceeding by the attorney general, if it is  
33 established that either of the following apply:

34 a. The corporation obtained its articles of incorporation  
35 through fraud.

1 b. The corporation has continued to exceed or abuse the  
2 authority conferred upon it by law.

3 2. A proceeding by a shareholder if it is established that  
4 any of the following conditions exist:

5 a. The directors are deadlocked in the management of the  
6 corporate affairs, the shareholders are unable to break the  
7 deadlock, and either irreparable injury to the corporation is  
8 threatened or being suffered, or the business and affairs of  
9 the corporation can no longer be conducted to the advantage of  
10 the shareholders generally, because of the deadlock.

11 b. The directors or those in control of the corporation  
12 have acted, are acting, or will act in a manner that is  
13 illegal, oppressive, or fraudulent.

14 c. The shareholders are deadlocked in voting power and  
15 have failed, for a period that includes at least two  
16 consecutive annual meeting dates, to elect successors to  
17 directors whose terms have expired.

18 d. The corporate assets are being misapplied or wasted.

19 3. A proceeding by a creditor if it is established that  
20 either of the following apply:

21 a. The creditors claim has been reduced to judgment, the  
22 execution on the judgment returned unsatisfied, and the  
23 corporation is insolvent.

24 b. The corporation has admitted in writing that the  
25 creditors claim is due and owing and the corporation is  
26 insolvent.

27 4. A proceeding by the corporation to have its voluntary  
28 dissolution continued under court supervision.

29 Sec. 154. NEW SECTION. 493B.1431 PROCEDURE FOR JUDICIAL  
30 DISSOLUTION.

31 1. Venue for a proceeding by the attorney general to  
32 dissolve a corporation lies in Polk County. Venue for a  
33 proceeding brought by any other party named in section  
34 493B.1430 lies in the county where a corporation's principal  
35 office or, if none in this state, its registered office is or

1 was last located.

2 2. It is not necessary to make shareholders parties to a  
3 proceeding to dissolve a corporation unless relief is sought  
4 against them individually.

5 3. A court in a proceeding brought to dissolve a  
6 corporation may issue injunctions, appoint a receiver or  
7 custodian pendente lite with all powers and duties the court  
8 directs, take other action required to preserve the corporate  
9 assets wherever located, and carry on the business of the  
10 corporation until a full hearing can be held.

11 Sec. 155. NEW SECTION. 493B.1432 RECEIVERSHIP OR  
12 CUSTODIANSHIP.

13 1. A court in a judicial proceeding brought to dissolve a  
14 corporation may appoint one or more receivers to wind up and  
15 liquidate, or one or more custodians to manage, the business  
16 and affairs of the corporation. The court shall hold a  
17 hearing, after notifying all parties to the proceeding and any  
18 interested persons designated by the court, before appointing  
19 a receiver or custodian. The court appointing a receiver or  
20 custodian has exclusive jurisdiction over the corporation and  
21 all its property wherever located.

22 2. The court may appoint an individual or a domestic or  
23 foreign corporation authorized to transact business in this  
24 state as a receiver or custodian. The court may require the  
25 receiver or custodian to post bond, with or without sureties,  
26 in an amount the court directs.

27 3. The court shall describe the powers and duties of the  
28 receiver or custodian in its appointing order, which may be  
29 amended from time to time. Among other powers:

30 a. The receiver may do either or both of the following:

31 (1) Dispose of all or any part of the assets of the  
32 corporation wherever located, at a public or private sale, if  
33 authorized by the court.

34 (2) Sue and defend in the receiver's own name as receiver  
35 of the corporation in all courts of this state.



1 receive them shall be reduced to cash and deposited with the  
2 treasurer of state or other appropriate state official for  
3 safekeeping. When the creditor, claimant, or shareholder  
4 furnishes satisfactory proof of entitlement to the amount  
5 deposited, the treasurer of state or other appropriate state  
6 official shall pay the creditor, claimant, or shareholder or  
7 that person's representative that amount.

8

DIVISION XV

9

FOREIGN CORPORATIONS

10

PART A

11 Sec. 158. NEW SECTION. 493B.1501 AUTHORITY TO TRANSACT  
12 BUSINESS REQUIRED.

13 1. A foreign corporation shall not transact business in  
14 this state until it obtains a certificate of authority from  
15 the secretary of state.

16 2. The following activities, among others, do not  
17 constitute transacting business within the meaning of  
18 subsection 1:

19 a. Maintaining, defending, or settling any proceeding.

20 b. Holding meetings of the board of directors or  
21 shareholders or carrying on other activities concerning  
22 internal corporate affairs.

23 c. Maintaining bank accounts.

24 d. Maintaining offices or agencies for the transfer,  
25 exchange, and registration of the corporation's own securities  
26 or maintaining trustees or depositories with respect to those  
27 securities.

28 e. Selling through independent contractors.

29 f. Soliciting or obtaining orders, whether by mail or  
30 through employees or agents or otherwise, if the orders  
31 require acceptance outside this state before they become  
32 contracts.

33 g. Creating or acquiring indebtedness, mortgages, and  
34 security interests in real or personal property.

35 h. Securing or collecting debts or enforcing mortgages and

1 security interests in property securing the debts.

2 i. Owning, without more, real or personal property.

3 j. Conducting an isolated transaction that is completed  
4 within thirty days and that is not one in the course of  
5 repeated transactions of a like nature.

6 k. Transacting business in interstate commerce.

7 3. The list of activities in subsection 2 is not  
8 exhaustive.

9 Sec. 159. NEW SECTION. 493B.1502 CONSEQUENCES OF  
10 TRANACTING BUSINESS WITHOUT AUTHORITY.

11 1. A foreign corporation transacting business in this  
12 state without a certificate of authority shall not maintain a  
13 proceeding in any court in this state until it obtains a  
14 certificate of authority.

15 2. The successor to a foreign corporation that transacted  
16 business in this state without a certificate of authority and  
17 the assignee of a cause of action arising out of that business  
18 shall not maintain a proceeding based on that cause of action  
19 in any court in this state until the foreign corporation or  
20 its successor obtains a certificate of authority.

21 3. A court may stay a proceeding commenced by a foreign  
22 corporation, its successor, or assignee until it determines  
23 whether the foreign corporation or its successor requires a  
24 certificate of authority. If it so determines, the court may  
25 further stay the proceeding until the foreign corporation or  
26 its successor obtains the certificate.

27 4. A foreign corporation is liable for a civil penalty of  
28 not to exceed a total of one thousand dollars if it transacts  
29 business in this state without a certificate of authority.  
30 The attorney general may collect all penalties due under this  
31 subsection.

32 5. Notwithstanding subsections 1 and 2, the failure of a  
33 foreign corporation to obtain a certificate of authority does  
34 not impair the validity of its corporate acts or prevent it  
35 from defending any proceeding in this state.

1     Sec. 160. NEW SECTION. 493B.1503 APPLICATION FOR  
2 CERTIFICATE OF AUTHORITY.

3     1. A foreign corporation may apply for a certificate of  
4 authority to transact business in this state by delivering an  
5 application to the secretary of state for filing. The  
6 application must set forth all of the following:

7     a. The name of the foreign corporation or, if its name is  
8 unavailable for use in this state, a corporate name that  
9 satisfies the requirements of section 493B.1506.

10    b. The name of the state or country under whose law it is  
11 incorporated.

12    c. Its date of incorporation and period of duration.

13    d. The street address of its principal office.

14    e. The address of its registered office in this state and  
15 the name of its registered agent at that office.

16    f. The names and usual business addresses of its current  
17 directors and officers.

18    2. The foreign corporation shall deliver with the  
19 completed application a certificate of existence or a document  
20 of similar import duly authenticated by the secretary of state  
21 or other official having custody of corporate records in the  
22 state or country under whose law it is incorporated.

23     Sec. 161. NEW SECTION. 493B.1504 AMENDED CERTIFICATE OF  
24 AUTHORITY.

25     1. A foreign corporation authorized to transact business  
26 in this state must obtain an amended certificate of authority  
27 from the secretary of state if it changes any of the  
28 following:

29     a. Its corporate name.

30     b. The period of its duration.

31     c. The state or country of its incorporation.

32     2. The requirements of section 493B.1503 for obtaining an  
33 original certificate of authority apply to obtaining an  
34 amended certificate under this section.

35     Sec. 162. NEW SECTION. 493B.1505 EFFECT OF CERTIFICATE

1 OF AUTHORITY.

2 1. A certificate of authority authorizes the foreign  
3 corporation to which it is issued to transact business in this  
4 state subject, however, to the right of the state to revoke  
5 the certificate as provided in this chapter.

6 2. A foreign corporation with a valid certificate of  
7 authority has the same but no greater rights and has the same  
8 but no greater privileges as, and except as otherwise provided  
9 in this chapter is subject to the same duties, restrictions,  
10 penalties, and liabilities now or later imposed on, a domestic  
11 corporation of like character.

12 3. This chapter does not authorize this state to regulate  
13 the organization or internal affairs of a foreign corporation  
14 authorized to transact business in this state.

15 Sec. 163. NEW SECTION. 493B.1506 CORPORATE NAME OF  
16 FOREIGN CORPORATION.

17 1. If the corporate name of a foreign corporation does not  
18 satisfy the requirements of section 493B.401, the foreign  
19 corporation, to obtain or maintain a certificate of authority  
20 to transact business in this state, may do either of the  
21 following:

22 a. Add the word "corporation", "incorporated", "company",  
23 or "limited", or the abbreviation "corp.", "inc.", "co.", or  
24 "ltd.", to its corporate name for use in this state.

25 b. Use a fictitious name to transact business in this  
26 state if its real name is unavailable and it delivers to the  
27 secretary of state for filing a copy of the resolution of its  
28 board of directors, certified by its secretary, adopting the  
29 fictitious name.

30 2. Except as authorized by subsections 3 and 4, the  
31 corporate name, including a fictitious name, of a foreign  
32 corporation must be distinguishable upon the records of the  
33 secretary of state from all of the following:

34 a. The corporate name of a corporation incorporated or  
35 authorized to transact business in this state.

1 b. A corporate name reserved or registered under section  
2 493B.402 or 493B.403.

3 c. The fictitious name of another foreign corporation  
4 authorized to transact business in this state.

5 d. The corporate name of a not-for-profit corporation  
6 incorporated or authorized to transact business in this state.

7 3. A foreign corporation may apply to the secretary of  
8 state for authorization to use in this state the name of  
9 another corporation incorporated or authorized to transact  
10 business in this state that is not distinguishable upon the  
11 secretary of state's records from the name applied for. The  
12 secretary of state shall authorize use of the name applied for  
13 if either of the following apply:

14 a. The other corporation consents to the use in writing  
15 and submits an undertaking in form satisfactory to the  
16 secretary of state to change its name to a name that is  
17 distinguishable upon the records of the secretary of state  
18 from the name of the applying corporation.

19 b. The applicant delivers to the secretary of state a  
20 certified copy of a final judgment of a court of competent  
21 jurisdiction establishing the applicant's right to use the  
22 name applied for in this state.

23 4. A foreign corporation may use in this state the name,  
24 including the fictitious name, of another domestic or foreign  
25 corporation that is used in this state if the other  
26 corporation is incorporated or authorized to transact business  
27 in this state and the foreign corporation has done any of the  
28 following:

29 a. Merged with the other corporation.

30 b. Been formed by reorganization of the other corporation.

31 c. Acquired all or substantially all of the assets,  
32 including the corporate name, of the other corporation.

33 5. If a foreign corporation authorized to transact  
34 business in this state changes its corporate name to one that  
35 does not satisfy the requirements of section 493B.401, it

1 shall not transact business in this state under the changed  
2 name until it adopts a name satisfying the requirements of  
3 section 493B.401 and obtains an amended certificate of  
4 authority under section 493B.1504.

5 Sec. 164. NEW SECTION. 493B.1507 REGISTERED OFFICE AND  
6 REGISTERED AGENT OF FOREIGN CORPORATION.

7 A foreign corporation authorized to transact business in  
8 this state must continuously maintain in this state both of  
9 the following:

10 1. A registered office that may be the same as any of its  
11 places of business.

12 2. A registered agent, who may be any of the following:

13 a. An individual who resides in this state and whose  
14 business office is identical with the registered office.

15 b. A domestic corporation or not-for-profit domestic  
16 corporation whose business office is identical with the  
17 registered office.

18 c. A foreign corporation or foreign not-for-profit  
19 corporation authorized to transact business in this state  
20 whose business office is identical with the registered office.

21 Sec. 165. NEW SECTION. 493B.1508 CHANGE OF REGISTERED  
22 OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.

23 1. A foreign corporation authorized to transact business  
24 in this state may change its registered office or registered  
25 agent by delivering to the secretary of state for filing a  
26 statement of change that sets forth:

27 a. Its name.

28 b. The street address of its current registered office.

29 c. If the current registered office is to be changed, the  
30 street address of its new registered office.

31 d. The name of its current registered agent.

32 e. If the current registered agent is to be changed, the  
33 name of its new registered agent and the new agent's written  
34 consent, either on the statement or attached to it, to the  
35 appointment.

1 f. That after the change or changes are made, the street  
2 addresses of its registered office and the business office of  
3 its registered agent will be identical.

4 2. If a registered agent changes the street address of the  
5 registered agent's business office, the registered agent may  
6 change the street address of the registered office of any  
7 foreign corporation for which the agent is the registered  
8 agent by notifying the corporation in writing of the change  
9 and signing, either manually or in facsimile, and delivering  
10 to the secretary of state for filing a statement of change  
11 that complies with the requirements of subsection 1 and  
12 recites that the corporation has been notified of the change.

13 3. A corporation may also change its registered office or  
14 registered agent in its annual report as provided in section  
15 493B.1622.

16 Sec. 166. NEW SECTION. 493B.1509 RESIGNATION OF  
17 REGISTERED AGENT OF FOREIGN CORPORATION.

18 1. The registered agent of a foreign corporation may  
19 resign the agency appointment by signing and delivering to the  
20 secretary of state for filing the original and two exact or  
21 conformed copies of a statement of resignation. The statement  
22 of resignation may include a statement that the registered  
23 office is also discontinued.

24 2. After filing the statement, the secretary of state  
25 shall attach the filing receipt to one copy and mail the copy  
26 and receipt to the registered office if not discontinued. The  
27 secretary of state shall mail the other copy of the foreign  
28 corporation to its principal office address shown in its most  
29 recent annual report.

30 3. The agency appointment is terminated, and the  
31 registered office discontinued if so provided, on the thirty-  
32 first day after the date on which the statement was filed.

33 Sec. 167. NEW SECTION. 493B.1510 SERVICE ON FOREIGN  
34 CORPORATION.

35 1. The registered agent of a foreign corporation

1 authorized to transact business in this state is the  
2 corporation's agent for service of process, notice, or demand  
3 required or permitted by law to be served on the foreign  
4 corporation.

5 2. A foreign corporation may be served by registered or  
6 certified mail, return receipt requested, addressed to the  
7 secretary of the foreign corporation at its principal office  
8 shown in its application for a certificate of authority or in  
9 its most recent annual report if the foreign corporation meets  
10 any of the following conditions:

11 a. Has no registered agent or its registered agent cannot  
12 with reasonable diligence be served.

13 b. Has withdrawn from transacting business in this state  
14 under section 493B.1520.

15 c. Has had its certificate of authority revoked under  
16 section 493B.1531.

17 3. Service is perfected under subsection 2 at the earliest  
18 of:

19 a. The date the foreign corporation receives the mail.

20 b. The date shown on the return receipt, if signed on  
21 behalf of the foreign corporation.

22 c. Five days after its deposit in the United States mail,  
23 as evidenced by the postmark, if mailed postpaid and correctly  
24 addressed.

25 4. A foreign corporation may also be served in any other  
26 manner permitted by law.

27 PART B

28 Sec. 168. NEW SECTION. 493B.1520 WITHDRAWAL OF FOREIGN  
29 CORPORATION.

30 1. A foreign corporation authorized to transact business  
31 in this state shall not withdraw from this state until it  
32 obtains a certificate of withdrawal from the secretary of  
33 state.

34 2. A foreign corporation authorized to transact business  
35 in this state may apply for a certificate of withdrawal by

1 delivering an application to the secretary of state for  
2 filing. The application must set forth all of the following:

3 a. The name of the foreign corporation and the name of the  
4 state or country under whose law it is incorporated.

5 b. That it is not transacting business in this state and  
6 that it surrenders its authority to transact business in this  
7 state.

8 c. That it revokes the authority of its registered agent  
9 to accept service on its behalf and appoints the secretary of  
10 state as its agent for service of process in any proceeding  
11 based on a cause of action arising during the time it was  
12 authorized to transact business in this state.

13 d. A mailing address to which the secretary of state may  
14 mail a copy of any process served on the secretary of state  
15 under paragraph "c".

16 e. A commitment to notify the secretary of state in the  
17 future of any change in its mailing address.

18 3. After the withdrawal of the corporation is effective,  
19 service of process on the secretary of state under this  
20 section is service on the foreign corporation. Upon receipt  
21 of process, the secretary of state shall mail a copy of the  
22 process to the foreign corporation at the mailing address set  
23 forth under subsection 2.

24 PART C

25 Sec. 169. NEW SECTION. 493B.1530 GROUNDS FOR REVOCATION.

26 The secretary of state may commence a proceeding under  
27 section 493B.1531 to revoke the certificate of authority of a  
28 foreign corporation authorized to transact business in this  
29 state if:

30 1. The foreign corporation does not deliver its annual  
31 report to the secretary of state within sixty days after it is  
32 due.

33 2. The foreign corporation does not pay within sixty days  
34 after they are due any franchise taxes or penalties imposed by  
35 this chapter or other laws.

1 3. The foreign corporation is without a registered agent  
2 or registered office in this state for sixty days or more.

3 4. The foreign corporation does not inform the secretary  
4 of state under section 493B.1508 or 493B.1509 that its  
5 registered agent or registered office has changed, that its  
6 registered agent has resigned, or that its registered office  
7 has been discontinued within sixty days of the change,  
8 resignation, or discontinuance.

9 5. An incorporator, director, officer, or agent of the  
10 foreign corporation signed a document that person knew was  
11 false in any material respect with intent that the document be  
12 delivered to the secretary of state for filing.

13 6. The secretary of state receives a duly authenticated  
14 certificate from the secretary of state or other official  
15 having custody of corporate records in the state or country  
16 under whose law the foreign corporation is incorporated  
17 stating that it has been dissolved or disappeared as the  
18 result of a merger.

19 Sec. 170. NEW SECTION. 493B.1531 PROCEDURE FOR AND  
20 EFFECT OF REVOCATION.

21 1. If the secretary of state determines that one or more  
22 grounds exist under section 493B.1530 for revocation of a  
23 certificate of authority, the secretary of state shall serve  
24 the foreign corporation with written notice of the secretary's  
25 determination under section 493B.1510.

26 2. If the foreign corporation does not correct each ground  
27 for revocation or demonstrate to the reasonable satisfaction  
28 of the secretary of state that each ground determined by the  
29 secretary of state does not exist within sixty days after  
30 service of the notice is perfected under section 493B.1510,  
31 the secretary of state may revoke the foreign corporation's  
32 certificate of authority by signing a certificate of  
33 revocation that recites the ground or grounds for revocation  
34 and its effective date. The secretary of state shall file the  
35 original of the certificate and serve a copy on the foreign

1 corporation under section 493B.1510.

2 3. The authority of a foreign corporation to transact  
3 business in this state ceases on the date shown on the  
4 certificate revoking its certificate of authority.

5 4. The secretary of state's revocation of a foreign  
6 corporation's certificate of authority appoints the secretary  
7 of state the foreign corporation's agent for service of  
8 process in any proceeding based on a cause of action which  
9 arose during the time the foreign corporation was authorized  
10 to transact business in this state. Service of process on the  
11 secretary of state under this subsection is service on the  
12 foreign corporation. Upon receipt of process, the secretary  
13 of state shall mail a copy of the process to the secretary of  
14 the foreign corporation at its principal office shown in its  
15 most recent annual report or in any subsequent communication  
16 received from the corporation stating the current mailing  
17 address of its principal office, or, if none is on file, in  
18 its application for a certificate of authority.

19 5. Revocation of a foreign corporation's certificate of  
20 authority does not terminate the authority of the registered  
21 agent of the corporation.

22 Sec. 171. NEW SECTION. 493B.1532 APPEAL FROM REVOCATION.

23 1. A foreign corporation may appeal the secretary of  
24 state's revocation of its certificate of authority to the  
25 district court within thirty days after service of the  
26 certificate of revocation is perfected under section  
27 493B.1510. The foreign corporation appeals by petitioning the  
28 court to set aside the revocation and attaching to the  
29 petition copies of its certificate of authority and the  
30 secretary of state's certificate of revocation.

31 2. The court may summarily order the secretary of state to  
32 reinstate the certificate of authority or may take any other  
33 action the court considers appropriate.

34 3. The court's final decision may be appealed as in other  
35 civil proceedings.

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DIVISION XVI  
RECORDS AND REPORTS  
PART A

Sec. 172. NEW SECTION. 493B.1601 CORPORATE RECORDS.

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of the following records:

a. Its articles or restated articles of incorporation and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

d. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years.

e. All written communications to shareholders generally within the past three years, including the financial

1 statements furnished for the past three years under section  
2 493B.1620.

3 f. A list of the names and business addresses of its  
4 current directors and officers.

5 g. Its most recent annual report delivered to the  
6 secretary of state under section 493B.1622.

7 Sec. 173. NEW SECTION. 493B.1602 INSPECTION OF RECORDS  
8 BY SHAREHOLDERS.

9 1. A shareholder of a corporation is entitled to inspect  
10 and copy, during regular business hours at the corporation's  
11 principal office, any of the records of the corporation  
12 described in section 493B.1601, subsection 5, if the  
13 shareholder gives the corporation written notice of the  
14 shareholder's demand at least five business days before the  
15 date on which the shareholder wishes to inspect and copy.

16 2. A shareholder of a corporation is entitled to inspect  
17 and copy, during regular business hours at a reasonable  
18 location specified by the corporation, any of the following  
19 records of the corporation if the shareholder meets the  
20 requirements of subsection 3 and gives the corporation written  
21 notice of the shareholder's demand at least five business days  
22 before the date on which the shareholder wishes to inspect and  
23 copy any of the following:

24 a. Excerpts from minutes of any meeting of the board of  
25 directors, records of any action of a committee of the board  
26 of directors while acting in place of the board of directors  
27 on behalf of the corporation, minutes of any meeting of the  
28 shareholders, and records of action taken by the shareholders  
29 or board of directors without a meeting, to the extent not  
30 subject to inspection under section 493B.1602, subsection 1.

31 b. Accounting records of the corporation.

32 c. The record of shareholders.

33 3. A shareholder may inspect and copy the records  
34 described in subsection 2 only if:

35 a. The shareholder's demand is made in good faith and for

1 a proper purpose.

2 b. The shareholder describes with reasonable particularity  
3 the shareholder's purpose and the records the shareholder  
4 desires to inspect.

5 c. The records are directly connected with the  
6 shareholder's purpose.

7 4. The right of inspection granted by this section shall  
8 not be abolished or limited by a corporation's articles of  
9 incorporation or bylaws.

10 5. This section does not affect either of the following:

11 a. The right of a shareholder to inspect records under  
12 section 493B.720 or, if the shareholder is in litigation with  
13 the corporation, to the same extent as any other litigant.

14 b. The power of a court, independently of this chapter, to  
15 compel the production of corporate records for examination.

16 Sec. 174. NEW SECTION. 493B.1603 SCOPE OF INSPECTION  
17 RIGHT.

18 1. A shareholder's agent or attorney has the same  
19 inspection and copying rights as the shareholder the agent or  
20 attorney represents.

21 2. The right to copy records under section 493B.1602  
22 includes, if reasonable, the right to receive copies made by  
23 photographic, xerographic, or other technological means.

24 3. The corporation may impose a reasonable charge,  
25 covering the costs of labor and material, for copies of any  
26 documents provided to the shareholder. The charge shall not  
27 exceed the estimated cost of production or reproduction of the  
28 records.

29 4. The corporation may comply with a shareholder's demand  
30 to inspect the record of shareholders under section 493B.1602,  
31 subsection 2, paragraph "c" by providing the shareholder with  
32 a list of its shareholders that was compiled no earlier than  
33 the date of the shareholder's demand.

34 Sec. 175. NEW SECTION. 493B.1604 COURT-ORDERED  
35 INSPECTION.

1 1. If a corporation does not allow a shareholder who  
2 complies with section 493B.1602, subsection 1, to inspect and  
3 copy any records required by that subsection to be available  
4 for inspection, the district court of the county where the  
5 corporation's principal office or, if none in this state, its  
6 registered office is located may summarily order inspection  
7 and copying of the records demanded at the corporation's  
8 expense upon application of the shareholder.

9 2. If a corporation does not within a reasonable time  
10 allow a shareholder to inspect and copy any other records, the  
11 shareholder who complies with section 493B.1602, subsections 2  
12 and 3 may apply to the district court in the county where the  
13 corporation's principal office or, if none in this state, its  
14 registered office is located for an order to permit inspection  
15 and copying of the records demanded. The court shall dispose  
16 of an application under this subsection on an expedited basis.

17 3. If the court orders inspection and copying of the  
18 records demanded, it shall also order the corporation to pay  
19 the shareholder's costs, including reasonable counsel fees,  
20 incurred to obtain the order unless the corporation proves  
21 that it refused inspection in good faith because it had a  
22 reasonable basis for doubt about the right of the shareholder  
23 to inspect the records demanded.

24 4. If the court orders inspection and copying of the  
25 records demanded, it may impose reasonable restrictions on the  
26 use or distribution of the records by the demanding  
27 shareholder.

28 PART B  
29 Sec. 176. NEW SECTION. 493B.1620 FINANCIAL STATEMENTS  
30 FOR SHAREHOLDERS.

31 A corporation shall prepare annual financial statements,  
32 which may be consolidated or combined statements of the  
33 corporation and one or more of its subsidiaries, as  
34 appropriate, that include a balance sheet as of the end of the  
35 fiscal year and an income statement for that year. Upon

1 written request from a shareholder, a corporation, at its  
2 expense, shall furnish to that shareholder the financial  
3 statements requested. If the annual financial statements are  
4 reported upon by a public accountant, that report must  
5 accompany them.

6 Sec. 177. NEW SECTION. 493B.1621 OTHER REPORTS TO  
7 SHAREHOLDERS.

8 1. If a corporation indemnifies or advances expenses to a  
9 director under section 493B.851 through 493B.854 in connection  
10 with a proceeding by or in the right of the corporation, the  
11 corporation shall report the indemnification or advance in  
12 writing to the shareholders with or before the notice of the  
13 next shareholders' meeting.

14 2. If a corporation issues or authorizes the issuance of  
15 shares for promissory notes or for promises to render services  
16 in the future, the corporation shall report in writing to the  
17 shareholders the number of shares authorized or issued, and  
18 the consideration received by the corporation, with or before  
19 the notice of the next shareholders' meeting.

20 Sec. 178. NEW SECTION. 493B.1622 ANNUAL REPORT FOR  
21 SECRETARY OF STATE.

22 1. Each domestic corporation, and each foreign corporation  
23 authorized to transact business in this state, shall deliver  
24 to the secretary of state for filing an annual report that  
25 sets forth all of the following:

26 a. The name of the corporation and the state or country  
27 under whose law it is incorporated.

28 b. The address of its registered office and the name of  
29 its registered agent at that office in this state, together  
30 with the consent of any new registered agent.

31 c. The address of its principal office.

32 d. The names and business addresses of its directors and  
33 principal officers.

34 e. The total number of authorized shares, itemized by  
35 class and series, if any, within each class.

1 f. The total number of issued and outstanding shares,  
2 itemized by class and series, if any, within each class.

3 g. A statement of the amount of agricultural land in this  
4 state owned by the corporation.

5 h. A statement that the corporation is or is not a family  
6 farm corporation as defined in section 172C.1.

7 2. Information in the annual report must be current as of  
8 the first day of January of the year in which the report is  
9 due. The annual report shall be executed on behalf of the  
10 corporation and signed as provided in section 493B.120 or by  
11 any other person authorized by the board of directors of the  
12 corporation.

13 3. The first annual report shall be delivered to the  
14 secretary of state between January 1 and April 1 of the year  
15 following the calendar year in which a domestic corporation  
16 was incorporated or a foreign corporation was authorized to  
17 transact business. Subsequent annual reports must be  
18 delivered to the secretary of state between January 1 and  
19 April 1 of the following calendar years.

20 4. If an annual report does not contain the information  
21 required by this section, the secretary of state shall  
22 promptly notify the reporting domestic or foreign corporation  
23 in writing and return the report to it for correction. If the  
24 report is corrected to contain the information required by  
25 this section and delivered to the secretary of state within  
26 thirty days after the effective date of notice, it is deemed  
27 to be timely filed.

28 5. The secretary of state may provide for the change of  
29 registered office or registered agent on the form prescribed  
30 by the secretary of state for the annual report, provided that  
31 the form contains the information required in section 493B.502  
32 or 493B.1508. If the secretary of state determines that an  
33 annual report does not contain the information required by  
34 this section but otherwise meets the requirements of section  
35 493B.502 or 493B.1508 for the purpose of changing the

1 registered office or registered agent, the secretary of state  
2 shall file the statement of change of registered office or  
3 registered agent, effective as provided in section 493B.123,  
4 before returning the annual report to the corporation as  
5 provided in this section. A statement of change of registered  
6 office or agent pursuant to this subsection shall be executed  
7 by a person authorized to execute the annual report.

8 DIVISION XVII

9 TRANSITION PROVISIONS

10 Sec. 179. NEW SECTION. 493B.1701 APPLICATION TO EXISTING  
11 CORPORATIONS.

12 1. Except as provided in this subsection or chapters 504  
13 or 504A, this chapter does not apply to or affect entities  
14 subject to chapters 504 or 504A. Such entities continue to be  
15 governed by all laws of this state applicable to them before  
16 the effective date of this Act as those laws are amended.  
17 This chapter does not derogate or limit the powers to which  
18 such entities are entitled.

19 2. Unless otherwise provided, this chapter does not apply  
20 to an entity subject to chapter 174, 176, 497, 498, 499, 499A,  
21 524, 533, or 534 or a corporation organized on the mutual plan  
22 under chapter 491, unless such entity voluntarily elects to  
23 adopt the provisions of this chapter and complies with the  
24 procedure prescribed by subsection 3 of this section.

25 3. The procedure for the voluntary election referred to in  
26 subsection 2 is as follows:

27 a. A resolution reciting that the corporation voluntarily  
28 adopts this chapter and designating the address of its initial  
29 registered office and the name of its registered agent or  
30 agents at that office and, if the name of the corporation is  
31 not in compliance with the requirements of this chapter,  
32 amending the articles of incorporation of the corporation to  
33 change the name of the corporation to one complying with the  
34 requirements of this chapter, shall be adopted by the board of  
35 directors and shareholders by the procedure prescribed by this

1 chapter for the amendment of articles of incorporation.

2 b. Upon adoption of the required resolution or  
3 resolutions, an instrument shall be executed by the  
4 corporation by its president or a vice president and by its  
5 secretary or an assistant secretary and verified by one of the  
6 officers signing the instrument, which shall set forth both of  
7 the following:

8 (1) The name of the corporation.

9 (2) Each such resolution adopted by the corporation and  
10 the date of adoption of each resolution.

11 (3) The address of its registered office and the name of  
12 its registered agent.

13 (4) A corporation subject to this chapter which does not  
14 have a registered office or registered agent or both  
15 designated on the records of the secretary of state is subject  
16 to all of the following provisions:

17 a. The office of the corporation set forth in its first  
18 annual report filed under this chapter shall be deemed its  
19 registered office until December 31, 1990, or until it files a  
20 designation of registered office with the secretary of state,  
21 whichever is earlier.

22 b. The person signing the first annual report of the  
23 corporation filed under this chapter shall be deemed the  
24 registered agent until December 31, 1990, or a statement  
25 designating a registered agent has been filed with the  
26 secretary of state, whichever is earlier.

27 c. Section 502 does not apply to the corporation until  
28 December 31, 1990, or until the corporation files a  
29 designation of registered office and registered agent at that  
30 office with the secretary of state, whichever is earlier.

31 (5) A corporation subject to this chapter is not subject  
32 to chapter 491, 492, 493, 494, 495, or 496.

33 c. The instrument shall be delivered to the secretary of  
34 state for filing and recording in the secretary of state's  
35 office, and shall be filed and recorded in the office of the

1 county recorder. The corporation shall at the time it files  
2 the instrument with the secretary of state deliver also to the  
3 secretary of state for filing in the secretary of state's  
4 office any annual report which is then due.

5 If the county of the initial registered office as stated in  
6 the instrument is one which is other than the county where the  
7 principal place of business of the corporation, as designated  
8 in its articles of incorporation, was located, the secretary  
9 of state shall forward also to the county recorder of the  
10 county in which the principal place of business of the  
11 corporation was located a copy of the instrument and the  
12 secretary of state shall forward to the recorder of the county  
13 in which the initial registered office of the corporation is  
14 located, in addition to the original of the instrument, a copy  
15 of the articles of incorporation of the corporation together  
16 with all amendments to them as then on file in the secretary  
17 of state's office.

18 d. Upon the filing of the instrument by a corporation all  
19 of the following apply:

20 (1) All of the provisions of this chapter apply to the  
21 corporation.

22 (2) The secretary of state shall issue a certificate as to  
23 the filing of the instrument and deliver the certificate to  
24 the corporation or its representative.

25 (3) The secretary of state shall not file the instrument  
26 with respect to a corporation unless at the time of filing the  
27 corporation is validly existing and in good standing in that  
28 office under the chapter under which it is incorporated. The  
29 corporation shall be considered validly existing and in good  
30 standing for the purpose of this chapter for a period of three  
31 months following the expiration date of the corporation,  
32 provided all annual reports due have been filed and all fees  
33 due in connection with the annual reports have been paid.

34 e. The provisions of this chapter becoming applicable to a  
35 corporation voluntarily electing to be governed by this

1 chapter does not affect any right accrued or established, or  
2 any liability or penalty incurred, under the chapter under  
3 which it is incorporated prior to the filing by the secretary  
4 of state in the secretary of state's office of the instrument  
5 manifesting the election by the corporation to adopt the  
6 provisions of this chapter as provided in subsection 3.

7 4. Except as specifically provided in this chapter, this  
8 chapter applies to all domestic corporations in existence on  
9 the effective date of this Act that were incorporated under  
10 any general statute of this state providing for incorporation  
11 of corporations for profit if power to amend or repeal the  
12 statute under which the corporation was reserved.

13 Sec. 180. NEW SECTION. 493B.1702 APPLICATION TO  
14 QUALIFIED FOREIGN CORPORATIONS.

15 A foreign corporation authorized to transact business in  
16 this state on the effective date of this Act is subject to  
17 this chapter but is not required to obtain a new certificate  
18 of authority to transact business under this chapter.

19 Sec. 181. NEW SECTION. 493B.1703 SAVINGS PROVISIONS.

20 1. Except as provided in subsection 2, the repeal of a  
21 statute by this chapter does not affect:

22 a. The operation of the statute or any action taken under  
23 it before its repeal.

24 b. Any ratification, right, remedy, privilege, obligation,  
25 or liability acquired, accrued, or incurred under the statute  
26 before its repeal.

27 c. Any violation of the statute, or any penalty,  
28 forfeiture, or punishment incurred because of the violation,  
29 before its repeal.

30 d. Any proceeding, reorganization, or dissolution  
31 commenced under the statute before its repeal, and the  
32 proceeding, reorganization, or dissolution may be completed in  
33 accordance with the statute as if it had not been repealed.

34 2. If a penalty or punishment imposed for violation of a  
35 statute repealed by this Act is reduced by this Act, the

1 penalty or punishment if not already imposed shall be imposed  
2 in accordance with this chapter.

3 Sec. 182. NEW SECTION. 493B.1704 PREEMPTIVE RIGHTS FOR  
4 EXISTING CORPORATIONS.

5 Notwithstanding any other provision of this chapter, a  
6 corporation which was incorporated under, or which elected to  
7 be governed by, chapter 496A prior to December 31, 1989, shall  
8 be governed by the following until December 31, 1992:

9 Except to the extent limited or denied by this section or  
10 by the articles of incorporation, shareholders have a  
11 preemptive right to acquire unissued shares or securities  
12 convertible into such shares or carrying a right to subscribe  
13 to or acquire shares.

14 Unless otherwise provided in the articles of incorporation:

15 1. No preemptive right exists:

16 a. To acquire any shares issued to directors, officers, or  
17 employees pursuant to approval by the affirmative vote of the  
18 holders of a majority of the shares entitled to vote thereon  
19 or when authorized by and consistent with a plan approved by  
20 such a vote of shareholders.

21 b. To acquire any shares sold otherwise than for cash.

22 c. To acquire treasury shares of the corporation.

23 2. Holders of shares of any class that is preferred or  
24 limited as to dividends or assets are not entitled to any  
25 preemptive right.

26 3. Holders of shares of common stock are not entitled to  
27 any preemptive right to shares of any class that is preferred  
28 or limited as to dividends or assets or to any obligations,  
29 unless convertible into shares of common stock or carrying a  
30 right to subscribe to or acquire shares of common stock.

31 4. Holders of common stock without voting power have no  
32 preemptive right to shares of common stock with voting power.

33 5. The preemptive right is only an opportunity to acquire  
34 shares or other securities under such terms and conditions as  
35 the board of directors may fix for the purpose of providing a

1 fair and reasonable opportunity for the exercise of the right.

2 Sec. 183. Section 491.1, Code 1989, is amended to read as  
3 follows:

4 491.1 WHO MAY INCORPORATE.

5 Any number of persons may become incorporated under this  
6 chapter prior to July 1, 1971 for the transaction of any  
7 lawful business, but the incorporation confers no power or  
8 privilege not possessed by natural persons, except as provided  
9 in this chapter. ~~All domestic corporations shall be organized~~  
10 ~~under chapter 496A only, except for corporations which are to~~  
11 ~~become subject to one or more of the following chapters:--174,~~  
12 ~~176, 499, 499A, 504A, 506, 508, 510, 512, 514, 515, 515A,~~  
13 ~~518, 518A, 519, 524, 533, and 534.~~ All domestic corporations  
14 shall be organized under chapter 493B, except as expressly  
15 provided otherwise in chapter 493B.

16 Sec. 184. NEW SECTION. 491.116 ELIMINATION OF FILING  
17 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

18 Effective December 31, 1989, the provisions of this chapter  
19 relating to the filing and recording of documents in the  
20 office of the county recorder have no effect.

21 Sec. 185. NEW SECTION. 496C.23 ELIMINATION OF FILING  
22 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

23 Effective December 31, 1989, the provisions of this chapter  
24 relating to the filing and recording of documents in the  
25 office of the county recorder have no effect.

26 Sec. 186. NEW SECTION. 497.35 ELIMINATION OF FILING  
27 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

28 Effective December 31, 1989, the provisions of this chapter  
29 relating to the filing and recording of documents in the  
30 office of the county recorder have no effect.

31 Sec. 187. NEW SECTION. 498.37 ELIMINATION OF FILING  
32 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

33 Effective December 31, 1989, the provisions of this chapter  
34 relating to the filing and recording of documents in the  
35 office of the county recorder have no effect.

1 Sec. 188. NEW SECTION. 499.79 ELIMINATION OF FILING  
2 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

3 Effective December 31, 1989, the provisions of this chapter  
4 relating to the filing and recording of documents in the  
5 office of the county recorder have no effect.

6 Sec. 189. NEW SECTION. 499A.22 ELIMINATION OF FILING  
7 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

8 Effective December 31, 1989, the provisions of this chapter  
9 relating to the filing and recording of documents in the  
10 office of the county recorder have no effect.

11 Sec. 190. NEW SECTION. 499B.20 ELIMINATION OF FILING  
12 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

13 Effective December 31, 1989, the provisions of this chapter  
14 relating to the filing and recording of documents in the  
15 office of the county recorder have no effect.

16 Sec. 191. NEW SECTION. 504.33 ELIMINATION OF FILING  
17 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

18 Effective December 31, 1989, the provisions of this chapter  
19 relating to the filing and recording of documents in the  
20 office of the county recorder have no effect.

21 Sec. 192. Section 504A.6, Code 1989, is amended by  
22 striking the section and inserting in lieu thereof the  
23 following:

24 504A.6 CORPORATE NAME.

25 1. A corporate name shall not contain language stating or  
26 implying that the corporation is organized for a purpose other  
27 than that permitted by its articles of incorporation.

28 2. Except as authorized by subsections 3 and 4, a  
29 corporate name must be distinguishable upon the records of the  
30 secretary of state from all of the following:

31 a. The corporate name of a nonprofit corporation or  
32 business corporation incorporated or authorized to conduct  
33 affairs or do business in this state.

34 b. A corporate name reserved under section 504A.7, or  
35 reserved or registered under the Iowa business corporation

1 Act.

2 c. The fictitious name of a foreign business or nonprofit  
3 corporation authorized to transact business or conduct affairs  
4 in this state because its real name is unavailable.

5 3. A corporation may apply to the secretary of state for  
6 authorization to use a name that is not distinguishable upon  
7 the secretary's records from one or more of the names  
8 described in subsection 2. The secretary of state shall  
9 authorize use of the name applied for if one of the following  
10 conditions applies:

11 a. The other corporation consents to the use in writing  
12 and submits an undertaking in a form satisfactory to the  
13 secretary of state to change its name to a name that is  
14 distinguishable upon the records of the secretary of state  
15 from the name of the applying corporation.

16 b. The applicant delivers to the secretary of state a  
17 certified copy of the final judgment of a court of competent  
18 jurisdiction establishing the applicant's right to use the  
19 name applied for in this state.

20 4. A corporation may use the name, including the  
21 fictitious name, of another domestic or foreign corporation  
22 that is used in this state if the other corporation is  
23 incorporated or authorized to conduct affairs or transact  
24 business in this state and the proposed user corporation meets  
25 one of the following conditions:

26 a. Has merged with the other corporation.

27 b. Has been formed by reorganization of the other  
28 corporation.

29 c. Has acquired all or substantially all of the assets,  
30 including the corporate name, of the other corporation.

31 5. This chapter does not control the use of fictitious  
32 names; however, if a corporation uses a fictitious name in  
33 this state it shall deliver to the secretary of state for  
34 filing a copy of the resolution of its board of directors,  
35 certified by its secretary, adopting the fictitious name.

1     Sec. 193. Section 504A.67, Code 1989, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4     504A.67 NAME OF A FOREIGN CORPORATION.

5     1. If the corporate name of a foreign corporation does not  
6 satisfy the requirements of section 504A.6, the foreign  
7 corporation, to obtain or maintain a certificate of authority  
8 to conduct affairs in this state, may use a fictitious name to  
9 transact business in this state if its real name is  
10 unavailable and it delivers to the secretary of state for  
11 filing a copy of the resolution of its board of directors,  
12 certified by its secretary, adopting the fictitious name.

13     2. Except as authorized by subsections 3 and 4, the  
14 corporate name, including a fictitious name, of a corporation  
15 must be distinguishable upon the records of the secretary of  
16 state from all of the following:

17     a. The corporate name of a nonprofit or business  
18 corporation incorporated or authorized to conduct affairs or  
19 to transact business in this state.

20     b. A corporate name reserved under section 504A.7 or  
21 section 493B.402, or registered under section 493B.403.

22     c. The fictitious name of another foreign business or  
23 nonprofit corporation authorized to transact business or  
24 conduct affairs in this state.

25     3. A foreign corporation may apply to the secretary of  
26 state for authorization to use in this state the name of  
27 another corporation, incorporated or authorized to transact  
28 business or conduct affairs in this state, that is not  
29 distinguishable upon the records of the secretary of state  
30 from the name applied for. The secretary of state shall  
31 authorize use of the name applied for if one of the following  
32 conditions applies:

33     a. The other corporation consents to the use in writing  
34 and submits an undertaking in a form satisfactory to the  
35 secretary of state to change its name to a name that is

1 distinguishable upon the records of the secretary of state  
2 from the name of the applying corporation.

3 b. The applicant delivers to the secretary of state a  
4 certified copy of a final judgment of a court of competent  
5 jurisdiction establishing the applicant's right to use the  
6 name applied for in this state.

7 4. A foreign corporation may use in this state the name,  
8 including a fictitious name, of another domestic or foreign  
9 business or nonprofit corporation that is used in this state  
10 if the other corporation is incorporated or authorized to  
11 transact business or conduct affairs in this state and the  
12 foreign corporation meets one of the following conditions:

13 a. Has merged with the other corporation.

14 b. Has been formed by reorganization of the other  
15 corporation.

16 c. Has acquired all or substantially all of the assets,  
17 including the corporate name, of the other corporation.

18 5. If a foreign corporation authorized to conduct affairs  
19 in this state changes its corporate name to one that does not  
20 satisfy the requirements of section 504A.6, it shall not  
21 conduct affairs in this state under the changed name until it  
22 adopts a name satisfying the requirements of section 504A.6  
23 and obtains an amended certificate of authority.

24 Sec. 194. NEW SECTION. 504A.102 ELIMINATION OF FILING  
25 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

26 Effective December 31, 1989, the provisions of this chapter  
27 relating to the filing and recording of documents in the  
28 office of the county recorder have no effect.

29 Sec. 195. Section 508.12, Code 1989, is amended to read as  
30 follows:

31 508.12 REDOMESTICATION OF INSURERS.

32 An insurer which is organized under the laws of any state,  
33 and is admitted to do business in this state for the purpose  
34 of writing insurance authorized by this chapter may become a  
35 domestic insurer by complying with section 491.33 or 493B.902

1 and with all of the requirements of law relative to the  
2 organization and licensing of a domestic insurer of the same  
3 type and by designating its principal place of business in  
4 this state, and, upon payment to the commissioner of insurance  
5 of a transfer tax in a sum equal to twenty-five percent of the  
6 premium tax paid pursuant to the provisions of chapter 432 for  
7 the last calendar year immediately preceding its becoming a  
8 domestic corporation or the sum of ten thousand dollars,  
9 whichever is the lesser but not less than one thousand  
10 dollars, may become a domestic corporation and be entitled to  
11 like certificates of its corporate existence and license to  
12 transact business in this state, and be subject in all  
13 respects to the authority and jurisdiction thereof.

14 The certificates of authority, agent's appointments and  
15 licenses, rates, and other items which are in existence at the  
16 time any insurer transfers its corporate domicile to this  
17 state, pursuant to this section, shall continue in full force  
18 and effect upon such transfer. For purposes of existing  
19 authorizations and all other corporate purposes, the insurer  
20 is deemed the same entity as it was prior to the transfer of  
21 its domicile. All outstanding policies of any transferring  
22 insurer shall remain in full force and effect and need not be  
23 endorsed as to any new name of the company or its new location  
24 unless so ordered by the commissioner of insurance.

25 Sec. 196. Section 515.1, Code 1989, is amended to read as  
26 follows:

27 515.1 APPLICABILITY.

28 Corporations formed for the purpose of insurance, other  
29 than life insurance, shall be governed by the provisions of  
30 chapter 491, chapter 493B, or chapter 504A, except as modified  
31 by the provisions of this chapter.

32 Sec. 197. Section 515.99, Code 1989, is amended by  
33 striking the section and inserting the following in lieu  
34 thereof:

35 515.99 FOREIGN COMPANIES MAY BECOME DOMESTIC.

1 An insurer which is organized under the laws of any state,  
2 and is admitted to do business in this state for the purpose  
3 of writing insurance authorized by this chapter may become a  
4 domestic insurer by complying with section 491.33 or 493B.902  
5 and with all of the requirements of law relative to the  
6 organization and licensing of a domestic insurer of the same  
7 type and by designating its principal place of business in  
8 this state, and, upon payment to the commissioner of insurance  
9 of a transfer tax in a sum equal to twenty-five percent of the  
10 premium tax paid pursuant to the provisions of chapter 432 for  
11 the last calendar year immediately preceding its becoming a  
12 domestic corporation or the sum of ten thousand dollars,  
13 whichever is the lesser but not less than one thousand  
14 dollars, may become a domestic corporation and be entitled to  
15 like certificates of its corporate existence and license to  
16 transact business in this state, and be subject in all  
17 respects to the authority and jurisdiction thereof.

18 The certificates of authority, agent's appointments and  
19 licenses, rates, and other items which are in existence at the  
20 time any insurer transfers its corporate domicile to this  
21 state, pursuant to this section, shall continue in full force  
22 and effect upon such transfer. For purposes of existing  
23 authorizations and all other corporate purposes, the insurer  
24 is deemed the same entity as it was prior to the transfer of  
25 its domicile. All outstanding policies of any transferring  
26 insurer shall remain in full force and effect and need not be  
27 endorsed as to any new name of the company or its new location  
28 unless so ordered by the commissioner of insurance.

29 Sec. 198. Section 545.102, subsection 4, Code 1989, is  
30 amended by striking the subsection and inserting the  
31 following:

32 4. Shall be distinguishable upon the records of the  
33 secretary of state from the name of a corporation or limited  
34 partnership organized under the law of this state or licensed  
35 or registered as a foreign corporation or foreign limited

1 partnership in this state or a name the exclusive right to  
2 which is, at the time, reserved in the manner provided in this  
3 chapter, without the written consent of the corporation or  
4 limited partnership, which consent shall be filed with the  
5 secretary of state, and provided the name is not identical.

6 Sec. 199. NEW SECTION. 545.1107 ELIMINATION OF FILING  
7 CORPORATE DOCUMENTS WITH COUNTY RECORDER.

8 Effective December 31, 1989, the provisions of this chapter  
9 relating to the filing and recording of documents in the  
10 office of the county recorder have no effect.

11 Sec. 200. Chapter 496A is repealed.

12 Sec. 201. This Act is effective December 31, 1989.

13 EXPLANATION

14 The bill enacts a new general business corporation law.  
15 The existing law was adopted in 1959 and was based on the  
16 then-existing Model Business Corporation Act. In 1984 the  
17 committee on corporate laws of the American bar association  
18 adopted a total revision of the Model Act and the bill is  
19 based on that revised Act, with minor variations for existing  
20 Iowa law.

21 The bill codifies many of the developments in corporate  
22 laws since the enactment of the Model Act. It will reorganize  
23 the sections of the corporate law so as to group the  
24 provisions by subject matter.

25 The bill repeals existing corporate laws and requires that  
26 all corporations must be incorporated under the new chapter  
27 except some specific regulated corporations such as banks and  
28 mutual insurance companies. All foreign corporations are  
29 required to become admitted to do business under the new law.

30 Among the major substantive changes are the following:

31 The bill simplifies many corporate procedures. One of the  
32 simplifications permits a corporation to file corporate  
33 documents only with the secretary of state's office and  
34 deletes requirements for corporate documents to also be  
35 recorded at the county recorder's office.

1 The bill eliminates the concept of par value of shares of  
2 stock. While a corporation could continue to provide that its  
3 stock have a par value, the legal effect of par value is  
4 deleted.

5 The bill permits corporations to issue shares of stock for  
6 whatever consideration is deemed appropriate by its board of  
7 directors. It would not be necessary to receive the par value  
8 for the shares and contracts for future services and  
9 promissory notes could be used to make payment for the shares.

10 Under the bill all forms of distributions to shareholders  
11 will be governed by the same standards. Under current law  
12 differing standards exist in areas of dividends, partial  
13 liquidations, redemptions and repurchases. The bill  
14 specifies that any such distributions may not take place if  
15 the corporation would thereby be insolvent or would not pay  
16 its liabilities or make distributions to shares with a  
17 liquidation preference.

18 Under the bill corporate action can be taken without a  
19 meeting by consent of the holders of ninety percent of the  
20 stock, while existing law requires that such consents be  
21 unanimous.

22 The bill provides that a quorum of shareholders can be such  
23 number as specified in the articles and does not require that  
24 it be any specific minimum. The bill would limit the ability  
25 of directors to increase or decrease the number of members on  
26 the board by more than thirty percent.

27 The bill provides a method by which a corporation, by vote  
28 of its shareholders, could agree to a mandatory exchange of  
29 shares with another corporation. The bill also eliminates the  
30 concept of consolidation of two corporations into a third.

31 The bill changes many of the procedures to be used in a  
32 merger and permits the merger to be approved by a majority of  
33 the shareholders.

34 The bill permits involuntary dissolutions of a corporation  
35 to be done by administrative actions by the secretary of state

1 if the corporation has failed to meet its reporting  
2 requirements. The bill will permit reinstatement of a  
3 dissolved corporation for a two-year period after the  
4 secretary of state's involuntary dissolution of the  
5 corporation for failure to report.

6 The bill provides a special effective date of December 31,  
7 1989.

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SENATE FILE 502

AN ACT  
RELATING TO BUSINESS CORPORATIONS, AND RELATED MATTERS  
INCLUDING THE FILING OF CORPORATE DOCUMENTS WITH COUNTY  
RECORDERS AND PROVIDING A SPECIAL EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I  
GENERAL PROVISIONS

PART A

Section 1. NEW SECTION. 493B.101 SHORT TITLE.

This Act is entitled and may be cited as the "Iowa Business Corporation Act".

Sec. 2. NEW SECTION. 493B.102 RESERVATION OF POWER TO AMEND OR REPEAL.

The general assembly has the power to amend or repeal all or part of this Act at any time and all domestic and foreign corporations subject to this Act are governed by an amendment or repeal.

PART B

Sec. 3. NEW SECTION. 493B.120 FILING REQUIREMENTS.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be filed in the office of the secretary of state.

3. The document must contain the information required by this chapter. It may contain other information as well.

4. The document must be typewritten or printed.

5. The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. Except as provided in section 493B.1622, subsection 2, the document must be executed by one of the following methods:

a. The chairperson of the board of directors of a domestic or foreign corporation, its president, or another of its officers.

b. If directors have not been selected or the corporation has not been formed, by an incorporator.

c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The document may, but need not, contain:

a. The corporate seals.

b. An attestation by the secretary or an assistant secretary.

c. An acknowledgment, verification, or proof.

The secretary of state may accept for filing a document containing a copy of a signature, however made.

8. If the secretary of state has prescribed a mandatory form for the document under section 493B.121, the document must be in or on the prescribed form.

9. The document must be delivered to the office of the secretary of state for filing and must be accompanied by the correct filing fee.

Sec. 4. NEW SECTION. 493B.121 FORMS.

1. The secretary of state may prescribe and furnish on request forms including but not limited to the following:

- a. An application for a certificate of existence.
- b. A foreign corporation's application for a certificate of authority to transact business in this state.
- c. A foreign corporation's application for a certificate of withdrawal.
- d. The annual report.

If the secretary of state so requires, use of these listed forms prescribed by the secretary of state is mandatory.

2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

**Sec. 5. NEW SECTION. 493B.122 FILING, SERVICE, AND COPYING FEES.**

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary's office for filing:

<u>Document</u>	<u>Fee</u>
a. Articles of incorporation .....	\$ 50
b. Application for use of indistinguishable name .....	\$ 10
c. Application for reserved name .....	\$ 10
d. Notice of transfer of reserved name .....	\$ 10
e. Application for registered name per month or part thereof .....	\$ 2
f. Application for renewal of registered name ....	\$ 20
g. Corporation's statement of change of registered agent or registered office or both .....	No fee
h. Agent's statement of change of registered office for each affected corporation .....	No fee
i. Agent's statement of resignation .....	No fee
j. Amendment of articles of incorporation .....	\$ 50
k. Restatement of articles of incorporation with amendment of articles .....	\$ 50
l. Articles of merger or share exchange .....	\$ 50

m. Articles of dissolution .....	\$ 5
n. Articles of revocation of dissolution .....	\$ 5
o. Certificate of administrative dissolution ....	No fee
p. Application for reinstatement following administrative dissolution .....	\$ 5
q. Certificate of reinstatement .....	No fee
r. Certificate of judicial dissolution .....	No fee
s. Application for certificate of authority .....	\$100
t. Application for amended certificate of authority .....	\$100
u. Application for certificate of withdrawal .....	\$ 10
v. Certificate of revocation of authority to transact business .....	No fee
w. Annual report .....	\$ 30
x. Articles of correction .....	\$ 5
y. Application for certificate of existence or authorization .....	\$ 5
z. Any other document required or permitted to be filed by this chapter .....	\$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- a. \$ .50 a page for copying.
- b. \$5.00 for the certificate.

**Sec. 6. NEW SECTION. 493B.123 EFFECTIVE TIME AND DATE OF DOCUMENTS.**

1. Except as provided in subsection 2 and section 493A.124, subsection 3, a document accepted for filing is effective at the later of the following times:

- a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

**Sec. 7. NEW SECTION. 493B.124 CORRECTING FILED DOCUMENTS.**

1. A domestic or foreign corporation may correct a document filed by the secretary of state if the document satisfies one or both of the following requirements:

- a. Contains an incorrect statement.
- b. Was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by complying with both of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

- (1) Describe the document, including its filing date, or attach a copy of it to the articles.
- (2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.
- (3) Correct the incorrect statement or defective execution.

b. By delivering the articles to the secretary of state for filing.

3. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

**Sec. 8. NEW SECTION. 493B.125 FILING DUTY OF SECRETARY OF STATE.**

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 493B.120, the secretary of state shall file it.

2. The secretary of state files a document by stamping or otherwise endorsing "filed", together with the secretary's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee. After filing a document, except the annual report required by section 493B.1622, and except as provided in sections 493B.503 and 493B.1509, the secretary of state shall deliver the document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached, to the domestic or foreign corporation or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative within ten days after the document was received by the secretary of state, together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

- a. Affect the validity or invalidity of the document in whole or part.
- b. Relate to the correctness or incorrectness of information contained in the document.
- c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**Sec. 9. NEW SECTION. 493B.126 APPEAL FROM SECRETARY OF STATE'S REFUSAL TO FILE DOCUMENT.**

1. If the secretary of state refuses to file a document delivered to the secretary's office for filing, the domestic or foreign corporation may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the corporation's principal office or,

If none in this state, its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

3. The court's final decision may be appealed as in other civil proceedings.

Sec. 10. NEW SECTION. 493B.127 EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of this state, is conclusive evidence that the original document is on file with the secretary of state.

Sec. 11. NEW SECTION. 493B.128 CERTIFICATE OF EXISTENCE.

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

2. A certificate of existence or authorization must set forth all of the following:

a. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.

b. That one of the following apply:

(1) If it is a domestic corporation, that it is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual.

(2) If it is a foreign corporation, that it is authorized to transact business in this state.

c. That all fees required by this chapter have been paid.

d. That its most recent annual report required by section 493B.1622 has been filed by the secretary of state.

e. That articles of dissolution have not been filed.

1. Other facts of record in the office of the secretary of state that may be requested by the applicant.

3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Sec. 12. NEW SECTION. 493B.129 PENALTY FOR SIGNING FALSE DOCUMENT.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

Sec. 13. NEW SECTION. 493B.130 RECORDING OF DOCUMENTS WITH COUNTY RECORDER.

A domestic corporation shall provide the secretary of state with a copy of each document, except an annual report which does not change the registered office or registered agent of the corporation, delivered by the corporation for filing with the secretary of state. A registered agent who delivers to the secretary of state for filing a statement pursuant to section 493B.502, subsection 2, or files a statement pursuant to section 493B.502, subsection 3, shall provide a copy of the statement to the secretary of state. A registered agent who delivers to the secretary of state for filing a statement pursuant to section 493B.503, subsection 1, shall provide an additional copy pursuant to this section. If a registered agent delivers for filing with the secretary of state a statement changing the operation's business address from one county to another county or the corporation delivers for filing with the secretary of state a statement changing its registered office from one county to another county, two copies of the statement shall be provided to the secretary of state. The secretary of state shall stamp the copy or copies

provided by the corporation or registered agent indicating receipt by the secretary of state and shall send the copy or copies to the county recorder. Upon receipt of the copy and upon receipt of the recording fees due the county recorder, the county recorder shall record and index the copy and return the copy to the corporation or registered agent who provided the copy. Notwithstanding section 331.602, subsection 1, original signatures and typed or printed names of signatories are not required on the copy to be recorded pursuant to this section. For purposes of this section, "county recorder" means the county recorder of the county in which the registered office of the corporation is located as shown on the records of the secretary of state, except that with respect to a change of registered office changing the location of the registered office from one county to another, "county recorder" means the county recorder for the county in which the registered office is located before the change and the county recorder for the county in which the registered office is located after the change.

## PART C

Sec. 14. NEW SECTION. 493B.135 SECRETARY OF STATE -- POWERS.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

## PART D

Sec. 15. NEW SECTION. 493B.140 DEFINITIONS.

In this chapter, unless the context requires otherwise:

1. "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.
2. "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.
3. "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

4. "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.

5. "Deliver" includes mail delivery.

6. "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrance of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

7. "Effective date of notice" is defined in section 493B.141.

8. "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

9. "Entity" includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

10. "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

11. "Governmental subdivision" includes authority, city, county, district, township, and other political subdivision.

12. "Includes" denotes a partial definition.

13. "Individual" includes the estate of an incompetent, a ward, or a deceased individual.

14. "Means" denotes an exhaustive definition.

15. "Notice" is defined in section 493B.141.

16. "Person" means a person as defined in section 4.1 and includes an individual and an entity.

17. "Principal office" means the office, in or out of this state, so designated in the annual report, where the principal executive offices of a domestic or foreign corporation are located.

18. "Proceeding" includes civil suit and criminal, administrative, and investigatory action.
  19. "Record date" means the date established under division 6 or 7 on which a corporation determines the identity of its shareholders for purposes of this chapter.
  20. "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section 493B.840, subsection 3, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.
  21. "Share" means the unit into which the proprietary interests in a corporation are divided.
  22. "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
  23. "State", when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions, of the United States.
  24. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
  25. "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.
  26. "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.
- Sec. 16. NEW SECTION. 493B.141 NOTICE.
1. Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

2. Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television, or other form of public broadcast communication.
3. Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.
4. Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.
5. Except as provided in subsection 3, written notice, if in a comprehensible form, is effective at the earliest of the following:
  - a. When received.
  - b. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
  - c. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
6. Oral notice is effective when communicated if communicated in a comprehensible manner.
7. If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

1. For purposes of this chapter, any of the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

- a. Three or fewer co-owners.
- b. A corporation, partnership, trust, estate, or other entity.
- c. The trustees, guardians of the property, custodians, or other fiduciaries of a single trust, estate, or account.

2. For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

DIVISION II  
INCORPORATION

Sec. 18. NEW SECTION. 493B.201 INCORPORATORS.

One or more persons may act as the incorporator or incorporators of a corporation by executing and delivering articles of incorporation to the secretary of state for filing.

Sec. 19. NEW SECTION. 493B.202 ARTICLES OF INCORPORATION.

1. The articles of incorporation must set forth all of the following:

- a. A corporate name for the corporation that satisfies the requirements of section 493B.401.
- b. The number of shares the corporation is authorized to issue.
- c. The street address of the corporation's initial registered office and the name of its initial registered agent at that office.
- d. The name and address of each incorporator.

2. The articles of incorporation may set forth any or all of the following:

- a. The names and addresses of the individuals who are to serve as the initial directors.
- b. Provisions not inconsistent with law regarding:

(1) The purpose or purposes for which the corporation is organized.

(2) Managing the business and regulating the affairs of the corporation.

(3) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders.

(4) A par value for authorized shares or classes of shares.

(5) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

c. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

d. A provision consistent with section 493B.832.

3. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

Sec. 20. NEW SECTION. 493B.203 INCORPORATION.

1. Unless a delayed effective date or time is specified, the corporate existence begins when the articles of incorporation are filed.

2. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

Sec. 21. NEW SECTION. 493B.204 LIABILITY FOR PREINCORPORATION TRANSACTIONS.

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

Sec. 22. NEW SECTION. 493B.205 ORGANIZATION OF CORPORATION.

1. After incorporation:

- a. If initial directors are named in the articles of incorporation, the initial directors shall hold an

organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.

b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:

- (1) Elect directors and complete the organization of the corporation.
- (2) Elect a board of directors who shall complete the organization of the corporation.

2. Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

3. An organizational meeting may be held in or out of this state.

Sec. 23. NEW SECTION. 493B.206 BYLAWS.

- 1. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.
- 2. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

Sec. 24. NEW SECTION. 493B.207 EMERGENCY BYLAWS.

1. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection 4. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

- a. Procedures for calling a meeting of the board of directors.
- b. Quorum requirements for the meeting.

- c. Designation of additional or substitute directors.
- 2. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

3. Corporate action taken in good faith in accordance with the emergency bylaws has both of the following effects:

- a. The action binds the corporation.
- b. The action shall not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

DIVISION III

PURPOSES AND POWERS

Sec. 25. NEW SECTION. 493B.301 PURPOSES.

1. A corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

2. A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

Sec. 26. NEW SECTION. 493B.302 GENERAL POWERS.

Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to do all of the following:

- 1. Sue and be sued, complain, and defend in its corporate name.
- 2. Have a corporate seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

3. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation.

4. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.

7. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

8. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

10. Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

11. Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit.

12. Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

13. Make donations for the public welfare or for charitable, scientific, or educational purposes.

14. Transact any lawful business that will aid governmental policy.

15. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

Sec. 27. NEW SECTION. 493B.303 EMERGENCY POWERS.

1. In anticipation of or during an emergency as defined in subsection 4, the board of directors of a corporation may do either or both of the following:

a. Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent.

b. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

2. During an emergency defined in subsection 4, unless emergency bylaws provide otherwise:

a. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio.

b. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

3. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation shall both:

a. Bind the corporation.

b. Not be used to impose liability on a corporate director, officer, employee, or agent.

4. An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

Sec. 28. NEW SECTION. 493B.304 ULTRA VIRES.

1. Except as provided in subsection 2, the validity of corporate action is not challengeable on the ground that the corporation lacks or lacked power to act.

2. A corporation's power to act may be challenged in any of the following proceedings:

a. By a shareholder against the corporation to enjoin the act.

b. By the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation.

c. By the attorney general under section 493B.1430.

3. In a shareholder's proceeding under subsection 2, paragraph "a", to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

#### DIVISION IV

##### NAMES

Sec. 29. NEW SECTION. 493B.401 CORPORATE NAME.

1. A corporate name:

a. Must contain the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", or words or abbreviations of like import in another language.

b. Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 493B.101 and its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved or registered under section 493B.402 or 493B.403.

c. The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable.

d. The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation meets one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation uses a fictitious name in this state it shall deliver to the secretary of state for

filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

Sec. 30. NEW SECTION. 493B.402 RESERVED NAME.

1. A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

2. The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

Sec. 31. NEW SECTION. 493B.403 REGISTERED NAME.

1. A foreign corporation may register its corporate name, or its corporate name with any addition required by section 493B.1506, if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under section 493B.401, subsection 2, paragraph "b".

2. A foreign corporation registers its corporate name, or its corporate name with any addition required by section 493B.1506, by delivering to the secretary of state for filing an application:

a. Setting forth its corporate name, or its corporate name with any addition required by section 493B.1506, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged.

b. Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

3. The name is registered for the applicant's exclusive use upon the effective date of the application.

4. A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application which complies with the requirements of subsection 2 between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

5. A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The first registration terminates when the domestic corporation is incorporated with that name or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

DIVISION V

REGISTERED OFFICE AND AGENT -- SERVICE

Sec. 32. NEW SECTION. 493B.501 REGISTERED OFFICE AND REGISTERED AGENT.

Each corporation must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

Sec. 33. NEW SECTION. 493B.502 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT.

1. A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

- a. The name of the corporation.
- b. The street address of its current registered office.
- c. If the current registered office is to be changed, the street address of the new registered office.
- d. The name of its current registered agent.
- e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.
- f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the person is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 2 for each corporation, or a single statement for all corporations named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph "e", and must recite that a copy of the statement has been mailed to each corporation named in the notice.

4. A corporation may also change its registered office or registered agent in its annual report as provided in section 493B.1622.

Sec. 34. NEW SECTION. 493B.503 RESIGNATION OF REGISTERED AGENT.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

2. After filing the statement the secretary of state shall mail one copy to the registered office, if not discontinued, and the other copy to the corporation at its principal office.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Sec. 35. NEW SECTION. 493B.504 SERVICE ON CORPORATION.

1. A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

2. If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

- a. The date the corporation receives the mail.
- b. The date shown on the return receipt, if signed on behalf of the corporation.
- c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

## SHARES AND SHAREHOLDERS' RIGHTS

## PART A

Sec. 36. NEW SECTION. 493B.601 AUTHORIZED SHARES.

1. The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section 493B.602.

2. The articles of incorporation must authorize both of the following:

- a. One or more classes of shares that together have unlimited voting rights.
- b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

3. The articles of incorporation may authorize one or more classes of shares that have any of the following qualities:

- a. Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.
- b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:
  - (1) At the option of the corporation, the shareholders, or another person or upon the occurrence of a designated event.
  - (2) For cash, indebtedness, securities, or other property.
  - (3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

c. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

d. Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

4. The description of the designations, preferences, limitations, and relative rights of share classes in subsection 3 is not exhaustive.

Sec. 37. NEW SECTION. 493B.602 TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF DIRECTORS.

1. If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in section 493B.601, of either of the following:

- a. Any class of shares before the issuance of any shares of that class.
- b. One or more series within a class before the issuance of any shares of that series.

2. Each series of a class must be given a distinguishing designation.

3. All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

4. Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth all of the following:

- a. The name of the corporation.
- b. The text of the amendment determining the terms of the class or series of shares.
- c. The date it was adopted.

d. A statement that the amendment was duly adopted by the board of directors.

**Sec. 38. NEW SECTION. 493B.601 ISSUED AND OUTSTANDING SHARES.**

1. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

2. The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection 3 and to section 493B.640.

3. At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

**Sec. 39. NEW SECTION. 493B.604 FRACTIONAL SHARES.**

1. A corporation may:

a. Issue fractions of a share or pay in money the value of fractions of a share.

b. Arrange for disposition of fractional shares by the shareholders.

c. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

2. Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 493B.625, subsection 2.

3. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

4. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

a. That the scrip will become void if not exchanged for full shares before a specified date.

b. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scrip holders.

**PART B**

**Sec. 40. NEW SECTION. 493B.620 SUBSCRIPTION FOR SHARES BEFORE INCORPORATION.**

1. A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

2. The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

4. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

5. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 493B.621.

**Sec. 41. NEW SECTION. 493B.621 ISSUANCE OF SHARES.**

1. The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

2. The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

3. Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

4. When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for that consideration are fully paid and nonassessable.

5. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

**Sec. 42. NEW SECTION. 493B.622 LIABILITY OF SHAREHOLDERS.**

1. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under section 493B.621, or specified in the subscription agreement authorized under section 493B.620.

2. Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation.

**Sec. 43. NEW SECTION. 493B.623 SHARE DIVIDENDS.**

1. Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

2. Shares of one class or series shall not be issued as a share dividend in respect of shares of another class or series unless one or more of the following conditions are met:

- a. The articles of incorporation so authorize.
- b. A majority of the votes entitled to be cast by the class or series to be issued approve the issue.
- c. There are no outstanding shares of the class or series to be issued.

3. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

**Sec. 44. NEW SECTION. 493B.624 SHARE OPTIONS.**

A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

**Sec. 45. NEW SECTION. 493B.624A POISON PILL DEFENSE AUTHORIZED.**

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions, or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee

of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

Sec. 46. NEW SECTION. 493B.625 CONTENT OF CERTIFICATES.

1. Shares may be, but need not be, represented by certificates. Unless this chapter or another section expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

2. At a minimum each share certificate must state on its face all of the following:

- a. The name of the issuing corporation and that it is organized under the law of this state.
- b. The name of the person to whom issued.
- c. The number and class of shares and the designation of the series, if any, the certificate represents.

3. If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class, the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

4. Each share certificate:

a. Must be signed either manually or in facsimile by two officers designated in the bylaws or by the board of directors.

b. May bear the corporate seal or its facsimile.

5. If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

Sec. 47. NEW SECTION. 493B.626 SHARES WITHOUT CERTIFICATES.

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

2. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 493B.625, subsections 2 and 3, and, if applicable, section 493B.627.

Sec. 48. NEW SECTION. 493B.627 RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES.

1. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

2. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 493B.626, subsection 2.

3. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

4. A restriction on the transfer or registration of transfer of shares is authorized for any of the following purposes:

a. To maintain the corporation's status when it is dependent on the number or identity of its shareholders.

b. To preserve exemptions under federal or state securities law.

c. For any other reasonable purpose.

4. A restriction on the transfer or registration of transfer of shares may do any of the following:

a. Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares.

b. Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares.

c. Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable.

d. Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

5. For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Sec. 49. NEW SECTION. 493B.620 EXPENSE OF ISSUE.

A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

PART C

Sec. 50. NEW SECTION. 493B.630 SHAREHOLDERS' PREEMPTIVE RIGHTS.

1. Unless section 493B.1704 is applicable to the corporation, the shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

2. A statement included in the articles of incorporation that "the corporation elects to have preemptive rights", or words of similar import, means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

a. The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

b. A shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

c. There is no preemptive right with respect to:

(1) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates.

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries, or its affiliates.

(3) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation.

(4) Shares sold otherwise than for money.

d. Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

e. Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

f. Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive

rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

3. For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Sec. 51. NEW SECTION. 493B.631 CORPORATION'S ACQUISITION OF ITS OWN SHARES.

1. A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

2. If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

3. The board of directors may adopt articles of amendment under this section without shareholder action, and deliver them to the secretary of state for filing. The articles must set forth all of the following:

- a. The name of the corporation.
- b. The reduction in the number of authorized shares, itemized by class and series.
- c. The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

PART D

Sec. 52. NEW SECTION. 493B.640 DISTRIBUTION TO SHAREHOLDERS.

1. A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection 3.

2. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a repurchase or reacquisition of shares, it is the date the board of directors authorizes the distribution.

3. No distribution may be made if, after giving it effect either of the following would result:

a. The corporation would not be able to pay its debts as they become due in the usual course of business.

b. The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

4. The board of directors may base a determination that a distribution is not prohibited under subsection 3 either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

5. The effect of a distribution under subsection 3 is measured:

a. In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:

(1) The date money or other property is transferred or debt incurred by the corporation.

(2) The date the shareholder ceases to be a shareholder with respect to the acquired shares.

b. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed.

c. In all other cases, as of:

(1) The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization.

(2) The date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

6. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this

section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

DIVISION VII  
MEETINGS -- NOTICE -- VOTING  
PART A

Sec. 53. NEW SECTION. 493B.701 ANNUAL MEETING.

1. A corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders.

2. Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

3. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

Sec. 54. NEW SECTION. 493B.702 SPECIAL MEETING.

1. A corporation shall hold a special meeting of shareholders either:

a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

2. If not otherwise fixed under sections 493B.703 or 493B.707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

3. Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with

the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

4. Only business with the purpose or purposes described in the meeting notice required by section 493B.705, subsection 3, may be conducted at a special shareholders' meeting.

Sec. 55. NEW SECTION. 493B.703 COURT-ORDERED MEETING.

1. The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held either:

a. On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting.

b. On application of a shareholder who signed a demand for a special meeting valid under section 493B.702 if either:

(1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary.

(2) The special meeting was not held in accordance with the notice.

2. The court may fix the time and place of the meeting, ascertain the shares entitled to participate in the meeting, specify a record date for ascertaining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Sec. 56. NEW SECTION. 493B.704 ACTION WITHOUT MEETING.

1. Unless otherwise provided in the articles of incorporation, any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken

without a meeting or vote, and, except as provided in subsection 5, without prior notice, if one or more written consents describing the action taken are signed by the holders of outstanding shares having not less than ninety percent of the votes entitled to be cast at a meeting at which all shares entitled to vote on the action were present and voted, and are delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A written consent shall bear the date of signature of each shareholder who signs the consent and no written consent is effective to take the corporate action referred to in the consent unless, within sixty days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders to take action are delivered to the corporation.

3. If not otherwise fixed under sections 493B.703 or 493B.707, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection 1.

4. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

5. If this chapter requires that notice of proposed action be given to shareholders not entitled to vote and the action is to be taken by consent of the voting shareholders, the corporation must give all shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to shareholders not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

6. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those shareholders who have not consented in writing. If the taking of that corporate action requires the giving of

notice under section 493B.1320, subsection 2, the notice of the action shall set forth the matters described in section 493B.1322.

Sec. 57. NEW SECTION. 493B.705 NOTICE OF MEETING.

1. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

2. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

4. If not otherwise fixed under section 493B.703 or 493B.707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

5. Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 493B.707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

Sec. 58. NEW SECTION. 493B.706 WAIVER OF NOTICE.

1. A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the

notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. A shareholder's attendance at a meeting:

a. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon the shareholder's arrival objects to holding the meeting or transacting business at the meeting.

b. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Sec. 59. NEW SECTION. 493B.707 RECORD DATE.

1. The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

2. A record date fixed under this section shall not be more than seventy days before the meeting or action requiring a determination of shareholders.

3. A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

4. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

PART B

Sec. 60. NEW SECTION. 493B.720 SHAREHOLDERS' LIST FOR MEETING.

1. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

2. The shareholders' list must be available for inspection by any shareholder beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, or a shareholder's agent or attorney, is entitled on written demand 493B.1602, subsection 3, to copy the list, during regular business hours and at the person's expense, during the period it is available for inspection.

3. The corporation shall make the shareholders' list available at the meeting, and any shareholder, or a shareholder's agent or attorney, is entitled to inspect the list at any time during the meeting or any adjournment.

4. If the corporation refuses to allow a shareholder, or a shareholder's agent or attorney, to inspect the shareholders' list before or at the meeting, or copy the list as permitted by subsection 3, the district court of the county where a corporation's principal office or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

5. Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

Sec. 61. NEW SECTION. 493B.721 VOTING ENTITLEMENT OF SHARES.

1. Except as provided in subsections 2 and 3 or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

2. Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

3. Subsection 2 does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

4. Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

Sec. 62. NEW SECTION. 493B.722 PROXIES.

1. A shareholder may vote the shareholder's shares in person or by proxy.

2. A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form, either personally or by the shareholder's attorney-in-fact.

3. An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

4. An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of:

a. A pledgee.

b. A person who purchased or agreed to purchase the shares.

c. A creditor of the corporation who extended it credit under terms requiring the appointment.

d. An employee of the corporation whose employment contract requires the appointment.

e. A party to a voting agreement created under section 493B.731.

5. The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

6. An appointment made irrevocable under subsection 4 is revoked when the interest with which it is coupled is extinguished.

7. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

8. Subject to section 493B.724 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Sec. 63. NEW SECTION. 493B.723 SHARES HELD BY NOMINEES.

1. A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

2. The procedure may set forth:

- a. The types of nominees to which it applies.
- b. The rights or privileges that the corporation recognizes in a beneficial owner.
- c. The manner in which the procedure is selected by the nominee.
- d. The information that must be provided when the procedure is selected.
- e. The period for which selection of the procedure is effective.
- f. Other aspects of the rights and duties created.

Sec. 64. NEW SECTION. 493B.724 CORPORATION'S ACCEPTANCE OF VOTES.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

2. If the name signed on a voted consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

- a. The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.
- b. The name signed purports to be that of an administrator, executor, guardian of the property, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.
- c. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment.

e. Two or more persons are the shareholder as co-tenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

3. The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

4. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

Sec. 65. NEW SECTION. 493B.725 QUORUM AND VOTING REQUIREMENTS FOR VOTING GROUPS.

1. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

2. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the

remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

3. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

4. An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection 2 or 3 is governed by section 493B.727.

5. The election of directors is governed by section 493B.728.

Sec. 66. NEW SECTION. 493B.726 ACTION BY SINGLE OR MULTIPLE GROUPS.

1. If the articles of incorporation or this chapter provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 493B.725.

2. If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 493B.725. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Sec. 67. NEW SECTION. 493B.727 GREATER QUORUM OR VOTING REQUIREMENTS.

1. The articles of incorporation may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this chapter.

2. An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be

adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

Sec. 68. NEW SECTION. 493B.728 VOTING FOR DIRECTORS -- CUMULATIVE VOTING.

1. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

2. Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation so provide.

3. A statement included in the articles of incorporation that "[all] (a designated voting group of) shareholders are entitled to cumulate their votes for directors", or words of similar import, means that the shareholders designated are entitled to multiply the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

PART C

Sec. 69. NEW SECTION. 493B.730 VOTING TRUSTS.

1. One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

2. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection 1.

3. All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

Sec. 70. NEW SECTION. 493B.731 VOTING AGREEMENTS.

1. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to section 493B.730.

2. A voting agreement created under this section is specifically enforceable.

PART D

Sec. 71. NEW SECTION. 493B.740 PROCEDURE IN DERIVATIVE PROCEEDINGS.

1. A person shall not commence a proceeding in the right of a domestic or foreign corporation unless that person was a shareholder of the corporation when the transaction complained of occurred or unless that person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

2. A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why the complainant did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

3. A proceeding commenced under this section shall not be discontinued or settled without the court's approval. If the

court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.

4. On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses including attorney fees incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

5. For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

DIVISION VIII

DIRECTORS AND OFFICERS

PART A

Sec. 72. NEW SECTION. 493B.801 REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS.

1. Except as provided in subsection 3, each corporation must have a board of directors.

2. 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, its board of directors, subject to any limitation set forth in the articles of incorporation.

3. A corporation having fifty or fewer shareholders may dispense with or limit the authority of a board of directors by describing in its articles of incorporation who will perform some or all of the duties of a board of directors.

Sec. 73. NEW SECTION. 493B.802 QUALIFICATIONS OF DIRECTORS.

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.

Sec. 74. NEW SECTION. 493B.803 NUMBER AND ELECTION OF DIRECTORS.

1. A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

2. If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty percent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty percent the number of directors last approved by the shareholders.

3. The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed-range to a variable-range size board or vice versa.

4. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 493B.806.

Sec. 75. NEW SECTION. 493B.804 ELECTION OF DIRECTORS BY CERTAIN CLASSES OF SHAREHOLDERS.

If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class, or classes, of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

Sec. 76. NEW SECTION. 493B.805 TERMS OF DIRECTORS GENERALLY.

1. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

2. The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 493B.806.

3. A decrease in the number of directors does not shorten an incumbent director's term.

4. The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

5. Despite the expiration of a director's term, the director continues to serve until a successor for that director is elected and qualifies or until there is a decrease in the number of directors.

Sec. 77. NEW SECTION. 493B.806 STAGGERED TERMS FOR DIRECTORS.

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Sec. 78. NEW SECTION. 493B.807 RESIGNATION OF DIRECTORS.

1. A director may resign at any time by delivering written notice to the board of directors, its chairperson, or to the corporation.

2. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

Sec. 79. NEW SECTION. 493B.808 REMOVAL OF DIRECTORS BY SHAREHOLDERS.

1. The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

2. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

3. If cumulative voting is authorized, a director shall not be removed if the number of votes sufficient to elect that director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove that director exceeds the number of votes cast not to remove the director.

4. A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and after notice stating that the purpose, or one of the purposes, of the meeting is removal of the director. A director shall not be removed pursuant to written consents under section 493B.704 unless written consents are obtained from the holders of all the outstanding shares of the corporation.

**Sec. 80. NEW SECTION. 493B.809 REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING.**

1. The district 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 either by the corporation or by its shareholders holding at least twenty percent of the outstanding shares of any class if the court finds that both of the following apply:

a. The director engaged in fraudulent or dishonest conduct with respect to the corporation.

b. Removal is in the best interest of the corporation.

2. The court that removes a director may bar the director from reelection for a period prescribed by the court.

3. If shareholders commence a proceeding under subsection 1, they shall make the corporation a party defendant.

**Sec. 81. NEW SECTION. 493B.810 VACANCY ON BOARD.**

1. Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled in any of the following manners:

a. The shareholders may fill the vacancy.

b. The board of directors may fill the vacancy.

c. If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

2. If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

3. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under section 493B.807, subsection 2 or otherwise, may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs.

**Sec. 82. NEW SECTION. 493B.811 COMPENSATION OF DIRECTORS.**

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

**PART B**

**Sec. 83. NEW SECTION. 493B.820 MEETINGS.**

1. The board of directors may hold regular or special meetings in or out of this state.

2. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**Sec. 84. NEW SECTION. 493B.821 ACTION WITHOUT MEETING.**

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

2. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

3. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

Sec. 85. NEW SECTION. 493B.022 NOTICE OF MEETING.

1. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

2. Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

Sec. 86. NEW SECTION. 493B.023 WAIVER OF NOTICE.

1. A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection 2, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

2. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Sec. 87. NEW SECTION. 493B.024 QUORUM AND VOTING.

1. Unless the articles of incorporation or bylaws require a different number, a quorum of a board of directors consists of either:

a. A majority of the fixed number of directors if the corporation has a fixed board size.

b. A majority of the number of directors prescribed, or, if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

2. The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection 1.

3. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

4. A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless one or more of the following occurs:

a. The director objects at the beginning of the meeting or promptly upon the director's arrival to holding it or transacting business at the meeting.

b. The director's dissent or abstention from the action taken is entered in the minutes of the meeting.

c. The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Sec. 88. NEW SECTION. 493B.025 COMMITTEES.

1. Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more

committees and appoint members of the board of directors to serve on them. Each committee may have two or more members, who serve at the pleasure of the board of directors.

2. The creation of a committee and appointment of members to it must be approved by the greater of either:

- a. A majority of all the directors in office when the action is taken.
  - b. The number of directors required by the articles of incorporation or bylaws to take action under section 493B.824.
3. Sections 493B.820 through 493B.824, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.
4. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section 493B.801.
5. A committee shall not, however:
- a. Authorize distributions.
  - b. Approve or propose to shareholders action that this chapter requires be approved by shareholders.
  - c. Fill vacancies on the board of directors or on any of its committees.
  - d. Amend articles of incorporation pursuant to section 493B.1002.
  - e. Adopt, amend, or repeal bylaws.
  - f. Approve a plan of merger not requiring shareholder approval.
  - g. Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors.
  - h. Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to

do so within limits specifically prescribed by the board of directors.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 493B.830.

#### PART C

Sec. 89. NEW SECTION. 493B.830 GENERAL STANDARDS FOR DIRECTORS.

1. A director shall discharge that director's duties as a director, including the director's duties as a member of a committee in conformity with all of the following:

- a. In good faith.
- b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- c. In a manner the director reasonably believes to be in the best interests of the corporation.

2. In discharging the director's duties a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

- a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.
- b. Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence.
- c. A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

3. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance

with this section, or if, and to the extent that, liability for any such action or failure to act has been limited by the articles of incorporation pursuant to section 493B.032.

Sec. 90. NEW SECTION. 493B.031 DIRECTOR CONFLICT OF INTEREST.

1. A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any one of the following is true:

a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction.

b. The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

c. The transaction was fair to the corporation.

2. For purposes of this section, a director of the corporation has an indirect interest in a transaction if either:

a. Another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction.

b. Another entity of which the director is a director, officer, or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

3. For purposes of subsection 1, paragraph "a", a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee, who have no direct or indirect interest in the transaction, but a

transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 1, paragraph "a", if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

4. For purposes of subsection 1, paragraph "b", a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in subsection 2, paragraph "a", shall not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 1, paragraph "b". The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Sec. 91. NEW SECTION. 493B.032 INDEMNIFICATION OF DIRECTORS.

The articles of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the corporation or its shareholders, for acts or omissions not in

good faith or which involve intentional misconduct or a knowing violation of law, for a transaction from which the director derives an improper personal benefit, or under section 493B.833. A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

**Sec. 92. NEW SECTION. 493B.833 LIABILITY FOR UNLAWFUL DISTRIBUTION.**

1. Unless the director complies with the applicable standards of conduct described in section 493B.830, a director who votes for or assents to a distribution made in violation of this chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter or the articles of incorporation.

2. A director held liable for an unlawful distribution under subsection 1 is entitled to contribution from both of the following:

a. Every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 493B.830.

b. Each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this chapter or the articles of incorporation.

**PART D**

**Sec. 93. NEW SECTION. 493B.840 REQUIRED OFFICERS.**

1. A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

2. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

3. The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

4. The same individual may simultaneously hold more than one office in a corporation.

**Sec. 94. NEW SECTION. 493B.841 DUTIES OF OFFICERS.**

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

**Sec. 95. NEW SECTION. 493B.842 STANDARDS OF CONDUCT FOR OFFICERS.**

1. An officer with discretionary authority shall discharge the officer's duties under that authority in conformity with all of the following:

a. In good faith.

b. With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

c. In a manner the officer reasonably believes to be in the best interests of the corporation.

2. In discharging the person's duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by either:

a. One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented.

b. Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

3. An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section.

Sec. 96. NEW SECTION. 493B.843 RESIGNATION AND REMOVAL OF OFFICERS.

1. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

2. A board of directors may remove any officer at any time with or without cause.

Sec. 97. NEW SECTION. 493B.844 CONTRACT RIGHTS OF OFFICERS.

1. The appointment of an officer does not itself create contract rights.

2. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

PART 2

Sec. 98. NEW SECTION. 493B.850 DEFINITIONS.

As used in this part of this chapter, unless the context otherwise requires:

1. "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

2. "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the

corporation also impose duties on, or otherwise involve services by, that director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

1. "Expenses" include counsel fees.

4. "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

5. "Official capacity" means:

a. When used with respect to a director, the office of director in a corporation.

b. When used with respect to an individual other than a director, as contemplated in section 493B.856, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation.

"Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

6. "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

7. "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Sec. 99. NEW SECTION. 493B.851 AUTHORITY TO INDEMNIFY.

1. Except as provided in subsection 4, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if all of the following apply:

a. The individual acted in good faith.

b. The individual reasonably believed:

(1) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in the corporation's best interests.

(2) In all other cases, that the individual's conduct was at least not opposed to the corporation's best interests.

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful).

2. A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection 1, paragraph "b", subparagraph (2).

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

4. A corporation shall not indemnify a director under this section in either of the following circumstances:

a. In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation.

b. In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

5. Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

**Sec. 100. NEW SECTION. 493B.852 MANDATORY INDEMNIFICATION.**

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly

successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

**Sec. 101. NEW SECTION. 493B.853 ADVANCE FOR EXPENSES.**

1. A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if any of the following apply:

a. The director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in section 493B.851.

b. The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet that standard of conduct.

c. A determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

2. The undertaking required by subsection 1, paragraph "b", must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

3. Determinations and authorizations of payments under this section shall be made in the manner specified in section 493B.855.

**Sec. 102. NEW SECTION. 493B.854 COURT-ORDERED INDEMNIFICATION.**

Unless a corporation's articles of incorporation provide otherwise, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification if it determines either of the following:

1. The director is entitled to mandatory indemnification under section 493B.852, in which case the court shall also order the corporation to pay the directors reasonable expenses incurred to obtain court-ordered indemnification.

2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in section 493B.851 or was adjudged liable as described in section 493B.851, subsection 4, but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred.

Sec. 103. NEW SECTION. 493B.855 DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

1. A corporation shall not indemnify a director under section 493B.851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 493B.851.

2. The determination shall be made by any of the following:

a. By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

b. If a quorum cannot be obtained under paragraph "a", by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding.

c. By special legal counsel:

(1) Selected by the board of directors or its committee in the manner prescribed in paragraph "a" or "b".

(2) If a quorum of the board of directors cannot be obtained under paragraph "a" and a committee cannot be designated under paragraph "b", selected by majority vote of the full board of directors, in which selection directors who are parties may participate.

d. By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding shall not be voted on the determination.

3. Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection 2, paragraph "c" to select counsel.

Sec. 104. NEW SECTION. 493B.856 INDEMNIFICATION OF OFFICERS, EMPLOYEES, AND AGENTS.

Unless a corporation's articles of incorporation provide otherwise all of the following apply:

1. An officer of the corporation who is not a director is entitled to mandatory indemnification under section 493B.852, and is entitled to apply for court-ordered indemnification under section 493B.854, in each case to the same extent as a director.

2. The corporation may indemnify and advance expenses under this part to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director.

3. A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

Sec. 105. NEW SECTION. 493B.857 INSURANCE.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture,

trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify that individual against the same liability under section 493B.851 or 493B.852.

Sec. 106. NEW SECTION. 493B.858 APPLICATION OF PART E.

Except as limited in section 493B.851, subsection 4, paragraph "a" and subsection 5 with respect to proceedings by or in the right of the corporation, the indemnification and advancement of expenses provided by, or granted pursuant to, sections 493B.850 through 493B.857 are not exclusive of any other rights to which persons seeking indemnification or advancement of expenses are entitled under a provision in the articles of incorporation or bylaws, agreements, vote of shareholders or disinterested directors, or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding the office. However, such provisions, agreements, votes, or other actions shall not provide indemnification for a breach of a director's duty of loyalty to the corporation or its shareholders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, for a transaction from which the person seeking indemnification derives an improper personal benefit, or for liability under section 493B.833.

#### DIVISION IX

##### SPECIAL CLASSES

Sec. 107. NEW SECTION. 493B.901 FOREIGN-TRADE ZONE CORPORATION.

A corporation may be organized under the laws of this state for the purpose of establishing, operating, and maintaining a foreign-trade zone as defined in 19 U.S.C. § 81(a). A corporation organized for the purposes set forth in this section has all powers necessary or convenient for applying for a grant of authority to establish, operate, and maintain a

foreign-trade zone under 19 U.S.C. § 81(a), et seq., and regulations promulgated under that law, and for establishing, operating, and maintaining a foreign-trade zone pursuant to that grant of authority.

Sec. 108. NEW SECTION. 493B.902 FOREIGN INSURANCE COMPANIES BECOMING DOMESTIC.

The secretary of state, upon a corporation complying with this section and upon the filing of articles of incorporation and upon receipt of the fees as provided in this chapter, shall issue a certificate of incorporation as of the date of the corporation's original incorporation in its state of original incorporation. The certificate of incorporation shall state on its face that it is issued in accordance with this section. The secretary of state shall forward the articles as provided in this chapter to the county recorder where the principal place of business of the corporation is to be located. The secretary of state shall then notify the appropriate officer of the state or country of the corporation's last domicile that the corporation is now a domestic corporation domiciled in this state. This section applies to life insurance companies, and to insurance companies doing business under chapter 515.

#### DIVISION X

##### AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

###### PART A

Sec. 109. NEW SECTION. 493B.1001 AMENDMENT OF ARTICLES OF INCORPORATION -- AUTHORITY TO AMEND.

1. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

2. A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of

Incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Sec. 110. NEW SECTION. 493B.1002 AMENDMENT BY BOARD OF DIRECTORS.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action for any of the following purposes:

1. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

2. To delete the names and addresses of the initial directors.

3. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.

4. To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.

5. To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name.

6. To make any other change expressly permitted by this chapter to be made without shareholder action.

Sec. 111. NEW SECTION. 493B.1003 AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS.

1. A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

2. For the amendment to be adopted both of the following must occur:

a. The board of directors must recommend the amendment to the shareholders unless the board of directors determines that

because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment.

b. The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection 5.

3. The board of directors may condition its submission of the proposed amendment on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 493B.705. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

5. Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by both of the following:

a. A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights.

b. The votes required by sections 493B.725 and 493B.726 by every other voting group entitled to vote on the amendment.

Sec. 112. NEW SECTION. 493B.1004 VOTING ON AMENDMENTS BY VOTING GROUPS.

1. The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would do any of the following:

a. Increase or decrease the aggregate number of authorized shares of the class.

b. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.

c. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of that class.

d. Change the designation, rights, preferences, or limitations of all or part of the shares of the class.

e. Change the shares of all or part of the class into a different number of shares of the same class.

f. Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to, the shares of the class.

g. Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class.

h. Limit or deny an existing preemptive right of all or part of the shares of the class.

1. Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

2. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection 1, the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

3. If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

4. A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

Sec. 113. NEW SECTION. 493B.1005 AMENDMENT BEFORE ISSUANCE OF SHARES.

If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

Sec. 114. NEW SECTION. 493B.1006 ARTICLES OF AMENDMENT.

A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

1. The name of the corporation.

2. The text of each amendment adopted.

3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.

4. The date of each amendment's adoption.

5. If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required.

6. If an amendment was approved by the shareholders:

a. The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting.

b. Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

Sec. 115. NEW SECTION. 493B.1007 RESTATED ARTICLES OF INCORPORATION.

1. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

2. The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section 493B.1003.

3. If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder whether or not entitled to vote, of the proposed

shareholders' meeting in accordance with section 493B.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.

4. A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

a. Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement.

b. If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section 493B.1006.

5. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

6. The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection 4.

Sec. 116. NEW SECTION. 493B.1008 AMENDMENT PURSUANT TO REORGANIZATION.

1. A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by section 493B.702.

2. The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

a. The name of the corporation.

b. The text of each amendment approved by the court.

c. The date of the court's order or decree approving the articles of amendment.

d. The title of the reorganization proceeding in which the order or decree was entered.

e. A statement that the court had jurisdiction of the proceeding under federal statute.

3. Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

4. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Sec. 117. NEW SECTION. 493B.1009 EFFECT OF AMENDMENT.

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

PART B

Sec. 118. NEW SECTION. 493B.1020 AMENDMENT OF BYLAWS BY BOARD OF DIRECTORS OR SHAREHOLDERS.

1. A corporation's board of directors may amend or repeal the corporation's bylaws unless either of the following apply:

a. The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part.

b. The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors shall not amend or repeal that bylaw.

2. A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

Sec. 119. NEW SECTION. 493B.1021 BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR SHAREHOLDERS.

1. If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups of shareholders than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

2. A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection 1 shall not be adopted, amended, or repealed by the board of directors.

Sec. 120. NEW SECTION. 493B.1022 BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR DIRECTORS.

1. A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

- a. If originally adopted by the shareholders, only by the shareholders.
- b. If originally adopted by the board of directors, either by the shareholders or by the board of directors.

2. A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

3. Action by the board of directors under subsection 1, paragraph "b" to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

DIVISION XI  
MERGER AND SHARE EXCHANGE

Sec. 121. NEW SECTION. 493B.1101 MERGER.

1. One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 493B.1103, approve a plan of merger.

2. The plan of merger must set forth all of the following:

- a. The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge.
- b. The terms and conditions of the merger.
- c. The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

3. The plan of merger may set forth:

- a. Restated articles or amendments to the articles of incorporation of the surviving corporation.
- b. Other provisions relating to the merger.

Sec. 122. NEW SECTION. 493B.1102 SHARE EXCHANGE.

1. A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by section 493B.1103, approve the exchange.

2. The plan of exchange must set forth all of the following:

- a. The name of the corporation whose shares will be acquired and the name of the acquiring corporation.
- b. The terms and conditions of the exchange.
- c. The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

3. The plan of exchange may set forth other provisions relating to the exchange.

4. This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

Sec. 123. NEW SECTION. 493B.1103 ACTION ON PLAN.

1. After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection 7, or share exchange for approval by its shareholders.

2. For a plan of merger or share exchange to be approved both of the following must occur:

a. The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan.

b. The shareholders entitled to vote must approve the plan.

3. The board of directors may condition its submission of the proposed merger or share exchange on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 493B.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

5. Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a

majority of all the votes entitled to be cast on the plan by that voting group.

6. Separate voting by voting groups is required:

a. On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section 493B.1004.

b. On a plan of share exchange, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

7. Action by the shareholders of the surviving corporation on a plan of merger is not required if all of the following apply:

a. The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in section 493B.1002, from its articles before the merger.

b. Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after.

c. The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of voting shares of the surviving corporation outstanding immediately before the merger.

d. The number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number

of participating shares outstanding immediately before the merger.

8. As used in subsection 7:

- a. "Participating shares" means shares that entitle their holders to participate without limitation in distributions.
- b. "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

9. After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

Sec. 124. NEW SECTION. 493B.1104 MERGER OF SUBSIDIARY.

1. A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

2. The board of directors of the parent shall adopt a plan of merger that sets forth both of the following:

- a. The names of the parent and subsidiary.
- b. The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

3. The parent corporation shall mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not waive the mailing requirement in writing.

4. The parent corporation shall not deliver articles of merger to the secretary of state for filing until at least thirty days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement.

5. Articles of merger under this section shall not contain amendments to the articles of incorporation of the parent

corporation except for amendments enumerated in section 493B.1002.

Sec. 125. NEW SECTION. 493B.1105 ARTICLES OF MERGER OR SHARE EXCHANGE.

1. After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth all of the following:

- a. The plan of merger or share exchange.
- b. If shareholder approval was not required, a statement to that effect.
- c. If approval of the shareholders of one or more corporations party to the merger or share exchange was required, both of the following:

(1) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation.

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

2. A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

Sec. 126. NEW SECTION. 493B.1106 EFFECT OF MERGER OR SHARE EXCHANGE.

- 1. When a merger takes effect all of the following apply:
  - a. Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases.
  - b. The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment.

c. The surviving corporation has all liabilities of each corporation party to the merger.

d. A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased.

e. The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger.

f. The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under division XIII.

2. When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under division XIII.

Sec. 127. NEW SECTION. 493B.1107 MERGER OR SHARE EXCHANGE WITH FOREIGN CORPORATION.

1. One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

a. In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger.

b. In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated.

c. The foreign corporation complies with section 493B.1105 if it is the surviving corporation of the merger or acquiring corporation of the share exchange.

d. Each domestic corporation complies with the applicable provisions of sections 493B.1101 through 493B.1104 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 493B.1105.

2. Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

a. To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange.

b. To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under division XIII.

3. This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Sec. 128. NEW SECTION. 493B.1108 CONSIDERATION OF COMMUNITY INTERESTS IN CONSIDERATION OF ACQUISITION PROPOSALS.

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.

b. The effects of the action on the communities in which the corporation operates.

c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in paragraph 1, the board of directors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

DIVISION XII  
SALE OF ASSETS

Sec. 129. NEW SECTION. 493B.1201 SALE OF ASSETS IN REGULAR COURSE OF BUSINESS AND MORTGAGE OF ASSETS.

1. A corporation may, on the terms and conditions and for the consideration determined by the board of directors do any of the following:
  - a. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business.
  - b. Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.
  - c. Transfer any or all of its property to a corporation all the shares of which are owned by the transferring corporation whether or not in the usual course of business.
2. Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection 1 is not required.

Sec. 130. NEW SECTION. 493B.1202 SALE OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS.

1. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.
2. For a transaction to be authorized both of the following must occur:
  - a. The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicate the basis for its determination to the shareholders with the submission of the proposed transaction.
  - b. The shareholders entitled to vote must approve the transaction.
3. The board of directors may condition its submission of the proposed transaction on any basis.
4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 493B.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.
5. Unless the articles of incorporation or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all the votes entitled to be cast on the transaction.
6. After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned

subject to any contractual rights without further shareholder action.

7. A transaction that constitutes a distribution is governed by section 493B.640 and not by this section.

DIVISION XIII  
DISSENTERS' RIGHTS  
PART A

Sec. 131. NEW SECTION. 493B.1301 DEFINITIONS FOR DIVISION XIII.

In this division:

1. "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

2. "Dissenter" means a shareholder who is entitled to dissent from corporate action under section 493B.1302 and who exercises that right when and in the manner required by sections 493B.1320 through 493B.1328.

3. "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

4. "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

5. "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

6. "Beneficial shareholder" means the person who is a beneficial owner of shares held by a nominee as the record shareholder.

7. "Shareholder" means the record shareholder or the beneficial shareholder.

Sec. 132. NEW SECTION. 493B.1302 SHAREHOLDERS' RIGHT TO DISSENT.

1. A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

a. Consummation of a plan of merger to which the corporation is a party if either of the following apply:

(1) Shareholder approval is required for the merger by section 493B.1103 or the articles of incorporation and the shareholder is entitled to vote on the merger.

(2) The corporation is a subsidiary that is merged with its parent under section 493B.1104.

b. Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

c. Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale.

d. An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it does any or all of the following:

(1) Alters or abolishes a preferential right of the shares.

(2) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares.

(3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities.

(4) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights.

(5) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 493B.604.

(6) Extends, for the first time after being governed by this chapter, the period of duration of a corporation organized under chapter 491 or 495A and existing for a period of years on the day preceding the date the corporation is first governed by this chapter.

e. Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

2. A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter is not entitled to challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

Sec. 133. NEW SECTION. 493B.1303 DISSENT BY NOMINEES AND BENEFICIAL OWNERS.

1. A record shareholder may assert dissenters' rights as to fewer than all the shares registered in that shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the shareholder dissents and the shareholder's other shares were registered in the names of different shareholders.

2. A beneficial shareholder may assert dissenters' rights as to shares held on the shareholder's behalf only if the shareholder does both of the following:

a. Submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights.

b. Does so with respect to all shares of which the shareholder is the beneficial shareholder or over which that beneficial shareholder has power to direct the vote.

PART B

Sec. 134. NEW SECTION. 493B.1320 NOTICE OF DISSENTERS' RIGHTS.

1. If proposed corporate action creating dissenters' rights under section 493B.1302 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this part and be accompanied by a copy of this part.

2. If corporate action creating dissenters' rights under section 493B.1302 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 493B.1322.

Sec. 135. NEW SECTION. 493B.1321 NOTICE OF INTENT TO DEMAND PAYMENT.

1. If proposed corporate action creating dissenters' rights under section 493B.1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must do all of the following:

a. Deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effectuated.

b. Not vote the dissenting shareholder's shares in favor of the proposed action.

2. A shareholder who does not satisfy the requirements of subsection 1, is not entitled to payment for the shareholder's shares under this part.

Sec. 116. NEW SECTION. 493B.1122 DISSENTERS' NOTICE.

1. If proposed corporate action creating dissenters' rights under section 493B.1102 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 493B.1121.

2. The dissenters' notice must be sent no later than ten days after the corporate action by the shareholders was taken and must do all of the following:

a. State where the payment demand must be sent and where and when certificates for certificated shares must be deposited.

b. Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received.

c. Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date.

d. Set a date by which the corporation must receive the payment demand, which date shall not be fewer than thirty nor more than sixty days after the date the subsection 1 notice is delivered.

e. Be accompanied by a copy of this division.

Sec. 117. NEW SECTION. 493B.1123 DUTY TO DEMAND PAYMENT.

1. A shareholder sent a dissenters' notice described in section 493B.1122 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice pursuant to section 493B.1122, subsection 2, paragraph "c", and deposit the shareholder's certificates in accordance with the terms of the notice.

2. The shareholder who demands payment and deposits the shareholder's shares under subsection 1 retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

3. A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this division.

Sec. 118. NEW SECTION. 493B.1124 SHARE RESTRICTIONS.

1. The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 493B.1126.

2. The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

Sec. 119. NEW SECTION. 493B.1125 PAYMENT.

1. Except as provided in section 493B.1127, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 493B.1123 the amount the corporation estimates to be the fair value of the dissenter's shares, plus accrued interest.

2. The payment must be accompanied by all of the following:

a. The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, 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.

b. A statement of the corporation's estimate of the fair value of the shares.

c. An explanation of how the interest was calculated.

d. A statement of the dissenter's right to demand payment under section 493B.1128.

e. A copy of this division.

Sec. 140. NEW SECTION. 493B.1326 FAILURE TO TAKE ACTION.

1. If the corporation does not take the proposed action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

2. If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 493B.1322 and repeat the payment demand procedure.

Sec. 141. NEW SECTION. 493B.1327 AFTER-ACQUIRED SHARES.

1. A corporation may elect to withhold payment required by section 493B.1325 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

2. To the extent the corporation elects to withhold payment under subsection 1, after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 493B.1328.

Sec. 142. NEW SECTION. 493B.1328 PROCEDURE IF SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER.

1. A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under section 493B.1325, or reject the corporation's offer under section 493B.1327 and demand payment of the fair value of the dissenter's shares and interest due, if any of the following apply:

a. The dissenter believes that the amount paid under section 493B.1325 or offered under section 493B.1327 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated.

b. The corporation fails to make payment under section 493B.1325 within sixty days after the date set for demanding payment.

c. The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

2. A dissenter waives the dissenter's right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand in writing under subsection 1 within thirty days after the corporation made or offered payment for the dissenter's shares.

PART C

Sec. 143. NEW SECTION. 493B.1330 COURT ACTION.

1. If a demand for payment under section 493B.1328 remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

2. The corporation shall commence the proceeding in the district court of the county where a corporation's principal office or, if none in this state, its registered office is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

3. The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares

and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

5. Each dissenter made a party to the proceeding is entitled to judgment for either of the following:

a. The amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation.

b. The fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under section 493B.1327.

Sec. 144. NEW SECTION. 493B.1331 COURT COSTS AND COUNSEL FEES.

1. The court in an appraisal proceeding commenced under section 493B.1330 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 493B.1328.

2. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable, for either of the following:

a. Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 493B.1320 through 493B.1328.

b. Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

3. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

#### DIVISION XIV

#### DISSOLUTION

#### PART A

Sec. 145. NEW SECTION. 493B.1401 DISSOLUTION BY INCORPORATORS OR INITIAL DIRECTORS.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the corporation.
2. The date of its incorporation.
3. Either of the following:
  - a. That none of the corporation's shares has been issued.
  - b. That the corporation has not commenced business.
4. That no debt of the corporation remains unpaid.
5. That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.
6. That a majority of the incorporators or initial directors authorized the dissolution.

Sec. 146. NEW SECTION. 493B.1402 DISSOLUTION BY BOARD OF DIRECTORS AND SHAREHOLDERS.

1. A corporation's board of directors may propose dissolution for submission to the shareholders.

2. For a proposal to dissolve to be adopted both of the following must apply:

a. The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders.

b. The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection 5.

3. The board of directors may condition its submission of the proposal for dissolution on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 493B.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

5. Unless the articles of incorporation or the board of directors acting pursuant to subsection 3 requires a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

Sec. 147. NEW SECTION. 493B.1403 ARTICLES OF DISSOLUTION.

1. At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing articles of dissolution setting forth all of the following:

a. The name of the corporation.  
b. The date dissolution was authorized.  
c. If dissolution was approved by the shareholders, both of the following:

(1) The number of votes entitled to be cast on the proposal to dissolve.

(2) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

d. If voting by voting groups was required, the information required by paragraph "c" must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

2. A corporation is dissolved upon the effective date of its articles of dissolution.

Sec. 148. NEW SECTION. 493B.1404 REVOCATION OF DISSOLUTION.

1. A corporation may revoke its dissolution within one hundred twenty days of its effective date.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

3. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the corporation.  
b. The effective date of the dissolution that was revoked.  
c. The date that the revocation of dissolution was authorized.

d. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If shareholder action was required to revoke the dissolution, the information required by section 493B.1403, subsection 1, paragraph "c" or "d".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

Sec. 149. NEW SECTION. 493B.1405 EFFECT OF DISSOLUTION.

1. A dissolved corporation continues its corporate existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

- a. Collecting its assets.
- b. Disposing of its properties that will not be distributed in kind to its shareholders.
- c. Discharging or making provision for discharging its liabilities.
- d. Distributing its remaining property among its shareholders according to their interests.
- e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a corporation does not do any of the following:

- a. Transfer title to the corporation's property.
- b. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records.
- c. Subject its directors or officers to standards of conduct different from those prescribed in division VIII.
- d. Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.
- e. Prevent commencement of a proceeding by or against the corporation in its corporate name.
- f. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.
- g. Terminate the authority of the registered agent of the corporation.

Sec. 150. NEW SECTION. 493B.1406 KNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

1. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

2. The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must do all of the following:

- a. Describe information that must be included in a claim.
- b. Provide a mailing address where a claim may be sent.
- c. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim.
- d. State that the claim will be barred if not received by the deadline.

3. A claim against the dissolved corporation is barred if either of the following occur:

- a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline.
- b. A claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Sec. 151. NEW SECTION. 493B.1407 UNKNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

1. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

2. The notice must meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

3. If the dissolved corporation publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

a. A claimant who did not receive written notice under section 493B.1406.

b. A claimant whose claim was timely sent to the dissolved corporation but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section in either of the following ways:

a. Against the dissolved corporation, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the shareholder in liquidation.

PART B

Sec. 152. NEW SECTION. 493B.1420 GROUND FOR ADMINISTRATIVE DISSOLUTION.

The secretary of state may commence a proceeding under section 493B.1421 to administratively dissolve a corporation if any of the following apply:

1. The corporation does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other law.

2. The corporation has not delivered an annual report to the secretary of state in a form that meets the requirements of section 493B.1622, within sixty days after it is due.

3. The corporation is without a registered agent or registered office in this state for sixty days or more.

4. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

5. The corporation's period of duration stated in its articles of incorporation expires.

Sec. 153. NEW SECTION. 493B.1421 PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION.

1. If the secretary of state determines that one or more grounds exist under section 493B.1420 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the secretary of state's determination under section 493B.504.

2. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 493B.504, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under section 493B.504.

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3. A corporation administratively dissolved continues its corporate existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 493B.1405 and notify claimants under sections 493B.1406 and 493B.1407.

4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Sec. 154. NEW SECTION. 493B.1422 REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

1. A corporation administratively dissolved under section 493B.1421 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:

- a. Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.
- b. State that the ground or grounds for dissolution either did not exist or have been eliminated.
- c. State a corporate name that satisfies the requirements of section 493B.401.
- d. Contain a certificate from the department of revenue and finance reciting that all taxes owed by the corporation have been paid.

2. If the secretary of state determines that the application contains the information required by subsection 1 and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 493B.504. If the corporate name in subsection 1, paragraph "c" is different than the corporate name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

Sec. 155. NEW SECTION. 493B.1423 APPEAL FROM DENIAL OF REINSTATEMENT.

1. If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under section 493B.504 with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

#### PART C

Sec. 156. NEW SECTION. 493B.1430 GROUNDS FOR JUDICIAL DISSOLUTION.

The district court may dissolve a corporation in any of the following ways:

1. A proceeding by the attorney general, if it is established that either of the following apply:
  - a. The corporation obtained its articles of incorporation through fraud.
  - b. The corporation has continued to exceed or abuse the authority conferred upon it by law.
2. A proceeding by a shareholder if it is established that any of the following conditions exist:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and either irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

c. The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

d. The corporate assets are being misapplied or wasted.

3. A proceeding by a creditor if it is established that either of the following apply:

a. The creditors claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

b. The corporation has admitted in writing that the creditors claim is due and owing and the corporation is insolvent.

4. A proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Sec. 157. NEW SECTION. 493B.1431 PROCEDURE FOR JUDICIAL DISSOLUTION.

1. Venue for a proceeding by the attorney general to dissolve a corporation lies in Polk county. Venue for a proceeding brought by any other party named in section 493B.1430 lies in the county where a corporation's principal office or, if none in this state, its registered office is or was last located.

2. It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

1. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Sec. 158. NEW SECTION. 493B.1432 RECEIVERSHIP OR CUSTODIANSHIP.

1. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

a. The receiver may do either or both of the following:  
(1) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.

b. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

Sec. 159. NEW SECTION. 493B.1433 DECREE OF DISSOLUTION.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 493B.1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 493B.1405 and the notification of claimants in accordance with sections 493B.1406 and 493B.1407.

PART D

Sec. 160. NEW SECTION. 493B.1440 DEPOSIT WITH STATE TREASURER.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or shareholder or that person's representative that amount.

DIVISION XV  
FOREIGN CORPORATIONS

PART A

Sec. 161. NEW SECTION. 493B.1501 AUTHORITY TO TRANSACT BUSINESS REQUIRED.

1. A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

a. Maintaining, defending, or settling any proceeding.

b. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

i. Owning, without more, real or personal property.

j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.

k. Transacting business in interstate commerce.

l. The list of activities in subsection 2 is not exhaustive.

Sec. 162. NEW SECTION. 493B.1502 CONSEQUENCES OF  
TRANSACTIONING BUSINESS WITHOUT AUTHORITY.

1. A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

4. A foreign corporation is liable for a civil penalty of not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Sec. 163. NEW SECTION. 493B.1503 APPLICATION FOR  
CERTIFICATE OF AUTHORITY.

1. A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth all of the following:

a. The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 493B.1506.

b. The name of the state or country under whose law it is incorporated.

c. Its date of incorporation and period of duration.

d. The street address of its principal office.

e. The address of its registered office in this state and the name of its registered agent at that office.

f. The names and usual business addresses of its current directors and officers.

2. The foreign corporation shall deliver with the completed application a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

Sec. 164. NEW SECTION. 493B.1504 AMENDED CERTIFICATE OF  
AUTHORITY.

1. A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes any of the following:

a. Its corporate name.

b. The period of its duration.

c. The state or country of its incorporation.

2. The requirements of section 493B.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Sec. 165. NEW SECTION. 493B.1505 EFFECT OF CERTIFICATE  
OF AUTHORITY.

1. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.

2. A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided in this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

1. This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Sec. 166. NEW SECTION. 493B.1506 CORPORATE NAME OF FOREIGN CORPORATION.

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 493B.401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may do either of the following:

a. Add the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", to its corporate name for use in this state.

b. Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2. Except as authorized by subsections 3 and 4, the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a corporation incorporated or authorized to transact business in this state.

b. A corporate name reserved or registered under section 493B.402 or 493B.403.

c. The fictitious name of another foreign corporation authorized to transact business in this state.

d. The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this state that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if either of the following apply:

a. The other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has done any of the following:

a. Merged with the other corporation.

b. Been formed by reorganization of the other corporation.

c. Acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 493B.401, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 493B.401 and obtains an amended certificate of authority under section 493B.1504.

Sec. 167. NEW SECTION. 493B.1507 REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION.

A foreign corporation authorized to transact business in this state must continuously maintain in this state both of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent, who may be any of the following:

a. An individual who resides in this state and whose business office is identical with the registered office.

b. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

Sec. 168. NEW SECTION. 493B.1508 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.

1. A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- a. Its name.
- b. The street address of its current registered office.
- c. If the current registered office is to be changed, the street address of its new registered office.
- d. The name of its current registered agent.
- e. If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.
- f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

3. A corporation may also change its registered office or registered agent in its annual report as provided in section 493B.1622.

Sec. 169. NEW SECTION. 493B.1509 RESIGNATION OF REGISTERED AGENT OF FOREIGN CORPORATION.

1. The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

2. After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail the other copy of the foreign corporation to its principal office address shown in its most recent annual report.

3. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Sec. 170. NEW SECTION. 493B.1510 SERVICE ON FOREIGN CORPORATION.

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation meets any of the following conditions:

- a. Has no registered agent or its registered agent cannot with reasonable diligence be served.
- b. Has withdrawn from transacting business in this state under section 493B.1520.
- c. Has had its certificate of authority revoked under section 493B.1531.

1. Service is perfected under subsection 2 at the earliest of:
  - a. The date the foreign corporation receives the mail.
  - b. The date shown on the return receipt, if signed on behalf of the foreign corporation.
  - c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
4. A foreign corporation may also be served in any other manner permitted by law.

PART B

Sec. 171. NEW SECTION. 493B.1520 WITHDRAWAL OF FOREIGN CORPORATION.

1. A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.
2. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth all of the following:
  - a. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.
  - b. That it is not transacting business in this state and that it surrenders its authority to transact business in this state.
  - c. That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.
  - d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph "c".
  - e. A commitment to notify the secretary of state in the future of any change in its mailing address.

3. After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection 2.

PART C

Sec. 172. NEW SECTION. 493B.1530 GROUNDS FOR REVOCATION.

The secretary of state may commence a proceeding under section 493B.1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

1. The foreign corporation does not deliver its annual report to the secretary of state within sixty days after it is due.
2. The foreign corporation does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other laws.
3. The foreign corporation is without a registered agent or registered office in this state for sixty days or more.
4. The foreign corporation does not inform the secretary of state under section 493B.1508 or 493B.1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance.
5. An incorporator, director, officer, or agent of the foreign corporation signed a document that person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.
6. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Sec. 173. NEW SECTION. 493B.1531 PROCEDURE FOR AND EFFECT OF REVOCATION.

1. If the secretary of state determines that one or more grounds exist under section 493B.1510 for revocation of a certificate of authority, the secretary of state shall serve the foreign corporation with written notice of the secretary's determination under section 493B.1510.

2. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 493B.1510, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 493B.1510.

3. The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

4. The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

5. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Sec. 174. NEW SECTION. 493B.1532 APPEAL FROM REVOCATION.

1. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty days after service of the certificate of revocation is perfected under section 493B.1510. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

2. The court may summarily order the secretary of state to reinstate 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.

DIVISION XVI  
RECORDS AND REPORTS  
PART A

Sec. 175. NEW SECTION. 493B.1601 CORPORATE RECORDS.

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of the following records:

a. Its articles or restated articles of incorporation and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

d. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years.

e. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 493B.1620.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent annual report delivered to the secretary of state under section 493B.1622.

Sec. 176. NEW SECTION. 493B.1602 INSPECTION OF RECORDS BY SHAREHOLDERS.

1. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 493B.1601, subsection 5, if the shareholder gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

2. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection 1 and gives the corporation written notice of the shareholder's demand at least five business days

before the date on which the shareholder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under section 493B.1602, subsection 1.

b. Accounting records of the corporation.

c. The record of shareholders.

3. A shareholder may inspect and copy the records described in subsection 2 only if:

a. The shareholder's demand is made in good faith and for a proper purpose.

b. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect.

c. The records are directly connected with the shareholder's purpose.

4. The right of inspection granted by this section shall not be abolished or limited by a corporation's articles of incorporation or bylaws.

5. This section does not affect either of the following:

a. The right of a shareholder to inspect records under section 493B.720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

Sec. 177. NEW SECTION. 493B.1603 SCOPE OF INSPECTION RIGHT.

1. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder the agent or attorney represents.

2. The right to copy records under section 493B.1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other technological means.

1. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge shall not exceed the estimated cost of production or reproduction of the records.

4. The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 493B.1602, subsection 2, paragraph "c" by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Sec. 178. NEW SECTION. 493B.1604 COURT-ORDERED INSPECTION.

1. If a corporation does not allow a shareholder who complies with section 493B.1602, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

2. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other records, the shareholder who complies with section 493B.1602, subsections 2 and 3 may apply to the district court in the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

PART B

Sec. 179. NEW SECTION. 493B.1620 FINANCIAL STATEMENTS FOR SHAREHOLDERS.

A corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. Upon written request from a shareholder, a corporation, at its expense, shall furnish to that shareholder the financial statements requested. If the annual financial statements are reported upon by a public accountant, that report must accompany them.

Sec. 180. NEW SECTION. 493B.1621 OTHER REPORTS TO SHAREHOLDERS.

1. If a corporation indemnifies or advances expenses to a director under section 493B.051 through 493B.054 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

2. If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

Sec. 181. NEW SECTION. 493B.1622 ANNUAL REPORT FOR SECRETARY OF STATE.

1. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth all of the following:

- a. The name of the corporation and the state or country under whose law it is incorporated.
  - b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.
  - c. The address of its principal office.
  - d. The names and business addresses of its directors and principal officers.
  - e. The total number of authorized shares, itemized by class and series, if any, within each class.
  - f. The total number of issued and outstanding shares, itemized by class and series, if any, within each class.
  - g. A statement of the amount of agricultural land in this state owned by the corporation.
  - h. A statement that the corporation is or is not a family farm corporation as defined in section 172C.1.
2. Information in the annual report must be current as of the first day of January of the year in which the report is due. The annual report shall be executed on behalf of the corporation and signed as provided in section 493B.120 or by any other person authorized by the board of directors of the corporation.
3. The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 1 of the following calendar years.
4. If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty days after the effective date of notice, it is deemed to be timely filed.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the annual report, provided that the form contains the information required in section 493B.502 or 493B.1508. If the secretary of state determines that an annual report does not contain the information required by this section but otherwise meets the requirements of section 493B.502 or 493B.1508 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 493B.123, before returning the annual report to the corporation as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the annual report.

DIVISION XVII

TRANSITION PROVISIONS

Sec. 1B2. NEW SECTION. 493B.170) APPLICATION TO EXISTING CORPORATIONS.

1. Except as provided in this subsection or chapters 504 or 504A, this chapter does not apply to or affect entities subject to chapters 504 or 504A. Such entities continue to be governed by all laws of this state applicable to them before the effective date of this Act as those laws are amended. This chapter does not derogate or limit the powers to which such entities are entitled.
2. Unless otherwise provided, this chapter does not apply to an entity subject to chapter 174, 176, 497, 498, 499, 499A, 524, 533, or 534 or a corporation organized on the mutual plan under chapter 491, or a telephone company organized as a corporation under chapter 491 qualifying pursuant to an internal revenue service letter ruling under I.R.C. § 501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to a chapter 499 corporation, unless such entity voluntarily elects to adopt the provisions of this chapter and complies with the procedure prescribed by subsection 3 of this section.

3. The procedure for the voluntary election referred to in subsection 2 is as follows:

a. A resolution reciting that the corporation voluntarily adopts this chapter and designating the address of its initial registered office and the name of its registered agent or agents at that office and, if the name of the corporation is not in compliance with the requirements of this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the board of directors and shareholders by the procedure prescribed by this chapter for the amendment of articles of incorporation.

b. Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing the instrument, which shall set forth all of the following:

- (1) The name of the corporation.
- (2) Each such resolution adopted by the corporation and the date of adoption of each resolution.
- (3) The address of its registered office and the name of its registered agent.

c. The instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office, and shall be filed and recorded in the office of the county recorder. The corporation shall at the time it files the instrument with the secretary of state deliver also to the secretary of state for filing in the secretary of state's office any annual report which is then due.

If the county of the initial registered office as stated in the instrument is one which is other than the county where the principal place of business of the corporation, as designated in its articles of incorporation, was located, the secretary of state shall forward also to the county recorder of the county in which the principal place of business of the

corporation was located a copy of the instrument and the secretary of state shall forward to the recorder of the county in which the initial registered office of the corporation is located, in addition to the original of the instrument, a copy of the articles of incorporation of the corporation together with all amendments to them as then on file in the secretary of state's office.

d. Upon the filing of the instrument by a corporation all of the following apply:

- (1) All of the provisions of this chapter apply to the corporation.
- (2) The secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative.
- (3) The secretary of state shall not file the instrument with respect to a corporation unless at the time of filing the corporation is validly existing and in good standing in that office under the chapter under which it is incorporated. The corporation shall be considered validly existing and in good standing for the purpose of this chapter for a period of three months following the expiration date of the corporation, provided all annual reports due have been filed and all fees due in connection with the annual reports have been paid.

e. The provisions of this chapter becoming applicable to a corporation voluntarily electing to be governed by this chapter do not affect any right accrued or established, or any liability or penalty incurred, under the chapter under which it is incorporated prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election by the corporation to adopt the provisions of this chapter as provided in subsection 3.

4. Except as specifically provided in this chapter, this chapter applies to all domestic corporations in existence on the effective date of this Act that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the

statute under which the corporation was incorporated was reserved.

5. A corporation subject to this chapter which does not have a registered office or registered agent or both designated on the records of the secretary of state is subject to all of the following provisions:

a. The office of the corporation set forth in its first annual report filed under this chapter shall be deemed its registered office until December 31, 1990, or until it files a designation of registered office with the secretary of state, whichever is earlier.

b. The person signing the first annual report of the corporation filed under this chapter shall be deemed the registered agent until December 31, 1990, or a statement designating a registered agent has been filed with the secretary of state, whichever is earlier.

c. Section 502 does not apply to the corporation until December 31, 1990, or until the corporation files a designation of registered office and registered agent at that office with the secretary of state, whichever is earlier.

6. A corporation subject to this chapter is not subject to chapter 491, 492, 493, 494, 495, or 496.

Sec. 183. NEW SECTION. 493B.1702 APPLICATION TO QUALIFIED FOREIGN CORPORATIONS.

A foreign corporation authorized to transact business in this state on the effective date of this Act is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

Sec. 184. NEW SECTION. 493B.1703 SAVINGS PROVISIONS.

1. Except as provided in subsection 2, the repeal of a statute by this chapter does not affect:

a. The operation of the statute or any action taken under it before its repeal.

b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal.

c. Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.

d. 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.

2. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

Sec. 185. NEW SECTION. 493B.1704 PREEMPTIVE RIGHTS FOR EXISTING CORPORATIONS.

Notwithstanding any other provision of this chapter, a corporation which was incorporated under, or which elected to be governed by, chapter 496A prior to December 31, 1989, shall be governed by the following until December 31, 1992:

Except to the extent limited or denied by this section or by the articles of incorporation, shareholders have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

Unless otherwise provided in the articles of incorporation:

1. No preemptive right exists:

a. To acquire any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan approved by such a vote of shareholders.

b. To acquire any shares sold otherwise than for cash.

c. To acquire treasury shares of the corporation.

2. Holders of shares of any class that is preferred or limited as to dividends or assets are not entitled to any preemptive right.

3. Holders of shares of common stock are not entitled to any preemptive right to shares of any class that is preferred

or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

4. Holders of common stock without voting power have no preemptive right to shares of common stock with voting power.

5. The preemptive right is only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of the right.

Sec. 186. Section 491.1, Code 1989, is amended to read as follows:

**491.1 WHO MAY INCORPORATE.**

Any number of persons may become incorporated under this chapter prior to July 1, 1971 for the transaction of any lawful business, but the incorporation confers no power or privilege not possessed by natural persons, except as provided in this chapter. ~~All domestic corporations shall be organized under chapter 496A only, except for corporations which are to become subject to one or more of the following chapters: 474, 476, 499, 499A, 504A, 506, 500, 510, 512, 514, 515, 515A, 510, 510A, 519, 524, 533, and 534. All domestic corporations shall be organized under chapter 493B, except as expressly provided otherwise in chapter 493B.~~

Sec. 187. NEW SECTION. 491.101A POISON PILL DEFENSE AUTHORIZED.

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions, or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

Sec. 188. NEW SECTION. 491.101B CONSIDERATION OF COMMUNITY INTERESTS IN CONSIDERATION OF ACQUISITION PROPOSALS.

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

- a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.
- b. The effects of the action on the communities in which the corporation operates.
- c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in paragraph 1, the board of directors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

Sec. 189. Section 504A.6, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

**504A.6 CORPORATE NAME.**

1. A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by its articles of incorporation.

2. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a nonprofit corporation or business corporation incorporated or authorized to conduct affairs or do business in this state.

b. A corporate name reserved under section 504A.7, or reserved or registered under the Iowa business corporation Act.

c. The fictitious name of a foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state because its real name is unavailable.

3. A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 2. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to conduct affairs or transact business in this state and the proposed user corporation meets one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. This chapter does not control the use of fictitious names; however, if a corporation uses a fictitious name in this state it shall deliver to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

Sec. 190. Section 504A.67, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

504A.67 NAME OF A FOREIGN CORPORATION.

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 504A.6, the foreign corporation, to obtain or maintain a certificate of authority to conduct affairs in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2. Except as authorized by subsections 3 and 4, the corporate name, including a fictitious name, of a corporation must be distinguishable upon the records of the secretary of state from all of the following:

a. The corporate name of a nonprofit or business corporation incorporated or authorized to conduct affairs or to transact business in this state.

b. A corporate name reserved under section 504A.7 or section 493B.402, or registered under section 493B.403.

c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business or conduct affairs in this state, that is not distinguishable upon the records of the secretary of state

from the name applied for. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

b. The applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

4. A foreign corporation may use in this state the name, including a fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business or conduct affairs in this state and the foreign corporation meets one of the following conditions:

a. Has merged with the other corporation.

b. Has been formed by reorganization of the other corporation.

c. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to conduct affairs in this state changes its corporate name to one that does not satisfy the requirements of section 504A.6, it shall not conduct affairs in this state under the changed name until it adopts a name satisfying the requirements of section 504A.6 and obtains an amended certificate of authority.

Sec. 191. Section 508.17, Code 1989, is amended to read as follows:

**508.17 REDEMPTION OF INSURERS.**

An insurer which is organized under the laws of any state, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 491.33 or 491B.902

and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state, and, upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately preceding its becoming a domestic corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

Sec. 192. Section 515.1, Code 1989, is amended to read as follows:

**515.1 APPLICABILITY.**

Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter 491, ~~chapter 493B~~, or chapter 504A, except as modified by the provisions of this chapter.

Sec. 193. Section 515.99, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

**515.99 FOREIGN COMPANIES MAY BECOME DOMESTIC.**

An insurer which is organized under the laws of any state, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 491.33 or 493B.902 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state, and, upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately preceding its becoming a domestic corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

Sec. 194. Section 545.102, subsection 4, Code 1989, is amended by striking the subsection and inserting in lieu thereof the following:

4. Shall be distinguishable upon the records of the secretary of state from the name of a corporation or limited partnership organized under the law of this state or licensed or registered as a foreign corporation or foreign limited partnership in this state or a name the exclusive right to

which is, at the time, reserved in the manner provided in this chapter, without the written consent of the corporation or limited partnership, which consent shall be filed with the secretary of state, and provided the name is not identical.

Sec. 195. Chapter 496A is repealed.

Sec. 196. This Act is effective December 31, 1989.

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JO ANN ZIMMERMAN  
President of the Senate

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DONALD D. AVENSON  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 502, Seventy-third General Assembly.

Approved  1989

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JOHN P. DWYER  
Secretary of the Senate

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TERRY E. BRANSTAD  
Governor