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SSB 3163

Succeeded By
SF/HF 2285

Commerce

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
COMMERCE BILL BY
CHAIRPERSON JENSEN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act regarding business corporations, and providing an
2 effective date.

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

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1 Section 1. Section 490.120, subsections 4, 7, 9, and 10,
2 Code 2001, are amended to read as follows:

3 4. The document must be typewritten or printed. If the
4 document is electronically transmitted, it must be in a format
5 that can be retrieved or reproduced in typewritten or printed
6 form.

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

11 a--~~The a corporate seals: seal,~~

12 b--~~An attestation by the secretary or an assistant~~
13 ~~secretary.~~

14 c--~~An attestation, acknowledgment, or verification, or~~
15 ~~proof.~~

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

18 9. The document must be delivered to the office of the
19 secretary of state for filing ~~and must be accompanied by the~~
20 ~~correct filing fee.~~ Delivery may be made by electronic
21 transmission if and to the extent permitted by the secretary
22 of state. If it is filed in typewritten or printed form and
23 not transmitted electronically, the secretary of state may
24 require one exact or conformed copy to be delivered with the
25 document, except as provided in sections 490.503 and 490.1509.

26 10. ~~The secretary of state may adopt rules for the~~
27 ~~electronic filing of documents and the certification of~~
28 ~~electronically filed documents.~~ When the document is
29 delivered to the office of the secretary of state for filing,
30 the correct filing fee, and any franchise tax, license fee, or
31 penalty, shall be paid in a manner permitted by the secretary
32 of state.

33 Sec. 2. Section 490.120, Code 2001, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 11. The secretary of state may adopt

1 rules for the electronic filing of documents and the
2 certification of electronically filed documents.

3 Sec. 3. Section 490.123, subsection 1, Code 2001, is
4 amended to read as follows:

5 1. Except as provided in subsection 2 and section 490.124,
6 subsection 3, a document accepted for filing is effective at
7 the later of the following times:

8 a. At the date and time of filing on-the-date-it-is-filed,
9 as evidenced by such means as the secretary of state's date
10 and-time-endorsement-on-the-original-document state may use
11 for the purpose of recording the date and time of filing.

12 b. At the time specified in the document as its effective
13 time on the date it is filed.

14 Sec. 4. Section 490.124, subsections 1 and 2, Code 2001,
15 are amended to read as follows:

16 1. A domestic or foreign corporation may correct a
17 document filed by the secretary of state if the document
18 satisfies one ~~or-both~~ of the following requirements:

19 a. Contains The document contains an incorrect-statement
20 inaccuracy.

21 b. Was The document was defectively executed, attested,
22 sealed, verified, or acknowledged.

23 c. The electronic transmission was defective.

24 2. A document is corrected by complying with both of the
25 following:

26 a. By preparing articles of correction that satisfy all of
27 the following requirements:

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

30 (2) Specify the ~~incorrect-statement-and-the-reason-it-is~~
31 ~~incorrect-or-the-manner-in-which-the-execution-was-defective~~
32 inaccuracy or defect to be corrected.

33 (3) Correct the ~~incorrect-statement-or-defective-execution~~
34 inaccuracy or defect.

35 b. By delivering the articles to the secretary of state

1 for filing.

2 Sec. 5. Section 490.125, subsection 2, Code 2001, is
3 amended to read as follows:

4 2. The secretary of state files a document by ~~stamping or~~
5 ~~otherwise endorsing "filed", together with the secretary's~~
6 ~~name and official title and~~ recording it as filed on the date
7 ~~and time of receipt, on both the document and the receipt for~~
8 ~~the filing fee.~~ After filing a document, except the biennial
9 report required by section 490.1622, and except as provided in
10 sections 490.503 and 490.1509, the secretary of state shall
11 ~~deliver the document, with the filing fee receipt, or~~
12 ~~acknowledgment of receipt if no fee is required, attached,~~ to
13 the domestic or foreign corporation or its representative a
14 copy of the document with an acknowledgement of the date and
15 time of filing.

16 Sec. 6. Section 490.127, Code 2001, is amended to read as
17 follows:

18 490.127 EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.

19 A certificate ~~attached to~~ from the secretary of state
20 delivered with a copy of a document filed by the secretary of
21 ~~state, bearing the secretary of state's signature, which may~~
22 ~~be in facsimile, and the seal of the secretary of state,~~ is
23 conclusive evidence that the original document is on file with
24 the secretary of state.

25 Sec. 7. Section 490.140, subsection 6, Code Supplement
26 2001, is amended to read as follows:

27 6. "Deliver" ~~includes mail~~ or "delivery" means any method
28 of delivery used in conventional commercial practice,
29 including delivery in person, and by mail, commercial
30 delivery, and electronic transmission.

31 Sec. 8. Section 490.140, Code Supplement 2001, is amended
32 by adding the following new subsections:

33 NEW SUBSECTION. 8A. "Electronic transmission" or
34 "electronically transmitted" means any process of
35 communication not directly involving the physical transfer of

1 paper that is suitable for the retention, retrieval, and
2 reproduction of information by the recipient.

3 NEW SUBSECTION. 23A. "Sign" or "signature" includes any
4 manual, facsimile, conformed, or electronic signature.

5 NEW SUBSECTION. 28. "Voting power" means the current
6 power to vote in the election of directors.

7 Sec. 9. Section 490.141, subsections 1, 2, 3, and 5, Code
8 2001, are amended to read as follows:

9 1. Notice under this chapter must be in writing unless
10 oral notice is reasonable under the circumstances. Notice by
11 electronic transmission is written notice.

12 2. Notice may be communicated in person; by telephone,
13 telegraph,~~teletype, or other form of wire or wireless~~
14 communication, or by mail or private carrier mail or other
15 method of delivery; or by telephone, voice mail, or other
16 electronic means. If these forms of personal notice are
17 impracticable, notice may be communicated by a newspaper of
18 general circulation in the area where published; or by radio,
19 television, or other form of public broadcast communication.

20 3. Written notice by a domestic or foreign corporation to
21 its shareholder, if in a comprehensible form, is effective
22 when mailed, according to one of the following:

23 a. Upon deposit in the United States mail, if mailed
24 postpaid and correctly addressed to the shareholder's address
25 shown in the corporation's current record of shareholders.

26 b. When electronically transmitted to the shareholder in a
27 manner authorized by the shareholder.

28 5. Except as provided in subsection 3, written notice, if
29 in a comprehensible form, is effective at the earliest of the
30 following:

31 a. When received.

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

35 c. On the date shown on the return receipt, if sent by

1 registered or certified mail, return receipt requested, and
2 the receipt is signed by or on behalf of the addressee.

3 Sec. 10. Section 490.202, subsection 2, Code 2001, is
4 amended to read as follows:

5 2. The articles of incorporation may set forth any or all
6 of the following:

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

9 b. Provisions not inconsistent with law regarding:

10 (1) The purpose or purposes for which the corporation is
11 organized.

12 (2) Managing the business and regulating the affairs of
13 the corporation.

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

16 (4) A par value for authorized shares or classes of
17 shares.

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

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

23 ~~d. A provision consistent with section 490.832. A~~
24 provision eliminating or limiting the liability of a director
25 to the corporation or its shareholders for money damages for
26 any action taken, or any failure to take any action, as a
27 director, except liability for any of the following:

28 (1) The amount of a financial benefit received by a
29 director to which the director is not entitled.

30 (2) An intentional infliction of harm on the corporation
31 or the shareholders.

32 (3) A violation of section 490.833.

33 (4) An intentional violation of criminal law.

34 e. A provision permitting or making obligatory
35 indemnification of a director for liability, as defined in

1 section 490.850, subsection 5, to any person for any action
2 taken, or any failure to take any action, as a director,
3 except liability for any of the following:

4 (1) Receipt of a financial benefit to which the person is
5 not entitled.

6 (2) An intentional infliction of harm on the corporation
7 or its shareholders.

8 (3) A violation of section 490.833.

9 (4) An intentional violation of criminal law.

10 f. A provision eliminating or limiting the liability of a
11 director to the corporation or its shareholders for money
12 damages for any action taken, or any failure to take any
13 action, as a director, except liability for any of the
14 following:

15 (1) The amount of a financial benefit received by a
16 director to which the director is not entitled.

17 (2) An intentional infliction of harm on the corporation
18 or the shareholders.

19 (3) A violation of section 490.833.

20 (4) An intentional violation of criminal law.

21 A provision shall not eliminate or limit the liability of a
22 director for an act or omission occurring prior to the date
23 when the provision in the articles of incorporation becomes
24 effective.

25 Sec. 11. Section 490.621, Code 2001, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 6. a. An issuance of shares or other
28 securities convertible into or rights exercisable for shares,
29 in a transaction or a series of integrated transactions,
30 requires approval of the shareholders, at a meeting at which a
31 quorum exists consisting of at least a majority of the votes
32 entitled to be cast on the matter, if both of the following
33 conditions are satisfied:

34 (1) The shares, other securities, or rights are issued for
35 consideration other than cash or cash equivalents.

1 (2) The voting power of shares that are issued and
2 issuable as a result of the transaction or series of
3 integrated transactions will comprise more than twenty percent
4 of the voting power of the shares of the corporation that were
5 outstanding immediately before the transaction.

6 b. (1) For purposes of determining the voting power of
7 shares issued and issuable as a result of a transaction or
8 series of integrated transactions, the voting power of shares
9 shall be the greater of the following:

10 (a) The voting power of the shares to be issued.

11 (b) The voting power of the shares that would be
12 outstanding after giving effect to the conversion of
13 convertible shares and other securities and the exercise of
14 rights to be issued.

15 (2) A series of transactions is integrated if consummation
16 of one transaction is made contingent on consummation of one
17 or more of the other transactions.

18 Sec. 12. Section 490.631, subsections 2 and 3, Code 2001,
19 are amended to read as follows:

20 2. If the articles of incorporation prohibit the reissue
21 of the acquired shares, the number of authorized shares is
22 reduced by the number of shares acquired, effective upon
23 amendment of the articles of incorporation.

24 ~~3. The board of directors may adopt articles of amendment~~
25 ~~under this section without shareholder action, and deliver~~
26 ~~them to the secretary of state for filing. The articles must~~
27 ~~set forth all of the following:~~

28 ~~a. The name of the corporation.~~

29 ~~b. The reduction in the number of authorized shares,~~
30 ~~itemized by class and series.~~

31 ~~c. The total number of authorized shares, itemized by~~
32 ~~class and series, remaining after reduction of the shares.~~

33 Sec. 13. Section 490.640, Code 2001, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 7. This section shall not apply to

1 distributions in liquidation under division XIV.

2 Sec. 14. Section 490.702, subsection 1, Code 2001, is
3 amended to read as follows:

4 1. Except as provided in subsection 5, a corporation shall
5 hold a special meeting of shareholders upon the occurrence of
6 either of the following:

7 a. On call of its board of directors or the person or
8 persons authorized to call a special meeting by the articles
9 of incorporation or bylaws.

10 b. If the holders of at least ten percent of all the votes
11 entitled to be cast on any issue proposed to be considered at
12 the proposed special meeting sign, date, and deliver to the
13 ~~corporation's secretary~~ corporation one or more written
14 demands for the meeting describing the purpose or purposes for
15 which it is to be held, provided that the articles of
16 incorporation may fix a lower percentage or a higher
17 percentage not exceeding twenty-five percent of all the votes
18 entitled to be cast on any issue proposed to be considered.
19 Unless otherwise provided in the articles of incorporation, a
20 written demand for a special meeting may be revoked by a
21 writing to that effect received by the corporation prior to
22 the receipt by the corporation of demands sufficient in number
23 to require the holding of a special meeting.

24 Sec. 15. Section 490.704, subsection 2, Code 2001, is
25 amended to read as follows:

26 2. A written consent shall bear the date of signature of
27 each shareholder who signs the consent and no written consent
28 is effective to take the corporate action referred to in the
29 consent unless, within sixty days of the earliest dated
30 consent delivered in the manner required by this section to
31 the corporation, written consents signed by a sufficient
32 number of holders to take action are delivered to the
33 corporation. A written consent may be revoked by a writing to
34 that effect received by the corporation prior to the receipt
35 by the corporation of unrevoked written consents sufficient in

1 number to take corporate action.

2 Sec. 16. NEW SECTION. 490.708 CONDUCT OF THE MEETING.

3 1. At each meeting of shareholders, a chairperson shall
4 preside. The chairperson shall be appointed as provided in
5 the bylaws or, in the absence of such provisions, by the
6 board.

7 2. The chairperson, unless the articles of incorporation
8 or bylaws provide otherwise, shall determine the order of
9 business and shall have the authority to establish rules for
10 the conduct of the meeting.

11 3. Any rules adopted for, and the conduct of, the meeting
12 shall be fair to shareholders.

13 4. The chairperson of the meeting shall announce at the
14 meeting when the polls close for each matter voted upon. If
15 no announcement is made, the polls shall be deemed to have
16 closed upon the final adjournment of the meeting. After the
17 polls close, no ballots, proxies, or votes nor any revocations
18 or changes to any votes may be accepted.

19 Sec. 17. Section 490.722, subsections 2, 3, 4, and 8, Code
20 2001, are amended to read as follows:

21 2. A shareholder or the shareholder's agent or attorney-
22 in-fact may appoint a proxy to vote or otherwise act for the
23 shareholder by signing an appointment form, ~~either personally~~
24 ~~or by the shareholder's attorney-in-fact~~ or by an electronic
25 transmission. An electronic transmission must contain or be
26 accompanied by information from which one can determine that
27 the shareholder, the shareholder's agent, or the shareholder's
28 attorney-in-fact authorized the electronic transmission.

29 3. An appointment of a proxy is effective when a signed
30 appointment form or an electronic transmission of the
31 appointment is received by the secretary-or-other-officer-or
32 agent inspector of election or the officer or agent of the
33 corporation authorized to tabulate votes. An appointment is
34 valid for eleven months unless a longer period is expressly
35 provided in the appointment form.

1 4. An appointment of a proxy is revocable by-the
2 shareholder unless the appointment form conspicuously or
3 electronic transmission states that it is irrevocable and the
4 appointment is coupled with an interest. Appointments coupled
5 with an interest include, but are not limited to, the
6 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
15 490.731.

16 8. Subject to section 490.724 and to any express
17 limitation on the proxy's authority ~~appearing-on-the-face-of~~
18 stated in the appointment form or electronic transmission, a
19 corporation is entitled to accept the proxy's vote or other
20 action as that of the shareholder making the appointment.

21 Sec. 18. Section 490.724, subsections 4 and 5, Code 2001,
22 are amended to read as follows:

23 4. The corporation and its officer or agent who accepts or
24 rejects a vote, consent, waiver, or proxy appointment in good
25 faith and in accordance with the standards of this section or
26 section 490.722, subsection 2, are not liable in damages to
27 the shareholder for the consequences of the acceptance or
28 rejection.

29 5. Corporate action based on the acceptance or rejection
30 of a vote, consent, waiver, or proxy appointment under this
31 section or section 490.722, subsection 2, is valid unless a
32 court of competent jurisdiction determines otherwise.

33 Sec. 19. Section 490.727, subsection 1, Code 2001, is
34 amended to read as follows:

35 1. The articles of incorporation or bylaws may provide for

1 a greater quorum or voting requirement for shareholders or
2 voting groups of shareholders than is provided for by this
3 chapter.

4 Sec. 20. Section 490.728, subsection 1, Code 2001, is
5 amended to read as follows:

6 1. Unless otherwise provided in the articles of
7 incorporation, directors are elected by a majority plurality
8 of the votes cast by the shares entitled to vote in the
9 election at a meeting at which a quorum is present.

10 Sec. 21. NEW SECTION. 490.729 INSPECTORS OF ELECTION.

11 1. A corporation having any shares listed on a national
12 securities exchange or regularly traded in a market maintained
13 by one or more members of a national or affiliated securities
14 association shall, and any other corporation may, appoint one
15 or more inspectors to act at a meeting of shareholders and
16 make a written report of the inspectors' determinations. Each
17 inspector shall take and sign an oath faithfully to execute
18 the duties of inspector with strict impartiality and according
19 to the best of the inspector's ability.

20 2. The inspectors shall do all of the following:

21 a. Ascertain the number of shares outstanding and the
22 voting power of each.

23 b. Determine the shares represented at a meeting.

24 c. Determine the validity of proxies and ballots.

25 d. Count all votes.

26 e. Determine the result.

27 3. An inspector may be an officer or employee of the
28 corporation.

29 Sec. 22. NEW SECTION. 490.732 SHAREHOLDER AGREEMENTS.

30 1. An agreement among the shareholders of a corporation
31 that complies with this section is effective among the
32 shareholders and the corporation even though it is
33 inconsistent with one or more other provisions of this chapter
34 in that it does one of the following:

35 a. Eliminates the board of directors or restricts the

1 discretion or powers of the board of directors.

2 b. Governs the authorization or making of distributions
3 whether or not in proportion to ownership of shares, subject
4 to the limitations in section 490.640.

5 c. Establishes who shall be directors or officers of the
6 corporation, or their terms of office or manner of selection
7 or removal.

8 d. Governs, in general or in regard to specific matters,
9 the exercise or division of voting power by or between the
10 shareholders and directors or by or among any of them,
11 including use of weighted voting rights or director proxies.

12 e. Establishes the terms and conditions of any agreement
13 for the transfer or use of property or the provision of
14 services between the corporation and any shareholder,
15 director, officer, or employee of the corporation, or among
16 any of them.

17 f. Transfers to one or more shareholders or other persons
18 all or part of the authority to exercise the corporate powers
19 or to manage the business and affairs of the corporation,
20 including the resolution of any issue about which there exists
21 a deadlock among directors or shareholders.

22 g. Requires dissolution of the corporation at the request
23 of one or more of the shareholders or upon the occurrence of a
24 specified event or contingency.

25 h. Otherwise governs the exercise of the corporate powers
26 or the management of the business and affairs of the
27 corporation or the relationship among the shareholders, the
28 directors, and the corporation, or among any of them, and is
29 not contrary to public policy.

30 2. An agreement authorized by this section must satisfy
31 all of the following requirements:

32 a. Be set forth in one of the following places and
33 manners:

34 (1) The articles of incorporation or bylaws and approved
35 by all persons who are shareholders at the time of the

1 agreement.

2 (2) In a written agreement that is signed by all persons
3 who are shareholders at the time of the agreement and is made
4 known to the corporation.

5 b. Be subject to amendment only by all persons who are
6 shareholders at the time of the amendment, unless the
7 agreement provides otherwise.

8 c. Be valid for ten years, unless the agreement provides
9 otherwise.

10 3. The existence of an agreement authorized by this
11 section shall be noted conspicuously on the front or back of
12 each certificate for outstanding shares or on the information
13 statement required by section 490.626, subsection 2. If at
14 the time of the agreement the corporation has shares
15 outstanding represented by certificates, the corporation shall
16 recall the outstanding certificates and issue substitute
17 certificates that comply with this section. The failure to
18 note the existence of the agreement on the certificate or
19 information statement shall not affect the validity of the
20 agreement or any action taken pursuant to it. Any purchaser
21 of shares who, at the time of purchase, did not have knowledge
22 of the existence of the agreement shall be entitled to
23 rescission of the purchase. A purchaser shall be deemed to have
24 knowledge of the existence of the agreement if its existence
25 is noted on the certificate or information statement for the
26 shares in compliance with this section and, if the shares are
27 not represented by a certificate, the information statement is
28 delivered to the purchaser at or prior to the time of purchase
29 of the shares. An action to enforce the right of rescission
30 authorized by this subsection must be commenced within the
31 earlier of ninety days after discovery of the existence of the
32 agreement or two years after the time of purchase of the
33 shares.

34 4. An agreement authorized by this section shall cease to
35 be effective when shares of the corporation are listed on a

1 national securities exchange or regularly traced in a market
 2 maintained by one or more members of a national or affiliated
 3 securities association. If the agreement ceases to be
 4 effective for any reason, the board of directors may, if the
 5 agreement is contained or referred to in the corporation's
 6 articles of incorporation or bylaws, adopt an amendment to the
 7 articles of incorporation or bylaws, without shareholder
 8 action, to delete the agreement and any references to it.

9 5. An agreement authorized by this section that limits the
 10 discretion or powers of the board of directors shall relieve
 11 the directors of, and impose upon the person or persons in
 12 whom such discretion or powers are vested, liability for acts
 13 or omissions imposed by law on directors to the extent that
 14 the discretion or powers of the directors are limited by the
 15 agreement.

16 6. The existence or performance of an agreement authorized
 17 by this section shall not be a ground for imposing personal
 18 liability on any shareholder for the acts or debts of the
 19 corporation even if the agreement or its performance treats
 20 the corporation as if it were a partnership or results in
 21 failure to observe the corporate formalities otherwise
 22 applicable to the matters governed by the agreement.

23 7. Incorporators or subscribers for shares may act as
 24 shareholders with respect to an agreement authorized by this
 25 section if no shares have been issued when the agreement is
 26 made.

27 Sec. 23. Section 490.740, Code 2001, is amended by
 28 striking the section and inserting in lieu thereof the
 29 following:

30 490.740 DEFINITIONS.

31 In this part, unless the context otherwise requires:

32 1. "Derivative proceeding" means a civil suit in the right
 33 of a domestic corporation or, to the extent provided in
 34 section 490.747, in the right of a foreign corporation.

35 2. "Shareholder" includes a beneficial owner whose shares

1 are held in a voting trust or held by a nominee on the
2 beneficial owner's behalf.

3 Sec. 24. NEW SECTION. 490.741 STANDING.

4 A shareholder shall not commence or maintain a derivative
5 proceeding unless the shareholder satisfies both of the
6 following:

7 1. Was a shareholder of the corporation at the time of the
8 act or omission complained of or became a shareholder through
9 transfer by operation of law from one who was a shareholder at
10 that time.

11 2. Fairly and adequately represents the interests of the
12 corporation in enforcing the right of the corporation.

13 Sec. 25. NEW SECTION. 490.742 DEMAND.

14 A shareholder shall not commence a derivative proceeding
15 until both of the following have occurred:

16 1. A written demand has been made upon the corporation to
17 take suitable action.

18 2. Ninety days have expired from the date the demand was
19 made, unless the shareholder has earlier been notified that
20 the demand has been rejected by the corporation or unless
21 irreparable injury to the corporation would result by waiting
22 for the expiration of the ninety-day period.

23 Sec. 26. NEW SECTION. 490.743 STAY OF PROCEEDINGS.

24 If the corporation commences an inquiry into the
25 allegations made in the demand or complaint, the court may
26 stay any derivative proceeding for a period of time as the
27 court deems appropriate.

28 Sec. 27. NEW SECTION. 490.744 DISMISSAL.

29 1. A derivative proceeding shall be dismissed by the court
30 on motion by the corporation if one of the groups specified in
31 subsection 2 or 6 has determined in good faith after
32 conducting a reasonable inquiry upon which its conclusions are
33 based that the maintenance of the derivative proceeding is not
34 in the best interests of the corporation. A corporation
35 moving to dismiss on this basis shall submit in support of the

1 motion a short and concise statement of the reasons for its
2 determination.

3 2. Unless a panel is appointed pursuant to subsection 6,
4 the determination in subsection 1 shall be made by one of the
5 following:

6 a. A majority vote of independent directors present at a
7 meeting of the board of directors if the independent directors
8 constitute a quorum.

9 b. A majority vote of a committee consisting of two or
10 more independent directors appointed by majority vote of
11 independent directors present at a meeting of the board of
12 directors, whether or not such independent directors
13 constitute a quorum.

14 3. None of the following shall by itself cause a director
15 to be considered not independent for purposes of this section:

16 a. The nomination or election of the director by persons
17 who are defendants in the derivative proceeding or against
18 whom action is demanded.

19 b. The naming of the director as a defendant in the
20 derivative proceeding or as a person against whom action is
21 demanded.

22 c. The approval by the director of the act being
23 challenged in the derivative proceeding or demand if the act
24 resulted in no personal benefit to the director.

25 4. If a derivative proceeding is commenced after a
26 determination has been made rejecting a demand by a
27 shareholder, the complaint shall allege with particularity
28 facts establishing one of the following:

29 a. That a majority of the board of directors did not
30 consist of independent directors at the time the determination
31 was made.

32 b. That the requirements of subsection 1 have not been
33 met.

34 All discovery and other proceedings shall be stayed during
35 the pendency of any motion to dismiss unless the court finds

1 upon the motion of any party that particularized discovery is
2 necessary to preserve evidence or prevent undue prejudice to
3 that party.

4 5. If a majority of the board of directors does not
5 consist of independent directors at the time the determination
6 is made, the corporation shall have the burden of proving that
7 the requirements of subsection 1 have been met. If a majority
8 of the board of directors consists of independent directors at
9 the time the determination is made, the plaintiff shall have
10 the burden of proving that the requirements of subsection 1
11 have not been met.

12 6. The court may appoint a panel of one or more
13 independent persons upon motion by the corporation to make a
14 determination whether the maintenance of the derivative
15 proceeding is in the best interests of the corporation. In
16 such case, the plaintiff shall have the burden of proving that
17 the requirements of subsection 1 have not been met.

18 Sec. 28. NEW SECTION. 490.745 DISCONTINUANCE OR
19 SETTLEMENT.

20 A derivative proceeding shall not be discontinued or
21 settled without the court's approval. If the court determines
22 that a proposed discontinuance or settlement will
23 substantially affect the interests of the corporation's
24 shareholders or a class of shareholders, the court shall
25 direct that notice be given to the shareholders affected.

26 Sec. 29. NEW SECTION. 490.746 PAYMENT OF EXPENSES.

27 On termination of the derivative proceeding, the court may
28 do either of the following:

29 1. Order the corporation to pay the plaintiff's reasonable
30 expenses, including attorney fees incurred in the proceeding,
31 if it finds that the proceeding has resulted in a substantial
32 benefit to the corporation.

33 2. Order the plaintiff to pay any defendant's reasonable
34 expenses, including attorney fees incurred in defending the
35 proceeding, if it finds that the proceeding was commenced or

1 maintained without reasonable cause or for an improper
2 purpose.

3 Sec. 30. NEW SECTION. 490.747 APPLICABILITY TO FOREIGN
4 CORPORATIONS.

5 In any derivative proceeding in the right of a foreign
6 corporation, the matters covered by this part shall be
7 governed by the laws of the jurisdiction of incorporation of
8 the foreign corporation except for sections 490.743, 490.745,
9 and 490.746.

10 Sec. 31. Section 490.801, Code 2001, is amended to read as
11 follows:

12 490.801 REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS.

13 1. Except as provided in subsection-3 section 490.732,
14 each corporation must have a board of directors.

15 2. All corporate powers shall be exercised by or under the
16 authority of, and the business and affairs of the corporation
17 managed by or under the direction of, its board of directors,
18 subject to any limitation set forth in the articles of
19 incorporation, or in an agreement authorized under section
20 490.732.

21 ~~3.--A-corporation-having-fifty-or-fewer-shareholders-may~~
22 ~~dispense-with-or-limit-the-authority-of-a-board-of-directors~~
23 ~~by-describing-in-its-articles-of-incorporation-who-will~~
24 ~~perform-some-or-all-of-the-duties-of-a-board-of-directors.~~

25 Sec. 32. Section 490.803, subsections 2, 3, and 4, Code
26 2001, are amended to read as follows:

27 2. ~~If-a-board-of-directors-has-power-to-fix-or-change-the~~
28 ~~number-of-directors,-the-board-may-increase-or-decrease-by~~
29 ~~thirty-percent-or-less-the-number-of-directors-last-approved~~
30 ~~by-the-shareholders,-but-only-the-shareholders-may-increase-or~~
31 ~~decrease-by-more-than-thirty-percent-the-number-of-directors~~
32 ~~last-approved-by-the-shareholders.~~ The number of directors
33 may be increased or decreased from time to time by amendment
34 to, or in the manner provided in, the articles of
35 incorporation or the bylaws.

1 3--The-articles-of-incorporation-or-bylaws-may-establish-a
2 variable-range-for-the-size-of-the-board-of-directors-by
3 fixing-a-minimum-and-maximum-number-of-directors---If-a
4 variable-range-is-established, the-number-of-directors-may-be
5 fixed-or-changed-from-time-to-time, within-the-minimum-and
6 maximum, by-the-shareholders-or-the-board-of-directors---After
7 shares-are-issued, only-the-shareholders-may-change-the-range
8 for-the-size-of-the-board-or-change-from-a-fixed-to-a
9 variable-range-size-board-or-vice-versa-

10 4: 3. Directors are elected at the first annual
11 shareholders' meeting and at each annual meeting thereafter
12 unless their terms are staggered under section 490.806.

13 Sec. 33. Section 490.809, Code 2001, is amended to read as
14 follows:

15 490.809 REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING.

16 1. The district court of the county where a corporation's
17 principal office or, if none in this state, its registered
18 office is located may remove a director of the corporation
19 from office in a proceeding commenced either by or in the
20 right of the corporation or-by-its-shareholders-holding-at
21 least-twenty-percent-of-the-outstanding-shares-of-any-class if
22 the court finds that both of the following apply:

23 a. The director engaged in fraudulent or-dishonest conduct
24 with respect to the corporation or its shareholders, grossly
25 abused the position of director, or intentionally inflicted
26 harm on the corporation.

27 b. Removal-is Considering the director's course of conduct
28 and the inadequacy of other available remedies, removal would
29 be in the best interest of the corporation.

30 2. A shareholder proceeding on behalf of the corporation
31 under subsection 1 shall comply with all of the requirements
32 of division VII, part D, except section 490.741.

33 2: 3. The court that-removes-a, in addition to removing
34 the director, may bar the director from reelection for a
35 period prescribed by the court.

1 ~~3. If shareholders commence a proceeding under subsection~~
2 ~~17 they shall make the corporation a party defendant.~~

3 4. This section does not limit the equitable powers of the
4 court to order other relief.

5 Sec. 34. Section 490.821, Code 2001, is amended to read as
6 follows:

7 490.821 ACTION WITHOUT MEETING.

8 1. Unless Except to the extent that the articles of
9 incorporation or bylaws provide otherwise require that action
10 by the board of directors be taken at a meeting, action
11 required or permitted by this chapter to be taken at a by the
12 board of directors meeting directors may be taken without a
13 meeting if the action is taken by all members of the board.
14 The action must be evidenced by one or more written consents
15 each director signs a consent describing the action to be
16 taken, signed by each director, and included in the minutes or
17 filed with the corporate records reflecting the action taken
18 and delivers it to the corporation.

19 2. Action taken under this section is effective when the
20 last director signs the consent, unless the consent specifies
21 a different effective date the act of the board of directors
22 when one or more consents signed by all the directors are
23 delivered to the corporation. The consent may specify the
24 time at which the action taken is to be effective. A
25 director's consent may be withdrawn by revocation signed by
26 the director and delivered to the corporation prior to
27 delivery to the corporation of unrevoked written consents
28 signed by all the directors.

29 3. A consent signed under this section has the effect of a
30 meeting vote an action taken at a meeting of the board of
31 directors and may be described as such in any document.

32 Sec. 35. Section 490.824, subsection 1, unnumbered
33 paragraph 1, Code 2001, is amended to read as follows:

34 Unless the articles of incorporation or bylaws require a
35 different number, or unless otherwise specifically provided in

1 this chapter, a quorum of a board of directors consists of
2 either:

3 Sec. 36. Section 490.825, Code 2001, is amended to read as
4 follows:

5 490.825 COMMITTEES.

6 1. Unless this chapter, the articles of incorporation, or
7 the bylaws provide otherwise, a board of directors may create
8 one or more committees and appoint one or more members of the
9 board of directors to serve on them any committee. Each
10 ~~committee may have two or more members, who serve at the~~
11 ~~pleasure of the board of directors.~~

12 2. The Unless this chapter provides otherwise, the
13 creation of a committee and appointment of members to it must
14 be approved by the greater of either:

15 a. A majority of all the directors in office when the
16 action is taken.

17 b. The number of directors required by the articles of
18 incorporation or bylaws to take action under section 490.824.

19 3. Sections 490.820 through 490.824, ~~which govern~~
20 ~~meetings, action without meetings, notice and waiver of~~
21 ~~notice, and quorum and voting requirements of the board of~~
22 ~~directors,~~ apply both to committees of the board and to their
23 members ~~as well.~~

24 4. To the extent specified by the board of directors or in
25 the articles of incorporation or bylaws, each committee may
26 exercise the authority powers of the board of directors under
27 section 490.801.

28 5. A committee shall not, however:

29 a. Authorize or approve distributions, except according to
30 formula or method, or within limits, prescribed by the board
31 of directors.

32 b. Approve or propose to shareholders action that this
33 chapter requires be approved by shareholders.

34 c. Fill vacancies on the board of directors or, subject to
35 subsection 7, on any of its committees.

1 ~~d. Amend articles of incorporation pursuant to section~~
2 ~~490.1002.~~

3 ~~e. d. Adopt, amend, or repeal bylaws.~~

4 ~~f. Approve a plan of merger not requiring shareholder~~
5 ~~approval.~~

6 ~~g. Authorize or approve reacquisition of shares, except~~
7 ~~according to a formula or method prescribed by the board of~~
8 ~~directors.~~

9 ~~h. Authorize or approve the issuance or sale or contract~~
10 ~~for sale of shares, or determine the designation and relative~~
11 ~~rights, preferences, and limitations of a class or series of~~
12 ~~shares, except that the board of directors may authorize a~~
13 ~~committee or a senior executive officer of the corporation to~~
14 ~~do so within limits specifically prescribed by the board of~~
15 ~~directors.~~

16 6. The creation of, delegation of authority to, or action
17 by a committee does not alone constitute compliance by a
18 director with the standards of conduct described in section
19 490.830.

20 7. The board of directors may appoint one or more
21 directors as alternate members of any committee to replace any
22 absent or disqualified member during the member's absence or
23 disqualification. Unless the articles of incorporation or the
24 bylaws or the resolution creating the committee provide
25 otherwise, in the event of the absence or disqualification of
26 a member of a committee, the member or members present at any
27 meeting and not disqualified from voting, unanimously, may
28 appoint another director to act in place of the absent or
29 disqualified member.

30 Sec. 37. Section 490.830, Code 2001, is amended to read as
31 follows:

32 490.830 GENERAL STANDARDS OF CONDUCT FOR DIRECTORS.

33 1. A director Each member of the board of directors, when
34 discharging the duties of a director, shall discharge that
35 director's duties as a director, including the director's

1 ~~duties-as-a-member-of-a-committee~~ act in conformity with all
2 of the following:

3 a. In good faith.

4 ~~b.---With-the-care-an-ordinarily-prudent-person-in-a-like~~
5 ~~position-would-exercise-under-similar-circumstances-~~

6 ~~c-~~ b. In a manner the director reasonably believes to be
7 in the best interests of the corporation.

8 2. The members of the board of directors or a committee of
9 the board, when becoming informed in connection with their
10 decision-making function or devoting attention to their
11 oversight function, shall discharge their duties with the care
12 that a person in a like position would reasonably believe
13 appropriate under similar circumstances.

14 3. In discharging board or committee duties, a director
15 who does not have knowledge that makes reliance unwarranted is
16 entitled to rely on the performance by any of the persons
17 specified in subsection 5 to whom the board may have
18 delegated, formally or informally by course of conduct, the
19 authority or duty to perform one or more of the board's
20 functions that are delegable under applicable law.

21 ~~2-~~ 4. In discharging the-director's board or committee
22 duties a director, who does not have knowledge that makes
23 reliance unwarranted, is entitled to rely on information,
24 opinions, reports, or statements, including financial
25 statements and other financial data, if prepared or presented
26 by any of the following: persons specified in subsection 5.

27 5. A director is entitled to rely, in accordance with
28 subsection 3 or 4, on any of the following:

29 a. One or more officers or employees of the corporation
30 whom the director reasonably believes to be reliable and
31 competent in the ~~matters-presented~~ functions performed or the
32 information, opinions, reports, or statements provided.

33 b. Legal counsel, public accountants, or other persons as
34 to matters involving skills or expertise the director
35 reasonably believes are either of the following:

1 (1) Matters within the particular person's professional or
2 expert competence.

3 (2) Matters as to which the particular person merits
4 confidence.

5 c. A committee of the board of directors of which the
6 director is not a member if the director reasonably believes
7 the committee merits confidence.

8 ~~3.--A-director-is-not-acting-in-good-faith-if-the-director~~
9 ~~has-knowledge-concerning-the-matter-in-question-that-makes~~
10 ~~reliance-otherwise-permitted-by-subsection-2-unwarranted.~~

11 ~~4.--A-director-is-not-liable-for-any-action-taken-as-a~~
12 ~~director,or-any-failure-to-take-any-action,if-the-director~~
13 ~~performed-the-duties-of-the-director's-office-in-compliance~~
14 ~~with-this-section,or-if, and-to-the-extent-that,liability~~
15 ~~for-any-such-action-or-failure-to-act-has-been-limited-by-the~~
16 ~~articles-of-incorporation-pursuant-to-section-490-832.~~

17 Sec. 38. Section 490.831, Code 2001, is amended by
18 striking the section and inserting in lieu thereof the
19 following:

20 490.831 STANDARDS OF LIABILITY FOR DIRECTORS.

21 1. A director shall not be liable to the corporation or
22 its shareholders for any decision as director to take or not
23 to take action, or any failure to take any action, unless the
24 party asserting liability in a proceeding establishes both of
25 the following:

26 a. That any provision in the articles of incorporation
27 authorized by section 490.202, subsection 2, paragraph "d", or
28 the protection afforded by section 490.861 for action taken in
29 compliance with section 490.862 or 490.863 if interposed as a
30 bar to the proceeding by the director, does not preclude
31 liability.

32 b. That the challenged conduct consisted or was the result
33 of one of the following:

34 (1) Action not in good faith.

35 (2) A decision that satisfies one of the following:

1 (a) That the director did not reasonably believe to be in
2 the best interests of the corporation.

3 (b) As to which the director was not informed to an extent
4 the director reasonably believed appropriate in the
5 circumstances.

6 (3) A lack of objectivity due to the director's familial,
7 financial, or business relationship with, or a lack of
8 independence due to the director's domination or control by,
9 another person having a material interest in the challenged
10 conduct, which also meets both of the following criteria:

11 (a) Which relationship or which domination or control
12 could reasonably be expected to have affected the director's
13 judgment respecting the challenged conduct in a manner adverse
14 to the corporation.

15 (b) After a reasonable expectation to such effect has been
16 established, the director shall not have established that the
17 challenged conduct was reasonably believed by the director to
18 be in the best interests of the corporation.

19 (4) A sustained failure of the director to devote
20 attention to ongoing oversight of the business and affairs of
21 the corporation, or a failure to devote timely attention, by
22 making, or causing to be made, appropriate inquiry, when
23 particular facts and circumstances of significant concern
24 materialize that would alert a reasonably attentive director
25 to the need for such oversight, attention, or inquiry.

26 (5) Receipt of a financial benefit to which the director
27 was not entitled or any other breach of the director's duties
28 to deal fairly with the corporation and its shareholders that
29 is actionable under applicable law.

30 2. a. A party seeking to hold the director liable for
31 money damages shall also have the burden of establishing both
32 of the following:

33 (1) That harm to the corporation or its shareholders has
34 been suffered.

35 (2) The harm suffered was proximately caused by the

1 director's challenged conduct.

2 b. A party seeking to hold the director liable for other
3 money payment under a legal remedy, such as compensation for
4 the unauthorized use of corporate assets, shall also have
5 whatever persuasion burden may be called for to establish that
6 the payment sought is appropriate in the circumstances.

7 c. A party seeking to hold the director liable for other
8 money payment under an equitable remedy, such as profit
9 recovery by or disgorgement to the corporation, shall also
10 have whatever persuasion burden may be called for to establish
11 that the equitable remedy sought is appropriate in the
12 circumstances.

13 3. This section shall not do any of the following:

14 a. In any instance where fairness is at issue, such as
15 consideration of the fairness of a transaction to the
16 corporation under section 490.861, subsection 2, paragraph
17 "c", alter the burden of proving the fact or lack of fairness
18 otherwise applicable.

19 b. Alter the fact or lack of liability of a director under
20 another section of this chapter, such as the provisions
21 governing the consequences of an unlawful distribution under
22 section 490.833 or a transactional interest under section
23 490.861.

24 c. Affect any rights to which the corporation or a
25 shareholder may be entitled under another statute of this
26 state or the United States.

27 Sec. 39. Section 490.833, Code 2001, is amended to read as
28 follows:

29 490.833 LIABILITY FOR UNLAWFUL DISTRIBUTION.

30 1. ~~Unless the director complies with the applicable~~
31 ~~standards of conduct described in section 490.8307-a A~~
32 director who votes for or assents to a distribution made in
33 ~~violation of this chapter or the articles of incorporation in~~
34 excess of what may be authorized and made pursuant to section
35 490.640, subsection 1, or section 490.1409, subsection 1, is

1 personally liable to the corporation for the amount of the
2 distribution that exceeds what could have been distributed
3 without violating ~~this chapter or the articles of~~
4 incorporation section 490.640, subsection 1, or section
5 490.1409, subsection 1, if the party asserting liability
6 establishes that when taking the action the director did not
7 comply with section 490.830.

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

11 a. Every Contribution from every other director who voted
12 for or assented to the distribution without complying with the
13 applicable standards of conduct described in section 490.830
14 could be held liable under subsection 1 for the unlawful
15 distribution.

16 b. Each Recoupment from each shareholder for of the pro
17 rata portion of the amount of the unlawful distribution the
18 shareholder accepted, knowing the distribution was made in
19 violation of this chapter or the articles of incorporation
20 section 490.640, subsection 1, or section 490.1409, subsection
21 1.

22 3. a. A proceeding to enforce the liability of a director
23 under subsection 1 is barred unless it is commenced within two
24 years after one of the following dates:

25 (1) The date on which the effect of the distribution was
26 measured under section 490.640, subsection 5 or 7.

27 (2) The date as of which the violation of section 490.640,
28 subsection 1, occurred as the consequence of disregard of a
29 restriction in the articles of incorporation.

30 (3) The date on which the distribution of assets to
31 shareholders under section 490.1409, subsection 1, was made.

32 b. A proceeding to enforce contribution or recoupment
33 under subsection 2 is barred unless it is commenced within one
34 year after the liability of the claimant has been finally
35 adjudicated under subsection 1.

1 Sec. 40. Section 490.840, Code 2001, is amended to read as
2 follows:

3 490.840 REQUIRED OFFICERS.

4 1. A corporation has the ~~officers~~ offices described in its
5 bylaws or ~~appointed~~ designated by the board of directors in
6 accordance with the bylaws.

7 2. ~~A-duty-appointed~~ The board of directors may elect
8 individuals to fill one or more offices of the corporation.

9 An officer may appoint one or more officers or-assistant
10 officers if authorized by the bylaws or the board of
11 directors.

12 3. The bylaws or the board of directors shall ~~delegate~~
13 assign to one of the officers responsibility for preparing
14 minutes of the directors' and shareholders' meetings and for
15 maintaining and authenticating the records of the corporation
16 required to be kept under section 490.1601, subsections 1 and
17 5.

18 4. The same individual may simultaneously hold more than
19 one office in a corporation.

20 Sec. 41. Section 490.842, Code 2001, is amended to read as
21 follows:

22 490.842 STANDARDS OF CONDUCT FOR OFFICERS.

23 1. An officer ~~with-discretionary-authority-shall-discharge~~
24 ~~the-officer's-duties-under-that-authority~~ when performing in
25 such capacity shall act in conformity with all of the
26 following:

27 a. In good faith.

28 b. With the care ~~an-ordinarily-prudent~~ that a person in a
29 like position would reasonably exercise under similar
30 circumstances.

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

33 2. In discharging the ~~person's~~ officer's duties an
34 officer, who does not have knowledge that makes reliance
35 unwarranted, is entitled to rely on ~~information, opinions,~~

1 reports,--or-statements,--including-financial-statements-and
2 other-financial-data,--if-prepared-or-presented-by-either any
3 of the following:

4 a. The performance of properly delegated responsibilities
5 by one or more employees of the corporation whom the officer
6 reasonably believes to be reliable and competent in performing
7 the responsibilities delegated.

8 a- b. One Information, opinions, reports, or statements,
9 including financial statements and other financial data,
10 prepared or presented by one or more officers-or employees of
11 the corporation whom the officer reasonably believes to be
12 reliable and competent in the matters presented.

13 b- c. Legal counsel, public accountants, or other persons
14 retained by the corporation as to matters involving skills or
15 expertise the officer reasonably believes are matters within
16 the particular person's professional or expert competence, or
17 in which the particular person merits confidence.

18 3. An-officer-is-not-acting-in-good-faith-if-the-officer
19 has-knowledge-concerning-the-matter-in-question-that-makes
20 reliance-otherwise-permitted-by-subsection-2-unwarranted. An
21 officer shall not be liable as an officer to the corporation
22 or its shareholders for any decision to take or not to take
23 action, or any failure to take any action, if the duties of
24 the officer are performed in compliance with this section.
25 Whether an officer who does not comply with this section shall
26 have liability will depend in such instance on applicable law,
27 including those principles of section 490.831 that have
28 relevance.

29 4.--An-officer-is-not-liable-for-any-action-taken-as-an
30 officer,--or-any-failure-to-take-any-action,--if-the-officer
31 performed-the-duties-of-the-officer's-office-in-compliance
32 with-this-section.

33 Sec. 42. Section 490.843, Code 2001, is amended to read as
34 follows:

35 490.843 RESIGNATION AND REMOVAL OF OFFICERS.

1 1. An officer may resign at any time by delivering notice
 2 to the corporation. A resignation is effective when the
 3 notice is delivered unless the notice specifies a later
 4 effective date time. If a resignation is made effective at a
 5 later date time and the corporation board or appointing
 6 officer accepts the future effective date time, its the board
 7 of-directors or the appointing officer may fill the pending
 8 vacancy before the effective date time if the board of
 9 directors or appointing officer provides that the successor
 10 does not take office until the effective date time. A
 11 ~~resignation-may-be-orally-communicated-provided-that-the~~
 12 ~~resignation-is-effective-only-if-written-notice-of-the~~
 13 ~~resignation-is-delivered-within-twenty-four-hours-of-such-oral~~
 14 ~~communication.~~

15 2. ~~A-board-of-directors-may-remove-any~~ An officer may be
 16 removed at any time with or without cause by any of the
 17 following:

18 a. The board of directors.

19 b. The officer who appointed such officer, unless the
 20 bylaws of the board of directors provide otherwise.

21 c. Any other officer if authorized by the bylaws of the
 22 board of directors.

23 3. In this section, "appointing officer" means the
 24 officer, including any successor to that officer, who
 25 appointed the officer resigning or being removed.

26 Sec. 43. Section 490.850, Code 2001, is amended to read as
 27 follows:

28 490.850 DEFINITIONS.

29 As used in this part of this chapter, unless the context
 30 otherwise requires:

31 1. "Corporation" includes any domestic or foreign
 32 predecessor entity of a corporation in a merger ~~or-other~~
 33 ~~transaction-in-which-the-predecessor's-existence-ceased-upon~~
 34 ~~consummation-of-the-transaction.~~

35 2. "Director" or "officer" means an individual who is or

1 was a director or officer, respectively, of a corporation or
2 ~~an individual~~ who, while a director or officer of a the
3 corporation, is or was serving at the corporation's request as
4 a director, officer, partner, trustee, employee, or agent of
5 another ~~foreign or domestic~~ or foreign corporation,
6 partnership, joint venture, trust, employee benefit plan, or
7 other enterprise entity. A director or officer is considered
8 to be serving an employee benefit plan at the corporation's
9 request if the director's duties to the corporation also
10 impose duties on, or otherwise involve services by, that
11 director to the plan or to participants in or beneficiaries of
12 the plan. "Director" or "officer" includes, unless the
13 context requires otherwise, the estate or personal
14 representative of a director or officer.

15 3. "Disinterested director" means a director who at the
16 time of a vote referred to in section 490.853, subsection 3,
17 or a vote or selection referred to in section 490.855,
18 subsection 2 or 3, is not either of the following:

19 a. A party to the proceeding.

20 b. An individual having a familial, financial,
21 professional, or employment relationship with the director
22 whose indemnification or advance for expenses is the subject
23 of the decision being made, which relationship would, in the
24 circumstances, reasonably be expected to exert an influence on
25 the director's judgment when voting on the decision being
26 made.

27 ~~3-~~ 4. "Expenses" include includes counsel fees.

28 ~~4-~~ 5. "Liability" means the obligation to pay a judgment,
29 settlement, penalty, fine, including an excise tax assessed
30 with respect to an employee benefit plan, or reasonable
31 expenses incurred with respect to a proceeding.

32 ~~5-~~ 6. "Official capacity" means:

33 a. When used with respect to a director, the office of
34 director in a corporation.

35 b. When used with respect to an individual-other-than-a

1 director officer, as contemplated in section 490.856, the
2 office in a corporation held by the officer ~~or-the-employment~~
3 ~~or-agency-relationship-undertaken-by-the-employee-or-agent-on~~
4 ~~behalf-of-the-corporation~~.

5 "Official capacity" does not include service for any other
6 ~~foreign-or~~ domestic or foreign corporation or any partnership,
7 joint venture, trust, employee benefit plan, or other
8 enterprise entity.

9 ~~6- 7.~~ "Party" includes means an individual who was, is, or
10 is threatened to be made a ~~named~~ defendant or respondent in a
11 proceeding.

12 ~~7- 8.~~ "Proceeding" means any threatened, pending, or
13 completed action, suit, or proceeding, whether civil,
14 criminal, administrative, or investigative and whether formal
15 or informal.

16 Sec. 44. Section 490.851, Code 2001, is amended to read as
17 follows:

18 490.851 ~~AUTHORITY-TO-INDEMNIFY~~ PERMISSIBLE
19 INDEMNIFICATION.

20 1. Except as otherwise provided in ~~subsection-4~~ this
21 section, a corporation may indemnify an individual made who is
22 a party to a proceeding because the individual is ~~or-was~~ a
23 director against liability incurred in the proceeding if all
24 of the following apply:

- 25 a. The individual acted in good faith.
- 26 b. The individual reasonably believed:

27 (1) In the case of conduct in the individual's official
28 ~~capacity with-the-corporation~~, that the individual's conduct
29 was in the corporation's best interests.

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

32 c. In the case of any criminal proceeding, the individual
33 had no reasonable cause to believe the individual's conduct
34 was unlawful, or the individual engaged in conduct for which
35 broader indemnification has been made permissible or

1 obligatory under a provision of the articles of incorporation
2 as authorized by section 490.202, subsection 2, paragraph "e".

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

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

13 4. A Unless ordered by a court under section 490.854,
14 subsection 1, paragraph "c", a corporation shall not indemnify
15 a director under this section in either of the following
16 circumstances:

17 a. In connection with a proceeding by or in the right of
18 the corporation ~~in which the director was adjudged liable to~~
19 ~~the corporation,~~ except for reasonable expenses incurred in
20 connection with the proceeding if it is determined that the
21 director has met the relevant standard of conduct under
22 subsection 1.

23 b. In connection with any other proceeding charging
24 ~~improper personal benefit to the director, whether or not~~
25 ~~involving action in the director's official capacity,~~ in with
26 respect to conduct for which the director was adjudged liable
27 on the basis that personal the director received a financial
28 benefit was improperly received by the director to which the
29 director was not entitled, whether or not involving action in
30 the director's official capacity.

31 ~~5. Indemnification permitted under this section in~~
32 ~~connection with a proceeding by or in the right of the~~
33 ~~corporation is limited to reasonable expenses incurred in~~
34 ~~connection with the proceeding.~~

35 Sec. 45. Section 490.852, Code 2001, is amended to read as

1 follows:

2 490.852 MANDATORY INDEMNIFICATION.

3 ~~Unless limited by its articles of incorporation,~~ a A
4 corporation shall indemnify a director who was wholly
5 successful, on the merits or otherwise, in the defense of any
6 proceeding to which the director was a party because the
7 director is or was a director of the corporation against
8 reasonable expenses incurred by the director in connection
9 with the proceeding.

10 Sec. 46. Section 490.853, Code 2001, is amended to read as
11 follows:

12 490.853 ADVANCE FOR EXPENSES.

13 1. A corporation may, before final disposition of a
14 proceeding, advance funds to pay for or reimburse the
15 reasonable expenses incurred by a director who is a party to a
16 proceeding in-advance-of-final-disposition-of-the-proceeding
17 because the person is a director if any-of the person delivers
18 all of the following apply to the corporation:

19 a. ~~The director furnishes the corporation a~~ A written
20 affirmation of the director's good faith belief that the
21 director has met the relevant standard of conduct described in
22 section 490.851 or that the proceeding involved conduct for
23 which liability has been eliminated under a provision of the
24 articles of incorporation as authorized by section 490.202,
25 subsection 2, paragraph "d".

26 b. ~~The director furnishes the corporation a~~ The director's
27 written undertaking, ~~executed personally or on the director's~~
28 ~~behalf,~~ to repay the advance any funds advanced if the
29 director is not entitled to mandatory indemnification under
30 section 490.852 and it is ultimately determined under section
31 490.854 or section 490.855 that the director did-not-meet-that
32 has not met the relevant standard of conduct described in
33 section 490.851.

34 ~~c.---A determination is made that the facts then known to~~
35 ~~those making the determination would not preclude~~

1 ~~indemnification-under-this-part-~~

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

6 3. ~~Determinations-and-authorizations~~ Authorizations of
7 payments under this section shall be made ~~in-the-manner~~
8 specified-in-section-490-855 according to the one of the
9 following:

10 a. By the board of directors:

11 (1) If there are two or more disinterested directors, by a
12 majority vote of all the disinterested directors, a majority
13 of whom shall for such purpose constitute a quorum, or by a
14 majority of the members of a committee of two or more
15 disinterested directors appointed by such a vote.

16 (2) If there are fewer than two disinterested directors,
17 by the vote necessary for action by the board in accordance
18 with section 490.824, subsection 3, in which authorization
19 directors who do not qualify as disinterested directors may
20 participate.

21 b. By the shareholders, but shares owned by or voted under
22 the control of a director who at the time does not qualify as
23 a disinterested director may not be voted on the
24 authorization.

25 Sec. 47. Section 490.854, Code 2001, is amended to read as
26 follows:

27 490.854 COURT-ORDERED INDEMNIFICATION.

28 1. Unless-a-corporation's-articles-of-incorporation
29 provide-otherwise, a A director of-the-corporation who is a
30 party to a proceeding because the person is a director may
31 apply for indemnification or an advance for expenses to the
32 court conducting the proceeding or to another court of
33 competent jurisdiction. ~~On~~ After receipt of an application,
34 ~~the-court~~ and after giving any notice ~~the-court~~ it considers
35 necessary may-order, the court shall do one of the following:

1 a. Order indemnification if it the court determines either
2 of-the-following:

3 ~~1. The that the~~ director is entitled to mandatory
4 indemnification under section 490.852, ~~in-which-case-the-court~~
5 ~~shall-also-order-the-corporation-to-pay-the-directors~~
6 ~~reasonable-expenses-incurred-to-obtain-court-ordered~~
7 ~~indemnification.~~

8 ~~2. The-director-is-fairly-and-reasonably-entitled-to~~
9 ~~indemnification-in-view-of-all-the-relevant-circumstances,~~
10 ~~whether-or-not-the-director-met-the-standard-of-conduct-set~~
11 ~~forth-in-section-490.851-or-was-adjudged-liable-as-described~~
12 ~~in-section-490.851, subsection-4, but-if-the-director-was~~
13 ~~adjudged-so-liable-the-director's-indemnification-is-limited~~
14 ~~to-reasonable-expenses-incurred.~~

15 b. Order indemnification or advance for expenses if the
16 court determines that the director is entitled to
17 indemnification or advance for expenses pursuant to a
18 provision authorized by section 490.858, subsection 1.

19 c. Order indemnification or advance for expenses if the
20 court determines, in view of all the relevant circumstances,
21 that it is fair and reasonable to do one of the following:

- 22 (1) To indemnify the director.
- 23 (2) To advance expenses to the director, even if the
24 director has not met the relevant standard of conduct set
25 forth in section 490.851, subsection 1, failed to comply with
26 section 490.853 or was adjudged liable in a proceeding
27 referred to in subsection 490.851, subsection 4, paragraph "a"
28 or "b", but if the director was adjudged so liable the
29 director's indemnification shall be limited to reasonable
30 expenses incurred in connection with the proceeding.

31 2. If the court determines that the director is entitled
32 to indemnification under subsection 1, paragraph "a", or to
33 indemnification or advance for expenses under subsection 1,
34 paragraph "b", it shall also order the corporation to pay the
35 director's reasonable expenses incurred in connection with

1 obtaining court-ordered indemnification or advance for
2 expenses. If the court determines that the director is
3 entitled to indemnification or advance for expenses under
4 subsection 1, paragraph "c", it may also order the corporation
5 to pay the director's reasonable expenses to obtain court-
6 ordered indemnification or advance for expenses.

7 Sec. 48. Section 490.855, Code 2001, is amended to read as
8 follows:

9 490.855 DETERMINATION AND AUTHORIZATION OF
10 INDEMNIFICATION.

11 1. A corporation shall not indemnify a director under
12 section 490.851 unless authorized in-the for a specific case
13 proceeding after a determination has been made that
14 indemnification of the director is permissible in-the
15 circumstances because the director has met the relevant
16 standard of conduct set forth in section 490.851.

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

19 a. ~~By-the-board-of-directors-by-majority-vote-of-a-quorum~~
20 ~~consisting-of-directors-not-at-the-time-parties-to-the~~
21 ~~proceeding.~~ If there are two or more disinterested directors,
22 by the board of directors by a majority vote of all the
23 disinterested directors, a majority of whom shall for such
24 purpose constitute a quorum, or by a majority of the members
25 of a committee of two or more disinterested directors
26 appointed by such a vote.

27 ~~b.--If-a-quorum-cannot-be-obtained-under-paragraph-"a",-by~~
28 ~~majority-vote-of-a-committee-duly-designated-by-the-board-of~~
29 ~~directors,-in-which-designation-directors-who-are-parties-may~~
30 ~~participate,-consisting-solely-of-two-or-more-directors-not-at~~
31 ~~the-time-parties-to-the-proceeding.~~

32 c. b. By special legal counsel:

33 (1) ~~Selected by-the-board-of-directors-or-its-committee in~~
34 the manner prescribed in paragraph "a" ~~or-"b".~~

35 (2) If ~~a-quorum-of-the-board-of~~ there are fewer than two

1 ~~disinterested~~ directors cannot-be-obtained-under-paragraph-"a"
2 and-a-committee-cannot-be-designated-under-paragraph-"b",
3 selected by majority-vote-of the full board of directors, in
4 which selection directors who are-parties do not qualify as
5 disinterested directors may participate.

6 d. c. By the shareholders, but shares owned by or voted
7 under the control of directors a director who are at the time
8 ~~parties-to-the-proceeding~~ does not qualify as a disinterested
9 director shall not be voted on the determination.

10 3. Authorization of indemnification and-evaluation-as-to
11 ~~reasonableness-of-expenses~~ shall be made in the same manner as
12 the determination that indemnification is permissible, except
13 that if there are fewer than two disinterested directors or if
14 the determination is made by special legal counsel,
15 authorization of indemnification and-evaluation-as-to
16 ~~reasonableness-of-expenses~~ shall be made by those entitled
17 under subsection 2, paragraph "e" "b", to select special legal
18 counsel.

19 Sec. 49. Section 490.856, Code 2001, is amended to read as
20 follows:

21 490.856 INDEMNIFICATION OF OFFICERS, ~~EMPLOYEES,~~ AND
22 AGENTS.

23 ~~Unless-a-corporation's-articles-of-incorporation-provide~~
24 ~~otherwise-all-of-the-following-apply:~~

25 ~~1. An-officer-of-the-corporation-who-is-not-a-director-is~~
26 ~~entitled-to-mandatory-indemnification-under-section-490-852,~~
27 ~~and-is-entitled-to-apply-for-court-ordered-indemnification~~
28 ~~under-section-490-854,-in-each-case-to-the-same-extent-as-a~~
29 ~~director.~~

30 2. 1. The A corporation may indemnify and advance expenses
31 under this part to an officer, ~~employee,~~ or-agent of the
32 corporation who is ~~not-a-director-to~~ a party to the proceeding
33 because the person is an officer, according to all of the
34 following:

35 a. To the same extent as to a director.

1 ~~3. b.~~ A corporation may also indemnify and advance
2 expenses to an officer, employee, or agent who is not a
3 director to the extent, consistent with law, that If the
4 person is an officer but not a director, to such further
5 extent as may be provided by its the articles of
6 incorporation, the bylaws, general or specific action a
7 resolution of its the board of directors, or contract, except
8 for either of the following:

9 (1) Liability in connection with a proceeding by or in the
10 right of the corporation other than for reasonable expenses
11 incurred in connection with the proceeding.

12 (2) Liability arising out of conduct that constitutes any
13 of the following:

14 (a) Receipt by the officer of a financial benefit to which
15 the officer is not entitled.

16 (b) An intentional infliction of harm on the corporation
17 or the shareholders.

18 (c) An intentional violation of criminal law.

19 2. The provisions of subsection 1, paragraph "b", shall
20 apply to an officer who is also a director if the basis on
21 which the officer is made a party to a proceeding is an act or
22 omission solely as an officer.

23 3. An officer of a corporation who is not a director is
24 entitled to mandatory indemnification under section 490.852,
25 and may apply to a court under section 490.854 for
26 indemnification or an advance for expenses, in each case to
27 the same extent to which a director may be entitled to
28 indemnification or advance for expenses under those
29 provisions.

30 Sec. 50. Section 490.857, Code 2001, is amended to read as
31 follows:

32 490.857 INSURANCE.

33 A corporation may purchase and maintain insurance on behalf
34 of an individual who is or was a director, or officer,
35 employee, or agent of the corporation, or who, while a

1 director, or officer, ~~employee~~ ~~or~~ agent of the corporation,
 2 ~~is or was serving~~ serves at the request ~~of the corporation~~
 3 corporation's request as a director, officer, partner,
 4 trustee, employee, or agent of another ~~foreign or~~ domestic or
 5 foreign corporation, partnership, joint venture, trust,
 6 employee benefit plan, or other enterprise entity, against
 7 liability asserted against or incurred by that individual in
 8 that capacity or arising from the individual's status as a
 9 director, or officer, ~~employee~~ ~~or~~ agent, whether or not the
 10 corporation would have power to indemnify or advance expenses
 11 to that individual against the same liability under section
 12 ~~490.851 or 490.852~~ this part.

13 Sec. 51. Section 490.858, Code 2001, is amended by
 14 striking the section and inserting in lieu thereof the
 15 following:

16 490.858 VARIATION BY CORPORATE ACTION -- APPLICATION OF
 17 PART.

18 1. A corporation may, by a provision in its articles of
 19 incorporation or bylaws or in a resolution adopted or a
 20 contract approved by its board of directors or shareholders,
 21 obligate itself in advance of the act or omission giving rise
 22 to a proceeding to provide indemnification in accordance with
 23 section 490.851 or advance funds to pay for or reimburse
 24 expenses in accordance with section 490.853. Any such
 25 obligatory provision shall be deemed to satisfy the
 26 requirements for authorization referred to in section 490.853,
 27 subsection 3, and in section 490.855, subsection 3. Any such
 28 provision that obligates the corporation to provide
 29 indemnification to the fullest extent permitted by law shall
 30 be deemed to obligate the corporation to advance funds to pay
 31 for or reimburse expenses in accordance with section 490.853
 32 to the fullest extent permitted by law, unless the provision
 33 specifically provides otherwise.

34 2. Any provision pursuant to subsection 1 shall not
 35 obligate the corporation to indemnify or advance expenses to a

1 director of a predecessor of the corporation, pertaining to
2 conduct with respect to the predecessor, unless otherwise
3 specifically provided. Any provision for indemnification or
4 advance for expenses in the articles of incorporation, bylaws,
5 or a resolution of the board of directors or shareholders of a
6 predecessor of the corporation in a merger or in a contract to
7 which the predecessor is a party, existing at the time the
8 merger takes effect, shall be governed by section 490.1106,
9 subsection 1, paragraph "c".

10 3. A corporation may, by a provision in its articles of
11 incorporation, limit any of the rights to indemnification or
12 advance for expenses created by or pursuant to this part.

13 4. This part does not limit a corporation's power to pay
14 or reimburse expenses incurred by a director or an officer in
15 connection with the director's or officer's appearance as a
16 witness in a proceeding at a time when the director or officer
17 is not a party.

18 5. This part does not limit a corporation's power to
19 indemnify, advance expenses to, or provide or maintain
20 insurance on behalf of an employee or agent.

21 Sec. 52. NEW SECTION. 490.859 EXCLUSIVITY OF PART.

22 A corporation may provide indemnification or advance
23 expenses to a director or an officer only as permitted by this
24 part.

25 Sec. 53. NEW SECTION. 490.860 DEFINITIONS.

26 In this part:

27 1. "Conflicting interest" with respect to a corporation
28 means the interest a director of the corporation has
29 respecting a transaction effected or proposed to be effected
30 by the corporation, or by a subsidiary of the corporation or
31 any other entity in which the corporation has a controlling
32 interest, if either of the following applies:

33 a. Whether or not the transaction is brought before the
34 board of directors of the corporation for action, the director
35 knows at the time of commitment that the director or a related

1 person is a party to the transaction or has a beneficial
2 financial interest in or is so closely linked to the
3 transaction and is of such financial significance to the
4 director or a related person that the interest would
5 reasonably be expected to exert an influence on the director's
6 judgment if the director were called upon to vote on the
7 transaction.

8 b. The transaction is brought, or is of such character and
9 significance to the corporation that it would in the normal
10 course be brought, before the board of directors of the
11 corporation for action, and the director knows at the time of
12 commitment that any of the following persons is either a party
13 to the transaction or has a beneficial financial interest in
14 or is so closely linked to the transaction and is of such
15 financial significance to the person that the interest would
16 reasonably be expected to exert an influence on the director's
17 judgment if the director were called upon to vote on the
18 transaction:

19 (1) An entity, other than the corporation, of which the
20 director is a director, general partner, manager, member,
21 agent, or employee.

22 (2) A person that controls one or more of the entities
23 specified in subparagraph (1) or an entity that is controlled
24 by, or is under common control with, one or more of the
25 entities specified in subparagraph (1).

26 (3) An individual who is a general partner, principal,
27 comember, or employer of the director.

28 2. "Director's conflicting interest transaction" with
29 respect to a corporation means a transaction effected or
30 proposed to be effected by the corporation, or by a subsidiary
31 of the corporation or any other entity in which the
32 corporation has a controlling interest, respecting which a
33 director of the corporation has a conflict of interest.

34 3. "Related person" of a director means any of the
35 following:

1 a. The spouse of the director, or a parent or a sibling of
2 a spouse of a director.

3 b. A child, grandchild, sibling, or parent of the
4 director, or a spouse of a child, grandchild, sibling, or
5 parent of the director.

6 c. An individual having the same home as the director.

7 d. A trust or estate of which an individual specified in
8 this subsection is a substantial beneficiary.

9 e. A trust, estate, incompetent, conservatee, or minor of
10 which the director is a fiduciary.

11 4. "Required disclosure" means disclosure by the director
12 who has a conflicting interest of both of the following:

13 a. The existence and nature of the director's conflicting
14 interest.

15 b. All facts known to the director respecting the subject
16 matter of the transaction that an ordinarily prudent person
17 would reasonably believe to be material to a judgment about
18 whether or not to proceed with the transaction.

19 5. "Time of commitment" respecting a transaction means the
20 time when the transaction is consummated or, if made pursuant
21 to contract, the time when the corporation, or its subsidiary
22 or the entity in which it has a controlling interest, becomes
23 contractually obligated so that its unilateral withdrawal from
24 the transaction would entail significant loss, liability, or
25 other damage.

26 Sec. 54. NEW SECTION. 490.861 JUDICIAL ACTION.

27 1. A transaction effected or proposed to be effected by a
28 corporation, or by a subsidiary of the corporation or any
29 other entity in which the corporation has a controlling
30 interest, that is not a director's conflicting interest
31 transaction shall not be enjoined, set aside, or give rise to
32 an award of damages or other sanctions, in a proceeding by a
33 shareholder or by or in the right of the corporation, because
34 a director of the corporation, or any person with whom or
35 which the director has a personal, economic, or other

1 association, has an interest in the transaction.

2 2. A director's conflicting interest transaction shall not
3 be enjoined, set aside, or give rise to an award of damages or
4 other sanctions, in a proceeding by a shareholder or by or in
5 the right of the corporation, because the director, or any
6 person with whom or which the director has a personal,
7 economic, or other association, has an interest in the
8 transaction, if any one of the following is true:

9 a. Directors' action respecting the transaction was at any
10 time taken in compliance with section 490.862.

11 b. Shareholders' action respecting the transaction was at
12 any time taken in compliance with section 490.863.

13 c. The transaction, judged according to the circumstances
14 at the time of commitment, is established to have been fair to
15 the corporation.

16 Sec. 55. NEW SECTION. 490.862 DIRECTORS' ACTION.

17 1. Directors' action respecting a transaction is effective
18 for purposes of section 490.861, subsection 2, paragraph "a",
19 if the transaction received the affirmative vote of a
20 majority, but no fewer than two, of those qualified directors
21 on the board of directors or on a duly empowered committee of
22 the board who voted on the transaction after either required
23 disclosure to them, to the extent the information was not
24 known by them, or compliance with subsection 2. However,
25 action by a committee is so effective only if both of the
26 following are satisfied:

27 a. All its members are qualified directors.

28 b. Its members are either all the qualified directors on
29 the board or are appointed by the affirmative vote of a
30 majority of the qualified directors on the board.

31 2. If a director has a conflicting interest respecting a
32 transaction but neither the director nor a related person of
33 the director specified in section 490.860, subsection 3,
34 paragraph "a", is a party to the transaction, and if the
35 director has a duty under law or professional canon, or a duty

1 of confidentiality to another person, respecting information
2 relating to the transaction such that the director shall not
3 make the disclosure described in section 490.860, subsection
4 4, paragraph "b", then disclosure is sufficient for purposes
5 of subsection 1 if the director does both of the following:

6 a. Discloses to the directors voting on the transaction
7 the existence and nature of the director's conflicting
8 interest and informs them of the character and limitations
9 imposed by that duty before their vote on the transaction.

10 b. Plays no part, directly or indirectly, in their
11 deliberations or vote.

12 3. A majority, but no fewer than two, of all the qualified
13 directors on the board of directors, or on the committee,
14 constitutes a quorum for purposes of action that complies with
15 this section. Directors' action that otherwise complies with
16 this section is not affected by the presence or vote of a
17 director who is not a qualified director.

18 4. For purposes of this section, "qualified director"
19 means, with respect to a director's conflicting interest
20 transaction, any director who does not have either a
21 conflicting interest respecting the transaction, or a
22 familial, financial, professional, or employment relationship
23 with a second director who does have a conflicting interest
24 respecting the transaction, which relationship would, in the
25 circumstances, reasonably be expected to exert an influence on
26 the first director's judgment when voting on the transaction.

27 5. Directors' action complying with subsection 1 may be
28 taken at any time, before or after the transaction, and may
29 deal with a single transaction or a specified category of
30 similar transactions.

31 Sec. 56. NEW SECTION. 490.863 SHAREHOLDERS' ACTION.

32 1. Shareholders' action respecting a transaction is
33 effective for purposes of section 490.861, subsection 2,
34 paragraph "b", if a majority of the votes entitled to be cast
35 by the holders of all qualified shares were cast in favor of

1 the transaction after all of the following occurred:

- 2 a. Notice to shareholders describing the director's
- 3 conflicting interest transaction.
- 4 b. Provision of the information referred to in subsection
- 5 4.
- 6 c. Required disclosure to the shareholders who voted on
- 7 the transaction, to the extent the information was not known
- 8 by them.

9 2. For purposes of this section, "qualified shares" means

10 any shares entitled to vote with respect to the director's

11 conflicting interest transaction except shares that, to the

12 knowledge, before the vote, of the secretary, or other officer

13 or agent of the corporation authorized to tabulate votes, are

14 beneficially owned, or the voting of which is controlled, by a

15 director who has a conflicting interest respecting the

16 transaction or by a related person of the director, or both.

17 3. A majority of the votes entitled to be cast by the

18 holders of all qualified shares constitutes a quorum for

19 purposes of action that complies with this section. Subject

20 to the provisions of subsections 4 and 5, shareholders' action

21 that otherwise complies with this section is not affected by

22 the presence of holders, or the voting of shares that are not

23 qualified shares.

24 4. For purposes of compliance with subsection 1, a

25 director who has a conflicting interest respecting the

26 transaction shall, before the shareholders' vote, inform the

27 secretary, or other officer or agent of the corporation

28 authorized to tabulate votes, of the number, and the identity

29 of persons holding or controlling the vote, of all shares that

30 the director knows are beneficially owned, or the voting of

31 which is controlled, by the director or by a related person of

32 the director, or both.

33 5. If a shareholders' vote does not comply with subsection

34 1 solely because of a failure of a director to comply with

35 subsection 4, and if the director establishes that the

1 director's failure did not determine and was not intended by
2 the director to influence the outcome of the vote, the court
3 may, with or without further proceedings respecting section
4 490.861, subsection 2, paragraph "c", take such action
5 respecting the transaction and the director, and give such
6 effect, if any, to the shareholders' vote, as it considers
7 appropriate in the circumstances.

8 6. Action that complies with subsection 1 may be taken at
9 any time, before or after the transaction, and may deal with a
10 single transaction or a specified category of similar
11 transactions.

12 Sec. 57. Section 490.1001, subsection 1, Code 2001, is
13 amended to read as follows:

14 1. A corporation may amend its articles of incorporation
15 at any time to add or change a provision that is required or
16 permitted in the articles of incorporation ~~or to delete a~~
17 ~~provision not required in the articles of incorporation.~~
18 ~~Whether a provision is required or permitted in the articles~~
19 ~~of incorporation is determined as of the effective date of the~~
20 amendment or to delete a provision that is not required to be
21 contained in the articles of incorporation.

22 Sec. 58. Section 490.1002, Code 2001, is amended by
23 striking the section and inserting in lieu thereof the
24 following:

25 490.1002 AMENDMENT BEFORE ISSUANCE OF SHARES.

26 If a corporation has not yet issued shares, its board of
27 directors, or its incorporators if it has no board of
28 directors, may adopt one or more amendments to the
29 corporation's articles of incorporation.

30 Sec. 59. Section 490.1003, Code 2001, is amended to read
31 as follows:

32 490.1003 AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS.

33 If a corporation has issued shares, an amendment to the
34 articles of incorporation shall be adopted in the following
35 manner:

1 1. ~~A corporation's~~ The proposed amendment must be adopted
2 by the board of directors may-propose-one-or-more-amendments
3 to-the-articles-of-incorporation-for-submission-to-the
4 shareholders.

5 2. ~~For the amendment to be adopted both of the following~~
6 ~~must occur:~~

7 a. 2. The Except as provided in section 490.1005,
8 490.1007, and 490.1008, after adopting the proposed amendment,
9 the board of directors must recommend submit the amendment to
10 the shareholders for their approval. The board of directors
11 must also transmit to the shareholders a recommendation that
12 the shareholders approved the amendment, unless the board of
13 directors determines makes a determination that because of
14 conflict of interest or other special circumstances it should
15 not make no such a recommendation and-communicates, in which
16 case the basis-for-its-determination board of directors must
17 transmit to the shareholders with-the-amendment the basis for
18 the determination.

19 b. ~~The shareholders entitled to vote on the amendment must~~
20 ~~approve the amendment as provided in subsection 5.~~

21 3. The board of directors may condition its submission of
22 the proposed amendment to the shareholders on any basis.

23 4. ~~The corporation shall~~ If the amendment is required to
24 be approved by the shareholders, and the approval is to be
25 given at a meeting, the corporation must notify each
26 shareholder, whether or not entitled to vote, of the proposed
27 shareholders' meeting in-accordance-with-section-490-705 of
28 shareholders at which the amendment is to be submitted for
29 approval. The notice of-meeting must also state that the
30 purpose, or one of the purposes, of the meeting is to consider
31 the proposed amendment and must contain or be accompanied by a
32 copy ~~or-summary~~ of the amendment.

33 5. Unless ~~this-chapter,~~ the articles of incorporation,
34 bylaws, or the board of directors acting pursuant to
35 subsection 3 requires a greater vote or ~~a-vote-by-voting~~

1 groups, ~~the amendment to be adopted must be approved by both~~
2 ~~of the following:~~

3 a. ~~---A greater number of shares to be present, approval of~~
4 ~~the amendment requires the approval of the shareholders at a~~
5 ~~meeting at which a quorum consisting of at least a majority of~~
6 ~~the votes entitled to be cast on the amendment exists, and, if~~
7 ~~any class or series of shares is entitled to vote as a~~
8 ~~separate group on the amendment, except as provided in section~~
9 ~~490.1004, subsection 3, the approval of each such separate~~
10 ~~voting group at a meeting at which a quorum of the voting~~
11 ~~group consisting of at least a majority of the votes entitled~~
12 ~~to be cast on the amendment by any voting group with respect~~
13 ~~to which the amendment would create dissenters' rights that~~
14 ~~voting group exists.~~

15 b. ~~---The votes required by sections 490.725 and 490.726 by~~
16 ~~every other voting group entitled to vote on the amendment.~~

17 Sec. 60. Section 490.1004, subsections 1, 2, and 3, Code
18 2001, are amended to read as follows:

19 1. ~~The~~ If a corporation has more than one class of shares
20 outstanding, the holders of the outstanding shares of a class
21 are entitled to vote as a separate voting group, if
22 shareholder voting is otherwise required by this chapter, on a
23 proposed amendment to the articles of incorporation if the
24 amendment would do any of the following:

25 a. ~~---Increase or decrease the aggregate number of authorized~~
26 ~~shares of the class.~~

27 b. a. Effect an exchange or reclassification of all or
28 part of the shares of the class into shares of another class.

29 c. b. Effect an exchange or reclassification, or create
30 the right of exchange, of all or part of the shares of another
31 class into shares of that class.

32 d. c. Change the ~~designation,~~ rights, preferences, or
33 limitations of all or part of the shares of the class.

34 e. d. Change the shares of all or part of the class into a
35 different number of shares of the same class.

1 f. e. Create a new class of shares having rights or
2 preferences with respect to distributions or to dissolution
3 that are prior, or superior, ~~or-substantially-equal~~ to, the
4 shares of the class.

5 g. f. Increase the rights, preferences, or number of
6 authorized shares of any class that, after giving effect to
7 the amendment, have rights or preferences with respect to
8 distributions or to dissolution that are prior, or superior,
9 ~~or-substantially-equal~~ to the shares of the class.

10 h. g. Limit or deny an existing preemptive right of all or
11 part of the shares of the class.

12 i. h. Cancel or otherwise affect rights to distributions
13 ~~or-dividends~~ that have accumulated but not yet been declared
14 authorized on all or part of the shares of the class.

15 2. If a proposed amendment would affect a series of a
16 class of shares in one or more of the ways described in
17 subsection 1, the holders of shares of that series are
18 entitled to vote as a separate voting group on the proposed
19 amendment.

20 3. If a proposed amendment that entitles the holders of
21 two or more classes or series of shares to vote as separate
22 voting groups under this section would affect those two or
23 more classes or series in the same or a substantially similar
24 way, the holders of shares of all the classes or series so
25 affected must vote together as a single voting group on the
26 proposed amendment, unless otherwise provided in the articles
27 of incorporation or required by the board of directors.

28 Sec. 61. Section 490.1005, Code 2001, is amended by
29 striking the section and inserting in lieu thereof the
30 following:

31 490.1005 AMENDMENT BY BOARD OF DIRECTORS.

32 Unless the articles of incorporation provide otherwise, a
33 corporation's board of directors may adopt amendments to the
34 corporation's articles of incorporation without shareholder
35 approval for any of the following purposes:

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

4 2. To delete the names and addresses of the initial
5 directors.

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

9 4. If the corporation has only one class of shares
10 outstanding:

11 a. To change each issued and unissued authorized share of
12 the class into a greater number of whole shares of that class.

13 b. To increase the number of authorized shares of the
14 class to the extent necessary to permit the issuance of shares
15 as a share dividend.

16 5. To change the corporate name by substituting the word
17 "corporation", "incorporated", "company", "limited", or the
18 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar
19 word or abbreviation in the name, or by adding, deleting, or
20 changing a geographical attribution for the name.

21 6. To reflect a reduction in authorized shares, as a
22 result of the operation of section 490.631, subsection 2, when
23 the corporation has acquired its own shares and the articles
24 of incorporation prohibit the reissue of the acquired shares.

25 7. To delete a class of shares from the articles of
26 incorporation, as a result of the operation of section
27 490.631, subsection 2, when there are no remaining shares of
28 the class because the corporation has acquired all shares of
29 the class and the articles of incorporation prohibit the
30 reissue of the acquired shares.

31 8. To make any change expressly permitted by section
32 490.602, subsection 4, to be made without shareholder
33 approval.

34 Sec. 62. Section 490.1006, Code 2001, is amended to read
35 as follows:

1 490.1006 ARTICLES OF AMENDMENT.

2 ~~A-corporation-amending-its-articles-of-incorporation~~ After
3 an amendment to the articles of incorporation has been adopted
4 and approved in the manner required by this chapter and by the
5 articles of incorporation, the corporation shall deliver to
6 the secretary of state, for filing, articles of amendment
7 setting, which shall set forth the following:

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 approval, a
17 statement to-that-effect that the amendment was duly approved
18 by the incorporators or by the board of directors, as the case
19 may be, and that shareholder action approval was not required.

20 6. If an amendment ~~was-approved~~ required approval by the
21 shareholders, a statement that the amendment was duly
22 approved by the shareholders in the manner required by this
23 chapter and by the articles of incorporation.

24 ~~a:--The-designation,-number-of-outstanding-shares,-number~~
25 ~~of-votes-entitled-to-be-cast-by-each-voting-group-entitled-to~~
26 ~~vote-separately-on-the-amendment,-and-number-of-votes-of-each~~
27 ~~voting-group-indisputably-represented-at-the-meeting.~~

28 ~~b:--Either-the-total-number-of-votes-cast-for-and-against~~
29 ~~the-amendment-by-each-voting-group-entitled-to-vote-separately~~
30 ~~on-the-amendment-or-the-total-number-of-undisputed-votes-cast~~
31 ~~for-the-amendment-by-each-voting-group-and-a-statement-that~~
32 ~~the-number-cast-for-the-amendment-by-each-voting-group-was~~
33 ~~sufficient-for-approval-by-that-voting-group.~~

34 Sec. 63. Section 490.1007, Code 2001, is amended to read
35 as follows:

1 490.1007 RESTATED ARTICLES OF INCORPORATION.

2 1. A corporation's board of directors may restate its
3 articles of incorporation at any time with or without
4 shareholder action approval, to consolidate all amendments
5 into a single document.

6 2. ~~The restatement may~~ If the restated articles include
7 one or more new amendments ~~to the articles. If the~~
8 ~~restatement includes an amendment requiring that require~~
9 shareholder approval, it the amendments must be adopted and
10 approved as provided in section 490.1003.

11 3. ~~If the board of directors submits a restatement for~~
12 ~~shareholder action, the corporation shall notify each~~
13 ~~shareholder whether or not entitled to vote, of the proposed~~
14 ~~shareholders' meeting in accordance with section 490.705. The~~
15 ~~notice must also state that the purpose, or one of the~~
16 ~~purposes, of the meeting is to consider the proposed~~
17 ~~restatement and contain or be accompanied by a copy of the~~
18 ~~restatement that identifies any amendment or other change it~~
19 ~~would make in the articles.~~

20 4. 3. A corporation restating that restates its articles
21 of incorporation shall deliver to the secretary of state for
22 filing articles of restatement setting forth the name of the
23 corporation and the text of the restated articles of
24 incorporation together with a certificate ~~setting forth~~ that
25 states that the restated articles consolidate all amendments
26 into a single document and, if a new amendment is included in
27 the restated articles, that also include the statements
28 required under section 490.1006.

29 ~~a. Whether the restatement contains an amendment to the~~
30 ~~articles requiring shareholder approval and, if it does not,~~
31 ~~that the board of directors adopted the restatement.~~

32 ~~b. If the restatement contains an amendment to the~~
33 ~~articles requiring shareholder approval, the information~~
34 ~~required by section 490.1006.~~

35 5. 4. Duly adopted restated articles of incorporation

1 supersede the original articles of incorporation and all
2 amendments to them the original articles of incorporation.

3 ~~6~~ 5. The secretary of state may certify restated articles
4 of incorporation, as the articles of incorporation currently
5 in effect, without including the certificate information
6 required by subsection ~~4~~ 3.

7 Sec. 64. Section 490.1008, subsections 1, 3, and 4, Code
8 2001, are amended to read as follows:

9 1. A corporation's articles of incorporation may be
10 amended without action by the board of directors or
11 shareholders to carry out a plan of reorganization ordered or
12 decreed by a court of competent jurisdiction under ~~federal~~
13 ~~statute-if-the-articles-of-incorporation-after-amendment~~
14 ~~contain-only-provisions-required-or-permitted-by-section~~
15 ~~490-202~~ the authority of law of the United States.

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

19 ~~4~~ 3. This section does not apply after entry of a final
20 decree in the reorganization proceeding even though the court
21 retains jurisdiction of the proceeding for limited purposes
22 unrelated to consummation of the reorganization plan.

23 Sec. 65. Section 490.1009, Code 2001, is amended to read
24 as follows:

25 490.1009 EFFECT OF AMENDMENT.

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

33 Sec. 66. Section 490.1020, Code 2001, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 490.1020 AMENDMENT OF BYLAWS BY BOARD OF DIRECTORS OR
2 SHAREHOLDERS.

3 1. A corporation's shareholders may amend or repeal the
4 corporation's bylaws.

5 2. A corporation's board of directors may amend or repeal
6 the corporation's bylaws unless either of the following apply:

7 a. The articles of incorporation or section 490.1021
8 reserve that power exclusively to the shareholders in whole or
9 in part.

10 b. The shareholders in amending, repealing, or adopting a
11 bylaw expressly provide that the board of directors shall not
12 amend, repeal, or reinstate that bylaw.

13 Sec. 67. Section 490.1021, Code 2001, is amended to read
14 as follows:

15 490.1021 BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR
16 SHAREHOLDERS DIRECTORS.

17 ~~1. If authorized by the articles of incorporation, the~~
18 ~~shareholders may adopt or amend a bylaw that fixes a greater A~~
19 ~~bylaw that increases a quorum or voting requirement for the~~
20 ~~board of directors may be amended or repealed as follows:~~

21 a. If adopted by the shareholders, only by the
22 shareholders, unless the bylaws otherwise provide.

23 b. If adopted by the board of directors, either by the
24 shareholders or voting groups of shareholders than is required
25 by this chapter by the board of directors. The adoption or
26 amendment of a bylaw that adds, changes, or deletes a greater

27 2. A bylaw adopted or amended by the shareholders that
28 increases a quorum or voting requirement for the board of
29 directors may provide that it can be amended or repealed only
30 by a specified vote of either the shareholders or the board of
31 directors.

32 3. Action by the board of directors under subsection 1 to
33 amend or repeal a bylaw that changes the quorum or voting
34 requirement for the board of directors must meet the same
35 quorum requirement and be adopted by the same vote and voting

1 groups required to take action under the quorum and voting
2 requirement then in effect or proposed to be adopted,
3 whichever is greater.

4 ~~2.---A-bylaw-that-fixes-a-greater-quorum-or-voting~~
5 ~~requirement-for-shareholders-under-subsection-1-shall-not-be~~
6 ~~adopted,-amended,-or-repealed-by-the-board-of-directors-~~

7 Sec. 68. Section 490.1101, Code 2001, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 490.1101 DEFINITIONS.

11 As used in this division, unless the context otherwise
12 requires:

13 1. "Interests" means the proprietary interests in another
14 entity.

15 2. "Merger" means a business combination pursuant to
16 section 490.1102.

17 3. "Organizational documents" means the basic document or
18 documents that create, or determine the internal governance
19 of, another entity.

20 4. "Other entity" means any association or legal entity,
21 other than a domestic or foreign corporation, organized to
22 conduct business, including, without limitation, limited
23 partnerships, general partnerships, limited liability
24 partnerships, limited liability companies, joint ventures,
25 joint stock companies, and business trusts.

26 5. "Party to a merger" or "party to a share exchange"
27 means any domestic or foreign corporation or other entity that
28 will accomplish one of the following during a merger:

29 a. Merge under a plan of merger.

30 b. Acquire shares or interests of another corporation or
31 another entity in a share exchange.

32 c. Have all of its shares or interests or all of one or
33 more classes or series of its shares or interests acquired in
34 a share exchange.

35 6. "Share exchange" means a business combination pursuant

1 to section 490.1103.

2 7. "Survivor" in a merger means the corporation or other
3 entity into which one or more other corporations or other
4 entities are merged. A survivor of a merger may preexist the
5 merger or be created by the merger.

6 Sec. 69. Section 490.1102, Code 2001, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 490.1102 MERGER.

10 1. One or more domestic corporations may merge with a
11 domestic or foreign corporation or other entity pursuant to a
12 plan of merger.

13 2. A foreign corporation, or domestic or foreign other
14 entity, may be a party to the merger, or may be created by the
15 terms of the plan of merger, only if both of the following are
16 satisfied:

17 a. The merger is permitted by the laws under which the
18 corporation or other entity is organized or by which it is
19 governed.

20 b. In effecting the merger, the corporation or other
21 entity complies with such laws and with its articles of
22 incorporation or organizational documents.

23 3. The plan of merger must include all of the following:

24 a. The name of each corporation or other entity that will
25 merge and the name of the corporation or other entity that
26 will be the survivor of the merger.

27 b. The terms and conditions of the merger.

28 c. The manner and basis of converting the shares of each
29 merging corporation and interests of each merging other entity
30 into shares, or other securities interests, obligations,
31 rights to acquire shares or other securities, cash, other
32 property, or any combination of the foregoing.

33 d. The articles of incorporation of any corporation, or
34 the organizational documents of any other entity, to be
35 created by the merger, or if a new corporation or other entity

1 is not to be created by the merger, any amendments to the
2 survivor's articles of incorporation or organizational
3 documents.

4 e. Any other provisions required by the laws under which
5 any party to the merger is organized or by which it is
6 governed, or by the articles of incorporation or
7 organizational documents of any such party.

8 4. The terms described in subsection 3, paragraphs "b" and
9 "c", may be made dependent on facts ascertainable outside the
10 plan of merger, provided that those facts are objectively
11 ascertainable. The term "facts" includes, but is not limited
12 to, the occurrence of any event, including a determination or
13 action by any person or body, including the corporation.

14 5. The plan of merger may also include a provision that
15 the plan may be amended prior to filing the articles of merger
16 with the secretary of state, provided that if the shareholders
17 of a domestic corporation that is a party to the merger are
18 required or permitted to vote on the plan, the plan must
19 provide that subsequent to approval of the plan by such
20 shareholders the plan shall not be amended to change any of
21 the following:

22 a. Change the amount or kind of shares or other
23 securities, interests, obligations, rights to acquire shares
24 or other securities, cash, or other property to be received by
25 the shareholders of or owners of interests in any party to the
26 merger upon conversion of their shares or interests under the
27 plan.

28 b. Change the articles of incorporation of any
29 corporation, or the organizational documents of any other
30 entity, that will survive or be created as a result of the
31 merger, except for changes permitted by section 490.1005 or by
32 comparable provisions of the laws under which the foreign
33 corporation or other entity is organized or governed.

34 c. Change any of the other terms or conditions of the plan
35 if the change would adversely affect such shareholders in any

1 material respect.

2 Sec. 70. Section 490.1103, Code 2001, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 490.1103 SHARE EXCHANGE.

6 1. Either of the following may occur through a share
7 exchange:

8 a. A domestic corporation may acquire all of the shares of
9 one or more classes or series of shares of another domestic or
10 foreign corporation, or all of the interests of one or more
11 classes or series of interests of a domestic or foreign other
12 entity, in exchange for shares or other securities, interests,
13 obligations, rights to acquire shares or other securities,
14 cash, other property, or any combination of the foregoing,
15 pursuant to a plan of share exchange.

16 b. All of the shares of one or more classes or series of
17 shares of a domestic corporation may be acquired by another
18 domestic or foreign corporation or other entity, in exchange
19 for shares or other securities, interests, obligations, rights
20 to acquire shares or other securities, cash, other property,
21 or any combination of the foregoing, pursuant to a plan of
22 share exchange.

23 2. A foreign corporation, or a domestic or foreign other
24 entity, may be a party to the share exchange only if both of
25 the following conditions are met:

26 a. The share exchange is permitted by the laws under which
27 the corporation or other entity is organized or by which it is
28 governed.

29 b. In effecting the share exchange, the corporation or
30 other entity complies with such laws and with its articles of
31 incorporation or organizational documents.

32 3. The plan of share exchange must include all of the
33 following:

34 a. The name of each corporation or other entity whose
35 shares or interests will be acquired and the name of the

1 corporation or other entity that will acquire those shares or
2 interests.

3 b. The terms and conditions of the share exchange.

4 c. The manner and basis of exchanging shares of a
5 corporation or interests in an other entity whose shares or
6 interests will be acquired under the share exchange into
7 shares or other securities, interests, obligations, rights to
8 acquire shares or other securities, cash, other property, or
9 any combination of the foregoing.

10 d. Any other provisions required by the laws under which
11 any party to the share exchange is organized or by the
12 articles of incorporation or organizational documents of any
13 such party.

14 4. The terms described in subsection 3, paragraphs "b" and
15 "c", may be made dependent on facts ascertainable outside the
16 plan of share exchange, provided that those facts are
17 objectively ascertainable. The term "facts" includes, but is
18 not limited to, the occurrence of any event, including a
19 determination or action by any person or body, including the
20 corporation.

21 5. The plan of share exchange may also include a provision
22 that the plan may be amended prior to filing of the articles
23 of share exchange with the secretary of state, provided that
24 if the shareholders of a domestic corporation that is a party
25 to the share exchange are required or permitted to vote on the
26 plan, the plan must provide that subsequent to approval of the
27 plan by such shareholders the plan shall not be amended to
28 change either of the following:

29 a. The amount or kind of shares or other securities,
30 interests, obligations, rights to acquire shares or other
31 securities, cash, or other property to be issued by the
32 corporation or to be received by the shareholders of or owners
33 of interests in any party to the share exchange in exchange
34 for their shares or interests under the plan.

35 b. Any of the terms or conditions of the plan if the

1 change would adversely affect such shareholders in any
2 material respect.

3 6. This section does not limit the power of a domestic
4 corporation to acquire shares of another corporation or
5 interests in an other entity in a transaction other than a
6 share exchange.

7 Sec. 71. Section 490.1104, Code 2001, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 490.1104 ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE.

11 In the case of a domestic corporation that is a party to a
12 merger or share exchange:

13 1. The plan of merger or share exchange must be adopted by
14 the board of directors.

15 2. Except as provided in subsection 7 and in section
16 490.1105, after adopting the plan of merger or share exchange
17 the board of directors must submit the plan to the
18 shareholders for their approval. The board of directors must
19 also transmit to the shareholders a recommendation that the
20 shareholders approve the plan, unless the board of directors
21 makes a determination that because of conflicts of interest or
22 other special circumstances it should not make such a
23 recommendation, in which case the board of directors must
24 transmit to the shareholders the basis for that determination.

25 3. The board of directors may condition its submission of
26 the plan of merger or share exchange to the shareholders on
27 any basis.

28 4. If the plan of merger or share exchange is required to
29 be approved by the shareholders, and if the approval is to be
30 given at a meeting, the corporation must notify each
31 shareholder, whether or not entitled to vote, of the meeting
32 of shareholders at which the plan is to be submitted for
33 approval. The notice must state that the purpose, or one of
34 the purposes, of the meeting is to consider the plan and must
35 contain or be accompanied by a copy or summary of the plan.

1 If the corporation is to be merged into an existing
 2 corporation or other entity, the notice shall also include or
 3 be accompanied by a copy or summary of the articles of
 4 incorporation or organizational documents of that corporation
 5 or other entity. If the corporation is to be merged into an
 6 existing corporation or other entity that is to be created
 7 pursuant to the merger, the notice shall include or be
 8 accompanied by a copy or summary of the articles of
 9 incorporation or organizational documents of the new
 10 corporation or other entity.

11 5. Unless the articles of incorporation, bylaws, or the
 12 board of directors require a greater vote or a greater number
 13 of votes to be present, the approval of the plan of merger or
 14 share exchange shall require the approval of the shareholders
 15 at a meeting at which a quorum consisting of at least a
 16 majority of the votes entitled to be cast on the plan exists,
 17 and, if any class or series of shares is entitled to vote as a
 18 separate group on the plan of merger or share exchange, the
 19 approval of each such separate voting group at a meeting at
 20 which a quorum of the voting group consisting of at least a
 21 majority of the votes entitled to be cast on the merger or
 22 share exchange by that voting group is present.

23 6. Separate voting by voting groups is required for each
 24 of the following:

25 a. On a plan of merger, by each class or series of shares
 26 that are to be converted, pursuant to the provisions of the
 27 plan of merger, into shares or other securities, interests,
 28 obligations, rights to acquire shares or other securities,
 29 cash, other property, or any combination of the foregoing, or
 30 would have a right to vote as a separate group on a provision
 31 in the plan that, if contained in a proposed amendment to
 32 articles of incorporation, would require action by separate
 33 voting groups under section 490.1004.

34 b. On a plan of share exchange, by each class or series of
 35 shares included in the exchange, with each class or series

1 constituting a separate voting group.

2 c. On a plan of merger or share exchange, if the voting
3 group is entitled under the articles of incorporation to vote
4 as a voting group to approve a plan of merger or share
5 exchange.

6 7. Unless the articles of incorporation otherwise provide,
7 approval by the corporation's shareholders of a plan of merger
8 or share exchange is not required if all of the following
9 conditions are satisfied:

10 a. The corporation will survive the merger or is the
11 acquiring corporation in a share exchange.

12 b. Except for amendments permitted by section 490.1005,
13 its articles of incorporation will not be changed.

14 c. Each shareholder of the corporation whose shares were
15 outstanding immediately before the effective date of the
16 merger or share exchange will hold the same number of shares,
17 with identical preferences, limitations, and relative rights,
18 immediately after the effective date of change.

19 d. The issuance in the merger or share exchange of shares
20 or other securities convertible into or rights exercisable for
21 shares does not require a vote under section 490.621,
22 subsection 6.

23 8. If as a result of a merger or share exchange one or
24 more shareholders of a domestic corporation would become
25 subject to personal liability for the obligations or
26 liabilities of any other person or other entity, approval of
27 the plan of merger shall require the execution, by each such
28 shareholder, of a separate written consent to become subject
29 to such personal liability.

30 Sec. 72. Section 490.1105, Code 2001, is amended by
31 striking the section and inserting in lieu thereof the
32 following:

33 490.1105 MERGER BETWEEN PARENT AND SUBSIDIARY OR BETWEEN
34 SUBSIDIARIES.

35 1. A domestic parent corporation that owns shares of a

1 domestic or foreign subsidiary corporation that carry at least
 2 ninety percent of the voting power of each class and series of
 3 the outstanding shares of the subsidiary that have voting
 4 power may merge the subsidiary into itself or into another
 5 such subsidiary, or merge itself into the subsidiary, without
 6 the approval of the board of directors or shareholders of the
 7 subsidiary unless the articles of incorporation of any of the
 8 corporations otherwise provide, and unless, in the case of a
 9 foreign subsidiary, approval by the subsidiary's board of
 10 directors or shareholders is required by the laws under which
 11 the subsidiary is organized.

12 2. If under subsection 1 approval of a merger by the
 13 subsidiary's shareholders is not required, the parent
 14 corporation shall, within ten days after the effective date of
 15 the merger, notify each of the subsidiary's shareholders that
 16 the merger has become effective.

17 3. Except as provided in subsections 1 and 2, a merger
 18 between a parent and subsidiary shall be governed by the
 19 provisions of this division, applicable to mergers generally.

20 Sec. 73. Section 490.1106, Code 2001, is amended by
 21 striking the section and inserting in lieu thereof the
 22 following:

23 490.1106 ARTICLES OF MERGER OR SHARE EXCHANGE.

24 1. After a plan of merger or share exchange has been
 25 adopted and approved as required by this chapter, articles of
 26 merger or share exchange shall be executed on behalf of each
 27 party to the merger or share exchange by any officer or other
 28 duly authorized representative. The articles shall set forth
 29 the following:

30 a. The names of the parties to the merger or share
 31 exchange and the date on which the merger or share exchange
 32 occurred or is to be effective.

33 b. If the articles of incorporation of the survivor of a
 34 merger are amended, or if a new corporation is created as a
 35 result of a merger, the amendments to the survivor's articles

1 of incorporation or the articles of incorporation of the new
2 corporation.

3 c. If the plan of merger or share exchange required
4 approval by the shareholders of a domestic corporation that
5 was a party to the merger or share exchange, a statement that
6 the plan was duly approved by the shareholders and, if voting
7 by any separate voting group was required, by each such
8 separate voting group, in the manner required by this chapter
9 and the articles of incorporation.

10 d. If the plan of merger or share exchange did not require
11 approval by the shareholders of a domestic corporation that
12 was a party to the merger or share exchange, a statement to
13 that effect.

14 e. As to each foreign corporation and each other entity
15 that was a party to the merger or share exchange, a statement
16 that the plan and the performance of its terms were duly
17 authorized by all action required by the laws under which the
18 corporation or other entity is organized or by which it is
19 governed, and by its articles of incorporation or
20 organizational documents.

21 2. Articles of merger or share exchange shall be delivered
22 to the secretary of state for filing by the survivor of the
23 merger or the acquiring corporation in a share exchange and
24 shall take effect on the effective date of the merger or share
25 exchange.

26 Sec. 74. Section 490.1107, Code 2001, is amended by
27 striking the section and inserting in lieu thereof the
28 following:

29 490.1107 EFFECT OF MERGER OR SHARE EXCHANGE.

30 1. When a merger becomes effective, certain acts shall
31 occur as follows:

32 a. The corporation or other entity that is designated in
33 the plan of merger as the survivor continues or comes into
34 existence, as the case may be.

35 b. The separate existence of every corporation or other

1 entity that is merged into the survivor ceases.

2 c. All property owned by, and every contract right
3 possessed by, each corporation or other entity that merges
4 into the survivor is vested in the survivor without reversion
5 or impairment.

6 d. All liabilities of each corporation or other entity
7 that is merged into the survivor are vested in the survivor.

8 e. The name of the survivor may, but need not be,
9 substituted in any pending proceeding for the name of any
10 party to the merger whose separate existence ceased in the
11 merger.

12 f. The articles of incorporation or organizational
13 documents of the survivor are amended to the extent provided
14 in the plan of merger.

15 g. The articles of incorporation or organizational
16 documents of a survivor that is created by the merger become
17 effective.

18 h. The shares of each corporation that is a party to the
19 merger, and the interests in another entity that is a party to
20 a merger, that are to be converted under the plan of merger
21 into shares, interests, obligations, rights to acquire
22 securities, other securities, cash, other property, or any
23 combination of the foregoing, are converted, and the former
24 holders of such shares or interests are entitled only to the
25 rights provided to them in the plan of merger or to any rights
26 they may have under division XIII.

27 2. When a share exchange becomes effective, the shares of
28 each domestic corporation that are to be exchanged for shares
29 or other securities, interests, obligations, rights to acquire
30 shares or securities, other securities, cash, other property,
31 or any combination of the foregoing, are entitled only to the
32 rights provided to them in the plan of share exchange or to
33 any rights they may have under division XIII.

34 3. Any shareholder of a domestic corporation that is a
35 party to a merger or share exchange who, prior to the merger

1 or share exchange, was liable for the liabilities or
2 obligations of such corporation, shall not be released from
3 such liabilities or obligations by reason of the merger or
4 share exchange.

5 4. Upon a merger becoming effective, a foreign
6 corporation, or a foreign other entity that is the survivor of
7 the mergers, is deemed to do both of the following:

8 a. Appoint the secretary of state as its agent for service
9 of process in a proceeding to enforce the rights of
10 shareholders of each domestic corporation that is a party to
11 the merger who exercise appraisal rights.

12 b. Agree that it will promptly pay the amount, if any, to
13 which such shareholders are entitled under division XIII.

14 Sec. 75. Section 490.1108, Code 2001, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 490.1108 ABANDONMENT OF A MERGER OR SHARE EXCHANGE.

18 1. Unless otherwise provided in a plan of merger or share
19 exchange or in the laws under which a foreign corporation or a
20 domestic or foreign other entity that is a party to a merger
21 or a share exchange is organized or by which it is governed,
22 after the plan has been adopted and approved as required by
23 this division, and at any time before the merger or share
24 exchange has become effective, it may be abandoned by any
25 party to the merger or share exchange without action by the
26 party's shareholders or owners of interests, in accordance
27 with any procedures set forth in the plan of merger or share
28 exchange or, if no such procedures are set forth in the plan,
29 in the manner determined by the board of directors of a
30 corporation, or the managers of any other entity, subject to
31 any contractual rights of other parties to the merger or share
32 exchange.

33 2. If a merger or share exchange is abandoned under
34 subsection 1 after articles of merger or share exchange have
35 been filed with the secretary of state but before the merger

1 or share exchange has become effective, a statement that the
2 merger or share exchange has been abandoned in accordance with
3 this section, executed on behalf of a party to the merger or
4 share exchange by an officer or other duly authorized
5 representative, shall be delivered to the secretary of state
6 for filing prior to the effective date of the merger or share
7 exchange. Upon filing, the statement shall take effect and
8 the merger or share exchange shall be deemed abandoned and
9 shall not become effective.

10 Sec. 76. Section 490.1201, Code 2001, is amended to read
11 as follows:

12 490.1201 SALE DISPOSITION OF ASSETS IN-REGULAR-COURSE-OF
13 BUSINESS-AND-MORTGAGE-OF-ASSETS NOT REQUIRING SHAREHOLDER
14 APPROVAL.

15 ~~1.---A-corporation-may, on-the-terms-and-conditions-and-for~~
16 ~~the-consideration-determined-by-the-board-of-directors~~
17 Approval of the shareholders of a corporation is not required
18 to do any of the following, unless the articles of
19 incorporation otherwise provide:

20 a. 1. Sell To sell, lease, exchange, or otherwise dispose
21 of all, or substantially all, of its property any or all of
22 the corporation's assets in the usual and regular course of
23 business.

24 b. 2. Mortgage To mortgage, pledge, dedicate to the
25 repayment of indebtedness, whether with or without recourse,
26 or otherwise encumber any or all of its-property the
27 corporation's assets, whether or not in the usual and regular
28 course of business.

29 c. 3. Transfer To transfer any or all of its-property-to-a
30 corporation-all-the-shares the corporation's assets to one or
31 more corporations or other entities all of the shares or
32 interests of which are owned by the transferring corporation
33 whether-or-not-in-the-usual-course-of-business.

34 ~~2.---Unless-the-articles-of-incorporation-require-it,~~
35 ~~approval-by-the-shareholders-of-a-transaction-described-in~~

1 ~~subsection 1 is not required.~~

2 4. To distribute assets pro rata to the holders of one or
3 more classes or series of the corporation's shares.

4 Sec. 77. Section 490.1202, Code 2001, is amended to read
5 as follows:

6 490.1202 ~~SALE-OF-ASSETS-OTHER-THAN-IN-REGULAR-COURSE-OF~~
7 BUSINESS SHAREHOLDER APPROVAL OF CERTAIN DISPOSITIONS.

8 1. A corporation may sell sale, lease, exchange, or
9 otherwise dispose of all, or substantially all, of its
10 property, with or without the good will, otherwise than in the
11 usual and regular course of business, on the terms and
12 conditions and for the consideration determined by other
13 disposition of assets, other than a disposition described in
14 section 490.1201, requires approval of the corporation's board
15 of directors, if corporation's shareholders if the disposition
16 would leave the corporation without a significant continuing
17 business activity. If a corporation retains a business
18 activity that represented at least twenty-five percent of
19 total assets at the end of the most recently completed fiscal
20 year, and twenty-five percent of either income from continuing
21 operations before taxes or revenues from continuing operations
22 for that fiscal year, in each case of the corporation and its
23 subsidiaries on a consolidated basis, the corporation will
24 conclusively be deemed to have retained a significant
25 continuing business activity; but no presumption that the
26 disposition will leave the corporation without a significant
27 continuing business activity shall arise from the fact that
28 the corporation's continuing business activity does not equal
29 or exceed any of these percentages.

30 2. A disposition that requires approval of the
31 shareholders under subsection 1 shall be initiated by a
32 resolution by the board of directors proposes and its
33 authorizing the disposition. After adoption of such a
34 resolution, the board of directors shall submit the proposed
35 disposition to the shareholders for their approval. The board

1 of directors shall also transmit to the shareholders a
2 recommendation that the shareholders approve the proposed
3 transaction.

4 ~~2.--For-a-transaction-to-be-authorized-both-of-the~~
5 ~~following-must-occur:~~

6 ~~a.--The-board-of-directors-must-recommend-the-proposed~~
7 ~~transaction-to-the-shareholders disposition, unless the board~~
8 ~~of directors determines makes a determination that because of~~
9 ~~conflict conflicts of interest or other special circumstances~~
10 ~~it should not make no such a recommendation ~~and-communicates,~~~~
11 ~~in which case the basis-for-its-determination board of~~
12 ~~directors shall transmit to the shareholders with the~~
13 ~~submission-of-the-proposed-transaction basis for that~~
14 ~~determination.~~

15 ~~b.--The-shareholders-entitled-to-vote-must-approve-the~~
16 ~~transaction.~~

17 3. The board of directors may condition its submission of
18 a disposition to the proposed-transaction shareholders under
19 subsection 2 on any basis.

20 4. The If a disposition is required to be approved by the
21 shareholders under subsection 1, and if the approval is to be
22 given at a meeting, the corporation shall notify each
23 shareholder, whether or not entitled to vote, of the proposed
24 ~~shareholders'-meeting-in-accordance-with-section-490-705~~
25 meeting of shareholders at which the disposition is to be
26 submitted for approval. The notice must-also shall state that
27 the purpose, or one of the purposes, of the meeting is to
28 consider the ~~sale,-lease,-exchange,-or-other~~ disposition of
29 ~~all,-or-substantially-all,-the-property-of-the-corporation-and~~
30 ~~contain-or-be-accompanied-by~~ and shall contain a description
31 of the transaction disposition, including the terms and
32 conditions of the disposition and the consideration to be
33 received by the corporation.

34 5. Unless the articles of incorporation, bylaws, or the
35 board of directors acting pursuant to subsection 3 require a

1 greater vote or a ~~vote-by-voting-groups,~~ ~~the-transaction-to-be~~
2 ~~authorized-must-be-approved-by-a-majority-of-all~~ greater
3 number of votes to be presented, the approval of a disposition
4 by the shareholders shall require the approval of the
5 shareholders at a meeting at which a quorum consisting of at
6 least a majority of the votes entitled to be cast on the
7 transaction disposition exists.

8 6. After a ~~sale,~~ ~~lease,~~ ~~exchange,~~ ~~or-other-disposition-of~~
9 ~~property-is-authorized,~~ the-transaction disposition has been
10 approved by the shareholders under subsection 2, and at any
11 time before the disposition has been consummated, it may be
12 abandoned by the corporation without action by the
13 shareholders, subject to any contractual rights without
14 further-shareholder-action of other parties to the
15 disposition.

16 7. ~~A-transaction-that-constitutes-a-distribution-is~~
17 ~~governed-by-section-490-640-and-not-by-this-section.~~ A
18 disposition of assets in the course of dissolution under
19 division XIV is not governed by this section.

20 8. The assets of a direct or indirect consolidated
21 subsidiary shall be deemed the assets of the parent
22 corporation for the purposes of this section.

23 Sec. 78. Section 490.1301, Code 2001, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 490.1301 DEFINITIONS.

27 In this division, unless the context otherwise requires:

28 1. "Affiliate" means a person that directly or indirectly
29 through one or more intermediaries controls, is controlled by,
30 or is under common control with another person or is a senior
31 executive thereof. For purposes of section 490.1302,
32 subsection 2, paragraph "d", a person is deemed to be an
33 affiliate of its senior executives.

34 2. "Beneficial shareholder" means a person who is the
35 beneficial owner of shares held in a voting trust or by a

- 1 nominee on the beneficial owner's behalf.
- 2 3. "Corporation" means the issuer of the shares held by a
- 3 shareholder demanding appraisal. In addition, for matters
- 4 covered in sections 490.1322 through 490.1331, "corporation"
- 5 includes the surviving entity in a merger.
- 6 4. "Fair value" means the value of the corporation's
- 7 shares determined according to the following:
- 8 a. Immediately before the effectuation of the corporate
- 9 action to which the shareholder objects.
- 10 b. Using customary and current valuation concepts and
- 11 techniques generally employed for similar businesses in the
- 12 context of the transaction requiring appraisal.
- 13 c. Without discounting for lack of marketability or
- 14 minority status except, if appropriate, for amendments to the
- 15 articles pursuant to section 490.1302, subsection 1, paragraph
- 16 "e".
- 17 5. "Interest" means interest from the effective date of
- 18 the corporate action until the date of payment, at the rate of
- 19 interest on judgments in this state on the effective date of
- 20 the corporate action.
- 21 6. "Preferred shares" means a class or series of shares
- 22 whose holders have preference over any other class or series
- 23 with respect to distributions.
- 24 7. "Record shareholder" means the person in whose name
- 25 shares are registered in the records of the corporation or the
- 26 beneficial owner of shares to the extent of the rights granted
- 27 by a nominee certificate on file with the corporation.
- 28 8. "Senior executive" means the chief executive officer,
- 29 chief operating officer, chief financial officer, and anyone
- 30 in charge of a principal business unit or function.
- 31 9. "Shareholder" means both a record shareholder and a
- 32 beneficial shareholder.

33 Sec. 79. Section 490.1302, Code 2001, is amended to read
 34 as follows:

35 490.1302 **SHAREHOLDERS' RIGHT TO DISSENT APPRAISAL.**

1 1. A shareholder is entitled to ~~dissent from~~ appraisal
2 rights, and to obtain payment of the fair value of the
3 shareholder's shares, in the event of, any of the following
4 corporate actions:

5 a. Consummation of a ~~plan of~~ merger to which the
6 corporation is a party if either of the following apply:

7 (1) Shareholder approval is required for the merger by
8 ~~section 490.1103 or the articles of incorporation and the~~
9 ~~shareholder is entitled to vote on the merger~~ 490.1104 and the
10 shareholder is entitled to vote on the merger, except that
11 appraisal rights shall not be available to any shareholder of
12 the corporation with respect to shares of any class or series
13 that remain outstanding after consummation of the merger.

14 (2) The corporation is a subsidiary ~~that is merged with~~
15 ~~its parent under~~ and the merger is governed by section
16 490.1104 490.1105.

17 b. Consummation of a ~~plan of~~ share exchange to which the
18 corporation is a party as the corporation whose shares will be
19 acquired, if the shareholder is entitled to vote on the ~~plan~~
20 exchange, except that appraisal rights shall not be available
21 to any shareholder of the corporation with respect to any
22 class or series of shares of the corporation that is not
23 exchanged.

24 c. Consummation of a ~~sale or exchange of all or~~
25 ~~substantially all of the property of the corporation other~~
26 ~~than in the usual and regular course of business, if the~~
27 ~~shareholder is entitled to vote on the sale or exchange,~~
28 ~~including a sale in dissolution, but not including a sale~~
29 ~~pursuant to court order or a sale for cash pursuant to a plan~~
30 ~~by which all or substantially all of the net proceeds of the~~
31 ~~sale will be distributed to the shareholders within one year~~
32 ~~after the date of sale~~ disposition of assets pursuant to
33 section 490.1202 if the shareholder is entitled to vote on the
34 disposition.

35 d. An amendment of the articles of incorporation with

1 respect to a class or series of shares that materially and
2 adversely affects rights in respect of a dissenter's shares
3 because it does any or all of the following:

4 (1) -- Alters or abolishes a preferential right of the
5 shares.

6 (2) -- Creates, alters, or abolishes a right in respect of
7 redemption, including a provision respecting a sinking fund
8 for the redemption or repurchase, of the shares.

9 (3) -- Alters or abolishes a preemptive right of the holder
10 of the shares to acquire shares or other securities.

11 (4) -- Excludes or limits the right of the shares to vote on
12 any matter, or to cumulate votes, other than a limitation by
13 dilution through issuance of shares or other securities with
14 similar voting rights.

15 (5) -- Reduces reduces the number of shares of a class or
16 series owned by the shareholder to a fraction of a share if
17 the corporation has the obligation or right to repurchase the
18 fractional share so created is to be acquired for cash under
19 section 490.604.

20 (6) -- Extends, for the first time after being governed by
21 this chapter, the period of duration of a corporation
22 organized under chapter 491 or former chapter 496A and
23 existing for a period of years on the day preceding the date
24 the corporation is first governed by this chapter.

25 e. Any corporate action taken pursuant to a shareholder
26 vote, other amendment to the articles of incorporation,
27 merger, share exchange, or disposition of assets to the extent
28 provided by the articles of incorporation, bylaws, or a
29 resolution of the board of directors that provides that voting
30 or nonvoting shareholders are entitled to dissent and obtain
31 payment for their shares.

32 2. Notwithstanding subsection 1, the availability of the
33 appraisal rights under subsection 1, paragraphs "a" through
34 "d", shall be limited in accordance with the following
35 provisions:

1 a. Appraisal rights shall not be available for the holders
2 of shares of any class or series of shares:

3 (1) Listed on the New York stock exchange or the American
4 stock exchange or designated as a national market system
5 security on an interdealer quotation system by the national
6 association of securities dealers, inc.

7 (2) Not so listed or designated, but has at least two
8 thousand shareholders and the outstanding shares of such class
9 or series has a market value of at least twenty million
10 dollars, exclusive of the value of such shares held by its
11 subsidiaries, senior executives, directors, and beneficial
12 shareholders owning more than ten percent of such shares.

13 b. The applicability of paragraph "a" shall be determined
14 according to the following:

15 (1) The record date fixed to determine the shareholders
16 entitled to receive notice of, and to vote at, the meeting of
17 shareholders to act upon the corporate action requiring
18 appraisal rights.

19 (2) The day before the effective date of such corporate
20 action if there is no meeting of shareholders.

21 c. Paragraph "a" shall not be applicable and appraisal
22 rights shall be available pursuant to subsection 1 for the
23 holders of any class or series of shares who are required by
24 the terms of the corporate action requiring appraisal rights
25 to accept for such shares anything other than cash or shares
26 of any class or any series of shares of any corporation, or
27 any other proprietary interest of any other entity, that
28 satisfies the standards set forth in paragraph "a", at the
29 time the corporate action becomes effective.

30 d. Paragraph "a" shall not be applicable and appraisal
31 rights shall be available pursuant to subsection 1 for the
32 holders of any class or series of shares where any of the
33 following applies:

34 (1) Any of the shares or assets of the corporation are
35 being acquired or converted, whether by merger, share

1 exchange, or otherwise, pursuant to the corporate action by a
2 person, or by an affiliate of a person, who:

3 (a) Is, or at any time in the one-year period immediately
4 preceding approval by the board of directors of the corporate
5 action requiring appraisal rights was, the beneficial owner of
6 twenty percent or more of the voting power of the corporation,
7 excluding any shares acquired pursuant to an offer for all
8 shares having voting power if such offer was made within one
9 year prior to the corporate action requiring appraisal rights
10 for consideration of the same kind and of a value equal to or
11 less than that paid in connection with the corporate action.

12 (b) Directly or indirectly has, or at any time in the one-
13 year period immediately preceding approval by the board of
14 directors of the corporation of the corporate action requiring
15 appraisal rights had, the power, contractually or otherwise,
16 to cause the appointment or election of twenty-five percent or
17 more of the directors to the board of directors of the
18 corporation.

19 (2) Any of the shares or assets of the corporation are
20 being acquired or converted, whether by merger, share
21 exchange, or otherwise, pursuant to such corporate action by a
22 person, or by an affiliate of a person, who is, or at any time
23 in the one-year period immediately preceding approval by the
24 board of directors of the corporate action requiring appraisal
25 rights was, a senior executive or director of the corporation
26 or a senior executive of any affiliate thereof, and that
27 senior executive or director will receive, as a result of the
28 corporate action, a financial benefit not generally available
29 to other shareholders as such, other than any of the
30 following:

31 (a) Employment, consulting, retirement, or similar
32 benefits established separately and not as part of or in
33 contemplation of the corporate action.

34 (b) Employment, consulting, retirement, or similar
35 benefits established in contemplation of, or as part of, the

1 corporate action that are not more favorable than those
2 existing before the corporate action or, if more favorable,
3 that have been approved on behalf of the corporation in the
4 same manner as is provided in section 490.862.

5 (c) In the case of a director of the corporation who will,
6 in the corporate action, become a director of the acquiring
7 entity in the corporate action or one of its affiliates,
8 rights and benefits as a director that are provided on the
9 same basis as those afforded by the acquiring entity generally
10 to other directors of such entity or such affiliate.

11 e. For the purposes of paragraph "d" only, the term
12 "beneficial owner" means any person who, directly or
13 indirectly, through any contract, arrangement, or
14 understanding, other than a revocable proxy, has or shares the
15 power to vote, or to direct the voting of, shares, provided
16 that a member of a national securities exchange shall not be
17 deemed to be a beneficial owner of securities held directly or
18 indirectly by such member on behalf of another person solely
19 because the member is the record holder of such securities if
20 the member is precluded by the rules of such exchange from
21 voting without instruction on contested matters or matters
22 that may affect substantially the rights or privileges of the
23 holders of the securities to be voted. When two or more
24 persons agree to act together for the purpose of voting their
25 shares of the corporation, each member of the group formed
26 thereby shall be deemed to have acquired beneficial ownership,
27 as of the date of such agreement, of all voting shares of the
28 corporation beneficially owned by any member of the group.

29 3. Notwithstanding any other provision of section
30 490.1302, the articles of incorporation as originally filed or
31 any amendment thereto may limit or eliminate appraisal rights
32 for any class or series of preferred shares, but any such
33 limitation or elimination contained in an amendment to the
34 articles of incorporation that limits or eliminates appraisal
35 rights for any of such shares that are outstanding immediately

1 prior to the effective date of such amendment or that the
 2 corporation is or may be required to issue or sell thereafter
 3 pursuant to any conversion, exchange, or other right existing
 4 immediately before the effective date of such amendment, shall
 5 not apply to any corporate action that becomes effective
 6 within one year of that date if such action would otherwise
 7 afford appraisal rights.

8 ~~2-~~ 4. A shareholder entitled to ~~dissent-and-obtain-payment~~
 9 ~~for-the-shareholder's-shares~~ appraisal rights under this
 10 chapter is not entitled to challenge the a completed corporate
 11 ~~action creating-the-shareholder's-entitlement-unless-the~~
 12 ~~action-is-unlawful-or-fraudulent-with-respect-to-the~~
 13 ~~shareholder-or-the-corporation-~~ for which appraisal rights are
 14 available unless such corporate action meets one of the
 15 following standards:

16 a. It was not effectuated in accordance with the
 17 applicable provisions of division X, XI, or XII or the
 18 corporation's articles of incorporation, bylaws, or board of
 19 directors' resolution authorizing the corporate action.

20 b. It was procured as a result of fraud or material
 21 misrepresentation.

22 Sec. 80. Section 490.1303, Code 2001, is amended to read
 23 as follows:

24 490.1303 DISSENT ASSERTION OF RIGHTS BY NOMINEES AND
 25 BENEFICIAL OWNERS.

26 1. A record shareholder may assert ~~dissenters'~~ appraisal
 27 rights as to fewer than all the shares registered in that the
 28 record shareholder's name but owned by a beneficial
 29 shareholder only if the record shareholder dissents objects
 30 with respect to all shares beneficially of the class or series
 31 owned by ~~any-one-person~~ the beneficial shareholder and
 32 notifies the corporation in writing of the name and address of
 33 each person beneficial shareholder on whose behalf the
 34 ~~shareholder-asserts-dissenters'~~ appraisal rights are being
 35 asserted. The rights of a ~~partial-dissenter~~ record

1 shareholder who asserts appraisal rights for only part of the
2 shares held of record in the record shareholder's name under
3 this subsection ~~are~~ shall be determined as if the shares as to
4 which the record shareholder dissents objects and the record
5 shareholder's other shares were registered in the names of
6 different record shareholders.

7 2. A beneficial shareholder may assert ~~dissenters'~~
8 appraisal rights as to shares of any class or series held on
9 ~~the-shareholder's~~ behalf of the shareholder only if the
10 shareholder does both of the following:

11 a. Submits to the corporation the record shareholder's
12 written consent to the ~~dissent-not-later-than-the-time-the~~
13 ~~beneficial-shareholder-asserts-dissenters'-rights~~ assertion of
14 such rights no later than the date referred to in section
15 490.1322, subsection 2, paragraph "b", subparagraph (2).

16 b. Does so with respect to all shares of ~~which-the~~
17 ~~shareholder-is~~ the class of series that are beneficially owned
18 by the beneficial shareholder or-over-which-that-beneficial
19 ~~shareholder-has-power-to-direct-the-vote.~~

20 Sec. 81. Section 490.1320, Code 2001, is amended to read
21 as follows:

22 490.1320 NOTICE OF ~~DISENTERS'~~ APPRAISAL RIGHTS.

23 1. If proposed corporate action ~~creating-dissenters'~~
24 ~~rights-under~~ described in section 490.1302, subsection 1, is
25 to be submitted to a vote at a shareholders' meeting, the
26 meeting notice must state that the corporation has concluded
27 that the shareholders are, are not, or may be entitled to
28 assert dissenters' appraisal rights under this part ~~and-be~~
29 ~~accompanied-by.~~ If the corporation concludes that appraisal
30 rights are or may be available, a copy of this part must
31 accompany the meeting notice sent to those record shareholders
32 entitled to exercise appraisal rights.

33 2. ~~If-corporate-action-creating-dissenters'-rights-under~~
34 In a merger pursuant to section 490-1302-is-taken-without-a
35 ~~vote-of-shareholders~~ 490.1105, the parent corporation shall

1 must notify in writing all record shareholders of the
 2 subsidiary who are entitled to assert dissenters' appraisal
 3 rights that the corporate action was-taken-and-send-them-the
 4 dissenters'-notice-described became effective. Such notice
 5 must be sent within ten days after the corporate action became
 6 effective and include the materials described in section
 7 490.1322.

8 Sec. 82. Section 490.1321, Code 2001, is amended to read
 9 as follows:

10 490.1321 NOTICE OF INTENT TO DEMAND PAYMENT.

11 1. If proposed corporate action ~~creating-dissenters'~~
 12 requiring appraisal rights under section 490.1302 is submitted
 13 to a vote at a shareholders' meeting, a shareholder who wishes
 14 to assert dissenters' appraisal rights with respect to any
 15 class or series of shares must do all of the following:

16 a. Deliver to the corporation before the vote is taken
 17 written notice of the shareholder's intent to demand payment
 18 ~~for-the-shareholder's-shares~~ if the proposed action is
 19 effectuated.

20 b. Not vote the-dissenting-shareholder's-shares, or cause
 21 or permit to be voted, any shares of such class or series in
 22 favor 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. 83. Section 490.1322, Code 2001, is amended to read
 27 as follows:

28 490.1322 DISSENTERS' APPRAISAL NOTICE AND FORM.

29 1. If proposed corporate action ~~creating-dissenters'~~
 30 requiring appraisal rights under section 490.1302 is
 31 ~~authorized-at-a-shareholders'-meeting,~~ subsection 1, becomes
 32 effective, the corporation shall must deliver a written
 33 dissenters' appraisal notice and form required by subsection
 34 2, paragraph "a", to all shareholders who satisfied the
 35 requirements of section 490.1321. In the case of a merger

1 under section 490.1105, the parent must deliver a written
2 appraisal notice and form to all record shareholders who may
3 be entitled to assert appraisal rights.

4 2. The dissenters¹ appraisal notice must be sent no
5 earlier than the date the corporate action became effective
6 and no later than ten days after the-proposed-corporate-action
7 is-authorized-at-a-shareholders¹-meeting,-or,-if-the-corporate
8 action-is-taken-without-a-vote-of-the-shareholders,-no-later
9 than-ten-days-after-the-corporate-action-is-taken, such date
10 and must do all of the following:

11 a. ~~State-where-the-payment-demand-must-be-sent-and-where~~
12 and-when Be accompanied by a form that specifies the date of
13 the first announcement to shareholders of the principal terms
14 of the proposed corporate action and requires the shareholder
15 asserting appraisal rights to certify whether or not
16 beneficial ownership of those shares for which appraisal
17 rights are asserted was acquired before that date, and that
18 the shareholder did not vote for the transaction.

19 b. State all of the following:

20 (1) Where the form must be sent and where certificates for
21 certificated shares must be deposited and the date by which
22 those certificates must be deposited, which date shall not be
23 earlier than the date for receiving the required form under
24 subparagraph (2).

25 ~~b.---Inform-holders-of-uncertificated-shares-to-what-extent~~
26 ~~transfer-of-the-shares-will-be-restricted-after-the-payment~~
27 ~~demand-is-received.~~

28 ~~c.---Supply-a-form-for-demanding-payment-that-includes-the~~
29 ~~date-of-the-first-announcement-to-news-media-or-to~~
30 ~~shareholders-of-the-terms-of-the-proposed-corporate-action-and~~
31 ~~requires-that-the-person-asserting-dissenters¹-rights-certify~~
32 ~~whether-or-not-the-person-acquired-beneficial-ownership-of-the~~
33 ~~shares-before-that-date.~~

34 ~~d. (2) Set-a A date by which the corporation must receive~~
35 ~~the payment-demand form, which date shall not be fewer than~~

1 ~~thirty~~ forty nor more than sixty days after the date the
2 ~~dissenters' notice is delivered~~ appraisal notice and form are
3 sent under subsection 1, and state that the shareholder shall
4 have waived the right to demand appraisal with respect to the
5 shares unless the form is received by the corporation by such
6 specified date.

7 (3) The corporation's estimate of the fair value of the
8 shares.

9 (4) That, if requested in writing, the corporation will
10 provide, to the shareholder so requesting, within ten days
11 after the date specified in subparagraph (2) the number of
12 shareholders who return the forms by the specified date and
13 the total number of shares owned by them.

14 (5) The date by which the notice to withdraw under section
15 490.1323 must be received, which date must be within twenty
16 days after the date specified in subparagraph (2).

17 e. c. Be accompanied by a copy of this division.

18 Sec. 84. Section 490.1323, Code 2001, is amended to read
19 as follows:

20 490.1323 ~~BUY-TO-DEMAND-PAYMENT~~ PERFECTION OF RIGHTS --
21 RIGHT TO WITHDRAW.

22 1. A shareholder ~~sent-a-dissenters'~~ who receives notice
23 described-in pursuant to section 490.1322 and who wishes to
24 exercise appraisal rights must ~~demand-payment,~~ certify on the
25 form sent by the corporation whether the shareholder
26 beneficial owner of such shares acquired beneficial ownership
27 of the shares before the date required to be set forth in the
28 ~~dissenters' notice~~ pursuant to section 490.1322, subsection 2,
29 paragraph "e" "a". If a shareholder fails to make this
30 certification, the corporation may elect to treat the
31 shareholder's shares as after-acquired shares under section
32 490.1325, and deposit the shareholder's certificates in
33 accordance with the terms of the notice by the date referred
34 to in the notice pursuant to section 490.1322, subsection 2,
35 paragraph "b", subparagraph (2). Once a shareholder deposits

1 that shareholder's certificates or, in the case of
2 uncertificated shares, returns the executed forms, that
3 shareholder loses all rights as a shareholder, unless the
4 shareholder withdraws pursuant to subsection 2.

5 2. The shareholder who demands payment and deposits the
6 shareholder's shares under subsection 1 retains all other
7 rights of a shareholder until these rights are canceled or
8 modified by the taking of the proposed corporate action. A
9 shareholder who has complied with subsection 1 may
10 nevertheless decline to exercise appraisal rights and withdraw
11 from the appraisal process by so notifying the corporation in
12 writing by the date set forth in the appraisal notice pursuant
13 to section 490.1322, subsection 2, paragraph "b", subparagraph
14 (5). A shareholder who fails to so withdraw from the
15 appraisal process shall not thereafter withdraw without the
16 corporation's written consent.

17 3. A shareholder who does not demand payment or execute
18 and return the form and, in the case of certificated shares,
19 deposit the shareholder's share certificates where required,
20 each by the date set forth in the dissenters' notice described
21 in section 490.1322, subsection 2, is shall not be entitled to
22 payment for the shareholder's shares under this division.

23 Sec. 85. Section 490.1324, Code 2001, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 490.1324 PAYMENT.

27 1. Except as provided in section 490.1325, within thirty
28 days after the form required by section 490.1322, subsection
29 2, paragraph "b", subparagraph (2), the corporation shall pay
30 in cash to those shareholders who complied with section
31 490.1323, subsection 1, the amount the corporation estimates
32 to be the fair value of their shares, plus interest.

33 2. The payment to each shareholder pursuant to subsection
34 1 must be accompanied by all of the following:

35 a. Financial statements of the corporation that issued the

1 shares to be appraised, consisting of a balance sheet as of
2 the end of a fiscal year ending not more than sixteen months
3 before the date of payment, an income statement for that year,
4 a statement of changes in shareholders' equity for that year,
5 and the latest available interim financial statements, if any.

6 b. A statement of the corporation's estimate of the fair
7 value of the shares, which estimate must equal or exceed the
8 corporation's estimate given pursuant to section 490.1322,
9 subsection 2, paragraph "b", subparagraph (3).

10 c. A statement that shareholders described in subsection 1
11 have the right to demand further payment under section
12 490.1326 and that if any such shareholder does not do so
13 within the time period specified therein, such shareholder
14 shall be deemed to have accepted such payment in full
15 satisfaction of the corporation's obligations under this
16 chapter.

17 Sec. 86. Section 490.1325, Code 2001, is amended by
18 striking the section and inserting in lieu thereof the
19 following:

20 490.1325 AFTER-ACQUIRED SHARES.

21 1. A corporation may elect to withhold payment required by
22 section 490.1324 from any shareholder who did not certify that
23 beneficial ownership of all of the shareholder's shares for
24 which appraisal rights are asserted was acquired before the
25 date set forth in the appraisal notice sent pursuant to
26 section 490.1322, subsection 2, paragraph "a".

27 2. If the corporation elects to withhold payment under
28 subsection 1, it must within thirty days after the form
29 required by section 490.1322, subsection 2, paragraph "b",
30 subparagraph (2), is due, notify all shareholders who are
31 described in subsection 1 regarding all of the following:

32 a. Of the information required by section 490.1324,
33 subsection 2, paragraph "a".

34 b. Of the corporation's estimate of fair value pursuant to
35 section 490.1324, subsection 2, paragraph "b".

1 c. That they may accept the corporation's estimate of fair
2 value, plus interest, in full satisfaction of their demands or
3 demand appraisal under section 490.1326.

4 d. That those shareholders who wish to accept such offer
5 must notify the corporation of their acceptance of the
6 corporation's offer within thirty days after receiving the
7 offer.

8 e. That those shareholders who do not satisfy the
9 requirements for demanding appraisal under section 490.1326
10 shall be deemed to have accepted the corporation's offer.

11 3. Within ten days after receiving the shareholder's
12 acceptance pursuant to subsection 2, the corporation must pay
13 in cash the amount it offered under subsection 2, paragraph
14 "b", to each shareholder who agreed to accept the
15 corporation's offer in full satisfaction of the shareholder's
16 demand.

17 4. Within forty days after sending the notice described in
18 subsection 2, the corporation must pay in cash the amount it
19 offered to pay under subsection 2, paragraph "b", to each
20 shareholder described in subsection 2, paragraph "e".

21 Sec. 87. Section 490.1326, Code 2001, is amended by
22 striking the section and inserting in lieu thereof the
23 following:

24 490.1326 PROCEDURE IF SHAREHOLDER DISSATISFIED WITH
25 PAYMENT OR OFFER.

26 1. A shareholder paid pursuant to section 490.1324 who is
27 dissatisfied with the amount of the payment must notify the
28 corporation in writing of that shareholder's estimate of the
29 fair value of the shares and demand payment of that estimate
30 plus interest, less any payment under section 490.1324. A
31 shareholder offered payment under section 490.1325 who is
32 dissatisfied with that offer must reject the offer and demand
33 payment of the shareholder's stated estimate of the fair value
34 of the shares plus interest.

35 2. A shareholder who fails to notify the corporation in

1 writing of that shareholder's demand to be paid the
 2 shareholder's stated estimate of the fair value plus interest
 3 under subsection 1 within thirty days after receiving the
 4 corporation's payment or offer of payment under section
 5 490.1324 or 490.1325, respectively, waives the right to demand
 6 payment under this section and shall be entitled only to the
 7 payment made or offered pursuant to those respective sections.

8 Sec. 88. Section 490.1330, Code 2001, is amended to read
 9 as follows:

10 490.1330 COURT ACTION.

11 1. If a demand shareholder makes demands for payment under
 12 section ~~490.1328~~ 490.1326 that remains unsettled, the
 13 corporation shall commence a proceeding within sixty days
 14 after receiving the payment demand and petition the court to
 15 determine the fair value of the shares and accrued interest.
 16 If the corporation does not commence the proceeding within the
 17 sixty-day period, it shall pay in cash to each dissenter-whose
 18 demand-remains-unsettled-the-amount-demanded shareholder the
 19 amount the shareholder demanded pursuant to section 490.1326
 20 plus interest.

21 2. The corporation shall commence the proceeding in the
 22 district court of the county where a the corporation's
 23 principal office or, if none ~~in-this-state~~, its registered
 24 office, in this state is located. If the corporation is a
 25 foreign corporation without a registered office in this state,
 26 it shall commence the proceeding in the county in this state
 27 where the principal office or registered office of the
 28 domestic corporation merged with ~~or-whose-shares-were-acquired~~
 29 by the foreign corporation was located at the time of the
 30 transaction.

31 3. The corporation shall make all ~~dissenters~~ shareholders,
 32 whether or not residents of this state, whose demands remain
 33 unsettled parties to the proceeding as in an action against
 34 their shares and all parties must be served with a copy of the
 35 petition. Nonresidents may be served by registered or

1 certified mail or by publication as provided by law.

2 4. The jurisdiction of the court in which the proceeding
3 is commenced under subsection 2 is plenary and exclusive. The
4 court may appoint one or more persons as appraisers to receive
5 evidence and recommend a decision on the question of fair
6 value. The appraisers shall have the powers described in the
7 order appointing them, or in any amendment to it. The
8 dissenters shareholders demanding appraisal rights are
9 entitled to the same discovery rights as parties in other
10 civil proceedings. There shall be no right to a jury trial.

11 5. Each dissenter shareholder made a party to the
12 proceeding is entitled to judgment for either of the
13 following:

14 a. The amount, if any, by which the court finds the fair
15 value of the dissenter's shareholder's shares, plus interest,
16 exceeds the amount paid by the corporation to the shareholder
17 for such shares.

18 b. The fair value, plus accrued interest, of the
19 dissenter's-after-acquired shareholder's shares for which the
20 corporation elected to withhold payment under section ~~490.1327~~
21 490.1325.

22 6. Notwithstanding the provisions of this division, if the
23 corporation is a bank holding company as defined in section
24 524.1801, fair value, at the election of the bank holding
25 company, may be determined as provided in section 524.1406,
26 subsection 3, prior to giving notice under section 490.1320 or
27 490.1322. The fair value as determined shall be included in
28 any notice under section 490.1320 or 490.1322, and section
29 ~~490.1328~~ 490.1326 shall not apply.

30 Sec. 89. Section 490.1331, Code 2001, is amended to read s
31 follows:

32 490.1331 COURT COSTS AND COUNSEL FEES.

33 1. The court in an appraisal proceeding commenced under
34 section 490.1330 shall determine all costs of the proceeding,
35 including the reasonable compensation and expenses of

1 appraisers appointed by the court. The court shall assess the
 2 costs against the corporation, except that the court may
 3 assess costs against all or some of the dissenters
 4 shareholders demanding appraisal, in amounts the court finds
 5 equitable, to the extent the court finds ~~the dissenters~~ such
 6 shareholders acted arbitrarily, vexatiously, or not in good
 7 ~~faith in-demanding-payment-under-section-490-1328~~ with respect
 8 to the rights provided by this division.

9 2. The court in an appraisal proceeding may also assess
 10 the fees and expenses of counsel and experts for the
 11 respective parties, in amounts the court finds equitable, for
 12 either of the following:

13 a. Against the corporation and in favor of any or all
 14 dissenters shareholders demanding appraisal if the court finds
 15 the corporation did not substantially comply with the
 16 requirements of sections section 490.1320 through-490-1328,
 17 490.1322, 490.1324, or 490.1325.

18 b. Against either the corporation or a dissenter
 19 shareholder demanding appraisal, in favor of any other party,
 20 if the court finds that the party against whom the fees and
 21 expenses are assessed acted arbitrarily, vexatiously, or not
 22 in good faith with respect to the rights provided by this
 23 chapter.

24 3. If the court in an appraisal proceeding finds that the
 25 services of counsel for any dissenter shareholder were of
 26 substantial benefit to other dissenters shareholders similarly
 27 situated, and that the fees for those services should not be
 28 assessed against the corporation, the court may award to these
 29 such counsel reasonable fees to be paid out of the amounts
 30 awarded the dissenters shareholders who were benefited.

31 4. To the extent the corporation fails to make a required
 32 payment pursuant to section 490.1324, 490.1325, or 490.1326,
 33 the shareholder may sue directly for the amount owed and, to
 34 the extent successful, shall be entitled to recover from the
 35 corporation all costs and expenses of the suit, including

1 counsel fees.

2 Sec. 90. Section 490.1402, subsections 4 and 5, Code 2001,
3 are amended to read as follows:

4 4. The corporation shall notify each shareholder, whether
5 or not entitled to vote, of the proposed shareholders' meeting
6 ~~in accordance with section 490-705.~~ The notice must also
7 state that the purpose, or one of the purposes, of the meeting
8 is to consider dissolving the corporation.

9 5. Unless the articles of incorporation, bylaws, or the
10 board of directors acting pursuant to subsection 3 requires a
11 greater vote, a greater number of shares to be present, or a
12 vote by voting groups, adoption of the proposal to dissolve to
13 ~~be adopted must be approved by a majority of all~~ shall require
14 the approval of the shareholders at a meeting at which the
15 quorum consisting of at least a majority of the votes entitled
16 to be cast on that proposal exists.

17 Sec. 91. Section 490.1403, Code 2001, is amended to read
18 as follows:

19 490.1403 ARTICLES OF DISSOLUTION.

20 1. At any time after dissolution is authorized, the
21 corporation may dissolve by delivering to the secretary of
22 state for filing articles of dissolution setting forth all of
23 the following:

24 a. The name of the corporation.

25 b. The date dissolution was authorized.

26 c. If dissolution was approved by the shareholders, ~~both~~
27 ~~of the following:~~

28 ~~{1}--The number of votes entitled to be cast on a statement~~
29 that the proposal to dissolve was duly approved by the
30 shareholders in the manner required by this chapter and by the
31 articles of incorporation.

32 ~~{2}--Either the total number of votes cast for and against~~
33 ~~dissolution or the total number of undisputed votes cast for~~
34 ~~dissolution and a statement that the number cast for~~
35 ~~dissolution was sufficient for approval.~~

1 ~~d.--If voting by voting groups was required, the~~
2 ~~information required by paragraph "c" must be separately~~
3 ~~provided for each voting group entitled to vote separately on~~
4 ~~the plan to dissolve.~~

5 2. A corporation is dissolved upon the effective date of
6 its articles of dissolution.

7 3. For purposes of this division, "dissolved corporation"
8 means a corporation whose articles of dissolution have become
9 effective and includes a successor entity to which the
10 remaining assets of the corporation are transferred subject to
11 its liabilities for purposes of liquidation.

12 Sec. 92. Section 490.1404, subsection 3, paragraph f, Code
13 2001, is amended to read as follows:

14 f. If shareholder action was required to revoke the
15 dissolution, the information required by section 490.1403,
16 subsection 1, paragraph "c" or "d".

17 Sec. 93. Section 490.1406, subsections 1 and 2, Code 2001,
18 are amended to read as follows:

19 1. A dissolved corporation may dispose of the known claims
20 against it by following the procedure described in this
21 section notifying its known claimants in writing of the
22 dissolution at any time after its effective date.

23 2. ~~The dissolved corporation shall notify its known~~
24 ~~claimants in writing of the dissolution at any time after its~~
25 ~~effective date.~~ The written notice must do all of the
26 following:

27 a. Describe information that must be included in a claim.

28 b. Provide a mailing address where a claim may be sent.

29 c. State the deadline, which may not be fewer than one
30 hundred twenty days from the effective date of the written
31 notice, by which the dissolved corporation must receive the
32 claim.

33 d. State that the claim will be barred if not received by
34 the deadline.

35 Sec. 94. Section 490.1407, Code 2001, is amended to read

1 as follows:

2 490.1407 UNKNOWN OTHER CLAIMS AGAINST DISSOLVED
3 CORPORATION.

4 1. A dissolved corporation may also publish notice of its
5 dissolution and request that persons with claims against the
6 dissolved corporation present them in accordance with the
7 notice.

8 2. The notice must meet all of the following requirements:

9 a. Be published one time in a newspaper of general
10 circulation in the county where the dissolved corporation's
11 principal office or, if none in this state, its registered
12 office is or was last located.

13 b. Describe the information that must be included in a
14 claim and provide a mailing address where the claim may be
15 sent.

16 c. State that a claim against the dissolved corporation
17 will be barred unless a proceeding to enforce the claim is
18 commenced within five three years after the publication of the
19 notice.

20 3. If the dissolved corporation publishes a newspaper
21 notice in accordance with subsection 2, the claim of each of
22 the following claimants is barred unless the claimant
23 commences a proceeding to enforce the claim against the
24 dissolved corporation within five three years after the
25 publication date of the newspaper notice:

26 a. A claimant who ~~did-not-receive~~ was not given written
27 notice under section 490.1406.

28 b. A claimant whose claim was timely sent to the dissolved
29 corporation but not acted on.

30 c. A claimant whose claim is contingent or based on an
31 event occurring after the effective date of dissolution.

32 4. A claim that is not barred by section 490.1406,
33 subsection 2, or subsection 3 of this section, may be enforced
34 ~~under-this-section~~ in either of the following ways:

35 a. Against the dissolved corporation, to the extent of its

1 undistributed assets.

2 b. If Except as provided in section 490.1408, subsection
3 4, the assets have been distributed in liquidation, against a
4 shareholder of the dissolved corporation to the extent of the
5 shareholder's pro rata share of the claim or the corporate
6 assets distributed to the shareholder in liquidation,
7 whichever is less, but a shareholder's total liability for all
8 claims under this section shall not exceed the total amount of
9 assets distributed to the shareholder in liquidation.

10 Sec. 95. NEW SECTION. 490.1408 COURT PROCEEDINGS.

11 1. A dissolved corporation that has published a notice
12 under section 490.1407 may file an application with the
13 district court of the county where the dissolved corporation's
14 principal office or, if none in this state, its registered
15 office is located for a determination of the amount and form
16 of security to be provided for payment of claims that are
17 contingent or have not been made known to the dissolved
18 corporation or that are based on an event occurring after the
19 effective date of dissolution but that, based on the facts
20 known to the dissolved corporation, are reasonably estimated
21 to arise after the effective date of dissolution. Provision
22 need not be made for any claim that is or is reasonably
23 anticipated to be barred under section 490.1407, subsection 3.

24 2. Within ten days after the filing of the application,
25 notice of the proceeding shall be given by the dissolved
26 corporation to each claimant holding a contingent claim whose
27 contingent claim is shown on the records of the dissolved
28 corporation.

29 3. The court may appoint a guardian ad litem to represent
30 all claimants whose identities are unknown in any proceeding
31 brought under this section. The reasonable fees and expenses
32 of such guardian, including all reasonable expert witness
33 fees, shall be paid by the dissolved corporation.

34 4. Provision by the dissolved corporation for security in
35 the amount and the form ordered by the court under subsection

1 1, shall satisfy the dissolved corporation's obligations with
2 respect to claims that are contingent, have not been made
3 known to the dissolved corporation or are based on an event
4 occurring after the effective date of dissolution, and such
5 claims shall not be enforced against a shareholder who
6 received assets in liquidation.

7 Sec. 96. NEW SECTION. 490.1409 DIRECTOR DUTIES.

8 1. Directors shall cause the dissolved corporation to
9 discharge or make reasonable provision for the payment of
10 claims and make distributions of assets to shareholders after
11 payment or provision for claims.

12 2. Directors of a dissolved corporation which has disposed
13 of claims under section 490.1406, 490.1407, or 490.1408 shall
14 not be liable for breach of subsection 1, with respect to
15 claims against the dissolved corporation that are barred or
16 satisfied under section 490.1406, 490.1407, or 490.1408.

17 Sec. 97. Section 490.1431, Code 2001, is amended by adding
18 the following new subsection:

19 NEW SUBSECTION. 4. Within ten days of the commencement of
20 a proceeding under section 490.1430, subsection 2, to dissolve
21 a corporation that has no shares listed on a national
22 securities exchange or regularly traded in a market maintained
23 by one or more members of a national securities exchange, the
24 corporation must send to all shareholders, other than the
25 petitioner, a notice stating that the shareholders are
26 entitled to avoid the dissolution of the corporation by
27 electing to purchase the petitioner's shares under section
28 490.1434, and a copy of section 490.1434.

29 Sec. 98. NEW SECTION. 490.1434 ELECTION TO PURCHASE IN
30 LIEU OF DISSOLUTION.

31 1. In a proceeding under section 490.1430, subsection 2,
32 to dissolve a corporation that has no shares listed on a
33 national securities exchange or regularly traded in a market
34 maintained by one or more members of a national or affiliated
35 securities association, the corporation may elect or, if it

1 fails to elect, one or more shareholders may elect to purchase
2 all shares owned by the petitioning shareholder at the fair
3 value of the shares. An election pursuant to this section
4 shall be irrevocable unless the court determines that it is
5 equitable to set aside or modify the election.

6 2. An election to purchase pursuant to this section may be
7 filed with the court at any time within ninety days after the
8 filing of the petition under section 490.1430, subsection 2,
9 or at such later time as the court in its discretion may
10 allow. If the election to purchase is filed by one or more
11 shareholders, the corporation shall, within ten days
12 thereafter, give written notice to all shareholders, other
13 than the petitioner. The notice must state the name and
14 number of shares owned by the petitioner and the name and
15 number of shares owned by each electing shareholder and must
16 advise the recipients of their right to join the election to
17 purchase shares in accordance with this section. Shareholders
18 who wish to participate must file notice of their intention to
19 join in the purchase no later than thirty days after the
20 effective date of the notice to them. All shareholders who
21 have filed an election or notice of their intention to
22 participate in the election to purchase thereby become parties
23 to the proceeding and shall participate in the purchase in
24 proportion to their ownership of shares as of the date the
25 first election was filed, unless they otherwise agree or the
26 court otherwise directs. After an election has been filed by
27 the corporation or one or more shareholders, the proceeding
28 under section 490.1430, subsection 2, shall not be
29 discontinued or settled, nor may the petitioning shareholder
30 sell or otherwise dispose of the shareholder's shares, unless
31 the court determines that it would be equitable to the
32 corporation and the shareholders, other than the petitioner,
33 to permit such discontinuance, settlement, sale, or other
34 disposition.

35 3. If, within sixty days of the filing of the first

1 election, the parties reach agreement as to the fair value and
2 terms of purchase of the petitioner's shares, the court shall
3 enter an order directing the purchase of the petitioner's
4 shares upon the terms and conditions agreed to by the parties.

5 4. If the parties are unable to reach an agreement as
6 provided for in subsection 3, the court, upon application of
7 any party, shall stay the section 490.1430, subsection 2,
8 proceedings and determine the fair value of the petitioner's
9 shares as of the day before the date on which the petition
10 under section 490.1430, subsection 2, was filed or as of such
11 other date as the court deems appropriate under the
12 circumstances.

13 5. Upon determining the fair value of the shares, the
14 court shall enter an order directing the purchase upon such
15 terms and conditions as the court deems appropriate, which may
16 include payment of the purchase price in installments, where
17 necessary in the interests of equity, provision for security
18 to assure payment of the purchase price and any additional
19 costs, fees, and expenses as may have been awarded, and, if
20 the shares are to be purchased by shareholders, the allocation
21 of shares among them. In allocating petitioner's shares among
22 holders of different classes of shares, the court shall
23 attempt to preserve the existing distribution of voting rights
24 among holders of different classes insofar as practicable and
25 may direct that holders of a specific class or classes shall
26 not participate in the purchase. Interest may be allowed at
27 the rate and from the date determined by the court to be
28 equitable, but if the court finds that the refusal of the
29 petitioning shareholder to accept an offer of payment was
30 arbitrary or otherwise not in good faith, no interest shall be
31 allowed. If the court finds that the petitioning shareholder
32 has probable grounds for relief under section 490.1430,
33 subsection 2, paragraph "b" or "d", it may award to the
34 petitioning shareholder reasonable fees and expenses of
35 counsel and of any experts employed by the shareholder.

1 6. Upon entry of an order under subsection 3 or 5, the
 2 court shall dismiss the petition to dissolve the corporation
 3 under section 490.1430, and the petitioning shareholder shall
 4 no longer have any rights or status as a shareholder of the
 5 corporation, except the right to receive the amounts awarded
 6 to the shareholder by the order of the court which shall be
 7 enforceable in the same manner as any other judgment.

8 7. The purchase ordered pursuant to subsection 5 shall be
 9 made within ten days after the date the order becomes final
 10 unless before that time the corporation files with the court a
 11 notice of its intention to adopt articles of dissolution
 12 pursuant to sections 490.1402 and 490.1403, which articles
 13 must then be adopted and filed within fifty days thereafter.
 14 Upon filing of such articles of dissolution, the corporation
 15 shall be dissolved in accordance with the provisions of
 16 sections 490.1405 through 490.1407, and the order entered
 17 pursuant to subsection 5 shall no longer be of any force or
 18 effect, except that the court may award the petitioning
 19 shareholder reasonable fees and expenses in accordance with
 20 the provisions of the last sentence of subsection 5 and the
 21 petitioner may continue to pursue any claims previously
 22 asserted on behalf of the corporation.

23 8. Any payment by the corporation pursuant to an order
 24 under subsection 3 or 5, other than an award of fees and
 25 expenses pursuant to subsection 5, is subject to the
 26 provisions of section 490.640.

27 Sec. 99. Section 490.1603, Code 2001, is amended to read
 28 as follows:

29 490.1603 SCOPE OF INSPECTION RIGHT.

30 1. A shareholder's agent or attorney has the same
 31 inspection and copying rights as the shareholder ~~the-agent-or~~
 32 ~~attorney-represents~~ represented.

33 2. The right to copy records under section 490.1602
 34 includes, if reasonable, the right to receive copies ~~made-by~~
 35 ~~photographic, xerographic, or other technological means~~ by

1 xerographic or other means, including copies through an
2 electronic transmission if available and so requested by the
3 shareholder.

4 3. The corporation may comply at its expense with a
5 shareholder's demand to inspect the record of shareholders
6 under section 490.1602, subsection 2, paragraph "c", by
7 providing the shareholder with a list of shareholders that was
8 compiled no earlier than the date of the shareholder's demand.

9 ~~3-~~ 4. The corporation may impose a reasonable charge,
10 covering the costs of labor and material, for copies of any
11 documents provided to the shareholder. The charge shall not
12 exceed the estimated cost of production, or reproduction, or
13 transmission of the records.

14 ~~4.--The corporation may comply with a shareholder's demand~~
15 ~~to inspect the record of shareholders under section 490.1602,~~
16 ~~subsection 2, paragraph "c" by providing the shareholder with~~
17 ~~a list of its shareholders that was compiled no earlier than~~
18 ~~the date of the shareholder's demand.~~

19 Sec. 100. NEW SECTION. 490.1605 INSPECTION OF RECORDS BY
20 DIRECTORS.

21 1. A director of a corporation is entitled to inspect and
22 copy the books, records, and documents of the corporation at
23 any reasonable time to the extent reasonably related to the
24 performance of the director's duties as a director, including
25 duties as a member of a committee, but not for any other
26 purpose or in any manner that would violate any duty to the
27 corporation.

28 2. The district court of the county where the
29 corporation's principal office, or if none in this state, its
30 registered office, is located may order inspection and copying
31 of the books, records, and documents at the corporation's
32 expense, upon application of a director who has been refused
33 such inspection rights, unless the corporation establishes
34 that the director is not entitled to such inspection rights.
35 The court shall dispose of an application under this

1 subsection on an expedited basis.

2 3. If an order is issued, the court may include provisions
3 protecting the corporation from undue burden or expense, and
4 prohibiting the director from using information obtained upon
5 exercise of the inspection rights in a manner that would
6 violate a duty to the corporation, and may also order the
7 corporation to reimburse the director for the director's
8 costs, including reasonable counsel fees, incurred in
9 connection with the application.

10 Sec. 101. NEW SECTION. 490.1606 EXCEPTION TO NOTICE
11 REQUIREMENT.

12 1. Whenever notice is required to be given under any
13 provision of this chapter to any shareholder, such notice
14 shall not be required to be given if either of the following
15 applies:

16 a. Notice of two consecutive annual meetings, and all
17 notices of meetings during the period between such two
18 consecutive annual meetings, have been sent to such
19 shareholder at such shareholder's address as shown on the
20 records of the corporation and have been returned
21 undeliverable.

22 b. All, but not less than two, payments of dividends on
23 securities during a twelve-month period, or two consecutive
24 payments of dividends on securities during a period of more
25 than twelve months, have been sent to such shareholder at such
26 shareholder's address as shown on the records of the
27 corporation and have been returned undeliverable.

28 2. If any such shareholder shall deliver to the
29 corporation a written notice setting forth such shareholder's
30 then-current address, the requirement that notice be given to
31 such shareholder shall be reinstated.

32 Sec. 102. Sections 490.832, 490.1022, 490.1327, 490.1328,
33 and 490.1621, Code 2001, are repealed.

34 Sec. 103. CODE EDITOR DIRECTIVE. The following division
35 and part titles shall be changed by the Code editor:

- 1 1. Division XII shall be retitled DISPOSITION OF ASSETS.
- 2 2. Division XIII shall be retitled APPRAISAL RIGHTS.
- 3 3. Division XIII, Part A, shall be retitled RIGHT TO
- 4 APPRAISAL AND PAYMENT FOR SHARES.
- 5 4. Division XIII, Part B, shall be retitled PROCEDURE FOR
- 6 EXERCISE OF APPRAISAL RIGHTS.
- 7 Sec. 104. EFFECTIVE DATE. This Act, takes effect January
- 8 1, 2003.

9 EXPLANATION

10 The following overview highlights the areas of change to
11 the Iowa Business Corporations Act:

12 AMENDMENT PERTAINING TO LIABILITY OF DIRECTORS. Code
13 section 490.202 allows shareholders the option to include in
14 the articles of incorporation a provision eliminating or
15 limiting the liability of a director to the corporation or its
16 shareholders, with certain exceptions. The provision on this
17 issue is currently in Code section 490.832, but it contains
18 more general language on exceptions than the new provision.

19 AMENDMENTS PERTAINING TO DIRECTOR CONFLICT OF INTERESTS.
20 Current Code section 490.831 on director conflicts of interest
21 is deleted and several new sections on the issue are added
22 from Code sections 490.860 through 490.863. Director
23 conflicting interest transactions require independent
24 examination and approval, either by independent directors, or
25 shareholders, or the court. Definitions are added for
26 "conflicting interest", "director's conflicting interest
27 transaction", "related person", "required disclosure", and
28 "time of commitment" in Code section 490.860.

29 AMENDMENTS PERTAINING TO DERIVATIVE PROCEEDINGS. Current
30 Code section 490.740 on derivative proceedings is replaced
31 with a new part that includes definitions and addresses
32 shareholder demand on the corporation, stay of proceedings,
33 dismissal of the action, settlement, and payment of expenses.

34 Code section 490.742 would allow a shareholder to commence
35 a derivative proceeding after 90 days after the demand was

1 made unless the shareholder has earlier been notified that the
2 demand has been rejected by the corporation or unless
3 irreparable injury to the corporation would result by waiting
4 for the expiration of the 90-day period.

5 An independent litigation committee may be appointed to
6 investigate and make recommendations concerning derivative
7 proceedings under Code section 490.744.

8 In addition, the bill allows such investigation and
9 recommendation to be made by a panel appointed either by the
10 independent directors present at a meeting of the board of
11 directors if the independent directors constitute a quorum or,
12 if the independent directors do not constitute a quorum, a
13 committee of two or more independent directors appointed by a
14 majority vote of independent directors present at a meeting of
15 the board of directors. Code section 490.744 addresses the
16 issue of independence and provides that by itself, the
17 nomination or election of the director by persons who are
18 defendants in the derivative proceeding or against whom the
19 action is demanded shall not cause a director to be considered
20 as not independent.

21 AMENDMENTS PERTAINING TO CLOSELY HELD CORPORATIONS. Code
22 section 490.732 validates shareholder agreements appearing in
23 the articles or signed by all shareholders, and it authorizes
24 wide latitude in their content for corporations whose shares
25 are not listed on a national securities exchange or regularly
26 traded in a market maintained by one or more members of a
27 national or affiliated securities association.

28 New Code section 490.1434 provides an alternative to the
29 corporation and its shareholders where one or more but fewer
30 than all shareholders petition for judicial dissolution on
31 grounds, for example, of deadlock or oppression. The
32 alternative essentially is a buyout of the petitioning
33 shareholders, either for an amount the parties can negotiate
34 or for "fair value", with the corporation having the right to
35 do so in the first instance, and, if the corporation does not

1 so elect, due regard for shareholders' relative positions.

2 AMENDMENTS PERTAINING TO INDEMNIFICATION AND ADVANCE FOR
3 EXPENSES. The bill expands the authority of a corporation to
4 indemnify a director through a charter provision adopted
5 pursuant to new Code section 490.202, which generally permits
6 indemnification with respect to a director's conduct to the
7 same extent that the director's liability for that conduct can
8 be limited under the section. Code sections 490.851 through
9 490.859 address the procedures for making decisions on
10 granting indemnification and authorizing an advance for
11 expenses, and make a court order available as a remedy to
12 enforce a legal right to indemnification or expense
13 advancement. Code section 490.854 permits a court to order an
14 advance for expenses.

15 AMENDMENTS PERTAINING TO SHAREHOLDER MEETINGS AND VOTING.
16 The bill amends Code section 490.702 regarding the percentage
17 of shares required before a special meeting of shareholders
18 must be granted, and new Code section 490.704 establishes a
19 procedure for revoking such a demand. New Code section
20 490.708 addresses conduct of a meeting of shareholders,
21 providing that a chair shall preside who, unless the articles
22 or bylaws provide otherwise, has the authority to determine
23 the order of business and establish rules for the conduct of
24 the meeting. The rules adopted and the conduct of the meeting
25 must be fair to shareholders. Code section 490.722, dealing
26 with proxies, has been amended to encompass electronic
27 transmission of proxies. New Code section 490.729 requires
28 the appointment of one or more inspectors of election for
29 publicly traded corporations and also delineates the
30 inspector's duties. Any other corporation may appoint
31 inspectors pursuant to section 490.729.

32 AMENDMENTS PERTAINING TO ELECTRONIC FILINGS. Code section
33 490.140 adds definitions for "deliver", "electronic
34 transmission", "sign" or "signature", and "voting power".
35 Code section 490.141 provides that notice by electronic

1 transmission is written notice, and that notice from a
 2 corporation to a shareholder may be effective when
 3 electronically transmitted in a manner authorized by the
 4 shareholder. Code sections 490.120, 490.123, 490.124,
 5 490.125, and 490.127 all address electronic filings with the
 6 secretary of state.

7 AMENDMENTS PERTAINING TO STANDARDS OF CONDUCT AND STANDARDS
 8 OF LIABILITY FOR DIRECTORS. New Code section 490.831,
 9 standards of liability for directors, has been added to
 10 clarify and distinguish the standard a plaintiff must meet in
 11 order for a director to be held liable.

12 AMENDMENTS PERTAINING TO STANDARDS OF CONDUCT FOR OFFICERS
 13 AND ALSO TO INSPECTION RIGHTS AND NOTICES. Code section
 14 490.842 on standards of conduct for officers is amended in
 15 light of the changes made pertaining to directors. In
 16 addition, Code section 490.1603 on the scope of a
 17 shareholder's inspection right is revised to reflect
 18 availability of electronic transmissions. New Code section
 19 490.1605 provides for inspection of records by directors. A
 20 court action is authorized in which the corporation has the
 21 burden of proof, and the court is directed to dispose of an
 22 application of a director for inspection on an expedited
 23 basis.

24 AMENDMENTS PERTAINING TO FUNDAMENTAL CHANGES. The quorum
 25 required is that stated in current 490.725, namely, "a
 26 majority of votes entitled to be cast on the matter by the
 27 voting group", unless the articles or bylaws require a greater
 28 number. Current Code language requires that the votes cast in
 29 favor of a proposed change exceed those cast opposing it.

30 Current Code section 490.1202 addresses sales of assets
 31 other than in the regular course of business and requires
 32 shareholder approval of a sale or other disposition of all or
 33 substantially all corporate assets where it does not occur in
 34 the regular course of business. As amended, Code section
 35 490.1202 does not utilize the standard "all or substantially

1 all" and the requirement of a shareholder vote instead turns
2 upon whether the disposition will leave the corporation
3 without a significant continuing business activity.

4 AMENDMENTS PERTAINING TO APPRAISAL RIGHTS. A number of
5 changes have been made in a continuing effort to allow
6 corporations, acting through their boards of directors and
7 shareholders, to change the nature and shape of the enterprise
8 and the rights of security holders, on the one hand, and, on
9 the other hand, to allow shareholders who object to the change
10 to withdraw from the corporation and obtain the fair value of
11 their investment. This accommodation has been known as
12 "dissenters' rights" or "appraisal rights". Division XIII is
13 amended to change the name from the former to the latter.
14 Shareholders will not be entitled to appraisal if the terms of
15 the class or series of shares that they hold will not be
16 changed.

17 The amendments to division XIII provide that a shareholder
18 who objects to corporate action effecting fundamental change
19 will receive fair value where the shares are publicly traded
20 and there is a sufficient market for the shares. However, the
21 division also includes provisions identifying conflict-of-
22 interest transactions in which the market exception will not
23 apply and appraisal rights will be available to shareholders.

24 AMENDMENTS PERTAINING TO DIRECTORS AND OFFICERS. Code
25 section 490.803 provides that a variable range for the size of
26 the board of directors may be established by the articles or
27 bylaws. Code section 490.825, committees of the board, has
28 been amended to allow committees to be given more authority to
29 act, primarily within limits stated by the board; and a new
30 provision in Code section 490.825 would allow the board to
31 appoint one or more directors as alternates to serve on a
32 committee where one or more is absent or disqualified, and
33 unless the articles, bylaws, or resolution of the board
34 creating the committee provided otherwise, would allow the
35 committee, upon unanimous vote of those present and not

1 disqualified, to appoint another director to serve in place of
2 the absent or disqualified member.

3 DISSOLUTION. Code section 490.640, governing
4 distributions, provides that the corporation must satisfy
5 equity and bankruptcy insolvency tests before the board can
6 authorize a distribution, but does not apply to distributions
7 made in liquidation.

8 The bill provides for a three-year period to assert claims
9 against the dissolved corporation, rather than the five years
10 provided under the current Code, and adds two new Code
11 sections, 490.1408 and 490.1409, that encourage directors to
12 anticipate and provide for such claims. Critical steps
13 include giving notice to known creditors and claimants,
14 publication, and in the claims that are unknown or contingent,
15 a court proceeding pursuant to Code section 490.1408, which
16 authorizes the corporation's board to file an application in
17 court for a determination of the amount and form of security
18 to be provided for payment of claims that are contingent or
19 have not been made known to the dissolved corporation or that
20 are based on an event occurring after the effective date of
21 dissolution, excluding claims that are or are reasonably
22 anticipated to be barred. The court is authorized to appoint
23 a guardian ad litem to represent such claimants. The court
24 hearing the matter may then determine the amount and form to
25 be provided for payment, and compliance with the court order
26 shall satisfy the dissolved corporation's obligations with
27 respect to claims that are contingent, have not been made
28 known to the dissolved corporation, or are based on an event
29 occurring after the effective date of dissolution, and such
30 claims may not be enforced against a shareholder who received
31 assets in liquidation.

32 ADDITIONAL AMENDMENTS PERTAINING TO DIRECTORS. Code
33 section 490.809, dealing with the judicial removal of
34 directors, requires the action be brought by or in the right
35 of the corporation, rather than by an authorized percentage of

1 a class of shareholders. In addition, grounds for removal of
2 directors have been amended. Fraudulent conduct remains a
3 basis for removal, but dishonest conduct has been eliminated.
4 Other grounds added are that the director "intentionally
5 inflicted harm on the corporation", or "grossly abused the
6 position of director". Code section 490.821, allowing the
7 board of directors to take action without a meeting, requires
8 that action taken without a meeting by consent must be
9 unanimous, and that action taken by consent is the act of the
10 board of directors when one or more consents signed by all the
11 directors are delivered to the corporation. Consent may be
12 withdrawn by signed revocation delivered to the corporation
13 prior to delivery to the corporation of unrevoked consents
14 signed by all directors.

15 The bill takes effect January 1, 2003.

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Substituted for by
HF 2509
4/1/02

3/14/02

UNFINISHED BUSINESS CALENDAR

FILED FEB 25 2002

WITHDRAWN
4-1-02

SENATE FILE 2285
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3163)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act regarding business corporations, and providing an
2 effective date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 2285

1 for filing.

2 Sec. 5. Section 490.125, subsection 2, Code 2001, is
3 amended to read as follows:

4 2. The secretary of state files a document by ~~stamping or~~
5 ~~otherwise endorsing "filed", together with the secretary's~~
6 ~~name and official title and~~ recording it as filed on the date
7 ~~and time of receipt, on both the document and the receipt for~~
8 ~~the filing fee.~~ After filing a document, except the biennial
9 report required by section 490.1622, and except as provided in
10 sections 490.503 and 490.1509, the secretary of state shall
11 ~~deliver the document, with the filing fee receipt, or~~
12 ~~acknowledgment of receipt if no fee is required, attached,~~ to
13 the domestic or foreign corporation or its representative a
14 copy of the document with an acknowledgement of the date and
15 time of filing.

16 Sec. 6. Section 490.127, Code 2001, is amended to read as
17 follows:

18 490.127 EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.

19 A certificate ~~attached to~~ from the secretary of state
20 delivered with a copy of a document filed by the secretary of
21 ~~state, bearing the secretary of state's signature, which may~~
22 ~~be in facsimile, and the seal of the secretary of state,~~ is
23 conclusive evidence that the original document is on file with
24 the secretary of state.

25 Sec. 7. Section 490.140, subsection 6, Code Supplement
26 2001, is amended to read as follows:

27 6. "Deliver" ~~includes mail~~ or "delivery" means any method
28 of delivery used in conventional commercial practice,
29 including delivery in person, and by mail, commercial
30 delivery, and electronic transmission.

31 Sec. 8. Section 490.140, Code Supplement 2001, is amended
32 by adding the following new subsections:

33 NEW SUBSECTION. 8A. "Electronic transmission" or
34 "electronically transmitted" means any process of
35 communication not directly involving the physical transfer of

1 paper that is suitable for the retention, retrieval, and
2 reproduction of information by the recipient.

3 NEW SUBSECTION. 23A. "Sign" or "signature" includes any
4 manual, facsimile, conformed, or electronic signature.

5 NEW SUBSECTION. 28. "Voting power" means the current
6 power to vote in the election of directors.

7 Sec. 9. Section 490.141, subsections 1, 2, 3, and 5, Code
8 2001, are amended to read as follows:

9 1. Notice under this chapter must be in writing unless
10 oral notice is reasonable under the circumstances. Notice by
11 electronic transmission is written notice.

12 2. Notice may be communicated in person; by ~~telephone~~
13 ~~telegraph~~~~teletype~~~~or other form of wire or wireless~~
14 ~~communication~~~~or by mail or private carrier~~ mail or other
15 method of delivery; or by telephone, voice mail, or other
16 electronic means. If these forms of personal notice are

17 impracticable, notice may be communicated by a newspaper of
18 general circulation in the area where published; or by radio,
19 television, or other form of public broadcast communication.

20 3. Written notice by a domestic or foreign corporation to
21 its shareholder, if in a comprehensible form, is effective
22 when mailed, according to one of the following:

23 a. Upon deposit in the United States mail, if mailed
24 postpaid and correctly addressed to the shareholder's address
25 shown in the corporation's current record of shareholders.

26 b. When electronically transmitted to the shareholder in a
27 manner authorized by the shareholder.

28 5. Except as provided in subsection 3, written notice, if
29 in a comprehensible form, is effective at the earliest of the
30 following:

31 a. When received.

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

35 c. On the date shown on the return receipt, if sent by

1 registered or certified mail, return receipt requested, and
2 the receipt is signed by or on behalf of the addressee.

3 Sec. 10. Section 490.202, subsection 2, Code 2001, is
4 amended to read as follows:

5 2. The articles of incorporation may set forth any or all
6 of the following:

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

9 b. Provisions not inconsistent with law regarding:

10 (1) The purpose or purposes for which the corporation is
11 organized.

12 (2) Managing the business and regulating the affairs of
13 the corporation.

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

16 (4) A par value for authorized shares or classes of
17 shares.

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

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

23 d. ~~A provision consistent with section 490.832.~~ A
24 provision eliminating or limiting the liability of a director
25 to the corporation or its shareholders for money damages for
26 any action taken, or any failure to take any action, as a
27 director, except liability for any of the following:

28 (1) The amount of a financial benefit received by a
29 director to which the director is not entitled.

30 (2) An intentional infliction of harm on the corporation
31 or the shareholders.

32 (3) A violation of section 490.833.

33 (4) An intentional violation of criminal law.

34 e. A provision permitting or making obligatory
35 indemnification of a director for liability, as defined in

1 section 490.850, subsection 5, to any person for any action
2 taken, or any failure to take any action, as a director,
3 except liability for any of the following:

4 (1) Receipt of a financial benefit to which the person is
5 not entitled.

6 (2) An intentional infliction of harm on the corporation
7 or its shareholders.

8 (3) A violation of section 490.833.

9 (4) An intentional violation of criminal law.

10 f. A provision eliminating or limiting the liability of a
11 director to the corporation or its shareholders for money
12 damages for any action taken, or any failure to take any
13 action, as a director, except liability for any of the
14 following:

15 (1) The amount of a financial benefit received by a
16 director to which the director is not entitled.

17 (2) An intentional infliction of harm on the corporation
18 or the shareholders.

19 (3) A violation of section 490.833.

20 (4) An intentional violation of criminal law.

21 A provision shall not eliminate or limit the liability of a
22 director for an act or omission occurring prior to the date
23 when the provision in the articles of incorporation becomes
24 effective.

25 Sec. 11. Section 490.621, Code 2001, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 6. a. An issuance of shares or other
28 securities convertible into or rights exercisable for shares,
29 in a transaction or a series of integrated transactions,
30 requires approval of the shareholders, at a meeting at which a
31 quorum exists consisting of at least a majority of the votes
32 entitled to be cast on the matter, if both of the following
33 conditions are satisfied:

34 (1) The shares, other securities, or rights are issued for
35 consideration other than cash or cash equivalents.

1 (2) The voting power of shares that are issued and
2 issuable as a result of the transaction or series of
3 integrated transactions will comprise more than twenty percent
4 of the voting power of the shares of the corporation that were
5 outstanding immediately before the transaction.

6 b. (1) For purposes of determining the voting power of
7 shares issued and issuable as a result of a transaction or
8 series of integrated transactions, the voting power of shares
9 shall be the greater of the following:

10 (a) The voting power of the shares to be issued.

11 (b) The voting power of the shares that would be
12 outstanding after giving effect to the conversion of
13 convertible shares and other securities and the exercise of
14 rights to be issued.

15 (2) A series of transactions is integrated if consummation
16 of one transaction is made contingent on consummation of one
17 or more of the other transactions.

18 Sec. 12. Section 490.631, subsections 2 and 3, Code 2001,
19 are amended to read as follows:

20 2. If the articles of incorporation prohibit the reissue
21 of the acquired shares, the number of authorized shares is
22 reduced by the number of shares acquired, ~~effective upon~~
23 ~~amendment of the articles of incorporation.~~

24 ~~3. The board of directors may adopt articles of amendment~~
25 ~~under this section without shareholder action, and deliver~~
26 ~~them to the secretary of state for filing. The articles must~~
27 ~~set forth all of the following:~~

28 ~~a. The name of the corporation.~~

29 ~~b. The reduction in the number of authorized shares,~~
30 ~~itemized by class and series.~~

31 ~~c. The total number of authorized shares, itemized by~~
32 ~~class and series, remaining after reduction of the shares.~~

33 Sec. 13. Section 490.640, Code 2001, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 7. This section shall not apply to

1 distributions in liquidation under division XIV.

2 Sec. 14. Section 490.702, subsection 1, Code 2001, is
3 amended to read as follows:

4 1. Except as provided in subsection 5, a corporation shall
5 hold a special meeting of shareholders upon the occurrence of
6 either of the following:

7 a. On call of its board of directors or the person or
8 persons authorized to call a special meeting by the articles
9 of incorporation or bylaws.

10 b. If the holders of at least ten percent of all the votes
11 entitled to be cast on any issue proposed to be considered at
12 the proposed special meeting sign, date, and deliver to the
13 corporation's-secretary corporation one or more written
14 demands for the meeting describing the purpose or purposes for
15 which it is to be held, provided that the articles of
16 incorporation may fix a lower percentage or a higher
17 percentage not exceeding twenty-five percent of all the votes
18 entitled to be cast on any issue proposed to be considered.
19 Unless otherwise provided in the articles of incorporation, a
20 written demand for a special meeting may be revoked by a
21 writing to that effect received by the corporation prior to
22 the receipt by the corporation of demands sufficient in number
23 to require the holding of a special meeting.

24 Sec. 15. Section 490.704, subsection 2, Code 2001, is
25 amended to read as follows:

26 2. A written consent shall bear the date of signature of
27 each shareholder who signs the consent and no written consent
28 is effective to take the corporate action referred to in the
29 consent unless, within sixty days of the earliest dated
30 consent delivered in the manner required by this section to
31 the corporation, written consents signed by a sufficient
32 number of holders to take action are delivered to the
33 corporation. A written consent may be revoked by a writing to
34 that effect received by the corporation prior to the receipt
35 by the corporation of unrevoked written consents sufficient in

1 number to take corporate action.

2 Sec. 16. NEW SECTION. 490.708 CONDUCT OF THE MEETING.

3 1. At each meeting of shareholders, a chairperson shall
4 preside. The chairperson shall be appointed as provided in
5 the bylaws or, in the absence of such provisions, by the
6 board.

7 2. The chairperson, unless the articles of incorporation
8 or bylaws provide otherwise, shall determine the order of
9 business and shall have the authority to establish rules for
10 the conduct of the meeting.

11 3. Any rules adopted for, and the conduct of, the meeting
12 shall be fair to shareholders.

13 4. The chairperson of the meeting shall announce at the
14 meeting when the polls close for each matter voted upon. If
15 no announcement is made, the polls shall be deemed to have
16 closed upon the final adjournment of the meeting. After the
17 polls close, no ballots, proxies, or votes nor any revocations
18 or changes to any votes may be accepted.

19 Sec. 17. Section 490.722, subsections 2, 3, 4, and 8, Code
20 2001, are amended to read as follows:

21 2. A shareholder or the shareholder's agent or attorney-
22 in-fact may appoint a proxy to vote or otherwise act for the
23 shareholder by signing an appointment form ~~7-either-personally~~
24 ~~or-by-the-shareholder's-attorney-in-fact~~ or by an electronic
25 transmission. An electronic transmission must contain or be
26 accompanied by information from which one can determine that
27 the shareholder, the shareholder's agent, or the shareholder's
28 attorney-in-fact authorized the electronic transmission.

29 3. An appointment of a proxy is effective when a signed
30 appointment form or an electronic transmission of the
31 appointment is received by the secretary-or-other-officer-or
32 agent inspector of election or the officer or agent of the
33 corporation authorized to tabulate votes. An appointment is
34 valid for eleven months unless a longer period is expressly
35 provided in the appointment form.

1 4. An appointment of a proxy is revocable by-the
2 shareholder unless the appointment form conspicuously or
3 electronic transmission states that it is irrevocable and the
4 appointment is coupled with an interest. Appointments coupled
5 with an interest include, but are not limited to, the
6 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
15 490.731.

16 8. Subject to section 490.724 and to any express
17 limitation on the proxy's authority ~~appearing-on-the-face-of~~
18 stated in the appointment form or electronic transmission, a
19 corporation is entitled to accept the proxy's vote or other
20 action as that of the shareholder making the appointment.

21 Sec. 18. Section 490.724, subsections 4 and 5, Code 2001,
22 are amended to read as follows:

23 4. The corporation and its officer or agent who accepts or
24 rejects a vote, consent, waiver, or proxy appointment in good
25 faith and in accordance with the standards of this section or
26 section 490.722, subsection 2, are not liable in damages to
27 the shareholder for the consequences of the acceptance or
28 rejection.

29 5. Corporate action based on the acceptance or rejection
30 of a vote, consent, waiver, or proxy appointment under this
31 section or section 490.722, subsection 2, is valid unless a
32 court of competent jurisdiction determines otherwise.

33 Sec. 19. Section 490.727, subsection 1, Code 2001, is
34 amended to read as follows:

35 1. The articles of incorporation or bylaws may provide for

1 a greater quorum or voting requirement for shareholders or
2 voting groups of shareholders than is provided for by this
3 chapter.

4 Sec. 20. Section 490.728, subsection 1, Code 2001, is
5 amended to read as follows:

6 1. Unless otherwise provided in the articles of
7 incorporation, directors are elected by a majority plurality
8 of the votes cast by the shares entitled to vote in the
9 election at a meeting at which a quorum is present.

10 Sec. 21. NEW SECTION. 490.729 INSPECTORS OF ELECTION.

11 1. A corporation having any shares listed on a national
12 securities exchange or regularly traded in a market maintained
13 by one or more members of a national or affiliated securities
14 association shall, and any other corporation may, appoint one
15 or more inspectors to act at a meeting of shareholders and
16 make a written report of the inspectors' determinations. Each
17 inspector shall take and sign an oath faithfully to execute
18 the duties of inspector with strict impartiality and according
19 to the best of the inspector's ability.

20 2. The inspectors shall do all of the following:

21 a. Ascertain the number of shares outstanding and the
22 voting power of each.

23 b. Determine the shares represented at a meeting.

24 c. Determine the validity of proxies and ballots.

25 d. Count all votes.

26 e. Determine the result.

27 3. An inspector may be an officer or employee of the
28 corporation.

29 Sec. 22. NEW SECTION. 490.732 SHAREHOLDER AGREEMENTS.

30 1. An agreement among the shareholders of a corporation
31 that complies with this section is effective among the
32 shareholders and the corporation even though it is
33 inconsistent with one or more other provisions of this chapter
34 in that it does one of the following:

35 a. Eliminates the board of directors or restricts the

1 discretion or powers of the board of directors.

2 b. Governs the authorization or making of distributions
3 whether or not in proportion to ownership of shares, subject
4 to the limitations in section 490.640.

5 c. Establishes who shall be directors or officers of the
6 corporation, or their terms of office or manner of selection
7 or removal.

8 d. Governs, in general or in regard to specific matters,
9 the exercise or division of voting power by or between the
10 shareholders and directors or by or among any of them,
11 including use of weighted voting rights or director proxies.

12 e. Establishes the terms and conditions of any agreement
13 for the transfer or use of property or the provision of
14 services between the corporation and any shareholder,
15 director, officer, or employee of the corporation, or among
16 any of them.

17 f. Transfers to one or more shareholders or other persons
18 all or part of the authority to exercise the corporate powers
19 or to manage the business and affairs of the corporation,
20 including the resolution of any issue about which there exists
21 a deadlock among directors or shareholders.

22 g. Requires dissolution of the corporation at the request
23 of one or more of the shareholders or upon the occurrence of a
24 specified event or contingency.

25 h. Otherwise governs the exercise of the corporate powers
26 or the management of the business and affairs of the
27 corporation or the relationship among the shareholders, the
28 directors, and the corporation, or among any of them, and is
29 not contrary to public policy.

30 2. An agreement authorized by this section must satisfy
31 all of the following requirements:

32 a. Be set forth in one of the following places and
33 manners:

34 (1) The articles of incorporation or bylaws and approved
35 by all persons who are shareholders at the time of the

1 agreement.

2 (2) In a written agreement that is signed by all persons
3 who are shareholders at the time of the agreement and is made
4 known to the corporation.

5 b. Be subject to amendment only by all persons who are
6 shareholders at the time of the amendment, unless the
7 agreement provides otherwise.

8 c. Be valid for ten years, unless the agreement provides
9 otherwise.

10 3. The existence of an agreement authorized by this
11 section shall be noted conspicuously on the front or back of
12 each certificate for outstanding shares or on the information
13 statement required by section 490.626, subsection 2. If at
14 the time of the agreement the corporation has shares
15 outstanding represented by certificates, the corporation shall
16 recall the outstanding certificates and issue substitute
17 certificates that comply with this section. The failure to
18 note the existence of the agreement on the certificate or
19 information statement shall not affect the validity of the
20 agreement or any action taken pursuant to it. Any purchaser
21 of shares who, at the time of purchase, did not have knowledge
22 of the existence of the agreement shall be entitled to
23 rescission of the purchase. A purchaser shall be deemed to have
24 knowledge of the existence of the agreement if its existence
25 is noted on the certificate or information statement for the
26 shares in compliance with this section and, if the shares are
27 not represented by a certificate, the information statement is
28 delivered to the purchaser at or prior to the time of purchase
29 of the shares. An action to enforce the right of rescission
30 authorized by this subsection must be commenced within the
31 earlier of ninety days after discovery of the existence of the
32 agreement or two years after the time of purchase of the
33 shares.

34 4. An agreement authorized by this section shall cease to
35 be effective when shares of the corporation are listed on a

1 national securities exchange or regularly traced in a market
2 maintained by one or more members of a national or affiliated
3 securities association. If the agreement ceases to be
4 effective for any reason, the board of directors may, if the
5 agreement is contained or referred to in the corporation's
6 articles of incorporation or bylaws, adopt an amendment to the
7 articles of incorporation or bylaws, without shareholder
8 action, to delete the agreement and any references to it.

9 5. An agreement authorized by this section that limits the
10 discretion or powers of the board of directors shall relieve
11 the directors of, and impose upon the person or persons in
12 whom such discretion or powers are vested, liability for acts
13 or omissions imposed by law on directors to the extent that
14 the discretion or powers of the directors are limited by the
15 agreement.

16 6. The existence or performance of an agreement authorized
17 by this section shall not be a ground for imposing personal
18 liability on any shareholder for the acts or debts of the
19 corporation even if the agreement or its performance treats
20 the corporation as if it were a partnership or results in
21 failure to observe the corporate formalities otherwise
22 applicable to the matters governed by the agreement.

23 7. Incorporators or subscribers for shares may act as
24 shareholders with respect to an agreement authorized by this
25 section if no shares have been issued when the agreement is
26 made.

27 Sec. 23. Section 490.740, Code 2001, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 490.740 DEFINITIONS.

31 In this part, unless the context otherwise requires:

32 1. "Derivative proceeding" means a civil suit in the right
33 of a domestic corporation or, to the extent provided in
34 section 490.747, in the right of a foreign corporation.

35 2. "Shareholder" includes a beneficial owner whose shares

1 are held in a voting trust or held by a nominee on the
2 beneficial owner's behalf.

3 Sec. 24. NEW SECTION. 490.741 STANDING.

4 A shareholder shall not commence or maintain a derivative
5 proceeding unless the shareholder satisfies both of the
6 following:

7 1. Was a shareholder of the corporation at the time of the
8 act or omission complained of or became a shareholder through
9 transfer by operation of law from one who was a shareholder at
10 that time.

11 2. Fairly and adequately represents the interests of the
12 corporation in enforcing the right of the corporation.

13 Sec. 25. NEW SECTION. 490.742 DEMAND.

14 A shareholder shall not commence a derivative proceeding
15 until both of the following have occurred:

16 1. A written demand has been made upon the corporation to
17 take suitable action.

18 2. Ninety days have expired from the date the demand was
19 made, unless the shareholder has earlier been notified that
20 the demand has been rejected by the corporation or unless
21 irreparable injury to the corporation would result by waiting
22 for the expiration of the ninety-day period.

23 Sec. 26. NEW SECTION. 490.743 STAY OF PROCEEDINGS.

24 If the corporation commences an inquiry into the
25 allegations made in the demand or complaint, the court may
26 stay any derivative proceeding for a period of time as the
27 court deems appropriate.

28 Sec. 27. NEW SECTION. 490.744 DISMISSAL.

29 1. A derivative proceeding shall be dismissed by the court
30 on motion by the corporation if one of the groups specified in
31 subsection 2 or 6 has determined in good faith after
32 conducting a reasonable inquiry upon which its conclusions are
33 based that the maintenance of the derivative proceeding is not
34 in the best interests of the corporation. A corporation
35 moving to dismiss on this basis shall submit in support of the

1 motion a short and concise statement of the reasons for its
2 determination.

3 2. Unless a panel is appointed pursuant to subsection 6,
4 the determination in subsection 1 shall be made by one of the
5 following:

6 a. A majority vote of independent directors present at a
7 meeting of the board of directors if the independent directors
8 constitute a quorum.

9 b. A majority vote of a committee consisting of two or
10 more independent directors appointed by majority vote of
11 independent directors present at a meeting of the board of
12 directors, whether or not such independent directors
13 constitute a quorum.

14 3. None of the following shall by itself cause a director
15 to be considered not independent for purposes of this section:

16 a. The nomination or election of the director by persons
17 who are defendants in the derivative proceeding or against
18 whom action is demanded.

19 b. The naming of the director as a defendant in the
20 derivative proceeding or as a person against whom action is
21 demanded.

22 c. The approval by the director of the act being
23 challenged in the derivative proceeding or demand if the act
24 resulted in no personal benefit to the director.

25 4. If a derivative proceeding is commenced after a
26 determination has been made rejecting a demand by a
27 shareholder, the complaint shall allege with particularity
28 facts establishing one of the following:

29 a. That a majority of the board of directors did not
30 consist of independent directors at the time the determination
31 was made.

32 b. That the requirements of subsection 1 have not been
33 met.

34 All discovery and other proceedings shall be stayed during
35 the pendency of any motion to dismiss unless the court finds

1 upon the motion of any party that particularized discovery is
2 necessary to preserve evidence or prevent undue prejudice to
3 that party.

4 5. If a majority of the board of directors does not
5 consist of independent directors at the time the determination
6 is made, the corporation shall have the burden of proving that
7 the requirements of subsection 1 have been met. If a majority
8 of the board of directors consists of independent directors at
9 the time the determination is made, the plaintiff shall have
10 the burden of proving that the requirements of subsection 1
11 have not been met.

12 6. The court may appoint a panel of one or more
13 independent persons upon motion by the corporation to make a
14 determination whether the maintenance of the derivative
15 proceeding is in the best interests of the corporation. In
16 such case, the plaintiff shall have the burden of proving that
17 the requirements of subsection 1 have not been met.

18 Sec. 28. NEW SECTION. 490.745 DISCONTINUANCE OR
19 SETTLEMENT.

20 A derivative proceeding shall not be discontinued or
21 settled without the court's approval. If the court determines
22 that a proposed discontinuance or settlement will
23 substantially affect the interests of the corporation's
24 shareholders or a class of shareholders, the court shall
25 direct that notice be given to the shareholders affected.

26 Sec. 29. NEW SECTION. 490.746 PAYMENT OF EXPENSES.

27 On termination of the derivative proceeding, the court may
28 do either of the following:

29 1. Order the corporation to pay the plaintiff's reasonable
30 expenses, including attorney fees incurred in the proceeding,
31 if it finds that the proceeding has resulted in a substantial
32 benefit to the corporation.

33 2. Order the plaintiff to pay any defendant's reasonable
34 expenses, including attorney fees incurred in defending the
35 proceeding, if it finds that the proceeding was commenced or

1 maintained without reasonable cause or for an improper
2 purpose.

3 Sec. 30. NEW SECTION. 490.747 APPLICABILITY TO FOREIGN
4 CORPORATIONS.

5 In any derivative proceeding in the right of a foreign
6 corporation, the matters covered by this part shall be
7 governed by the laws of the jurisdiction of incorporation of
8 the foreign corporation except for sections 490.743, 490.745,
9 and 490.746.

10 Sec. 31. Section 490.801, Code 2001, is amended to read as
11 follows:

12 490.801 REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS.

13 1. Except as provided in ~~subsection-3~~ section 490.732,
14 each corporation must have a board of directors.

15 2. All corporate powers shall be exercised by or under the
16 authority of, and the business and affairs of the corporation
17 managed by or under the direction of, its board of directors,
18 subject to any limitation set forth in the articles of
19 incorporation, or in an agreement authorized under section
20 490.732.

21 ~~3--A-corporation-having-fifty-or-fewer-shareholders-may~~
22 ~~dispense-with-or-limit-the-authority-of-a-board-of-directors~~
23 ~~by-describing-in-its-articles-of-incorporation-who-will~~
24 ~~perform-some-or-all-of-the-duties-of-a-board-of-directors.~~

25 Sec. 32. Section 490.803, subsections 2, 3, and 4, Code
26 2001, are amended to read as follows:

27 2. ~~If-a-board-of-directors-has-power-to-fix-or-change-the~~
28 ~~number-of-directors, the-board-may-increase-or-decrease-by~~
29 ~~thirty-percent-or-less-the-number-of-directors-last-approved~~
30 ~~by-the-shareholders, but-only-the-shareholders-may-increase-or~~
31 ~~decrease-by-more-than-thirty-percent-the-number-of-directors~~
32 ~~last-approved-by-the-shareholders. The number of directors~~
33 may be increased or decreased from time to time by amendment
34 to, or in the manner provided in, the articles of
35 incorporation or the bylaws.

1 ~~3.--The articles of incorporation or bylaws may establish a~~
2 ~~variable range for the size of the board of directors by~~
3 ~~fixing a minimum and maximum number of directors.--If a~~
4 ~~variable range is established, the number of directors may be~~
5 ~~fixed or changed from time to time, within the minimum and~~
6 ~~maximum, by the shareholders or the board of directors.--After~~
7 ~~shares are issued, only the shareholders may change the range~~
8 ~~for the size of the board or change from a fixed to a~~
9 ~~variable range size board or vice versa.~~

10 ~~4. 3.~~ Directors are elected at the first annual
11 shareholders' meeting and at each annual meeting thereafter
12 unless their terms are staggered under section 490.806.

13 Sec. 33. Section 490.809, Code 2001, is amended to read as
14 follows:

15 490.809 REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING.

16 1. The district court of the county where a corporation's
17 principal office or, if none in this state, its registered
18 office is located may remove a director of the corporation
19 from office in a proceeding commenced either by or in the
20 right of the corporation ~~or by its shareholders holding at~~
21 ~~least twenty percent of the outstanding shares of any class~~ if
22 the court finds that both of the following apply:

23 a. The director engaged in fraudulent ~~or dishonest~~ conduct
24 with respect to the corporation or its shareholders, grossly
25 abused the position of director, or intentionally inflicted
26 harm on the corporation.

27 b. ~~Removal is~~ Considering the director's course of conduct
28 and the inadequacy of other available remedies, removal would
29 be in the best interest of the corporation.

30 2. A shareholder proceeding on behalf of the corporation
31 under subsection 1 shall comply with all of the requirements
32 of division VII, part D, except section 490.741.

33 ~~2. 3.~~ The court ~~that removes a,~~ in addition to removing
34 the director, may bar the director from reelection for a
35 period prescribed by the court.

1 ~~3. If shareholders commence a proceeding under subsection~~
2 ~~17 they shall make the corporation a party defendant.~~

3 4. This section does not limit the equitable powers of the
4 court to order other relief.

5 Sec. 34. Section 490.821, Code 2001, is amended to read as
6 follows:

7 490.821 ACTION WITHOUT MEETING.

8 1. ~~Unless~~ Except to the extent that the articles of
9 incorporation or bylaws ~~provide otherwise~~ require that action
10 by the board of directors be taken at a meeting, action
11 required or permitted by this chapter to be taken ~~at a~~ by the
12 board of directors ~~meeting~~ directors may be taken without a
13 meeting ~~if the action is taken by all members of the board.~~
14 ~~The action must be evidenced by one or more written consents~~
15 each director signs a consent describing the action to be
16 ~~taken, signed by each director, and included in the minutes or~~
17 ~~filed with the corporate records reflecting the action taken~~
18 and delivers it to the corporation.

19 2. Action taken under this section is ~~effective when the~~
20 ~~last director signs the consent, unless the consent specifies~~
21 ~~a different effective date~~ the act of the board of directors
22 when one or more consents signed by all the directors are
23 delivered to the corporation. The consent may specify the
24 time at which the action taken is to be effective. A
25 director's consent may be withdrawn by revocation signed by
26 the director and delivered to the corporation prior to
27 delivery to the corporation of unrevoked written consents
28 signed by all the directors.

29 3. A consent signed under this section has the effect of a
30 ~~meeting vote~~ an action taken at a meeting of the board of
31 directors and may be described as such in any document.

32 Sec. 35. Section 490.824, subsection 1, unnumbered
33 paragraph 1, Code 2001, is amended to read as follows:

34 Unless the articles of incorporation or bylaws require a
35 different number, or unless otherwise specifically provided in

1 this chapter, a quorum of a board of directors consists of
2 either:

3 Sec. 36. Section 490.825, Code 2001, is amended to read as
4 follows:

5 490.825 COMMITTEES.

6 1. Unless this chapter, the articles of incorporation, or
7 the bylaws provide otherwise, a board of directors may create
8 one or more committees and appoint one or more members of the
9 board of directors to serve on them any committee. Each
10 ~~committee may have two or more members, who serve at the~~
11 ~~pleasure of the board of directors.~~

12 2. The Unless this chapter provides otherwise, the
13 creation of a committee and appointment of members to it must
14 be approved by the greater of either:

15 a. A majority of all the directors in office when the
16 action is taken.

17 b. The number of directors required by the articles of
18 incorporation or bylaws to take action under section 490.824.

19 3. Sections 490.820 through 490.824, ~~which govern~~
20 ~~meetings, action without meetings, notice and waiver of~~
21 ~~notice, and quorum and voting requirements of the board of~~
22 ~~directors,~~ apply both to committees of the board and to their
23 members ~~as well.~~

24 4. To the extent specified by the board of directors or in
25 the articles of incorporation or bylaws, each committee may
26 exercise the authority powers of the board of directors under
27 section 490.801.

28 5. A committee shall not, however:

29 a. Authorize or approve distributions, except according to
30 formula or method, or within limits, prescribed by the board
31 of directors.

32 b. Approve or propose to shareholders action that this
33 chapter requires be approved by shareholders.

34 c. Fill vacancies on the board of directors or, subject to
35 subsection 7, on any of its committees.

1 ~~d.--Amend-articles-of-incorporation-pursuant-to-section~~
2 ~~490.1002.~~

3 e. d. Adopt, amend, or repeal bylaws.

4 ~~f.--Approve-a-plan-of-merger-not-requiring-shareholder~~
5 ~~approval.~~

6 ~~g.--Authorize-or-approve-reacquisition-of-shares, except~~
7 ~~according-to-a-formula-or-method-prescribed-by-the-board-of~~
8 ~~directors.~~

9 ~~h.--Authorize-or-approve-the-issuance-or-sale-or-contract~~
10 ~~for-sale-of-shares, or-determine-the-designation-and-relative~~
11 ~~rights, preferences, and-limitations-of-a-class-or-series-of~~
12 ~~shares, except-that-the-board-of-directors-may-authorize-a~~
13 ~~committee-or-a-senior-executive-officer-of-the-corporation-to~~
14 ~~do-so-within-limits-specifically-prescribed-by-the-board-of~~
15 ~~directors.~~

16 6. The creation of, delegation of authority to, or action
17 by a committee does not alone constitute compliance by a
18 director with the standards of conduct described in section
19 490.830.

20 7. The board of directors may appoint one or more
21 directors as alternate members of any committee to replace any
22 absent or disqualified member during the member's absence or
23 disqualification. Unless the articles of incorporation or the
24 bylaws or the resolution creating the committee provide
25 otherwise, in the event of the absence or disqualification of
26 a member of a committee, the member or members present at any
27 meeting and not disqualified from voting, unanimously, may
28 appoint another director to act in place of the absent or
29 disqualified member.

30 Sec. 37. Section 490.830, Code 2001, is amended to read as
31 follows:

32 490.830 GENERAL STANDARDS OF CONDUCT FOR DIRECTORS.

33 1. A-director Each member of the board of directors, when
34 discharging the duties of a director, shall discharge-that
35 director's-duties-as-a-director, including-the-director's

1 ~~duties-as-a-member-of-a-committee~~ act in conformity with all
2 of the following:

3 a. In good faith.

4 ~~b.--With-the-care-an-ordinarily-prudent-person-in-a-like~~
5 ~~position-would-exercise-under-similar-circumstances.~~

6 ~~e-~~ b. In a manner the director reasonably believes to be
7 in the best interests of the corporation.

8 2. The members of the board of directors or a committee of
9 the board, when becoming informed in connection with their
10 decision-making function or devoting attention to their
11 oversight function, shall discharge their duties with the care
12 that a person in a like position would reasonably believe
13 appropriate under similar circumstances.

14 3. In discharging board or committee duties, a director
15 who does not have knowledge that makes reliance unwarranted is
16 entitled to rely on the performance by any of the persons
17 specified in subsection 5 to whom the board may have
18 delegated, formally or informally by course of conduct, the
19 authority or duty to perform one or more of the board's
20 functions that are delegable under applicable law.

21 ~~2-~~ 4. In discharging the-director's board or committee
22 duties a director, who does not have knowledge that makes
23 reliance unwarranted, is entitled to rely on information,
24 opinions, reports, or statements, including financial
25 statements and other financial data, if prepared or presented
26 by any of the following: persons specified in subsection 5.

27 5. A director is entitled to rely, in accordance with
28 subsection 3 or 4, on any of the following:

29 a. One or more officers or employees of the corporation
30 whom the director reasonably believes to be reliable and
31 competent in the ~~matters-presented~~ functions performed or the
32 information, opinions, reports, or statements provided.

33 b. Legal counsel, public accountants, or other persons as
34 to matters involving skills or expertise the director
35 reasonably believes are either of the following:

1 (1) Matters within the particular person's professional or
2 expert competence.

3 (2) Matters as to which the particular person merits
4 confidence.

5 c. A committee of the board of directors of which the
6 director is not a member if the director reasonably believes
7 the committee merits confidence.

8 ~~3.--A-director-is-not-acting-in-good-faith-if-the-director~~
9 ~~has-knowledge-concerning-the-matter-in-question-that-makes~~
10 ~~reliance-otherwise-permitted-by-subsection-2-unwarranted.~~

11 ~~4.--A-director-is-not-liable-for-any-action-taken-as-a~~
12 ~~director,-or-any-failure-to-take-any-action,-if-the-director~~
13 ~~performed-the-duties-of-the-director's-office-in-compliance~~
14 ~~with-this-section,-or-if,-and-to-the-extent-that,-liability~~
15 ~~for-any-such-action-or-failure-to-act-has-been-limited-by-the~~
16 ~~articles-of-incorporation-pursuant-to-section-490.832.~~

17 Sec. 38. Section 490.831, Code 2001, is amended by
18 striking the section and inserting in lieu thereof the
19 following:

20 490.831 STANDARDS OF LIABILITY FOR DIRECTORS.

21 1. A director shall not be liable to the corporation or
22 its shareholders for any decision as director to take or not
23 to take action, or any failure to take any action, unless the
24 party asserting liability in a proceeding establishes both of
25 the following:

26 a. That any provision in the articles of incorporation
27 authorized by section 490.202, subsection 2, paragraph "d", or
28 the protection afforded by section 490.861 for action taken in
29 compliance with section 490.862 or 490.863 if interposed as a
30 bar to the proceeding by the director, does not preclude
31 liability.

32 b. That the challenged conduct consisted or was the result
33 of one of the following:

34 (1) Action not in good faith.

35 (2) A decision that satisfies one of the following:

1 (a) That the director did not reasonably believe to be in
2 the best interests of the corporation.

3 (b) As to which the director was not informed to an extent
4 the director reasonably believed appropriate in the
5 circumstances.

6 (3) A lack of objectivity due to the director's familial,
7 financial, or business relationship with, or a lack of
8 independence due to the director's domination or control by,
9 another person having a material interest in the challenged
10 conduct, which also meets both of the following criteria:

11 (a) Which relationship or which domination or control
12 could reasonably be expected to have affected the director's
13 judgment respecting the challenged conduct in a manner adverse
14 to the corporation.

15 (b) After a reasonable expectation to such effect has been
16 established, the director shall not have established that the
17 challenged conduct was reasonably believed by the director to
18 be in the best interests of the corporation.

19 (4) A sustained failure of the director to devote
20 attention to ongoing oversight of the business and affairs of
21 the corporation, or a failure to devote timely attention, by
22 making, or causing to be made, appropriate inquiry, when
23 particular facts and circumstances of significant concern
24 materialize that would alert a reasonably attentive director
25 to the need for such oversight, attention, or inquiry.

26 (5) Receipt of a financial benefit to which the director
27 was not entitled or any other breach of the director's duties
28 to deal fairly with the corporation and its shareholders that
29 is actionable under applicable law.

30 2. a. A party seeking to hold the director liable for
31 money damages shall also have the burden of establishing both
32 of the following:

33 (1) That harm to the corporation or its shareholders has
34 been suffered.

35 (2) The harm suffered was proximately caused by the

1 director's challenged conduct.

2 b. A party seeking to hold the director liable for other
3 money payment under a legal remedy, such as compensation for
4 the unauthorized use of corporate assets, shall also have
5 whatever persuasion burden may be called for to establish that
6 the payment sought is appropriate in the circumstances.

7 c. A party seeking to hold the director liable for other
8 money payment under an equitable remedy, such as profit
9 recovery by or disgorgement to the corporation, shall also
10 have whatever persuasion burden may be called for to establish
11 that the equitable remedy sought is appropriate in the
12 circumstances.

13 3. This section shall not do any of the following:

14 a. In any instance where fairness is at issue, such as
15 consideration of the fairness of a transaction to the
16 corporation under section 490.861, subsection 2, paragraph
17 "c", alter the burden of proving the fact or lack of fairness
18 otherwise applicable.

19 b. Alter the fact or lack of liability of a director under
20 another section of this chapter, such as the provisions
21 governing the consequences of an unlawful distribution under
22 section 490.833 or a transactional interest under section
23 490.861.

24 c. Affect any rights to which the corporation or a
25 shareholder may be entitled under another statute of this
26 state or the United States.

27 Sec. 39. Section 490.833, Code 2001, is amended to read as
28 follows:

29 490.833 LIABILITY FOR UNLAWFUL DISTRIBUTION.

30 ~~1. Unless the director complies with the applicable~~
31 ~~standards of conduct described in section 490.830, a A~~
32 ~~director who votes for or assents to a distribution made in~~
33 ~~violation of this chapter or the articles of incorporation in~~
34 ~~excess of what may be authorized and made pursuant to section~~
35 ~~490.640, subsection 1, or section 490.1409, subsection 1, is~~

1 personally liable to the corporation for the amount of the
2 distribution that exceeds what could have been distributed
3 without violating ~~this chapter or the articles of~~
4 incorporation section 490.640, subsection 1, or section
5 490.1409, subsection 1, if the party asserting liability
6 establishes that when taking the action the director did not
7 comply with section 490.830.

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

11 a. Every Contribution from every other director who voted
12 for or assented to the distribution without complying with the
13 applicable standards of conduct described in section 490.830
14 could be held liable under subsection 1 for the unlawful
15 distribution.

16 b. Each Recoupment from each shareholder for of the pro
17 rata portion of the amount of the unlawful distribution the
18 shareholder accepted, knowing the distribution was made in
19 violation of this chapter or the articles of incorporation
20 section 490.640, subsection 1, or section 490.1409, subsection
21 1.

22 3. a. A proceeding to enforce the liability of a director
23 under subsection 1 is barred unless it is commenced within two
24 years after one of the following dates:

25 (1) The date on which the effect of the distribution was
26 measured under section 490.640, subsection 5 or 7.

27 (2) The date as of which the violation of section 490.640,
28 subsection 1, occurred as the consequence of disregard of a
29 restriction in the articles of incorporation.

30 (3) The date on which the distribution of assets to
31 shareholders under section 490.1409, subsection 1, was made.

32 b. A proceeding to enforce contribution or recoupment
33 under subsection 2 is barred unless it is commenced within one
34 year after the liability of the claimant has been finally
35 adjudicated under subsection 1.

1 Sec. 40. Section 490.840, Code 2001, is amended to read as
2 follows:

3 490.840 REQUIRED OFFICERS.

4 1. A corporation has the ~~officers~~ offices described in its
5 bylaws or ~~appointed~~ designated by the board of directors in
6 accordance with the bylaws.

7 2. ~~A-duly-appointed~~ The board of directors may elect
8 individuals to fill one or more offices of the corporation.
9 An officer may appoint one or more officers or-assistant
10 officers if authorized by the bylaws or the board of
11 directors.

12 3. The bylaws or the board of directors shall ~~delegate~~
13 assign to one of the officers responsibility for preparing
14 minutes of the directors' and shareholders' meetings and for
15 maintaining and authenticating the records of the corporation
16 required to be kept under section 490.1601, subsections 1 and
17 5.

18 4. The same individual may simultaneously hold more than
19 one office in a corporation.

20 Sec. 41. Section 490.842, Code 2001, is amended to read as
21 follows:

22 490.842 STANDARDS OF CONDUCT FOR OFFICERS.

23 1. An officer ~~with-discretionary-authority-shall-discharge~~
24 ~~the-officer's-duties-under-that-authority~~ when performing in
25 such capacity shall act in conformity with all of the
26 following:

27 a. In good faith.

28 b. With the care ~~an-ordinarily-prudent~~ that a person in a
29 like position would reasonably exercise under similar
30 circumstances.

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

33 2. In discharging the ~~person's~~ officer's duties an
34 officer, who does not have knowledge that makes reliance
35 unwarranted, is entitled to rely on ~~information,~~ opinions,

1 ~~reports, or statements, including financial statements and~~
2 ~~other financial data, if prepared or presented by either any~~
3 of the following:

4 a. The performance of properly delegated responsibilities
5 by one or more employees of the corporation whom the officer
6 reasonably believes to be reliable and competent in performing
7 the responsibilities delegated.

8 ~~a-~~ b. One information, opinions, reports, or statements,
9 including financial statements and other financial data,
10 prepared or presented by one or more officers or employees of
11 the corporation whom the officer reasonably believes to be
12 reliable and competent in the matters presented.

13 ~~b-~~ c. Legal counsel, public accountants, or other persons
14 retained by the corporation as to matters involving skills or
15 expertise the officer reasonably believes are matters within
16 the particular person's professional or expert competence, or
17 in which the particular person merits confidence.

18 ~~3. An officer is not acting in good faith if the officer~~
19 ~~has knowledge concerning the matter in question that makes~~
20 ~~reliance otherwise permitted by subsection 2 unwarranted. An~~
21 officer shall not be liable as an officer to the corporation
22 or its shareholders for any decision to take or not to take
23 action, or any failure to take any action, if the duties of
24 the officer are performed in compliance with this section.
25 Whether an officer who does not comply with this section shall
26 have liability will depend in such instance on applicable law,
27 including those principles of section 490.831 that have
28 relevance.

29 ~~4.--An officer is not liable for any action taken as an~~
30 ~~officer, or any failure to take any action, if the officer~~
31 ~~performed the duties of the officer's office in compliance~~
32 ~~with this section.~~

33 Sec. 42. Section 490.843, Code 2001, is amended to read as
34 follows:

35 490.843 RESIGNATION AND REMOVAL OF OFFICERS.

1 1. An officer may resign at any time by delivering notice
2 to the corporation. A resignation is effective when the
3 notice is delivered unless the notice specifies a later
4 effective date time. If a resignation is made effective at a
5 later date time and the corporation board or appointing
6 officer accepts the future effective date time, its the board
7 of-directors or the appointing officer may fill the pending
8 vacancy before the effective date time if the board of
9 directors or appointing officer provides that the successor
10 does not take office until the effective date time. A
11 ~~resignation-may-be-orally-communicated-provided-that-the~~
12 ~~resignation-is-effective-only-if-written-notice-of-the~~
13 ~~resignation-is-delivered-within-twenty-four-hours-of-such-oral~~
14 ~~communication-~~

15 2. ~~A-board-of-directors-may-remove-any~~ An officer may be
16 removed at any time with or without cause by any of the
17 following:

18 a. The board of directors.

19 b. The officer who appointed such officer, unless the
20 bylaws of the board of directors provide otherwise.

21 c. Any other officer if authorized by the bylaws of the
22 board of directors.

23 3. In this section, "appointing officer" means the
24 officer, including any successor to that officer, who
25 appointed the officer resigning or being removed.

26 Sec. 43. Section 490.850, Code 2001, is amended to read as
27 follows:

28 490.850 DEFINITIONS.

29 As used in this part of this chapter, unless the context
30 otherwise requires:

31 1. "Corporation" includes any domestic or foreign
32 predecessor entity of a corporation in a merger ~~or-other~~
33 ~~transaction-in-which-the-predecessor's-existence-ceased-upon~~
34 ~~consummation-of-the-transaction.~~

35 2. "Director" or "officer" means an individual who is or

1 was a director or officer, respectively, of a corporation or
2 ~~an individual~~ who, while a director or officer of a the
3 corporation, is or was serving at the corporation's request as
4 a director, officer, partner, trustee, employee, or agent of
5 another ~~foreign-or~~ domestic or foreign corporation,
6 partnership, joint venture, trust, employee benefit plan, or
7 other enterprise entity. A director or officer is considered
8 to be serving an employee benefit plan at the corporation's
9 request if the director's duties to the corporation also
10 impose duties on, or otherwise involve services by, that
11 director to the plan or to participants in or beneficiaries of
12 the plan. "Director" or "officer" includes, unless the
13 context requires otherwise, the estate or personal
14 representative of a director or officer.

15 3. "Disinterested director" means a director who at the
16 time of a vote referred to in section 490.853, subsection 3,
17 or a vote or selection referred to in section 490.855,
18 subsection 2 or 3, is not either of the following:

19 a. A party to the proceeding.

20 b. An individual having a familial, financial,
21 professional, or employment relationship with the director
22 whose indemnification or advance for expenses is the subject
23 of the decision being made, which relationship would, in the
24 circumstances, reasonably be expected to exert an influence on
25 the director's judgment when voting on the decision being
26 made.

27 ~~3-~~ 4. "Expenses" include includes counsel fees.

28 ~~4-~~ 5. "Liability" means the obligation to pay a judgment,
29 settlement, penalty, fine, including an excise tax assessed
30 with respect to an employee benefit plan, or reasonable
31 expenses incurred with respect to a proceeding.

32 ~~5-~~ 6. "Official capacity" means:

33 a. When used with respect to a director, the office of
34 director in a corporation.

35 b. When used with respect to an ~~individual-other-than-a~~

1 director officer, as contemplated in section 490.856, the
2 office in a corporation held by the officer ~~or-the-employment~~
3 ~~or-agency-relationship-undertaken-by-the-employee-or-agent-on~~
4 ~~behalf-of-the-corporation~~.

5 "Official capacity" does not include service for any other
6 ~~foreign-or~~ domestic or foreign corporation or any partnership,
7 joint venture, trust, employee benefit plan, or other
8 enterprise entity.

9 ~~6-~~ 7. "Party" ~~includes~~ means an individual who was, is, or
10 is threatened to be made a named defendant or respondent in a
11 proceeding.

12 ~~7-~~ 8. "Proceeding" means any threatened, pending, or
13 completed action, suit, or proceeding, whether civil,
14 criminal, administrative, or investigative and whether formal
15 or informal.

16 Sec. 44. Section 490.851, Code 2001, is amended to read as
17 follows:

18 490.851 ~~AUTHORITY-TO-INDEMNIFY~~ PERMISSIBLE
19 INDEMNIFICATION.

20 1. Except as otherwise provided in ~~subsection-4~~ this
21 section, a corporation may indemnify an individual made who is
22 a party to a proceeding because the individual is ~~or-was~~ a
23 director against liability incurred in the proceeding if all
24 of the following apply:

25 a. The individual acted in good faith.

26 b. The individual reasonably believed:

27 (1) In the case of conduct in the individual's official
28 capacity ~~with-the-corporation~~, that the individual's conduct
29 was in the corporation's best interests.

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

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

34 was unlawful, or the individual engaged in conduct for which

35 broader indemnification has been made permissible or

1 obligatory under a provision of the articles of incorporation
2 as authorized by section 490.202, subsection 2, paragraph "e".

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

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

13 4. A Unless ordered by a court under section 490.854,
14 subsection 1, paragraph "c", a corporation shall not indemnify
15 a director under this section in either of the following
16 circumstances:

17 a. In connection with a proceeding by or in the right of
18 the corporation ~~in-which-the-director-was-adjudged-liable-to~~
19 ~~the-corporation,~~ except for reasonable expenses incurred in
20 connection with the proceeding if it is determined that the
21 director has met the relevant standard of conduct under
22 subsection 1.

23 b. In connection with any ~~other proceeding charging~~
24 ~~improper-personal-benefit-to-the-director, whether or not~~
25 ~~involving action in the director's official capacity, in~~ with
26 respect to conduct for which the director was adjudged liable
27 on the basis that ~~personal~~ the director received a financial
28 benefit was improperly received by the director to which the
29 director was not entitled, whether or not involving action in
30 the director's official capacity.

31 ~~5. Indemnification permitted under this section in~~
32 ~~connection with a proceeding by or in the right of the~~
33 ~~corporation is limited to reasonable expenses incurred in~~
34 ~~connection with the proceeding.~~

35 Sec. 45. Section 490.852, Code 2001, is amended to read as

1 follows:

2 490.852 MANDATORY INDEMNIFICATION.

3 ~~Unless limited by its articles of incorporation, a~~ A
4 corporation shall indemnify a director who was wholly
5 successful, on the merits or otherwise, in the defense of any
6 proceeding to which the director was a party because the
7 director is or was a director of the corporation against
8 reasonable expenses incurred by the director in connection
9 with the proceeding.

10 Sec. 46. Section 490.853, Code 2001, is amended to read as
11 follows:

12 490.853 ADVANCE FOR EXPENSES.

13 1. A corporation may, before final disposition of a
14 proceeding, advance funds to pay for or reimburse the
15 reasonable expenses incurred by a director who is a party to a
16 proceeding ~~in advance of final disposition of the proceeding~~
17 because the person is a director if any of the person delivers
18 all of the following apply to the corporation:

19 a. ~~The director furnishes the corporation a~~ A written
20 affirmation of the director's good faith belief that the
21 director has met the relevant standard of conduct described in
22 section 490.851 or that the proceeding involved conduct for
23 which liability has been eliminated under a provision of the
24 articles of incorporation as authorized by section 490.202,
25 subsection 2, paragraph "d".

26 b. ~~The director furnishes the corporation a~~ The director's
27 written undertaking, ~~executed personally or on the director's~~
28 behalf, to repay the advance any funds advanced if the
29 director is not entitled to mandatory indemnification under
30 section 490.852 and it is ultimately determined under section
31 490.854 or section 490.855 that the director did not meet that
32 has not met the relevant standard of conduct described in
33 section 490.851.

34 c. ~~A determination is made that the facts then known to~~
35 those making the determination would not preclude

1 ~~indemnification under this part.~~

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

6 3. ~~Determinations and authorizations~~ Authorizations of
7 payments under this section shall be made ~~in the manner~~
8 specified in section 490.855 according to one of the
9 following:

10 a. By the board of directors:

11 (1) If there are two or more disinterested directors, by a
12 majority vote of all the disinterested directors, a majority
13 of whom shall for such purpose constitute a quorum, or by a
14 majority of the members of a committee of two or more
15 disinterested directors appointed by such a vote.

16 (2) If there are fewer than two disinterested directors,
17 by the vote necessary for action by the board in accordance
18 with section 490.824, subsection 3, in which authorization
19 directors who do not qualify as disinterested directors may
20 participate.

21 b. By the shareholders, but shares owned by or voted under
22 the control of a director who at the time does not qualify as
23 a disinterested director may not be voted on the
24 authorization.

25 Sec. 47. Section 490.854, Code 2001, is amended to read as
26 follows:

27 490.854 COURT-ORDERED INDEMNIFICATION.

28 1. Unless a corporation's articles of incorporation
29 provide otherwise, a A director of the corporation who is a
30 party to a proceeding because the person is a director may
31 apply for indemnification or an advance for expenses to the
32 court conducting the proceeding or to another court of
33 competent jurisdiction. ~~On~~ After receipt of an application,
34 ~~the court~~ and after giving any notice ~~the court~~ it considers
35 necessary ~~may order,~~ the court shall do one of the following:

1 a. Order indemnification if it the court determines either
2 of-the-following:

3 ~~1. The that the~~ director is entitled to mandatory
4 indemnification under section 490.852, ~~in-which-case-the-court~~
5 ~~shall-also-order-the-corporation-to-pay-the-directors~~
6 ~~reasonable-expenses-incurred-to-obtain-court-ordered~~
7 ~~indemnification.~~

8 ~~2. The-director-is-fairly-and-reasonably-entitled-to~~
9 ~~indemnification-in-view-of-all-the-relevant-circumstances,~~
10 ~~whether-or-not-the-director-met-the-standard-of-conduct-set~~
11 ~~forth-in-section-490.851-or-was-adjudged-liable-as-described~~
12 ~~in-section-490.851, subsection-4, but-if-the-director-was~~
13 ~~adjudged-so-liable-the-director's-indemnification-is-limited~~
14 ~~to-reasonable-expenses-incurred.~~

15 b. Order indemnification or advance for expenses if the
16 court determines that the director is entitled to
17 indemnification or advance for expenses pursuant to a
18 provision authorized by section 490.858, subsection 1.

19 c. Order indemnification or advance for expenses if the
20 court determines, in view of all the relevant circumstances,
21 that it is fair and reasonable to do one of the following:

22 (1) To indemnify the director.

23 (2) To advance expenses to the director, even if the
24 director has not met the relevant standard of conduct set
25 forth in section 490.851, subsection 1, failed to comply with
26 section 490.853 or was adjudged liable in a proceeding
27 referred to in subsection 490.851, subsection 4, paragraph "a"
28 or "b", but if the director was adjudged so liable the
29 director's indemnification shall be limited to reasonable
30 expenses incurred in connection with the proceeding.

31 2. If the court determines that the director is entitled
32 to indemnification under subsection 1, paragraph "a", or to
33 indemnification or advance for expenses under subsection 1,
34 paragraph "b", it shall also order the corporation to pay the
35 director's reasonable expenses incurred in connection with

1 obtaining court-ordered indemnification or advance for
2 expenses. If the court determines that the director is
3 entitled to indemnification or advance for expenses under
4 subsection 1, paragraph "c", it may also order the corporation
5 to pay the director's reasonable expenses to obtain court-
6 ordered indemnification or advance for expenses.

7 Sec. 48. Section 490.855, Code 2001, is amended to read as
8 follows:

9 490.855 DETERMINATION AND AUTHORIZATION OF
10 INDEMNIFICATION.

11 1. A corporation shall not indemnify a director under
12 section 490.851 unless authorized in-the for a specific case
13 proceeding after a determination has been made that
14 indemnification of the director is permissible in-the
15 circumstances because the director has met the relevant
16 standard of conduct set forth in section 490.851.

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

19 a. ~~By-the-board-of-directors-by-majority-vote-of-a-quorum~~
20 ~~consisting-of-directors-not-at-the-time-parties-to-the~~
21 ~~proceeding.~~ If there are two or more disinterested directors,
22 by the board of directors by a majority vote of all the
23 disinterested directors, a majority of whom shall for such
24 purpose constitute a quorum, or by a majority of the members
25 of a committee of two or more disinterested directors
26 appointed by such a vote.

27 ~~b.--If-a-quorum-cannot-be-obtained-under-paragraph-"a",-by~~
28 ~~majority-vote-of-a-committee-duly-designated-by-the-board-of~~
29 ~~directors,-in-which-designation-directors-who-are-parties-may~~
30 ~~participate,-consisting-solely-of-two-or-more-directors-not-at~~
31 ~~the-time-parties-to-the-proceeding.~~

32 c. b. By special legal counsel:

33 (1) ~~Selected by-the-board-of-directors-or-its-committee in~~
34 ~~the manner prescribed in paragraph "a" or-"b".~~

35 (2) ~~If a-quorum-of-the-board-of~~ there are fewer than two

1 ~~disinterested~~ directors ~~cannot-be-obtained-under-paragraph-"a"~~
2 ~~and-a-committee-cannot-be-designated-under-paragraph-"b"~~,
3 selected by ~~majority-vote-of~~ the full board of directors, in
4 which selection directors who ~~are-parties~~ do not qualify as
5 disinterested directors may participate.

6 d. c. By the shareholders, but shares owned by or voted
7 under the control of ~~directors~~ a director who ~~are~~ at the time
8 ~~parties-to-the-proceeding~~ does not qualify as a disinterested
9 director shall not be voted on the determination.

10 3. Authorization of indemnification ~~and-evaluation-as-to~~
11 ~~reasonableness-of-expenses~~ shall be made in the same manner as
12 the determination that indemnification is permissible, except
13 that if there are fewer than two disinterested directors or if
14 the determination is made by special legal counsel,
15 authorization of indemnification ~~and-evaluation-as-to~~
16 ~~reasonableness-of-expenses~~ shall be made by those entitled
17 under subsection 2, paragraph "c" "b", to select special legal
18 counsel.

19 Sec. 49. Section 490.856, Code 2001, is amended to read as
20 follows:

21 490.856 INDEMNIFICATION OF OFFICERS, EMPLOYEES, AND
22 AGENTS.

23 ~~Unless-a-corporation's-articles-of-incorporation-provide~~
24 ~~otherwise-all-of-the-following-apply:~~

25 ~~1. An officer of the corporation who is not a director is~~
26 ~~entitled to mandatory indemnification under section 490.852,~~
27 ~~and is entitled to apply for court-ordered indemnification~~
28 ~~under section 490.854, in each case to the same extent as a~~
29 ~~director.~~

30 2. 1. The A corporation may indemnify and advance expenses
31 under this part to an officer, employee, or agent of the
32 corporation who is ~~not-a-director-to~~ a party to the proceeding
33 because the person is an officer, according to all of the
34 following:

35 a. To the same extent as to a director.

1 ~~3. b. A corporation may also indemnify and advance~~
2 ~~expenses to an officer, employee, or agent who is not a~~
3 ~~director to the extent, consistent with law, that~~ If the
4 person is an officer but not a director, to such further
5 extent as may be provided by its the articles of
6 incorporation, the bylaws, general or specific action a
7 resolution of its the board of directors, or contract, except
8 for either of the following:

9 (1) Liability in connection with a proceeding by or in the
10 right of the corporation other than for reasonable expenses
11 incurred in connection with the proceeding.

12 (2) Liability arising out of conduct that constitutes any
13 of the following:

14 (a) Receipt by the officer of a financial benefit to which
15 the officer is not entitled.

16 (b) An intentional infliction of harm on the corporation
17 or the shareholders.

18 (c) An intentional violation of criminal law.

19 2. The provisions of subsection 1, paragraph "b", shall
20 apply to an officer who is also a director if the basis on
21 which the officer is made a party to a proceeding is an act or
22 omission solely as an officer.

23 3. An officer of a corporation who is not a director is
24 entitled to mandatory indemnification under section 490.852,
25 and may apply to a court under section 490.854 for
26 indemnification or an advance for expenses, in each case to
27 the same extent to which a director may be entitled to
28 indemnification or advance for expenses under those
29 provisions.

30 Sec. 50. Section 490.857, Code 2001, is amended to read as
31 follows:

32 490.857 INSURANCE.

33 A corporation may purchase and maintain insurance on behalf
34 of an individual who is ~~or was~~ a director, or officer,
35 ~~employee, or agent~~ of the corporation, or who, while a

1 director, or officer, ~~employee-or-agent~~ of the corporation,
2 ~~is-or-was-serving~~ serves at the request-of-the-corporation
3 corporation's request as a director, officer, partner,
4 trustee, employee, or agent of another ~~foreign-or~~ domestic or
5 foreign corporation, partnership, joint venture, trust,
6 employee benefit plan, or other enterprise entity, against
7 liability asserted against or incurred by that individual in
8 that capacity or arising from the individual's status as a
9 director, or officer, ~~employee-or-agent~~, whether or not the
10 corporation would have power to indemnify or advance expenses
11 to that individual against the same liability under section
12 490.851-or-490.852 this part.

13 Sec. 51. Section 490.858, Code 2001, is amended by
14 striking the section and inserting in lieu thereof the
15 following:

16 490.858 VARIATION BY CORPORATE ACTION -- APPLICATION OF
17 PART.

18 1. A corporation may, by a provision in its articles of
19 incorporation or bylaws or in a resolution adopted or a
20 contract approved by its board of directors or shareholders,
21 obligate itself in advance of the act or omission giving rise
22 to a proceeding to provide indemnification in accordance with
23 section 490.851 or advance funds to pay for or reimburse
24 expenses in accordance with section 490.853. Any such
25 obligatory provision shall be deemed to satisfy the
26 requirements for authorization referred to in section 490.853,
27 subsection 3, and in section 490.855, subsection 3. Any such
28 provision that obligates the corporation to provide
29 indemnification to the fullest extent permitted by law shall
30 be deemed to obligate the corporation to advance funds to pay
31 for or reimburse expenses in accordance with section 490.853
32 to the fullest extent permitted by law, unless the provision
33 specifically provides otherwise.

34 2. Any provision pursuant to subsection 1 shall not
35 obligate the corporation to indemnify or advance expenses to a

1 director of a predecessor of the corporation, pertaining to
2 conduct with respect to the predecessor, unless otherwise
3 specifically provided. Any provision for indemnification or
4 advance for expenses in the articles of incorporation, bylaws,
5 or a resolution of the board of directors or shareholders of a
6 predecessor of the corporation in a merger or in a contract to
7 which the predecessor is a party, existing at the time the
8 merger takes effect, shall be governed by section 490.1106,
9 subsection 1, paragraph "c".

10 3. A corporation may, by a provision in its articles of
11 incorporation, limit any of the rights to indemnification or
12 advance for expenses created by or pursuant to this part.

13 4. This part does not limit a corporation's power to pay
14 or reimburse expenses incurred by a director or an officer in
15 connection with the director's or officer's appearance as a
16 witness in a proceeding at a time when the director or officer
17 is not a party.

18 5. This part does not limit a corporation's power to
19 indemnify, advance expenses to, or provide or maintain
20 insurance on behalf of an employee or agent.

21 Sec. 52. NEW SECTION. 490.859 EXCLUSIVITY OF PART.

22 A corporation may provide indemnification or advance
23 expenses to a director or an officer only as permitted by this
24 part.

25 Sec. 53. NEW SECTION. 490.860 DEFINITIONS.

26 In this part:

27 1. "Conflicting interest" with respect to a corporation
28 means the interest a director of the corporation has
29 respecting a transaction effected or proposed to be effected
30 by the corporation, or by a subsidiary of the corporation or
31 any other entity in which the corporation has a controlling
32 interest, if either of the following applies:

33 a. Whether or not the transaction is brought before the
34 board of directors of the corporation for action, the director
35 knows at the time of commitment that the director or a related

1 person is a party to the transaction or has a beneficial
2 financial interest in or is so closely linked to the
3 transaction and is of such financial significance to the
4 director or a related person that the interest would
5 reasonably be expected to exert an influence on the director's
6 judgment if the director were called upon to vote on the
7 transaction.

8 b. The transaction is brought, or is of such character and
9 significance to the corporation that it would in the normal
10 course be brought, before the board of directors of the
11 corporation for action, and the director knows at the time of
12 commitment that any of the following persons is either a party
13 to the transaction or has a beneficial financial interest in
14 or is so closely linked to the transaction and is of such
15 financial significance to the person that the interest would
16 reasonably be expected to exert an influence on the director's
17 judgment if the director were called upon to vote on the
18 transaction:

19 (1) An entity, other than the corporation, of which the
20 director is a director, general partner, manager, member,
21 agent, or employee.

22 (2) A person that controls one or more of the entities
23 specified in subparagraph (1) or an entity that is controlled
24 by, or is under common control with, one or more of the
25 entities specified in subparagraph (1).

26 (3) An individual who is a general partner, principal,
27 comember, or employer of the director.

28 2. "Director's conflicting interest transaction" with
29 respect to a corporation means a transaction effected or
30 proposed to be effected by the corporation, or by a subsidiary
31 of the corporation or any other entity in which the
32 corporation has a controlling interest, respecting which a
33 director of the corporation has a conflict of interest.

34 3. "Related person" of a director means any of the
35 following:

1 a. The spouse of the director, or a parent or a sibling of
2 a spouse of a director.

3 b. A child, grandchild, sibling, or parent of the
4 director, or a spouse of a child, grandchild, sibling, or
5 parent of the director.

6 c. An individual having the same home as the director.

7 d. A trust or estate of which an individual specified in
8 this subsection is a substantial beneficiary.

9 e. A trust, estate, incompetent, conservatee, or minor of
10 which the director is a fiduciary.

11 4. "Required disclosure" means disclosure by the director
12 who has a conflicting interest of both of the following:

13 a. The existence and nature of the director's conflicting
14 interest.

15 b. All facts known to the director respecting the subject
16 matter of the transaction that an ordinarily prudent person
17 would reasonably believe to be material to a judgment about
18 whether or not to proceed with the transaction.

19 5. "Time of commitment" respecting a transaction means the
20 time when the transaction is consummated or, if made pursuant
21 to contract, the time when the corporation, or its subsidiary
22 or the entity in which it has a controlling interest, becomes
23 contractually obligated so that its unilateral withdrawal from
24 the transaction would entail significant loss, liability, or
25 other damage.

26 Sec. 54. NEW SECTION. 490.861 JUDICIAL ACTION.

27 1. A transaction effected or proposed to be effected by a
28 corporation, or by a subsidiary of the corporation or any
29 other entity in which the corporation has a controlling
30 interest, that is not a director's conflicting interest
31 transaction shall not be enjoined, set aside, or give rise to
32 an award of damages or other sanctions, in a proceeding by a
33 shareholder or by or in the right of the corporation, because
34 a director of the corporation, or any person with whom or
35 which the director has a personal, economic, or other

1 association, has an interest in the transaction.

2 2. A director's conflicting interest transaction shall not
3 be enjoined, set aside, or give rise to an award of damages or
4 other sanctions, in a proceeding by a shareholder or by or in
5 the right of the corporation, because the director, or any
6 person with whom or which the director has a personal,
7 economic, or other association, has an interest in the
8 transaction, if any one of the following is true:

9 a. Directors' action respecting the transaction was at any
10 time taken in compliance with section 490.862.

11 b. Shareholders' action respecting the transaction was at
12 any time taken in compliance with section 490.863.

13 c. The transaction, judged according to the circumstances
14 at the time of commitment, is established to have been fair to
15 the corporation.

16 Sec. 55. NEW SECTION. 490.862 DIRECTORS' ACTION.

17 1. Directors' action respecting a transaction is effective
18 for purposes of section 490.861, subsection 2, paragraph "a",
19 if the transaction received the affirmative vote of a
20 majority, but no fewer than two, of those qualified directors
21 on the board of directors or on a duly empowered committee of
22 the board who voted on the transaction after either required
23 disclosure to them, to the extent the information was not
24 known by them, or compliance with subsection 2. However,
25 action by a committee is so effective only if both of the
26 following are satisfied:

27 a. All its members are qualified directors.

28 b. Its members are either all the qualified directors on
29 the board or are appointed by the affirmative vote of a
30 majority of the qualified directors on the board.

31 2. If a director has a conflicting interest respecting a
32 transaction but neither the director nor a related person of
33 the director specified in section 490.860, subsection 3,
34 paragraph "a", is a party to the transaction, and if the
35 director has a duty under law or professional canon, or a duty

1 of confidentiality to another person, respecting information
2 relating to the transaction such that the director shall not
3 make the disclosure described in section 490.860, subsection
4 4, paragraph "b", then disclosure is sufficient for purposes
5 of subsection 1 if the director does both of the following:

6 a. Discloses to the directors voting on the transaction
7 the existence and nature of the director's conflicting
8 interest and informs them of the character and limitations
9 imposed by that duty before their vote on the transaction.

10 b. Plays no part, directly or indirectly, in their
11 deliberations or vote.

12 3. A majority, but no fewer than two, of all the qualified
13 directors on the board of directors, or on the committee,
14 constitutes a quorum for purposes of action that complies with
15 this section. Directors' action that otherwise complies with
16 this section is not affected by the presence or vote of a
17 director who is not a qualified director.

18 4. For purposes of this section, "qualified director"
19 means, with respect to a director's conflicting interest
20 transaction, any director who does not have either a
21 conflicting interest respecting the transaction, or a
22 familial, financial, professional, or employment relationship
23 with a second director who does have a conflicting interest
24 respecting the transaction, which relationship would, in the
25 circumstances, reasonably be expected to exert an influence on
26 the first director's judgment when voting on the transaction.

27 5. Directors' action complying with subsection 1 may be
28 taken at any time, before or after the transaction, and may
29 deal with a single transaction or a specified category of
30 similar transactions.

31 Sec. 56. NEW SECTION. 490.863 SHAREHOLDERS' ACTION.

32 1. Shareholders' action respecting a transaction is
33 effective for purposes of section 490.861, subsection 2,
34 paragraph "b", if a majority of the votes entitled to be cast
35 by the holders of all qualified shares were cast in favor of

1 the transaction after all of the following occurred:

2 a. Notice to shareholders describing the director's
3 conflicting interest transaction.

4 b. Provision of the information referred to in subsection
5 4.

6 c. Required disclosure to the shareholders who voted on
7 the transaction, to the extent the information was not known
8 by them.

9 2. For purposes of this section, "qualified shares" means
10 any shares entitled to vote with respect to the director's
11 conflicting interest transaction except shares that, to the
12 knowledge, before the vote, of the secretary, or other officer
13 or agent of the corporation authorized to tabulate votes, are
14 beneficially owned, or the voting of which is controlled, by a
15 director who has a conflicting interest respecting the
16 transaction or by a related person of the director, or both.

17 3. A majority of the votes entitled to be cast by the
18 holders of all qualified shares constitutes a quorum for
19 purposes of action that complies with this section. Subject
20 to the provisions of subsections 4 and 5, shareholders' action
21 that otherwise complies with this section is not affected by
22 the presence of holders, or the voting of shares that are not
23 qualified shares.

24 4. For purposes of compliance with subsection 1, a
25 director who has a conflicting interest respecting the
26 transaction shall, before the shareholders' vote, inform the
27 secretary, or other officer or agent of the corporation
28 authorized to tabulate votes, of the number, and the identity
29 of persons holding or controlling the vote, of all shares that
30 the director knows are beneficially owned, or the voting of
31 which is controlled, by the director or by a related person of
32 the director, or both.

33 5. If a shareholders' vote does not comply with subsection
34 1 solely because of a failure of a director to comply with
35 subsection 4, and if the director establishes that the

1 director's failure did not determine and was not intended by
2 the director to influence the outcome of the vote, the court
3 may, with or without further proceedings respecting section
4 490.861, subsection 2, paragraph "c", take such action
5 respecting the transaction and the director, and give such
6 effect, if any, to the shareholders' vote, as it considers
7 appropriate in the circumstances.

8 6. Action that complies with subsection 1 may be taken at
9 any time, before or after the transaction, and may deal with a
10 single transaction or a specified category of similar
11 transactions.

12 Sec. 57. Section 490.1001, subsection 1, Code 2001, is
13 amended to read as follows:

14 1. A corporation may amend its articles of incorporation
15 at any time to add or change a provision that is required or
16 permitted in the articles of incorporation ~~or to delete a~~
17 ~~provision not required in the articles of incorporation.~~
18 ~~Whether a provision is required or permitted in the articles~~
19 ~~of incorporation is determined~~ as of the effective date of the
20 amendment or to delete a provision that is not required to be
21 contained in the articles of incorporation.

22 Sec. 58. Section 490.1002, Code 2001, is amended by
23 striking the section and inserting in lieu thereof the
24 following:

25 490.1002 AMENDMENT BEFORE ISSUANCE OF SHARES.

26 If a corporation has not yet issued shares, its board of
27 directors, or its incorporators if it has no board of
28 directors, may adopt one or more amendments to the
29 corporation's articles of incorporation.

30 Sec. 59. Section 490.1003, Code 2001, is amended to read
31 as follows:

32 490.1003 AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS.

33 If a corporation has issued shares, an amendment to the
34 articles of incorporation shall be adopted in the following
35 manner:

1 1. ~~A-corporation's~~ The proposed amendment must be adopted
2 by the board of directors may-propose-one-or-more-amendments
3 to-the-articles-of-incorporation-for-submission-to-the
4 shareholders.

5 2. ~~For the amendment to be adopted both of the following~~
6 ~~must occur:~~

7 a. 2. The Except as provided in section 490.1005,
8 490.1007, and 490.1008, after adopting the proposed amendment,
9 the board of directors must recommend submit the amendment to
10 the shareholders for their approval. The board of directors
11 must also transmit to the shareholders a recommendation that
12 the shareholders approve the amendment, unless the board of
13 directors determines makes a determination that because of
14 conflict of interest or other special circumstances it should
15 not make no such a recommendation and communicates, in which
16 case the basis-for-its-determination board of directors must
17 transmit to the shareholders with-the-amendment the basis for
18 the determination.

19 b. ~~The shareholders entitled to vote on the amendment must~~
20 ~~approve the amendment as provided in subsection 5.~~

21 3. The board of directors may condition its submission of
22 the proposed amendment to the shareholders on any basis.

23 4. ~~The corporation shall~~ If the amendment is required to
24 be approved by the shareholders, and the approval is to be
25 given at a meeting, the corporation must notify each
26 shareholder, whether or not entitled to vote, of the proposed
27 shareholders' meeting in accordance with section 490.705 of
28 shareholders at which the amendment is to be submitted for
29 approval. The notice of meeting must also state that the
30 purpose, or one of the purposes, of the meeting is to consider
31 the proposed amendment and must contain or be accompanied by a
32 copy or summary of the amendment.

33 5. Unless ~~this chapter,~~ the articles of incorporation,
34 bylaws, or the board of directors acting pursuant to
35 subsection 3 requires a greater vote or ~~a vote by voting~~

1 groups, ~~the amendment to be adopted must be approved by both~~
2 ~~of the following:~~

3 a. ~~---A greater number of shares to be present, approval of~~
4 ~~the amendment requires the approval of the shareholders at a~~
5 ~~meeting at which a quorum consisting of at least a majority of~~
6 ~~the votes entitled to be cast on the amendment exists, and, if~~
7 ~~any class or series of shares is entitled to vote as a~~
8 ~~separate group on the amendment, except as provided in section~~
9 ~~490.1004, subsection 3, the approval of each such separate~~
10 ~~voting group at a meeting at which a quorum of the voting~~
11 ~~group consisting of at least a majority of the votes entitled~~
12 ~~to be cast on the amendment by any voting group with respect~~
13 ~~to which the amendment would create dissenters' rights that~~
14 ~~voting group exists.~~

15 b. ~~---The votes required by sections 490.725 and 490.726 by~~
16 ~~every other voting group entitled to vote on the amendment.~~

17 Sec. 60. Section 490.1004, subsections 1, 2, and 3, Code
18 2001, are amended to read as follows:

19 1. ~~The~~ If a corporation has more than one class of shares
20 outstanding, the holders of the outstanding shares of a class
21 are entitled to vote as a separate voting group, if
22 shareholder voting is otherwise required by this chapter, on a
23 proposed amendment to the articles of incorporation if the
24 amendment would do any of the following:

25 a. ~~---Increase or decrease the aggregate number of authorized~~
26 ~~shares of the class.~~

27 b. a. Effect an exchange or reclassification of all or
28 part of the shares of the class into shares of another class.

29 c. b. Effect an exchange or reclassification, or create
30 the right of exchange, of all or part of the shares of another
31 class into shares of that class.

32 d. c. Change the ~~designation,~~ rights, preferences, or
33 limitations of all or part of the shares of the class.

34 e. d. Change the shares of all or part of the class into a
35 different number of shares of the same class.

1 f. e. Create a new class of shares having rights or
2 preferences with respect to distributions or to dissolution
3 that are prior, or superior, ~~or-substantially-equal~~ to, the
4 shares of the class.

5 g. f. Increase the rights, preferences, or number of
6 authorized shares of any class that, after giving effect to
7 the amendment, have rights or preferences with respect to
8 distributions or to dissolution that are prior, or superior,
9 ~~or-substantially-equal~~ to the shares of the class.

10 h. g. Limit or deny an existing preemptive right of all or
11 part of the shares of the class.

12 i. h. Cancel or otherwise affect rights to distributions
13 ~~or-dividends~~ that have accumulated but not yet been declared
14 authorized on all or part of the shares of the class.

15 2. If a proposed amendment would affect a series of a
16 class of shares in one or more of the ways described in
17 subsection 1, the holders of shares of that series are
18 entitled to vote as a separate voting group on the proposed
19 amendment.

20 3. If a proposed amendment that entitles the holders of
21 two or more classes or series of shares to vote as separate
22 voting groups under this section would affect those two or
23 more classes or series in the same or a substantially similar
24 way, the holders of shares of all the classes or series so
25 affected must vote together as a single voting group on the
26 proposed amendment, unless otherwise provided in the articles
27 of incorporation or required by the board of directors.

28 Sec. 61. Section 490.1005, Code 2001, is amended by
29 striking the section and inserting in lieu thereof the
30 following:

31 490.1005 AMENDMENT BY BOARD OF DIRECTORS.

32 Unless the articles of incorporation provide otherwise, a
33 corporation's board of directors may adopt amendments to the
34 corporation's articles of incorporation without shareholder
35 approval for any of the following purposes:

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

4 2. To delete the names and addresses of the initial
5 directors.

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

9 4. If the corporation has only one class of shares
10 outstanding:

11 a. To change each issued and unissued authorized share of
12 the class into a greater number of whole shares of that class.

13 b. To increase the number of authorized shares of the
14 class to the extent necessary to permit the issuance of shares
15 as a share dividend.

16 5. To change the corporate name by substituting the word
17 "corporation", "incorporated", "company", "limited", or the
18 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar
19 word or abbreviation in the name, or by adding, deleting, or
20 changing a geographical attribution for the name.

21 6. To reflect a reduction in authorized shares, as a
22 result of the operation of section 490.631, subsection 2, when
23 the corporation has acquired its own shares and the articles
24 of incorporation prohibit the reissue of the acquired shares.

25 7. To delete a class of shares from the articles of
26 incorporation, as a result of the operation of section
27 490.631, subsection 2, when there are no remaining shares of
28 the class because the corporation has acquired all shares of
29 the class and the articles of incorporation prohibit the
30 reissue of the acquired shares.

31 8. To make any change expressly permitted by section
32 490.602, subsection 4, to be made without shareholder
33 approval.

34 Sec. 62. Section 490.1006, Code 2001, is amended to read
35 as follows:

1 490.1006 ARTICLES OF AMENDMENT.

2 ~~A corporation amending its articles of incorporation~~ After
3 an amendment to the articles of incorporation has been adopted
4 and approved in the manner required by this chapter and by the
5 articles of incorporation, the corporation shall deliver to
6 the secretary of state, for filing, articles of amendment
7 setting, which shall set forth the following:

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 approval, a
17 statement to that effect that the amendment was duly approved
18 by the incorporators or by the board of directors, as the case
19 may be, and that shareholder action approval was not required.

20 6. If an amendment ~~was approved~~ required approval by the
21 shareholders, a statement that the amendment was duly
22 approved by the shareholders in the manner required by this
23 chapter and by the articles of incorporation.

24 ~~a. The designation, number of outstanding shares, number~~
25 ~~of votes entitled to be cast by each voting group entitled to~~
26 ~~vote separately on the amendment, and number of votes of each~~
27 ~~voting group indisputably represented at the meeting.~~

28 ~~b. Either the total number of votes cast for and against~~
29 ~~the amendment by each voting group entitled to vote separately~~
30 ~~on the amendment or the total number of undisputed votes cast~~
31 ~~for the amendment by each voting group and a statement that~~
32 ~~the number cast for the amendment by each voting group was~~
33 ~~sufficient for approval by that voting group.~~

34 Sec. 63. Section 490.1007, Code 2001, is amended to read
35 as follows:

1 490.1007 RESTATED ARTICLES OF INCORPORATION.

2 1. A corporation's board of directors may restate its
3 articles of incorporation at any time with or without
4 shareholder action approval, to consolidate all amendments
5 into a single document.

6 2. ~~The restatement may~~ If the restated articles include
7 one or more new amendments ~~to the articles. If the~~
8 ~~restatement includes an amendment requiring that require~~
9 shareholder approval, it the amendments must be adopted and
10 approved as provided in section 490.1003.

11 ~~3. If the board of directors submits a restatement for~~
12 ~~shareholder action, the corporation shall notify each~~
13 ~~shareholder whether or not entitled to vote, of the proposed~~
14 ~~shareholders' meeting in accordance with section 490.705. The~~
15 ~~notice must also state that the purpose, or one of the~~
16 ~~purposes, of the meeting is to consider the proposed~~
17 ~~restatement and contain or be accompanied by a copy of the~~
18 ~~restatement that identifies any amendment or other change it~~
19 ~~would make in the articles.~~

20 4. 3. A corporation restating that restates its articles
21 of incorporation shall deliver to the secretary of state for
22 filing articles of restatement setting forth the name of the
23 corporation and the text of the restated articles of
24 incorporation together with a certificate ~~setting forth: that~~
25 states that the restated articles consolidate all amendments
26 into a single document and, if a new amendment is included in
27 the restated articles, that also include the statements
28 required under section 490.1006.

29 ~~a. Whether the restatement contains an amendment to the~~
30 ~~articles requiring shareholder approval and, if it does not,~~
31 ~~that the board of directors adopted the restatement.~~

32 ~~b. If the restatement contains an amendment to the~~
33 ~~articles requiring shareholder approval, the information~~
34 ~~required by section 490.1006.~~

35 5. 4. Duly adopted restated articles of incorporation

1 supersede the original articles of incorporation and all
2 amendments to ~~them~~ the original articles of incorporation.

3 ~~6~~ 5. The secretary of state may certify restated articles
4 of incorporation, as the articles of incorporation currently
5 in effect, without including the certificate information
6 required by subsection ~~4~~ 3.

7 Sec. 64. Section 490.1008, subsections 1, 3, and 4, Code
8 2001, are amended to read as follows:

9 1. A corporation's articles of incorporation may be
10 amended without action by the board of directors or
11 shareholders to carry out a plan of reorganization ordered or
12 decreed by a court of competent jurisdiction under ~~federal~~
13 ~~statute-if-the-articles-of-incorporation-after-amendment~~
14 ~~contain-only-provisions-required-or-permitted-by-section~~
15 ~~490-202~~ the authority of law of the United States.

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

19 ~~4~~ 3. This section does not apply after entry of a final
20 decree in the reorganization proceeding even though the court
21 retains jurisdiction of the proceeding for limited purposes
22 unrelated to consummation of the reorganization plan.

23 Sec. 65. Section 490.1009, Code 2001, is amended to read
24 as follows:

25 490.1009 EFFECT OF AMENDMENT.

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

33 Sec. 66. Section 490.1020, Code 2001, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 490.1020 AMENDMENT OF BYLAWS BY BOARD OF DIRECTORS OR
2 SHAREHOLDERS.

3 1. A corporation's shareholders may amend or repeal the
4 corporation's bylaws.

5 2. A corporation's board of directors may amend or repeal
6 the corporation's bylaws unless either of the following apply:

7 a. The articles of incorporation or section 490.1021
8 reserve that power exclusively to the shareholders in whole or
9 in part.

10 b. The shareholders in amending, repealing, or adopting a
11 bylaw expressly provide that the board of directors shall not
12 amend, repeal, or reinstate that bylaw.

13 Sec. 67. Section 490.1021, Code 2001, is amended to read
14 as follows:

15 490.1021 BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR
16 ~~SHAREHOLDERS~~ DIRECTORS.

17 ~~1. If authorized by the articles of incorporation, the~~
18 ~~shareholders may adopt or amend a bylaw that fixes a greater A~~
19 ~~bylaw that increases a quorum or voting requirement for the~~
20 ~~board of directors may be amended or repealed as follows:~~

21 a. If adopted by the shareholders, only by the
22 shareholders, unless the bylaws otherwise provide.

23 b. If adopted by the board of directors, either by the
24 shareholders or voting groups of shareholders than is required
25 by this chapter by the board of directors. The adoption or
26 amendment of a bylaw that adds, changes, or deletes a greater

27 2. A bylaw adopted or amended by the shareholders that
28 increases a quorum or voting requirement for the board of
29 directors may provide that it can be amended or repealed only
30 by a specified vote of either the shareholders or the board of
31 directors.

32 3. Action by the board of directors under subsection 1 to
33 amend or repeal a bylaw that changes the quorum or voting
34 requirement for the board of directors must meet the same
35 quorum requirement and be adopted by the same vote and voting

1 groups required to take action under the quorum and voting
2 requirement then in effect or proposed to be adopted,
3 whichever is greater.

4 ~~2.--A-bylaw-that-fixes-a-greater-quorum-or-voting~~
5 ~~requirement-for-shareholders-under-subsection-1-shall-not-be~~
6 ~~adopted,-amended,-or-repealed-by-the-board-of-directors-~~

7 Sec. 68. Section 490.1101, Code 2001, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 490.1101 DEFINITIONS.

11 As used in this division, unless the context otherwise
12 requires:

13 1. "Interests" means the proprietary interests in another
14 entity.

15 2. "Merger" means a business combination pursuant to
16 section 490.1102.

17 3. "Organizational documents" means the basic document or
18 documents that create, or determine the internal governance
19 of, another entity.

20 4. "Other entity" means any association or legal entity,
21 other than a domestic or foreign corporation, organized to
22 conduct business, including, without limitation, limited
23 partnerships, general partnerships, limited liability
24 partnerships, limited liability companies, joint ventures,
25 joint stock companies, and business trusts.

26 5. "Party to a merger" or "party to a share exchange"
27 means any domestic or foreign corporation or other entity that
28 will accomplish one of the following during a merger:

29 a. Merge under a plan of merger.

30 b. Acquire shares or interests of another corporation or
31 another entity in a share exchange.

32 c. Have all of its shares or interests or all of one or
33 more classes or series of its shares or interests acquired in
34 a share exchange.

35 6. "Share exchange" means a business combination pursuant

1 to section 490.1103.

2 7. "Survivor" in a merger means the corporation or other
3 entity into which one or more other corporations or other
4 entities are merged. A survivor of a merger may preexist the
5 merger or be created by the merger.

6 Sec. 69. Section 490.1102, Code 2001, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 490.1102 MERGER.

10 1. One or more domestic corporations may merge with a
11 domestic or foreign corporation or other entity pursuant to a
12 plan of merger.

13 2. A foreign corporation, or domestic or foreign other
14 entity, may be a party to the merger, or may be created by the
15 terms of the plan of merger, only if both of the following are
16 satisfied:

17 a. The merger is permitted by the laws under which the
18 corporation or other entity is organized or by which it is
19 governed.

20 b. In effecting the merger, the corporation or other
21 entity complies with such laws and with its articles of
22 incorporation or organizational documents.

23 3. The plan of merger must include all of the following:

24 a. The name of each corporation or other entity that will
25 merge and the name of the corporation or other entity that
26 will be the survivor of the merger.

27 b. The terms and conditions of the merger.

28 c. The manner and basis of converting the shares of each
29 merging corporation and interests of each merging other entity
30 into shares, or other securities interests, obligations,
31 rights to acquire shares or other securities, cash, other
32 property, or any combination of the foregoing.

33 d. The articles of incorporation of any corporation, or
34 the organizational documents of any other entity, to be
35 created by the merger, or if a new corporation or other entity

1 is not to be created by the merger, any amendments to the
2 survivor's articles of incorporation or organizational
3 documents.

4 e. Any other provisions required by the laws under which
5 any party to the merger is organized or by which it is
6 governed, or by the articles of incorporation or
7 organizational documents of any such party.

8 4. The terms described in subsection 3, paragraphs "b" and
9 "c", may be made dependent on facts ascertainable outside the
10 plan of merger, provided that those facts are objectively
11 ascertainable. The term "facts" includes, but is not limited
12 to, the occurrence of any event, including a determination or
13 action by any person or body, including the corporation.

14 5. The plan of merger may also include a provision that
15 the plan may be amended prior to filing the articles of merger
16 with the secretary of state, provided that if the shareholders
17 of a domestic corporation that is a party to the merger are
18 required or permitted to vote on the plan, the plan must
19 provide that subsequent to approval of the plan by such
20 shareholders the plan shall not be amended to change any of
21 the following:

22 a. Change the amount or kind of shares or other
23 securities, interests, obligations, rights to acquire shares
24 or other securities, cash, or other property to be received by
25 the shareholders of or owners of interests in any party to the
26 merger upon conversion of their shares or interests under the
27 plan.

28 b. Change the articles of incorporation of any
29 corporation, or the organizational documents of any other
30 entity, that will survive or be created as a result of the
31 merger, except for changes permitted by section 490.1005 or by
32 comparable provisions of the laws under which the foreign
33 corporation or other entity is organized or governed.

34 c. Change any of the other terms or conditions of the plan
35 if the change would adversely affect such shareholders in any

1 material respect.

2 Sec. 70. Section 490.1103, Code 2001, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 490.1103 SHARE EXCHANGE.

6 1. Either of the following may occur through a share
7 exchange:

8 a. A domestic corporation may acquire all of the shares of
9 one or more classes or series of shares of another domestic or
10 foreign corporation, or all of the interests of one or more
11 classes or series of interests of a domestic or foreign other
12 entity, in exchange for shares or other securities, interests,
13 obligations, rights to acquire shares or other securities,
14 cash, other property, or any combination of the foregoing,
15 pursuant to a plan of share exchange.

16 b. All of the shares of one or more classes or series of
17 shares of a domestic corporation may be acquired by another
18 domestic or foreign corporation or other entity, in exchange
19 for shares or other securities, interests, obligations, rights
20 to acquire shares or other securities, cash, other property,
21 or any combination of the foregoing, pursuant to a plan of
22 share exchange.

23 2. A foreign corporation, or a domestic or foreign other
24 entity, may be a party to the share exchange only if both of
25 the following conditions are met:

26 a. The share exchange is permitted by the laws under which
27 the corporation or other entity is organized or by which it is
28 governed.

29 b. In effecting the share exchange, the corporation or
30 other entity complies with such laws and with its articles of
31 incorporation or organizational documents.

32 3. The plan of share exchange must include all of the
33 following:

34 a. The name of each corporation or other entity whose
35 shares or interests will be acquired and the name of the

1 corporation or other entity that will acquire those shares or
2 interests.

3 b. The terms and conditions of the share exchange.

4 c. The manner and basis of exchanging shares of a
5 corporation or interests in an other entity whose shares or
6 interests will be acquired under the share exchange into
7 shares or other securities, interests, obligations, rights to
8 acquire shares or other securities, cash, other property, or
9 any combination of the foregoing.

10 d. Any other provisions required by the laws under which
11 any party to the share exchange is organized or by the
12 articles of incorporation or organizational documents of any
13 such party.

14 4. The terms described in subsection 3, paragraphs "b" and
15 "c", may be made dependent on facts ascertainable outside the
16 plan of share exchange, provided that those facts are
17 objectively ascertainable. The term "facts" includes, but is
18 not limited to, the occurrence of any event, including a
19 determination or action by any person or body, including the
20 corporation.

21 5. The plan of share exchange may also include a provision
22 that the plan may be amended prior to filing of the articles
23 of share exchange with the secretary of state, provided that
24 if the shareholders of a domestic corporation that is a party
25 to the share exchange are required or permitted to vote on the
26 plan, the plan must provide that subsequent to approval of the
27 plan by such shareholders the plan shall not be amended to
28 change either of the following:

29 a. The amount or kind of shares or other securities,
30 interests, obligations, rights to acquire shares or other
31 securities, cash, or other property to be issued by the
32 corporation or to be received by the shareholders of or owners
33 of interests in any party to the share exchange in exchange
34 for their shares or interests under the plan.

35 b. Any of the terms or conditions of the plan if the

1 change would adversely affect such shareholders in any
2 material respect.

3 6. This section does not limit the power of a domestic
4 corporation to acquire shares of another corporation or
5 interests in an other entity in a transaction other than a
6 share exchange.

7 Sec. 71. Section 490.1104, Code 2001, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 490.1104 ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE.

11 In the case of a domestic corporation that is a party to a
12 merger or share exchange:

13 1. The plan of merger or share exchange must be adopted by
14 the board of directors.

15 2. Except as provided in subsection 7 and in section
16 490.1105, after adopting the plan of merger or share exchange
17 the board of directors must submit the plan to the
18 shareholders for their approval. The board of directors must
19 also transmit to the shareholders a recommendation that the
20 shareholders approve the plan, unless the board of directors
21 makes a determination that because of conflicts of interest or
22 other special circumstances it should not make such a
23 recommendation, in which case the board of directors must
24 transmit to the shareholders the basis for that determination.

25 3. The board of directors may condition its submission of
26 the plan of merger or share exchange to the shareholders on
27 any basis.

28 4. If the plan of merger or share exchange is required to
29 be approved by the shareholders, and if the approval is to be
30 given at a meeting, the corporation must notify each
31 shareholder, whether or not entitled to vote, of the meeting
32 of shareholders at which the plan is to be submitted for
33 approval. The notice must state that the purpose, or one of
34 the purposes, of the meeting is to consider the plan and must
35 contain or be accompanied by a copy or summary of the plan.

1 If the corporation is to be merged into an existing
2 corporation or other entity, the notice shall also include or
3 be accompanied by a copy or summary of the articles of
4 incorporation or organizational documents of that corporation
5 or other entity. If the corporation is to be merged into an
6 existing corporation or other entity that is to be created
7 pursuant to the merger, the notice shall include or be
8 accompanied by a copy or summary of the articles of
9 incorporation or organizational documents of the new
10 corporation or other entity.

11 5. Unless the articles of incorporation, bylaws, or the
12 board of directors require a greater vote or a greater number
13 of votes to be present, the approval of the plan of merger or
14 share exchange shall require the approval of the shareholders
15 at a meeting at which a quorum consisting of at least a
16 majority of the votes entitled to be cast on the plan exists,
17 and, if any class or series of shares is entitled to vote as a
18 separate group on the plan of merger or share exchange, the
19 approval of each such separate voting group at a meeting at
20 which a quorum of the voting group consisting of at least a
21 majority of the votes entitled to be cast on the merger or
22 share exchange by that voting group is present.

23 6. Separate voting by voting groups is required for each
24 of the following:

25 a. On a plan of merger, by each class or series of shares
26 that are to be converted, pursuant to the provisions of the
27 plan of merger, into shares or other securities, interests,
28 obligations, rights to acquire shares or other securities,
29 cash, other property, or any combination of the foregoing, or
30 would have a right to vote as a separate group on a provision
31 in the plan that, if contained in a proposed amendment to
32 articles of incorporation, would require action by separate
33 voting groups under section 490.1004.

34 b. On a plan of share exchange, by each class or series of
35 shares included in the exchange, with each class or series

1 constituting a separate voting group.

2 c. On a plan of merger or share exchange, if the voting
3 group is entitled under the articles of incorporation to vote
4 as a voting group to approve a plan of merger or share
5 exchange.

6 7. Unless the articles of incorporation otherwise provide,
7 approval by the corporation's shareholders of a plan of merger
8 or share exchange is not required if all of the following
9 conditions are satisfied:

10 a. The corporation will survive the merger or is the
11 acquiring corporation in a share exchange.

12 b. Except for amendments permitted by section 490.1005,
13 its articles of incorporation will not be changed.

14 c. Each shareholder of the corporation whose shares were
15 outstanding immediately before the effective date of the
16 merger or share exchange will hold the same number of shares,
17 with identical preferences, limitations, and relative rights,
18 immediately after the effective date of change.

19 d. The issuance in the merger or share exchange of shares
20 or other securities convertible into or rights exercisable for
21 shares does not require a vote under section 490.621,
22 subsection 6.

23 8. If as a result of a merger or share exchange one or
24 more shareholders of a domestic corporation would become
25 subject to personal liability for the obligations or
26 liabilities of any other person or other entity, approval of
27 the plan of merger shall require the execution, by each such
28 shareholder, of a separate written consent to become subject
29 to such personal liability.

30 Sec. 72. Section 490.1105, Code 2001, is amended by
31 striking the section and inserting in lieu thereof the
32 following:

33 490.1105 MERGER BETWEEN PARENT AND SUBSIDIARY OR BETWEEN
34 SUBSIDIARIES.

35 1. A domestic parent corporation that owns shares of a

1 6. Upon entry of an order under subsection 3 or 5, the
2 court shall dismiss the petition to dissolve the corporation
3 under section 490.1430, and the petitioning shareholder shall
4 no longer have any rights or status as a shareholder of the
5 corporation, except the right to receive the amounts awarded
6 to the shareholder by the order of the court which shall be
7 enforceable in the same manner as any other judgment.

8 7. The purchase ordered pursuant to subsection 5 shall be
9 made within ten days after the date the order becomes final
10 unless before that time the corporation files with the court a
11 notice of its intention to adopt articles of dissolution
12 pursuant to sections 490.1402 and 490.1403, which articles
13 must then be adopted and filed within fifty days thereafter.
14 Upon filing of such articles of dissolution, the corporation
15 shall be dissolved in accordance with the provisions of
16 sections 490.1405 through 490.1407, and the order entered
17 pursuant to subsection 5 shall no longer be of any force or
18 effect, except that the court may award the petitioning
19 shareholder reasonable fees and expenses in accordance with
20 the provisions of the last sentence of subsection 5 and the
21 petitioner may continue to pursue any claims previously
22 asserted on behalf of the corporation.

23 8. Any payment by the corporation pursuant to an order
24 under subsection 3 or 5, other than an award of fees and
25 expenses pursuant to subsection 5, is subject to the
26 provisions of section 490.640.

27 Sec. 99. Section 490.1603, Code 2001, is amended to read
28 as follows:

29 490.1603 SCOPE OF INSPECTION RIGHT.

30 1. A shareholder's agent or attorney has the same
31 inspection and copying rights as the shareholder ~~the-agent-or~~
32 ~~attorney-represents~~ represented.

33 2. The right to copy records under section 490.1602
34 includes, if reasonable, the right to receive copies ~~made-by~~
35 ~~photographic, xerographic, or other technological means~~ by

1 xerographic or other means, including copies through an
2 electronic transmission if available and so requested by the
3 shareholder.

4 3. The corporation may comply at its expense with a
5 shareholder's demand to inspect the record of shareholders
6 under section 490.1602, subsection 2, paragraph "c", by
7 providing the shareholder with a list of shareholders that was
8 compiled no earlier than the date of the shareholder's demand.

9 ~~3.~~ 4. The corporation may impose a reasonable charge,
10 covering the costs of labor and material, for copies of any
11 documents provided to the shareholder. The charge shall not
12 exceed the estimated cost of production, or reproduction, or
13 transmission of the records.

14 ~~4.--The corporation may comply with a shareholder's demand~~
15 ~~to inspect the record of shareholders under section 490.1602,~~
16 ~~subsection 2, paragraph "c" by providing the shareholder with~~
17 ~~a list of its shareholders that was compiled no earlier than~~
18 ~~the date of the shareholder's demand.~~

19 Sec. 100. NEW SECTION. 490.1605 INSPECTION OF RECORDS BY
20 DIRECTORS.

21 1. A director of a corporation is entitled to inspect and
22 copy the books, records, and documents of the corporation at
23 any reasonable time to the extent reasonably related to the
24 performance of the director's duties as a director, including
25 duties as a member of a committee, but not for any other
26 purpose or in any manner that would violate any duty to the
27 corporation.

28 2. The district court of the county where the
29 corporation's principal office, or if none in this state, its
30 registered office, is located may order inspection and copying
31 of the books, records, and documents at the corporation's
32 expense, upon application of a director who has been refused
33 such inspection rights, unless the corporation establishes
34 that the director is not entitled to such inspection rights.
35 The court shall dispose of an application under this

1 subsection on an expedited basis.

2 3. If an order is issued, the court may include provisions
3 protecting the corporation from undue burden or expense, and
4 prohibiting the director from using information obtained upon
5 exercise of the inspection rights in a manner that would
6 violate a duty to the corporation, and may also order the
7 corporation to reimburse the director for the director's
8 costs, including reasonable counsel fees, incurred in
9 connection with the application.

10 Sec. 101. NEW SECTION. 490.1606 EXCEPTION TO NOTICE
11 REQUIREMENT.

12 1. Whenever notice is required to be given under any
13 provision of this chapter to any shareholder, such notice
14 shall not be required to be given if either of the following
15 applies:

16 a. Notice of two consecutive annual meetings, and all
17 notices of meetings during the period between such two
18 consecutive annual meetings, have been sent to such
19 shareholder at such shareholder's address as shown on the
20 records of the corporation and have been returned
21 undeliverable.

22 b. All, but not less than two, payments of dividends on
23 securities during a twelve-month period, or two consecutive
24 payments of dividends on securities during a period of more
25 than twelve months, have been sent to such shareholder at such
26 shareholder's address as shown on the records of the
27 corporation and have been returned undeliverable.

28 2. If any such shareholder shall deliver to the
29 corporation a written notice setting forth such shareholder's
30 then-current address, the requirement that notice be given to
31 such shareholder shall be reinstated.

32 Sec. 102. Sections 490.832, 490.1022, 490.1327, 490.1328,
33 and 490.1621, Code 2001, are repealed.

34 Sec. 103. CODE EDITOR DIRECTIVE. The following division
35 and part titles shall be changed by the Code editor:

- 1 1. Division XII shall be retitled DISPOSITION OF ASSETS.
- 2 2. Division XIII shall be retitled APPRAISAL RIGHTS.
- 3 3. Division XIII, Part A, shall be retitled RIGHT TO
- 4 APPRAISAL AND PAYMENT FOR SHARES.
- 5 4. Division XIII, Part B, shall be retitled PROCEDURE FOR
- 6 EXERCISE OF APPRAISAL RIGHTS.
- 7 Sec. 104. EFFECTIVE DATE. This Act, takes effect January
- 8 1, 2003.

9 EXPLANATION

10 The following overview highlights the areas of change to
11 the Iowa Business Corporations Act:

12 AMENDMENT PERTAINING TO LIABILITY OF DIRECTORS. Code
13 section 490.202 allows shareholders the option to include in
14 the articles of incorporation a provision eliminating or
15 limiting the liability of a director to the corporation or its
16 shareholders, with certain exceptions. The provision on this
17 issue is currently in Code section 490.832, but it contains
18 more general language on exceptions than the new provision.

19 AMENDMENTS PERTAINING TO DIRECTOR CONFLICT OF INTERESTS.
20 Current Code section 490.831 on director conflicts of interest
21 is deleted and several new sections on the issue are added
22 from Code sections 490.860 through 490.863. Director
23 conflicting interest transactions require independent
24 examination and approval, either by independent directors, or
25 shareholders, or the court. Definitions are added for
26 "conflicting interest", "director's conflicting interest
27 transaction", "related person", "required disclosure", and
28 "time of commitment" in Code section 490.860.

29 AMENDMENTS PERTAINING TO DERIVATIVE PROCEEDINGS. Current
30 Code section 490.740 on derivative proceedings is replaced
31 with a new part that includes definitions and addresses
32 shareholder demand on the corporation, stay of proceedings,
33 dismissal of the action, settlement, and payment of expenses.

34 Code section 490.742 would allow a shareholder to commence
35 a derivative proceeding after 90 days after the demand was

1 made unless the shareholder has earlier been notified that the
2 demand has been rejected by the corporation or unless
3 irreparable injury to the corporation would result by waiting
4 for the expiration of the 90-day period.

5 An independent litigation committee may be appointed to
6 investigate and make recommendations concerning derivative
7 proceedings under Code section 490.744.

8 In addition, the bill allows such investigation and
9 recommendation to be made by a panel appointed either by the
10 independent directors present at a meeting of the board of
11 directors if the independent directors constitute a quorum or,
12 if the independent directors do not constitute a quorum, a
13 committee of two or more independent directors appointed by a
14 majority vote of independent directors present at a meeting of
15 the board of directors. Code section 490.744 addresses the
16 issue of independence and provides that by itself, the
17 nomination or election of the director by persons who are
18 defendants in the derivative proceeding or against whom the
19 action is demanded shall not cause a director to be considered
20 as not independent.

21 AMENDMENTS PERTAINING TO CLOSELY HELD CORPORATIONS. Code
22 section 490.732 validates shareholder agreements appearing in
23 the articles or signed by all shareholders, and it authorizes
24 wide latitude in their content for corporations whose shares
25 are not listed on a national securities exchange or regularly
26 traded in a market maintained by one or more members of a
27 national or affiliated securities association.

28 New Code section 490.1434 provides an alternative to the
29 corporation and its shareholders where one or more but fewer
30 than all shareholders petition for judicial dissolution on
31 grounds, for example, of deadlock or oppression. The
32 alternative essentially is a buyout of the petitioning
33 shareholders, either for an amount the parties can negotiate
34 or for "fair value", with the corporation having the right to
35 do so in the first instance, and, if the corporation does not

1 so elect, due regard for shareholders' relative positions.

2 AMENDMENTS PERTAINING TO INDEMNIFICATION AND ADVANCE FOR
3 EXPENSES. The bill expands the authority of a corporation to
4 indemnify a director through a charter provision adopted
5 pursuant to new Code section 490.202, which generally permits
6 indemnification with respect to a director's conduct to the
7 same extent that the director's liability for that conduct can
8 be limited under the section. Code sections 490.851 through
9 490.859 address the procedures for making decisions on
10 granting indemnification and authorizing an advance for
11 expenses, and make a court order available as a remedy to
12 enforce a legal right to indemnification or expense
13 advancement. Code section 490.854 permits a court to order an
14 advance for expenses.

15 AMENDMENTS PERTAINING TO SHAREHOLDER MEETINGS AND VOTING.
16 The bill amends Code section 490.702 regarding the percentage
17 of shares required before a special meeting of shareholders
18 must be granted, and new Code section 490.704 establishes a
19 procedure for revoking such a demand. New Code section
20 490.708 addresses conduct of a meeting of shareholders,
21 providing that a chair shall preside who, unless the articles
22 or bylaws provide otherwise, has the authority to determine
23 the order of business and establish rules for the conduct of
24 the meeting. The rules adopted and the conduct of the meeting
25 must be fair to shareholders. Code section 490.722, dealing
26 with proxies, has been amended to encompass electronic
27 transmission of proxies. New Code section 490.729 requires
28 the appointment of one or more inspectors of election for
29 publicly traded corporations and also delineates the
30 inspector's duties. Any other corporation may appoint
31 inspectors pursuant to section 490.729.

32 AMENDMENTS PERTAINING TO ELECTRONIC FILINGS. Code section
33 490.140 adds definitions for "deliver", "electronic
34 transmission", "sign" or "signature", and "voting power".
35 Code section 490.141 provides that notice by electronic

1 transmission is written notice, and that notice from a
2 corporation to a shareholder may be effective when
3 electronically transmitted in a manner authorized by the
4 shareholder. Code sections 490.120, 490.123, 490.124,
5 490.125, and 490.127 all address electronic filings with the
6 secretary of state.

7 AMENDMENTS PERTAINING TO STANDARDS OF CONDUCT AND STANDARDS
8 OF LIABILITY FOR DIRECTORS. New Code section 490.831,
9 standards of liability for directors, has been added to
10 clarify and distinguish the standard a plaintiff must meet in
11 order for a director to be held liable.

12 AMENDMENTS PERTAINING TO STANDARDS OF CONDUCT FOR OFFICERS
13 AND ALSO TO INSPECTION RIGHTS AND NOTICES. Code section
14 490.842 on standards of conduct for officers is amended in
15 light of the changes made pertaining to directors. In
16 addition, Code section 490.1603 on the scope of a
17 shareholder's inspection right is revised to reflect
18 availability of electronic transmissions. New Code section
19 490.1605 provides for inspection of records by directors. A
20 court action is authorized in which the corporation has the
21 burden of proof, and the court is directed to dispose of an
22 application of a director for inspection on an expedited
23 basis.

24 AMENDMENTS PERTAINING TO FUNDAMENTAL CHANGES. The quorum
25 required is that stated in current 490.725, namely, "a
26 majority of votes entitled to be cast on the matter by the
27 voting group", unless the articles or bylaws require a greater
28 number. Current Code language requires that the votes cast in
29 favor of a proposed change exceed those cast opposing it.

30 Current Code section 490.1202 addresses sales of assets
31 other than in the regular course of business and requires
32 shareholder approval of a sale or other disposition of all or
33 substantially all corporate assets where it does not occur in
34 the regular course of business. As amended, Code section
35 490.1202 does not utilize the standard "all or substantially

1 all" and the requirement of a shareholder vote instead turns
2 upon whether the disposition will leave the corporation
3 without a significant continuing business activity.

4 AMENDMENTS PERTAINING TO APPRAISAL RIGHTS. A number of
5 changes have been made in a continuing effort to allow
6 corporations, acting through their boards of directors and
7 shareholders, to change the nature and shape of the enterprise
8 and the rights of security holders, on the one hand, and, on
9 the other hand, to allow shareholders who object to the change
10 to withdraw from the corporation and obtain the fair value of
11 their investment. This accommodation has been known as
12 "dissenters' rights" or "appraisal rights". Division XIII is
13 amended to change the name from the former to the latter.
14 Shareholders will not be entitled to appraisal if the terms of
15 the class or series of shares that they hold will not be
16 changed.

17 The amendments to division XIII provide that a shareholder
18 who objects to corporate action effecting fundamental change
19 will receive fair value where the shares are publicly traded
20 and there is a sufficient market for the shares. However, the
21 division also includes provisions identifying conflict-of-
22 interest transactions in which the market exception will not
23 apply and appraisal rights will be available to shareholders.

24 AMENDMENTS PERTAINING TO DIRECTORS AND OFFICERS. Code
25 section 490.803 provides that a variable range for the size of
26 the board of directors may be established by the articles or
27 bylaws. Code section 490.825, committees of the board, has
28 been amended to allow committees to be given more authority to
29 act, primarily within limits stated by the board; and a new
30 provision in Code section 490.825 would allow the board to
31 appoint one or more directors as alternates to serve on a
32 committee where one or more is absent or disqualified, and
33 unless the articles, bylaws, or resolution of the board
34 creating the committee provided otherwise, would allow the
35 committee, upon unanimous vote of those present and not

1 disqualified, to appoint another director to serve in place of
2 the absent or disqualified member.

3 DISSOLUTION. Code section 490.640, governing
4 distributions, provides that the corporation must satisfy
5 equity and bankruptcy insolvency tests before the board can
6 authorize a distribution, but does not apply to distributions
7 made in liquidation.

8 The bill provides for a three-year period to assert claims
9 against the dissolved corporation, rather than the five years
10 provided under the current Code, and adds two new Code
11 sections, 490.1408 and 490.1409, that encourage directors to
12 anticipate and provide for such claims. Critical steps
13 include giving notice to known creditors and claimants,
14 publication, and in the claims that are unknown or contingent,
15 a court proceeding pursuant to Code section 490.1408, which
16 authorizes the corporation's board to file an application in
17 court for a determination of the amount and form of security
18 to be provided for payment of claims that are contingent or
19 have not been made known to the dissolved corporation or that
20 are based on an event occurring after the effective date of
21 dissolution, excluding claims that are or are reasonably
22 anticipated to be barred. The court is authorized to appoint
23 a guardian ad litem to represent such claimants. The court
24 hearing the matter may then determine the amount and form to
25 be provided for payment, and compliance with the court order
26 shall satisfy the dissolved corporation's obligations with
27 respect to claims that are contingent, have not been made
28 known to the dissolved corporation, or are based on an event
29 occurring after the effective date of dissolution, and such
30 claims may not be enforced against a shareholder who received
31 assets in liquidation.

32 ADDITIONAL AMENDMENTS PERTAINING TO DIRECTORS. Code
33 section 490.809, dealing with the judicial removal of
34 directors, requires the action be brought by or in the right
35 of the corporation, rather than by an authorized percentage of

1 a class of shareholders. In addition, grounds for removal of
2 directors have been amended. Fraudulent conduct remains a
3 basis for removal, but dishonest conduct has been eliminated.
4 Other grounds added are that the director "intentionally
5 inflicted harm on the corporation", or "grossly abused the
6 position of director". Code section 490.821, allowing the
7 board of directors to take action without a meeting, requires
8 that action taken without a meeting by consent must be
9 unanimous, and that action taken by consent is the act of the
10 board of directors when one or more consents signed by all the
11 directors are delivered to the corporation. Consent may be
12 withdrawn by signed revocation delivered to the corporation
13 prior to delivery to the corporation of unrevoked consents
14 signed by all directors.

15 The bill takes effect January 1, 2003.

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1 6. Upon entry of an order under subsection 3 or 5, the
2 court shall dismiss the petition to dissolve the corporation
3 under section 490.1430, and the petitioning shareholder shall
4 no longer have any rights or status as a shareholder of the
5 corporation, except the right to receive the amounts awarded
6 to the shareholder by the order of the court which shall be
7 enforceable in the same manner as any other judgment.

8 7. The purchase ordered pursuant to subsection 5 shall be
9 made within ten days after the date the order becomes final
10 unless before that time the corporation files with the court a
11 notice of its intention to adopt articles of dissolution
12 pursuant to sections 490.1402 and 490.1403, which articles
13 must then be adopted and filed within fifty days thereafter.
14 Upon filing of such articles of dissolution, the corporation
15 shall be dissolved in accordance with the provisions of
16 sections 490.1405 through 490.1407, and the order entered
17 pursuant to subsection 5 shall no longer be of any force or
18 effect, except that the court may award the petitioning
19 shareholder reasonable fees and expenses in accordance with
20 the provisions of the last sentence of subsection 5 and the
21 petitioner may continue to pursue any claims previously
22 asserted on behalf of the corporation.

23 8. Any payment by the corporation pursuant to an order
24 under subsection 3 or 5, other than an award of fees and
25 expenses pursuant to subsection 5, is subject to the
26 provisions of section 490.640.

27 Sec. 99. Section 490.1603, Code 2001, is amended to read
28 as follows:

29 490.1603 SCOPE OF INSPECTION RIGHT.

30 1. A shareholder's agent or attorney has the same
31 inspection and copying rights as the shareholder ~~the agent or~~
32 ~~attorney represents~~ represented.

33 2. The right to copy records under section 490.1602
34 includes, if reasonable, the right to receive copies ~~made by~~
35 ~~photographic, xerographic, or other technological means~~ by

1 xerographic or other means, including copies through an
2 electronic transmission if available and so requested by the
3 shareholder.

4 3. The corporation may comply at its expense with a
5 shareholder's demand to inspect the record of shareholders
6 under section 490.1602, subsection 2, paragraph "c", by
7 providing the shareholder with a list of shareholders that was
8 compiled no earlier than the date of the shareholder's demand.

9 ~~3.~~ 4. The corporation may impose a reasonable charge,
10 covering the costs of labor and material, for copies of any
11 documents provided to the shareholder. The charge shall not
12 exceed the estimated cost of production, or reproduction, or
13 transmission of the records.

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20 DIRECTORS.

21 1. A director of a corporation is entitled to inspect and
22 copy the books, records, and documents of the corporation at
23 any reasonable time to the extent reasonably related to the
24 performance of the director's duties as a director, including
25 duties as a member of a committee, but not for any other
26 purpose or in any manner that would violate any duty to the
27 corporation.

28 2. The district court of the county where the
29 corporation's principal office, or if none in this state, its
30 registered office, is located may order inspection and copying
31 of the books, records, and documents at the corporation's
32 expense, upon application of a director who has been refused
33 such inspection rights, unless the corporation establishes
34 that the director is not entitled to such inspection rights.
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1 subsection on an expedited basis.

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3 protecting the corporation from undue burden or expense, and
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6 violate a duty to the corporation, and may also order the
7 corporation to reimburse the director for the director's
8 costs, including reasonable counsel fees, incurred in
9 connection with the application.

10 Sec. 101. NEW SECTION. 490.1606 EXCEPTION TO NOTICE
11 REQUIREMENT.

12 1. Whenever notice is required to be given under any
13 provision of this chapter to any shareholder, such notice
14 shall not be required to be given if either of the following
15 applies:

16 a. Notice of two consecutive annual meetings, and all
17 notices of meetings during the period between such two
18 consecutive annual meetings, have been sent to such
19 shareholder at such shareholder's address as shown on the
20 records of the corporation and have been returned
21 undeliverable.

22 b. All, but not less than two, payments of dividends on
23 securities during a twelve-month period, or two consecutive
24 payments of dividends on securities during a period of more
25 than twelve months, have been sent to such shareholder at such
26 shareholder's address as shown on the records of the
27 corporation and have been returned undeliverable.

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29 corporation a written notice setting forth such shareholder's
30 then-current address, the requirement that notice be given to
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10 independent directors present at a meeting of the board of
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29 corporation and its shareholders where one or more but fewer
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29 publicly traded corporations and also delineates the
30 inspector's duties. Any other corporation may appoint
31 inspectors pursuant to section 490.729.

32 AMENDMENTS PERTAINING TO ELECTRONIC FILINGS. Code section
33 490.140 adds definitions for "deliver", "electronic
34 transmission", "sign" or "signature", and "voting power".
35 Code section 490.141 provides that notice by electronic

1 transmission is written notice, and that notice from a
2 corporation to a shareholder may be effective when
3 electronically transmitted in a manner authorized by the
4 shareholder. Code sections 490.120, 490.123, 490.124,
5 490.125, and 490.127 all address electronic filings with the
6 secretary of state.

7 AMENDMENTS PERTAINING TO STANDARDS OF CONDUCT AND STANDARDS
8 OF LIABILITY FOR DIRECTORS. New Code section 490.831,
9 standards of liability for directors, has been added to
10 clarify and distinguish the standard a plaintiff must meet in
11 order for a director to be held liable.

12 AMENDMENTS PERTAINING TO STANDARDS OF CONDUCT FOR OFFICERS
13 AND ALSO TO INSPECTION RIGHTS AND NOTICES. Code section
14 490.842 on standards of conduct for officers is amended in
15 light of the changes made pertaining to directors. In
16 addition, Code section 490.1603 on the scope of a
17 shareholder's inspection right is revised to reflect
18 availability of electronic transmissions. New Code section
19 490.1605 provides for inspection of records by directors. A
20 court action is authorized in which the corporation has the
21 burden of proof, and the court is directed to dispose of an
22 application of a director for inspection on an expedited
23 basis.

24 AMENDMENTS PERTAINING TO FUNDAMENTAL CHANGES. The quorum
25 required is that stated in current 490.725, namely, "a
26 majority of votes entitled to be cast on the matter by the
27 voting group", unless the articles or bylaws require a greater
28 number. Current Code language requires that the votes cast in
29 favor of a proposed change exceed those cast opposing it.

30 Current Code section 490.1202 addresses sales of assets
31 other than in the regular course of business and requires
32 shareholder approval of a sale or other disposition of all or
33 substantially all corporate assets where it does not occur in
34 the regular course of business. As amended, Code section
35 490.1202 does not utilize the standard "all or substantially

1 all" and the requirement of a shareholder vote instead turns
2 upon whether the disposition will leave the corporation
3 without a significant continuing business activity.

4 AMENDMENTS PERTAINING TO APPRAISAL RIGHTS. A number of
5 changes have been made in a continuing effort to allow
6 corporations, acting through their boards of directors and
7 shareholders, to change the nature and shape of the enterprise
8 and the rights of security holders, on the one hand, and, on
9 the other hand, to allow shareholders who object to the change
10 to withdraw from the corporation and obtain the fair value of
11 their investment. This accommodation has been known as
12 "dissenters' rights" or "appraisal rights". Division XIII is
13 amended to change the name from the former to the latter.
14 Shareholders will not be entitled to appraisal if the terms of
15 the class or series of shares that they hold will not be
16 changed.

17 The amendments to division XIII provide that a shareholder
18 who objects to corporate action effecting fundamental change
19 will receive fair value where the shares are publicly traded
20 and there is a sufficient market for the shares. However, the
21 division also includes provisions identifying conflict-of-
22 interest transactions in which the market exception will not
23 apply and appraisal rights will be available to shareholders.

24 AMENDMENTS PERTAINING TO DIRECTORS AND OFFICERS. Code
25 section 490.803 provides that a variable range for the size of
26 the board of directors may be established by the articles or
27 bylaws. Code section 490.825, committees of the board, has
28 been amended to allow committees to be given more authority to
29 act, primarily within limits stated by the board; and a new
30 provision in Code section 490.825 would allow the board to
31 appoint one or more directors as alternates to serve on a
32 committee where one or more is absent or disqualified, and
33 unless the articles, bylaws, or resolution of the board
34 creating the committee provided otherwise, would allow the
35 committee, upon unanimous vote of those present and not

1 disqualified, to appoint another director to serve in place of
2 the absent or disqualified member.

3 DISSOLUTION. Code section 490.640, governing
4 distributions, provides that the corporation must satisfy
5 equity and bankruptcy insolvency tests before the board can
6 authorize a distribution, but does not apply to distributions
7 made in liquidation.

8 The bill provides for a three-year period to assert claims
9 against the dissolved corporation, rather than the five years
10 provided under the current Code, and adds two new Code
11 sections, 490.1408 and 490.1409, that encourage directors to
12 anticipate and provide for such claims. Critical steps
13 include giving notice to known creditors and claimants,
14 publication, and in the claims that are unknown or contingent,
15 a court proceeding pursuant to Code section 490.1408, which
16 authorizes the corporation's board to file an application in
17 court for a determination of the amount and form of security
18 to be provided for payment of claims that are contingent or
19 have not been made known to the dissolved corporation or that
20 are based on an event occurring after the effective date of
21 dissolution, excluding claims that are or are reasonably
22 anticipated to be barred. The court is authorized to appoint
23 a guardian ad litem to represent such claimants. The court
24 hearing the matter may then determine the amount and form to
25 be provided for payment, and compliance with the court order
26 shall satisfy the dissolved corporation's obligations with
27 respect to claims that are contingent, have not been made
28 known to the dissolved corporation, or are based on an event
29 occurring after the effective date of dissolution, and such
30 claims may not be enforced against a shareholder who received
31 assets in liquidation.

32 ADDITIONAL AMENDMENTS PERTAINING TO DIRECTORS. Code
33 section 490.809, dealing with the judicial removal of
34 directors, requires the action be brought by or in the right
35 of the corporation, rather than by an authorized percentage of

1 a class of shareholders. In addition, grounds for removal of
2 directors have been amended. Fraudulent conduct remains a
3 basis for removal, but dishonest conduct has been eliminated.
4 Other grounds added are that the director "intentionally
5 inflicted harm on the corporation", or "grossly abused the
6 position of director". Code section 490.821, allowing the
7 board of directors to take action without a meeting, requires
8 that action taken without a meeting by consent must be
9 unanimous, and that action taken by consent is the act of the
10 board of directors when one or more consents signed by all the
11 directors are delivered to the corporation. Consent may be
12 withdrawn by signed revocation delivered to the corporation
13 prior to delivery to the corporation of unrevoked consents
14 signed by all directors.

15 The bill takes effect January 1, 2003.

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SENATE FILE 2285

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1 Amend Senate File 2285 as follows:

2 1. Page 3, line 29, by striking the word "and".

3 2. Page 7, line 6, by inserting before the figure

4 "(1)" the following: "For purposes of this

5 subsection, the following shall apply:"

6 3. Page 8, line 10, by striking the word

7 "holders" and inserting the following: "~~holders~~

8 shareholders".

9 4. Page 9, line 18, by inserting before the word

10 "votes" the following: "ballots, proxies, or".

11 5. Page 13, line 17, by striking the word

12 "section" and inserting the following: "subsection".

13 6. Page 13, line 26, by striking the word

14 "section" and inserting the following: "subsection".

15 7. Page 23, line 17, by inserting after the word

16 and figure "subsection 5" the following: ", paragraph

17 a,".

18 8. Page 24, by striking lines 28 and 29 and

19 inserting the following: "the protection afforded by

20 section 490.832 if interposed as a".

21 9. Page 26, by inserting after line 26 the

22 following:

23 "Sec. ____ . Section 490.832, Code 2001, is amended

24 by striking the section and inserting in lieu thereof

25 the following:

26 490.832 DIRECTOR CONFLICT OF INTEREST.

27 1. A conflict of interest transaction is a

28 transaction with the corporation in which a director

29 of the corporation has a direct or indirect interest.

30 A conflict of interest transaction is not voidable by

31 the corporation solely because of the director's

32 interest in the transaction if any one of the

33 following is true:

34 a. The material facts of the transaction and the

35 director's interest were disclosed or known to the

36 board of directors or a committee of the board of

37 directors and the board of directors or committee

38 authorized, approved, or ratified the transaction.

39 b. The material facts of the transaction and the

40 director's interest were disclosed or known to the

41 shareholders entitled to vote and the shareholders

42 authorized, approved, or ratified the transaction.

43 c. The transaction was fair to the corporation.

44 2. For purposes of this section, a director of the

45 corporation has an indirect interest in a transaction

46 if either of the following is true:

47 a. Another entity in which the director has a

48 material financial interest or in which the director

49 is a general partner is a party to the transaction.

50 b. Another entity of which the director is a

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1 director, officer, or trustee is a party to the
2 transaction and the transaction is or should be
3 considered by the board of directors of the
4 corporation.

5 3. For purposes of subsection 1, paragraph "a", a
6 conflict of interest transaction is authorized,
7 approved, or ratified if it receives the affirmative
8 vote of a majority of the directors on the board of
9 directors or on the committee, who have no direct or
10 indirect interest in the transaction, but a
11 transaction may not be authorized, approved, or
12 ratified under this section by a single director. If
13 a majority of the directors who have no direct or
14 indirect interest in the transaction vote to
15 authorize, approve, or ratify the transaction, a
16 quorum is present for the purpose of taking action
17 under this section. The presence of, or a vote cast
18 by, a director with a direct or indirect interest in
19 the transaction does not affect the validity of any
20 action taken under subsection 1, paragraph "a", if the
21 transaction is otherwise authorized, approved, or
22 ratified as provided in that subsection.

23 4. For purposes of subsection 1, paragraph "b", a
24 conflict of interest transaction is authorized,
25 approved, or ratified if it receives the vote of a
26 majority of the shares entitled to be counted under
27 this subsection. Shares owned by or voted under the
28 control of a director who has a direct or indirect
29 interest in the transaction, and shares owned by or
30 voted under the control of an entity described in
31 subsection 2, paragraph "a", shall not be counted in a
32 vote of shareholders to determine whether to
33 authorize, approve, or ratify a conflict of interest
34 transaction under subsection 1, paragraph "b". The
35 vote of those shares, however, is counted in
36 determining whether the transaction is approved under
37 other sections of this chapter. A majority of the
38 shares, whether or not present, that are entitled to
39 be counted in a vote on the transaction under this
40 subsection constitutes a quorum for the purpose of
41 taking action under this section."

42 10. Page 29, line 17, by striking the word "in"
43 and inserting the following: "as to".

44 11. Page 30, line 20, by striking the words "of
45 the" and inserting the following: "or the".

46 12. Page 30, line 21, by striking the word "of"
47 and inserting the following: "or".

48 13. Page 32, by striking line 29, and inserting
49 the following: "was in the ~~corporation's~~ best
50 interests of the corporation."

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1 14. Page 32, by striking line 31, and inserting
2 the following: "at least not opposed to the
3 ~~corporation's~~ best interests of the corporation."

4 15. Page 35, lines 6 and 7, by striking the words
5 "Authorizations of payments" and inserting the
6 following: "~~of payments~~ Authorizations".

7 16. By striking page 41, line 25, through page
8 47, line 11.

9 17. Page 48, line 14, by striking the word
10 "conflict" and inserting the following: "~~conflict~~
11 conflicts".

12 18. Page 49, line 31, by striking the word "that"
13 and inserting the following: "~~that~~ the".

14 19. Page 56, line 13, by striking the word
15 "another" and inserting the following: "an other".

16 20. Page 56, line 19, by striking the word
17 "another" and inserting the following: "an other".

18 21. Page 56, line 31, by striking the word
19 "another" and inserting the following: "an other".

20 22. Page 57, line 30, by striking the word
21 "securities" and inserting the following:
22 "securities,".

23 23. Page 62, lines 5 and 6, by striking the words
24 "an existing" and inserting the following: "a".

25 24. Page 67, line 6, by striking the word
26 "entity" and inserting the following: "entity,".

27 25. Page 68, by inserting after line 9 the
28 following:

29 "Sec. ____ . NEW SECTION. 490.1108A CONSIDERATION
30 OF ACQUISITION PROPOSALS -- COMMUNITY INTERESTS.

31 1. A director, in determining what is in the best
32 interest of the corporation when considering a tender
33 offer or proposal of acquisition, merger,
34 consolidation, or similar proposal, may consider any
35 or all of the following community interest factors, in
36 addition to consideration of the effects of any action
37 on shareholders:

38 a. The effects of the action on the corporation's
39 employees, suppliers, creditors, and customers.

40 b. The effects of the action on the communities in
41 which the corporation operates.

42 c. The long-term as well as short-term interests
43 of the corporation and its shareholders, including the
44 possibility that these interests may be best served by
45 the continued independence of the corporation.

46 2. If on the basis of the community interest
47 factors described in subsection 1, the board of
48 directors determines that a proposal or offer to
49 acquire or merge the corporation is not in the best
50 interests of the corporation, it may reject the

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1 proposal or offer. If the board of directors
2 determines to reject any such proposal or offer, the
3 board of directors has no obligation to facilitate, to
4 remove any barriers to, or to refrain from impeding,
5 the proposal or offer. Consideration of any or all of
6 the community interest factors is not a violation of
7 the business judgment rule or of any duty of the
8 director to the shareholders, or a group of
9 shareholders, even if the director reasonably
10 determines that a community interest factor or factors
11 outweigh the financial or other benefits to the
12 corporation or a shareholder or group of shareholders.

13 "Sec. ____ . Section 490.1110, subsection 2,
14 paragraph f, subparagraph (2), subparagraph
15 subdivision (a), Code 2001, is amended to read as
16 follows:

17 (a) A merger of the corporation, other than a
18 merger pursuant to section ~~490.1104~~ 490.1105.

19 Sec. ____ . Section 490.1110, subsection 3,
20 paragraph c, subparagraph (3), subparagraph
21 subdivision (b), Code 2001, is amended to read as
22 follows:

23 (b) Pursuant to a merger under section ~~490.1104~~
24 490.1105."

25 26. Page 71, line 3, by striking the word
26 "presented" and inserting the following: "present".

27 27. Page 72, by inserting after line 16 the
28 following:

29 "With respect to shares of a corporation that is a
30 bank holding company as defined in section 524.1801,
31 the factors identified in section 524.1406, subsection
32 3, paragraph "a", shall also be considered in
33 determining fair value."

34 28. Page 74, lines 25 and 26, by striking the
35 words "corporate action taken pursuant to a
36 shareholder vote," and inserting the following:
37 "~~corporate action taken pursuant to a shareholder~~
38 ~~vote~~".

39 29. Page 74, lines 29 through 31, by striking the
40 words "that provides that voting or nonvoting
41 shareholders are entitled to dissent and obtain
42 payment for their shares" and inserting the following:
43 "~~provides that voting or nonvoting shareholders are~~
44 ~~entitled to dissent and obtain payment for their~~
45 ~~shares~~".

46 30. Page 76, line 2, by striking the word "who:"
47 and inserting the following: "who fulfills either of
48 the following:"

49 31. Page 77, line 4, by striking the figure
50 "490.862" and inserting the following: "490.832".

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1 32. Page 82, line 29, by striking the letter

2 "~~"e"~~" and inserting the following: ""e"".

3 33. Page 82, by striking line 32, and inserting

4 the following: "490.1325. In addition, a shareholder

5 who wishes to exercise appraisal rights must execute

6 and return the form and, in a case of certificated

7 shares, deposit the shareholder's certificates in".

8 34. Page 83, by striking lines 5 through 8, and

9 inserting the following:

10 "~~2. The shareholder who demands payment and~~

11 ~~deposits the shareholder's shares under subsection 1~~

12 ~~retains all other rights of a shareholder until these~~

13 ~~rights are canceled or modified by the taking of the~~

14 ~~proposed corporate action. A".~~

15 35. Page 83, line 29, by inserting after the

16 figure "(2)," the following: "is due,".

17 36. Page 86, line 33, by striking the word

18 "unsettled" and inserting the following:

19 "unsettled,".

20 37. Page 92, line 3, by inserting before the

21 words "the assets" the following: "if".

22 38. Page 94, line 29, by striking the word "may"

23 and inserting the following: "shall".

24 39. Page 98, by inserting after line 31 the

25 following:

26 "Sec. _____. Section 491.3, subsection 8, Code 2001,

27 is amended to read as follows:

28 8. A corporation organized under or subject to

29 this chapter may make indemnification as provided in

30 sections 490.850 through ~~490.858~~ 490.859.

31 Sec. _____. Section 491.16, Code 2001, is amended to

32 read as follows:

33 491.16 INDEMNIFICATION OF OFFICERS, DIRECTORS,

34 EMPLOYEES, AND AGENTS -- INSURANCE.

35 Sections 490.850 through ~~490.858~~ 490.859 apply to

36 corporations organized under or subject to this

37 chapter.

38 Sec. _____. Section 497.34, Code 2001, is amended to

39 read as follows:

40 497.34 INDEMNIFICATION.

41 A cooperative association operating under this

42 chapter may indemnify any present or former director,

43 officer, employee, member, or volunteer in the manner

44 and in the instances authorized in sections 490.850

45 through ~~490.858~~ 490.859, provided that where sections

46 490.850 through ~~490.858~~ 490.859 provide for action by

47 shareholders the sections are applicable to action by

48 voting members of the cooperative association, and

49 where sections 490.850 through ~~490.858~~ 490.859 refer

50 to the corporation organized under chapter 490 the

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1 sections are applicable to the cooperative association
2 organized under this chapter, and where sections
3 490.850 through ~~490.858~~ 490.859 refer to the director
4 the sections are applicable to a director, officer,
5 employee, member, or volunteer of the cooperative
6 association organized under this chapter.

7 Sec. _____. Section 498.36, Code 2001, is amended to
8 read as follows:

9 498.36 INDEMNIFICATION.

10 A cooperative association operating under this
11 chapter may indemnify any present or former director,
12 officer, employee, member, or volunteer in the manner
13 and in the instances authorized in sections 490.850
14 through ~~490.858~~ 490.859, provided that where sections
15 490.850 through ~~490.858~~ 490.859 provide for action by
16 shareholders the sections are applicable to action by
17 voting members of the cooperative association, and
18 where sections 490.850 through ~~490.858~~ 490.859 refer
19 to the corporation organized under chapter 490 the
20 sections are applicable to the cooperative association
21 organized under this chapter, and where sections
22 490.850 through ~~490.858~~ 490.859 refer to the director
23 the sections are applicable to a director, officer,
24 employee, member, or volunteer of the cooperative
25 association organized under this chapter.

26 Sec. _____. Section 499.59A, Code 2001, is amended
27 to read as follows:

28 499.59A INDEMNIFICATION.

29 A cooperative association operating under this
30 chapter may indemnify any present or former director,
31 officer, employee, member, or volunteer in the manner
32 and in the instances authorized in sections 490.850
33 through ~~490.858~~ 490.859, provided that where sections
34 490.850 through ~~490.858~~ 490.859 provide for action by
35 shareholders the sections are applicable to action by
36 voting members of the cooperative association, and
37 where sections 490.850 through ~~490.858~~ 490.859 refer
38 to the corporation organized under chapter 490 the
39 sections are applicable to the cooperative association
40 organized under this chapter, and where sections
41 490.850 through ~~490.858~~ 490.859 refer to the director
42 the sections are applicable to a director, officer,
43 employee, member, or volunteer of the cooperative
44 association organized under this chapter.

45 Sec. _____. Section 499.69A, subsections 4 and 7,
46 Code 2001, are amended to read as follows:

47 4. For a surviving cooperative association, a
48 qualified merger becomes effective upon the filing of
49 the articles of merger with the secretary of state and
50 the issuance of a certificate of merger pursuant to

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1 section 499.68 or the date stated in the articles of
2 merger, whichever is later. For a surviving qualified
3 corporation, a qualified merger becomes effective upon
4 the filing of the articles of merger with the
5 secretary of state pursuant to section ~~490.1105~~
6 490.1106 or the date stated in the articles, whichever
7 is later.

8 7. A foreign cooperative association may
9 participate in a qualified merger as provided in this
10 section, if the foreign cooperative association
11 complies with the requirements for a cooperative
12 association under this section and the requirements
13 for a foreign cooperative association under section
14 499.69. A foreign corporation may participate in a
15 qualified merger as provided in this section if it
16 complies with the requirements of a qualified
17 corporation under this section and the requirements
18 for a foreign corporation under section ~~490.1107~~
19 490.1102.

20 Sec. _____. Section 508B.2, unnumbered paragraph 2,
21 Code 2001, is amended to read as follows:

22 A plan of conversion may provide that a mutual
23 company may convert into a domestic stock company,
24 convert and merge, or convert and consolidate with a
25 domestic stock company, as provided in chapter 490 or
26 491, whichever is applicable. However, the mutual
27 company is not required to comply with sections
28 491.102 through 491.105 or sections ~~490.1101~~ 490.1102
29 and ~~490.1103~~ 490.1104 relating to approval of merger
30 or consolidation plans by boards of directors and
31 shareholders, if at the time of approval of the plan
32 of conversion the board of directors approves the
33 merger or consolidation and if at the time of approval
34 of the plan by policyholders as provided in section
35 508B.6, the policyholders approve the merger or
36 consolidation. This chapter supersedes any
37 conflicting provisions of chapters 521 and 521A. A
38 mutual company may convert, merge, or consolidate as
39 part of a plan of conversion in which a majority or
40 all of the common shares of the stock company are
41 acquired by another corporation, which may be a
42 corporation organized for that purpose, or in which
43 the new stock company consolidates with a stock
44 company to form another stock company.

45 Sec. _____. Section 504A.4, subsection 14, Code
46 2001, is amended to read as follows:

47 14. A corporation operating under this chapter may
48 indemnify any present or former director, officer,
49 employee, member, or volunteer in the manner and in
50 the instances authorized in sections 490.850 through

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1 ~~490.858~~ 490.859.2 Sec. _____. Section 508B.13, Code 2001, is amended
3 to read as follows:4 508B.13 PROHIBITIONS ON CERTAIN OFFERS TO ACQUIRE
5 SHARES.

6 Prior to and for a period of five years following
7 the effective date of the conversion, and in the case
8 of the plans of conversion specified in subsections 1
9 and 3 of section 508B.3, five years following the date
10 of distribution of consideration to the policyholders
11 in exchange for their membership interests, a person,
12 other than the reorganized company, other than an
13 employee benefit plan or employee benefit trust
14 sponsored by the reorganized company, or as otherwise
15 specifically provided for in the plan of conversion,
16 shall not directly or indirectly acquire or offer to
17 acquire the beneficial ownership of more than five
18 percent of any class of voting security of the
19 reorganized company, and a person, other than the
20 reorganized company or other than an employee benefit
21 plan or employee benefit trust sponsored by the
22 reorganized company, who acquires five percent or more
23 of any class of voting security of the reorganized
24 company prior to the conversion or as specifically
25 provided for in the plan of conversion, shall not
26 directly or indirectly acquire or offer to acquire the
27 beneficial ownership of additional voting securities
28 of the reorganized company, unless the acquisition is
29 approved by the commissioner as not being contrary to
30 the interests of the policyholders of the reorganized
31 company or its life insurance company subsidiary and
32 by the board of directors of the reorganized company.
33 The commissioner and the board of directors may
34 consider the factors set forth in section ~~490.1108~~
35 490.1108A. The provisions of section 521A.3, except
36 subsection 4, paragraph "a", shall be applicable to a
37 proposed acquisition subject to this section. An
38 approved plan of conversion may include a stock option
39 plan. As used in this section, "beneficial ownership"
40 means, with respect to a security, the sole or shared
41 power to vote or direct the voting of the security or
42 the sole power to dispose or direct the disposition of
43 the security.

44 Sec. _____. Section 508C.16, unnumbered paragraph 2,
45 Code 2001, is amended to read as follows:46 Sections 490.850 through ~~490.858~~ 490.859 apply to
47 the association.48 Sec. _____. Section 524.801, subsection 7, Code
49 2001, is amended to read as follows:

50 7. To indemnify a director, officer, or employee,

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1 or a former director, officer, or employee of the
2 state bank in the manner and in the instances
3 authorized by sections 490.850 through ~~490.858~~
4 490.859.

5 Sec. _____. Section 524.1213, subsection 2, Code
6 Supplement 2001, is amended to read as follows:

7 2. A united community bank office formed under
8 this section shall have a united community bank office
9 board, at least one-half or more of the members of
10 which shall be residents of the county in which the
11 united community bank office is located. The
12 liability of the united community bank office board
13 shall be limited as provided in section 524.614. The
14 bank establishing and operating the united community
15 bank office may indemnify members of the united
16 community bank office board as agents of the bank in
17 the manner and in the instances authorized by sections
18 490.850 through ~~490.858~~ 490.859.

19 Sec. _____. Section 524.1309, subsection 8, Code
20 2001, is amended to read as follows:

21 8. A shareholder of a state bank who objects to
22 adoption by the state bank of a plan to cease to carry
23 on the business of banking and to continue as a
24 corporation subject to chapter 490, is entitled to ~~the~~
25 ~~rights and remedies of a dissenting shareholder~~
26 appraisal rights provided for in chapter 490, division
27 XIII.

28 Sec. _____. Section 524.1402, subsection 2, Code
29 2001, is amended to read as follows:

30 2. In the case of a state bank which is a party to
31 the plan, if the proposed merger will result in a
32 state bank subject to this chapter, adoption of the
33 plan by such state bank requires the affirmative vote
34 of at least a majority of the directors and approval
35 by the shareholders, in the manner and according to
36 the procedures prescribed in section ~~490.1103~~
37 490.1104, at a meeting called in accordance with the
38 terms of that section. In the case of a national
39 bank, or if the proposed merger will result in a
40 national bank, adoption of the plan by each party to
41 the merger shall require the affirmative vote of at
42 least such directors and shareholders whose
43 affirmative vote on the plan is required under the
44 laws of the United States. Subject to applicable
45 requirements of the laws of the United States in a
46 case in which a national bank is a party to a plan,
47 any modification of a plan which has been adopted
48 shall be made by any method provided in the plan, or
49 in the absence of such provision, by the same vote as
50 required for adoption.

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1 Sec. ____ . Section 524.1406, Code 2001, is amended
2 to read as follows:

3 524.1406 RIGHTS APPRAISAL RIGHTS OF DISSENTING
4 SHAREHOLDERS.

5 1. A shareholder of a state bank, which is a party
6 to a proposed merger plan which will result in a state
7 bank subject to this chapter, who objects to the plan
8 is entitled to ~~the rights and remedies of a dissenting~~
9 ~~shareholder~~ appraisal rights as provided in chapter
10 490, division XIII.

11 2. If a shareholder of a national bank which is a
12 party to a proposed merger plan which will result in a
13 state bank, or a shareholder of a state bank which is
14 a party to a plan which will result in a national
15 bank, objects to the plan and complies with the
16 requirements of the applicable laws of the United
17 States, the resulting state bank or national bank, as
18 the case may be, is liable for the value of the
19 shareholder's shares as determined in accordance with
20 such laws of the United States.

21 3. a. Notwithstanding any contrary provision in
22 chapter 490, division XIII, in determining the fair
23 value of the shareholder's shares of a bank organized
24 under this chapter or a bank holding company as
25 defined in section 524.1801 in a transaction or event
26 in which the shareholder is entitled to ~~the rights and~~
27 ~~remedies of a dissenting shareholder~~ appraisal rights,
28 due consideration shall be given to valuation factors
29 recognized for federal and estate tax purposes,
30 including discounts for minority interests and
31 discounts for lack of marketability. However, any
32 payment made to ~~dissenting~~ shareholders under section
33 ~~490.1325~~ 490.1324 shall be in an amount not less than
34 the stockholders' equity in the bank disclosed in its
35 last statement of condition filed under section
36 524.220 or the total equity capital of the bank
37 holding company disclosed in the most recent report
38 filed by the bank holding company with the board of
39 governors of the federal reserve system, divided by
40 the number of shares outstanding.

41 b. Prior to giving notice of a meeting at which a
42 shareholder of a bank organized under this chapter or
43 a bank holding company as defined in section 524.1801
44 would be entitled to ~~the rights and remedies of a~~
45 ~~dissenting shareholder~~ appraisal rights, such bank or
46 bank holding company may seek a declaratory judgment
47 to establish the fair value for purposes of section
48 490.1301, subsection 4, of shares held by such
49 shareholders. Another cause of action or a
50 counterclaim shall not be joined with such a

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1 declaratory action. A declaratory judgment shall be
2 filed in the county where the principal place of
3 business of the bank or bank holding company is
4 located. The court shall appoint an attorney to
5 represent minority shareholders. All shareholders of
6 the bank or bank holding company shall be served with
7 notice of the action and be advised of the name,
8 address, and telephone number of the attorney
9 appointed to represent minority shareholders. The
10 attorney appointed to represent minority shareholders
11 shall select an appraiser to give an opinion of the
12 fair value of such shares. The bank or bank holding
13 company may select an appraiser to give an opinion on
14 the fair value of the shares of the bank or bank
15 holding company. Any shareholder may participate
16 individually and present evidence of the fair value of
17 such shareholder's shares. All court costs,
18 appraiser's fees, and the fees and expenses of the
19 attorney appointed to represent the minority
20 shareholders shall be assessed against the bank or the
21 bank holding company. A judgment in the action shall
22 not determine fair value for a share to be less than
23 the stockholders' equity in the bank disclosed in its
24 last statement of condition filed under section
25 524.220 or the total equity capital of the bank
26 holding company disclosed in the most recent report
27 filed by the bank holding company with the board of
28 governors of the federal reserve system, divided by
29 the number of shares outstanding. A final judgment in
30 the action shall establish fair value for the purposes
31 of chapter 490, division XIII and shall be disclosed
32 to the shareholders in the notice to shareholders of
33 the meeting to approve the transaction that gives rise
34 to ~~dissenters'~~ appraisal rights. If the proposed
35 transaction is approved by the shareholders, upon
36 consummation of the proposed transaction the fair
37 value so established shall be paid to each shareholder
38 entitled to payment for the shareholder's shares upon
39 receipt of such shareholder's share certificates.

40 Sec. ____ . Section 524.1408, Code 2001, is amended
41 to read as follows:

42 524.1408 MERGER OF CORPORATION SUBSTANTIALLY OWNED
43 BY A STATE BANK.

44 A state bank owning at least ninety percent of the
45 outstanding shares, of each class, of another
46 corporation which it is authorized to own under this
47 chapter, may merge the other corporation into itself
48 without approval by a vote of the shareholders of
49 either the state bank or the subsidiary corporation.
50 The board of directors of the state bank shall approve

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1 a plan of merger, mail to shareholders of record of
2 the subsidiary corporation, and prepare and execute
3 articles of merger in the manner provided for in
4 section ~~490.1104~~ 490.1105. The articles of merger,
5 together with the applicable filing and recording
6 fees, shall be delivered to the superintendent who
7 shall, if the superintendent approves of the proposed
8 merger and if the superintendent finds the articles of
9 merger satisfy the requirements of this section,
10 deliver them to the secretary of state for filing and
11 recording in the secretary of state's office, and they
12 shall be filed in the office of the county recorder.
13 The secretary of state upon filing the articles of
14 merger shall issue a certificate of merger and send
15 the certificate to the state bank and a copy of it to
16 the superintendent.

17 Sec. _____. Section 524.1417, Code 2001, is amended
18 to read as follows:

19 524.1417 RIGHTS APPRAISAL RIGHTS OF DISSENTING
20 SHAREHOLDER OF CONVERTING STATE OR NATIONAL BANK OR
21 FEDERAL SAVINGS ASSOCIATION.

22 1. A shareholder of a state bank ~~which that~~
23 converts into a national bank or federal savings
24 association who objects to the plan of conversion is
25 entitled to ~~the rights and remedies of a dissenting~~
26 ~~shareholder~~ appraisal rights as provided in chapter
27 490, division XIII.

28 2. If a shareholder of a national bank or federal
29 savings association, ~~which that~~ converts into a state
30 bank, objects to the plan of conversion and complies
31 with the requirements of applicable laws of the United
32 States, the resulting state bank is liable for the
33 value of the shareholder's shares as determined in
34 accordance with such laws of the United States.

35 Sec. _____. Section 533.4, subsection 27, Code 2001,
36 is amended to read as follows:

37 27. To provide indemnity for the director,
38 officer, or employee in the same fashion that a
39 corporation organized under chapter 490 could under
40 sections 490.850 through ~~490.858~~ 490.859; however,
41 where those sections provide for action by
42 shareholders the provision is applicable to action by
43 members of the credit union and where the sections
44 have reference to the corporation organized under
45 chapter 490, the provision is applicable to the
46 association organized under this chapter.

47 Sec. _____. Section 534.504, Code 2001, is amended
48 to read as follows:

49 534.504 MEETINGS OF STOCKHOLDERS.

50 Sections 490.701 through ~~490.731~~ 490.732 apply to

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1 stock associations.

2 Sec. ____ . Section 534.605, subsection 4, Code

3 Supplement 2001, is amended to read as follows:

4 4. An association operating under this chapter may
5 indemnify any present or former director, officer, or
6 employee in the manner and in the instances authorized
7 in sections 490.850 through ~~490.858~~ 490.859. If the
8 association is a mutual association, the references in
9 those sections to stockholder shall be deemed to be
10 references to members.

11 Sec. ____ . Section 534.607, Code 2001, is amended
12 to read as follows:

13 534.607 INDEMNIFICATION.

14 Except as otherwise provided in section 534.602,
15 sections 490.850 through ~~490.858~~ 490.859 apply to
16 associations incorporated under this chapter."

17 40. Page 98, line 32, by striking the figure
18 "490.832,".

19 41. By renumbering, redesignating, and correcting
20 internal references as necessary.

By NEAL SCHUERER

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