

asserting, at any time, that an agreement to locate property is based upon excessive or unjust consideration. This section does not apply to an owner who has a bona fide fee contract with a practicing attorney and counselor as described in chapter 602, article 10.

Sec. 6. Section 556.18, subsection 1, Code 1989, is amended to read as follows:

1. Except as provided in subsection 3, all funds received under this chapter, including the proceeds from the sale of abandoned property under section 556.17, shall be deposited monthly by the treasurer of state in the general ~~funds~~ fund of the state. However, the treasurer of state shall retain in a separate trust fund an amount not exceeding one two hundred thousand dollars from which the treasurer of state shall make prompt payment of claims duly allowed under section 556.20. Before making the deposit, the treasurer of state shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection at all reasonable business hours.

Sec. 7. Section 602.8105, subsection 4, Code 1989, is amended by striking the subsection and inserting in lieu thereof the following:

4. The clerk shall pay to the treasurer of state all fees which have come into the clerk's possession and which are unclaimed pursuant to section 556.8 accompanied by a form prescribed by the treasurer. Claims for payment of the moneys must be filed pursuant to chapter 556.

Sec. 8. UNCLAIMED FEES IN DISTRICT COURT. Moneys remitted to the treasurer of state pursuant to section 602.8105, subsection 4, before the effective date of this Act shall be transferred to the unclaimed property trust fund created by section 556.18 and are subject to the reversion requirements of that section.

Approved June 1, 1989

CHAPTER 288

BUSINESS CORPORATIONS

S.F. 502

AN ACT relating to business corporations, and related matters including the filing of corporate documents with county recorders and providing a special effective date.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I GENERAL PROVISIONS PART A

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

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

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

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

PART B

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

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.
2. The document must be filed in the office of the secretary of state.
3. The document must contain the information required by this chapter. It may contain other information as well.
4. The document must be typewritten or printed.
5. The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.
6. Except as provided in section 493B.1622, subsection 2, the document must be executed by one of the following methods:
 - a. The chairperson of the board of directors of a domestic or foreign corporation, its president, or another of its officers.
 - b. If directors have not been selected or the corporation has not been formed, by an incorporator.
 - c. If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The document may, but need not, contain:
 - a. The corporate seals.
 - b. An attestation by the secretary or an assistant secretary.
 - c. An acknowledgment, verification, or proof.

The secretary of state may accept for filing a document containing a copy of a signature, however made.
8. If the secretary of state has prescribed a mandatory form for the document under section 493B.121, the document must be in or on the prescribed form.
9. The document must be delivered to the office of the secretary of state for filing and must be accompanied by the correct filing fee.

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

1. The secretary of state may prescribe and furnish on request forms including but not limited to the following:
 - a. An application for a certificate of existence.
 - b. A foreign corporation's application for a certificate of authority to transact business in this state.
 - c. A foreign corporation's application for a certificate of withdrawal.
 - d. The annual report.

If the secretary of state so requires, use of these listed forms prescribed by the secretary of state is mandatory.
2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

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

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

<u>Document</u>	<u>Fee</u>
a. Articles of incorporation	\$ 50
b. Application for use of indistinguishable name	\$ 10
c. Application for reserved name	\$ 10
d. Notice of transfer of reserved name	\$ 10

e. Application for registered name per month or part thereof	\$ 2
f. Application for renewal of registered name	\$ 20
g. Corporation's statement of change of registered agent or registered office or both	No fee
h. Agent's statement of change of registered office for each affected corporation	No fee
i. Agent's statement of resignation	No fee
j. Amendment of articles of incorporation	\$ 50
k. Restatement of articles of incorporation with amendment of articles	\$ 50
l. Articles of merger or share exchange	\$ 50
m. Articles of dissolution	\$ 5
n. Articles of revocation of dissolution	\$ 5
o. Certificate of administrative dissolution	No fee
p. Application for reinstatement following administrative dissolution	\$ 5
q. Certificate of reinstatement	No fee
r. Certificate of judicial dissolution	No fee
s. Application for certificate of authority	\$100
t. Application for amended certificate of authority	\$100
u. Application for certificate of withdrawal	\$ 10
v. Certificate of revocation of authority to transact business	No fee
w. Annual report	\$ 30
x. Articles of correction	\$ 5
y. Application for certificate of existence or authorization	\$ 5
z. Any other document required or permitted to be filed by this chapter	\$ 5

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

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

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

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

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

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

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

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

*Section 493B.124 probably intended

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

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

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

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

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

- (1) Describe the document, including its filing date, or attach a copy of it to the articles.
- (2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.

- (3) Correct the incorrect statement or defective execution.

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

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

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

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

2. The secretary of state files a document by stamping or otherwise endorsing "filed", together with the secretary's name and official title and the date and time of receipt, on both the document and the receipt for the filing fee. After filing a document, except the annual report required by section 493B.1622, and except as provided in sections 493B.503 and 493B.1509, the secretary of state shall deliver the document, with the filing fee receipt, or acknowledgment of receipt if no fee is required, attached, to the domestic or foreign corporation or its representative.

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

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

- a. Affect the validity or invalidity of the document in whole or part.
- b. Relate to the correctness or incorrectness of information contained in the document.
- c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

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

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

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

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

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

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

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

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.
2. A certificate of existence or authorization must set forth all of the following:
 - a. The domestic corporation's corporate name or the foreign corporation's corporate name used in this state.
 - b. That one of the following apply:
 - (1) If it is a domestic corporation, that it is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual.
 - (2) If it is a foreign corporation, that it is authorized to transact business in this state.
 - c. That all fees required by this chapter have been paid.
 - d. That its most recent annual report required by section 493B.1622 has been filed by the secretary of state.
 - e. That articles of dissolution have not been filed.
 - f. Other facts of record in the office of the secretary of state that may be requested by the applicant.
3. Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

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

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.
2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

Sec. 13. NEW SECTION. 493B.130 RECORDING OF DOCUMENTS WITH COUNTY RECORDER.

A domestic corporation shall provide the secretary of state with a copy of each document, except an annual report which does not change the registered office or registered agent of the corporation, delivered by the corporation for filing with the secretary of state. A registered agent who delivers to the secretary of state for filing a statement pursuant to section 493B.502, subsection 2, or files a statement pursuant to section 493B.502, subsection 3, shall provide a copy of the statement to the secretary of state. A registered agent who delivers to the secretary of state for filing a statement pursuant to section 493B.503, subsection 1, shall provide an additional copy pursuant to this section. If a registered agent delivers for filing with the secretary of state a statement changing the operation's business address from one county to another county or the corporation delivers for filing with the secretary of state a statement changing its registered office from one county to another county, two copies of the statement shall be provided to the secretary of state. The secretary of state shall stamp the copy or copies provided by the corporation or registered agent indicating receipt by the secretary of state and shall send the copy or copies to the county recorder. Upon receipt of the copy and upon receipt of the recording fees due the county recorder, the county recorder shall record and index the copy and return the copy to the corporation or registered agent who provided the copy. Notwithstanding section 331.602, subsection 1, original signatures and typed or printed names of signatories are not required on the copy to be recorded pursuant to this section. For purposes of this section, "county recorder" means the county recorder of the county in which the registered office of the corporation is located as shown on the records of the secretary of state, except that with respect to a change of registered office changing the location of the registered office from one county to another, "county recorder" means the county recorder for the county in which the registered office is located before the change and the county recorder for the county in which the registered office is located after the change.

PART C

Sec. 14. NEW SECTION. 493B.135 SECRETARY OF STATE — POWERS.

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

PART D

Sec. 15. NEW SECTION. 493B.140 DEFINITIONS.

In this chapter, unless the context requires otherwise:

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

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

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

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

5. "Deliver" includes mail delivery.

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

7. "Effective date of notice" is defined in section 493B.141.

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

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

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

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

12. "Includes" denotes a partial definition.

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

14. "Means" denotes an exhaustive definition.

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

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

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

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

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

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

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

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

*Division VI or VII probably intended

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

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

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

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

Sec. 16. NEW SECTION. 493B.141 NOTICE.

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

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

3. Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

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

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

a. When received.

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

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

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

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

Sec. 17. NEW SECTION. 493B.142 NUMBER OF SHAREHOLDERS.

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

a. Three or fewer co-owners.

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

c. The trustees, guardians of the property, custodians, or other fiduciaries of a single trust, estate, or account.

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

DIVISION II
INCORPORATION

Sec. 18. NEW SECTION. 493B.201 INCORPORATORS.

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

Sec. 19. NEW SECTION. 493B.202 ARTICLES OF INCORPORATION.

1. The articles of incorporation must set forth all of the following:
 - a. A corporate name for the corporation that satisfies the requirements of section 493B.401.
 - b. The number of shares the corporation is authorized to issue.
 - c. The street address of the corporation's initial registered office and the name of its initial registered agent at that office.
 - d. The name and address of each incorporator.
2. The articles of incorporation may set forth any or all of the following:
 - a. The names and addresses of the individuals who are to serve as the initial directors.
 - b. Provisions not inconsistent with law regarding:
 - (1) The purpose or purposes for which the corporation is organized.
 - (2) Managing the business and regulating the affairs of the corporation.
 - (3) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders.
 - (4) A par value for authorized shares or classes of shares.
 - (5) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.
 - c. Any provision that under this chapter is required or permitted to be set forth in the bylaws.
 - d. A provision consistent with section 493B.832.
3. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

Sec. 20. NEW SECTION. 493B.203 INCORPORATION.

1. Unless a delayed effective date or time is specified, the corporate existence begins when the articles of incorporation are filed.
2. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

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

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

Sec. 22. NEW SECTION. 493B.205 ORGANIZATION OF CORPORATION.

1. After incorporation:
 - a. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.
 - b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:
 - (1) Elect directors and complete the organization of the corporation.
 - (2) Elect a board of directors who shall complete the organization of the corporation.
2. Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

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

Sec. 23. NEW SECTION. 493B.206 BYLAWS.

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

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

Sec. 24. NEW SECTION. 493B.207 EMERGENCY BYLAWS.

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

- a. Procedures for calling a meeting of the board of directors.
- b. Quorum requirements for the meeting.
- c. Designation of additional or substitute directors.

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

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

- a. The action binds the corporation.
- b. The action shall not be used to impose liability on a corporate director, officer, employee, or agent.

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

DIVISION III
PURPOSES AND POWERS

Sec. 25. NEW SECTION. 493B.301 PURPOSES.

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

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

Sec. 26. NEW SECTION. 493B.302 GENERAL POWERS.

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

1. Sue and be sued, complain, and defend in its corporate name.
2. Have a corporate seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.
3. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation.
4. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.
5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.

7. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

8. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.

10. Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this state.

11. Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit.

12. Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.

13. Make donations for the public welfare or for charitable, scientific, or educational purposes.

14. Transact any lawful business that will aid governmental policy.

15. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

Sec. 27. NEW SECTION. 493B.303 EMERGENCY POWERS.

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

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

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

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

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

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

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

a. Bind the corporation.

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

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

Sec. 28. NEW SECTION. 493B.304 ULTRA VIRES.

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

2. A corporation's power to act may be challenged in any of the following proceedings:

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

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

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

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

DIVISION IV
NAMES

Sec. 29. NEW SECTION. 493B.401 CORPORATE NAME.

1. A corporate name:

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

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

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

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

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

c. The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable.

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

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

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

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

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

a. Has merged with the other corporation.

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

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

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

Sec. 30. NEW SECTION. 493B.402 RESERVED NAME.

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

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

Sec. 31. NEW SECTION. 493B.403 REGISTERED NAME.

1. A foreign corporation may register its corporate name, or its corporate name with any addition required by section 493B.1506, if the name is distinguishable upon the records of the

secretary of state from the corporate names that are not available under section 493B.401, subsection 2, paragraph "b".

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

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

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

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

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

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

DIVISION V

REGISTERED OFFICE AND AGENT – SERVICE

Sec. 32. NEW SECTION. 493B.501 REGISTERED OFFICE AND REGISTERED AGENT. Each corporation must continuously maintain in this state both of the following:

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

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

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

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

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

Sec. 33. NEW SECTION. 493B.502 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT.

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

a. The name of the corporation.

b. The street address of its current registered office.

c. If the current registered office is to be changed, the street address of the new registered office.

d. The name of its current registered agent.

e. If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any corporation for which the person is the registered agent by notifying the corporation in writing of the change

and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

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

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

Sec. 34. NEW SECTION. 493B.503 RESIGNATION OF REGISTERED AGENT.

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

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

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

Sec. 35. NEW SECTION. 493B.504 SERVICE ON CORPORATION.

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

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

a. The date the corporation receives the mail.

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

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

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

DIVISION VI
SHARES AND SHAREHOLDERS' RIGHTS
PART A

Sec. 36. NEW SECTION. 493B.601 AUTHORIZED SHARES.

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

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

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

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

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

- a. Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.
- b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:
 - (1) At the option of the corporation, the shareholders, or another person or upon the occurrence of a designated event.
 - (2) For cash, indebtedness, securities, or other property.
 - (3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.
- c. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.
- d. Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.
4. The description of the designations, preferences, limitations, and relative rights of share classes in subsection 3 is not exhaustive.

Sec. 37. NEW SECTION. 493B.602 TERMS OF CLASS OR SERIES DETERMINED BY BOARD OF DIRECTORS.

1. If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in section 493B.601, of either of the following:
 - a. Any class of shares before the issuance of any shares of that class.
 - b. One or more series within a class before the issuance of any shares of that series.
2. Each series of a class must be given a distinguishing designation.
3. All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.
4. Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth all of the following:
 - a. The name of the corporation.
 - b. The text of the amendment determining the terms of the class or series of shares.
 - c. The date it was adopted.
 - d. A statement that the amendment was duly adopted by the board of directors.

Sec. 38. NEW SECTION. 493B.603 ISSUED AND OUTSTANDING SHARES.

1. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.
2. The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection 3 and to section 493B.640.
3. At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

Sec. 39. NEW SECTION. 493B.604 FRACTIONAL SHARES.

1. A corporation may:
 - a. Issue fractions of a share or pay in money the value of fractions of a share.
 - b. Arrange for disposition of fractional shares by the shareholders.
 - c. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.
2. Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 493B.625, subsection 2.
3. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation

upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

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

- a. That the scrip will become void if not exchanged for full shares before a specified date.
- b. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scrip holders.

PART B

Sec. 40. NEW SECTION. 493B.620 SUBSCRIPTION FOR SHARES BEFORE INCORPORATION.

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

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

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

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

5. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 493B.621.

Sec. 41. NEW SECTION. 493B.621 ISSUANCE OF SHARES.

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

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

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

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

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

Sec. 42. NEW SECTION. 493B.622 LIABILITY OF SHAREHOLDERS.

1. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were

authorized to be issued under section 493B.621, or specified in the subscription agreement authorized under section 493B.620.

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

Sec. 43. NEW SECTION. 493B.623 SHARE DIVIDENDS.

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

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

a. The articles of incorporation so authorize.

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

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

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

Sec. 44. NEW SECTION. 493B.624 SHARE OPTIONS.

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

Sec. 45. NEW SECTION. 493B.624A POISON PILL DEFENSE AUTHORIZED.

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions, or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

Sec. 46. NEW SECTION. 493B.625 CONTENT OF CERTIFICATES.

1. Shares may be, but need not be, represented by certificates. Unless this chapter or another section expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

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

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

b. The name of the person to whom issued.

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

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

4. Each share certificate:

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

b. May bear the corporate seal or its facsimile.

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

Sec. 47. NEW SECTION. 493B.626 SHARES WITHOUT CERTIFICATES.

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

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

Sec. 48. NEW SECTION. 493B.627 RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES.

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

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

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

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

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

c. For any other reasonable purpose.

4. A restriction on the transfer or registration of transfer of shares may do any of the following:

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

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

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

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

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

Sec. 49. NEW SECTION. 493B.628 EXPENSE OF ISSUE.

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

PART C

Sec. 50. NEW SECTION. 493B.630 SHAREHOLDERS' PREEMPTIVE RIGHTS.

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

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

a. The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

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

c. There is no preemptive right with respect to:

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

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

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

(4) Shares sold otherwise than for money.

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

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

f. Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

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

Sec. 51. NEW SECTION. 493B.631 CORPORATION'S ACQUISITION OF ITS OWN SHARES.

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

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

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

a. The name of the corporation.

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

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

PART D

Sec. 52. NEW SECTION. 493B.640 DISTRIBUTION TO SHAREHOLDERS.

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

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

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

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

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

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

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

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

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

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

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

c. In all other cases, as of:

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

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

6. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

DIVISION VII
MEETINGS — NOTICE — VOTING
PART A

Sec. 53. NEW SECTION. 493B.701 ANNUAL MEETING.

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

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

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

Sec. 54. NEW SECTION. 493B.702 SPECIAL MEETING.

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

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

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

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

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

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

Sec. 55. NEW SECTION. 493B.703 COURT-ORDERED MEETING.

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

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

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

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

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

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

Sec. 56. NEW SECTION. 493B.704 ACTION WITHOUT MEETING.

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

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

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

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

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

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

Sec. 57. NEW SECTION. 493B.705 NOTICE OF MEETING.

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

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

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

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

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

Sec. 58. NEW SECTION. 493B.706 WAIVER OF NOTICE.

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

2. A shareholder's attendance at a meeting:

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

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

Sec. 59. NEW SECTION. 493B.707 RECORD DATE.

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

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

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

4. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

PART B

Sec. 60. NEW SECTION. 493B.720 SHAREHOLDERS' LIST FOR MEETING.

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

2. The shareholders' list must be available for inspection by any shareholder beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, or a shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements

of section 493B.1602, subsection 3, to copy the list, during regular business hours and at the person's expense, during the period it is available for inspection.

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

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

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

Sec. 61. NEW SECTION. 493B.721 VOTING ENTITLEMENT OF SHARES.

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

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

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

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

Sec. 62. NEW SECTION. 493B.722 PROXIES.

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

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

3. An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

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

a. A pledgee.

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

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

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

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

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

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

7. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the

shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

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

Sec. 63. NEW SECTION. 493B.723 SHARES HELD BY NOMINEES.

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

2. The procedure may set forth:

- a. The types of nominees to which it applies.
- b. The rights or privileges that the corporation recognizes in a beneficial owner.
- c. The manner in which the procedure is selected by the nominee.
- d. The information that must be provided when the procedure is selected.
- e. The period for which selection of the procedure is effective.
- f. Other aspects of the rights and duties created.

Sec. 64. NEW SECTION. 493B.724 CORPORATION'S ACCEPTANCE OF VOTES.

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

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

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

b. The name signed purports to be that of an administrator, executor, guardian of the property, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment.

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

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

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

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

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

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

Sec. 65. NEW SECTION. 493B.725 QUORUM AND VOTING REQUIREMENTS FOR VOTING GROUPS.

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

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

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

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

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

Sec. 66. NEW SECTION. 493B.726 ACTION BY SINGLE OR MULTIPLE GROUPS.

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

2. If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 493B.725. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

Sec. 67. NEW SECTION. 493B.727 GREATER QUORUM OR VOTING REQUIREMENTS.

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

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

Sec. 68. NEW SECTION. 493B.728 VOTING FOR DIRECTORS — CUMULATIVE VOTING.

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

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

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

PART C

Sec. 69. NEW SECTION. 493B.730 VOTING TRUSTS.

1. One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the

trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

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

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

Sec. 70. NEW SECTION. 493B.731 VOTING AGREEMENTS.

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

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

PART D

Sec. 71. NEW SECTION. 493B.740 PROCEDURE IN DERIVATIVE PROCEEDINGS.

1. A person shall not commence a proceeding in the right of a domestic or foreign corporation unless that person was a shareholder of the corporation when the transaction complained of occurred or unless that person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

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

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

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

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

**DIVISION VIII
DIRECTORS AND OFFICERS
PART A**

Sec. 72. NEW SECTION. 493B.801 REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS.

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

2. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

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

Sec. 73. NEW SECTION. 493B.802 QUALIFICATIONS OF DIRECTORS.

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

Sec. 74. NEW SECTION. 493B.803 NUMBER AND ELECTION OF DIRECTORS.

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

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

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

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

Sec. 75. NEW SECTION. 493B.804 ELECTION OF DIRECTORS BY CERTAIN CLASSES OF SHAREHOLDERS.

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

Sec. 76. NEW SECTION. 493B.805 TERMS OF DIRECTORS GENERALLY.

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

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

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

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

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

Sec. 77. NEW SECTION. 493B.806 STAGGERED TERMS FOR DIRECTORS.

The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

Sec. 78. NEW SECTION. 493B.807 RESIGNATION OF DIRECTORS.

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

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

Sec. 79. NEW SECTION. 493B.808 REMOVAL OF DIRECTORS BY SHAREHOLDERS.

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

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

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

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

Sec. 80. NEW SECTION. 493B.809 REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING.

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

- a. The director engaged in fraudulent or dishonest conduct with respect to the corporation.
- b. Removal is in the best interest of the corporation.

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

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

Sec. 81. NEW SECTION. 493B.810 VACANCY ON BOARD.

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

- a. The shareholders may fill the vacancy.
- b. The board of directors may fill the vacancy.

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

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

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

Sec. 82. NEW SECTION. 493B.811 COMPENSATION OF DIRECTORS.

Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

PART B

Sec. 83. NEW SECTION. 493B.820 MEETINGS.

1. The board of directors may hold regular or special meetings in or out of this state.

2. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Sec. 84. NEW SECTION. 493B.821 ACTION WITHOUT MEETING.

1. Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

2. Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

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

Sec. 85. NEW SECTION. 493B.822 NOTICE OF MEETING.

1. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

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

Sec. 86. NEW SECTION. 493B.823 WAIVER OF NOTICE.

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

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

Sec. 87. NEW SECTION. 493B.824 QUORUM AND VOTING.

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

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

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

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

3. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

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

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

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

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

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

Sec. 88. NEW SECTION. 493B.825 COMMITTEES.

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

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

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

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

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

4. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section 493B.801.

5. A committee shall not, however:

a. Authorize distributions.

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

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

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

e. Adopt, amend, or repeal bylaws.

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

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

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

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

PART C

Sec. 89. NEW SECTION. 493B.830 GENERAL STANDARDS FOR DIRECTORS.

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

a. In good faith.

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

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

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

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

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

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

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

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

Sec. 90. NEW SECTION. 493B.831 DIRECTOR CONFLICT OF INTEREST.

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

a. The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved, or ratified the transaction.

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

c. The transaction was fair to the corporation.

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

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

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

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

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

Sec. 91. NEW SECTION. 493B.832 INDEMNIFICATION OF DIRECTORS.

The articles of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach

of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the corporation or its shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, for a transaction from which the director derives an improper personal benefit, or under section 493B.833. A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

Sec. 92. NEW SECTION. 493B.833 LIABILITY FOR UNLAWFUL DISTRIBUTION.

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

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

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

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

PART D

Sec. 93. NEW SECTION. 493B.840 REQUIRED OFFICERS.

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

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

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

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

Sec. 94. NEW SECTION. 493B.841 DUTIES OF OFFICERS.

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

Sec. 95. NEW SECTION. 493B.842 STANDARDS OF CONDUCT FOR OFFICERS.

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

a. In good faith.

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

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

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

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

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

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

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

Sec. 96. NEW SECTION. 493B.843 RESIGNATION AND REMOVAL OF OFFICERS.

1. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

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

Sec. 97. NEW SECTION. 493B.844 CONTRACT RIGHTS OF OFFICERS.

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

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

PART E

Sec. 98. NEW SECTION. 493B.850 DEFINITIONS.

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

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

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

3. "Expenses" include counsel fees.

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

5. "Official capacity" means:

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

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

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

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

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

Sec. 99. NEW SECTION. 493B.851 AUTHORITY TO INDEMNIFY.

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

a. The individual acted in good faith.

b. The individual reasonably believed:

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

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

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

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

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

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

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

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

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

Sec. 100. NEW SECTION. 493B.852 MANDATORY INDEMNIFICATION.

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

Sec. 101. NEW SECTION. 493B.853 ADVANCE FOR EXPENSES.

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

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

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

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

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

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

Sec. 102. NEW SECTION. 493B.854 COURT-ORDERED INDEMNIFICATION.

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

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

2. The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in

section 493B.851 or was adjudged liable as described in section 493B.851, subsection 4, but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred.

Sec. 103. NEW SECTION. 493B.855 DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

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

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

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

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

c. By special legal counsel:

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

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

d. By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding shall not be voted on the determination.

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

Sec. 104. NEW SECTION. 493B.856 INDEMNIFICATION OF OFFICERS, EMPLOYEES, AND AGENTS.

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

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

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

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

Sec. 105. NEW SECTION. 493B.857 INSURANCE.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify that individual against the same liability under section 493B.851 or 493B.852.

Sec. 106. NEW SECTION. 493B.858 APPLICATION OF PART E.

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

DIVISION IX
SPECIAL CLASSES

Sec. 107. NEW SECTION. 493B.901 FOREIGN-TRADE ZONE CORPORATION.

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

Sec. 108. NEW SECTION. 493B.902 FOREIGN INSURANCE COMPANIES BECOMING DOMESTIC.

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

DIVISION X
AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS
PART A

Sec. 109. NEW SECTION. 493B.1001 AMENDMENT OF ARTICLES OF INCORPORATION — AUTHORITY TO AMEND.

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

2. A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation.

Sec. 110. NEW SECTION. 493B.1002 AMENDMENT BY BOARD OF DIRECTORS.

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

1. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.
2. To delete the names and addresses of the initial directors.
3. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.
4. To change each issued and unissued authorized share of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding.
5. To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name.
6. To make any other change expressly permitted by this chapter to be made without shareholder action.

Sec. 111. NEW SECTION. 493B.1003 AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS.

1. A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.
2. For the amendment to be adopted both of the following must occur:
 - a. The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment.
 - b. The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection 5.
3. The board of directors may condition its submission of the proposed amendment on any basis.
4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 493B.705. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.
5. Unless this chapter, the articles of incorporation, or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by both of the following:
 - a. A majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights.
 - b. The votes required by sections 493B.725 and 493B.726 by every other voting group entitled to vote on the amendment.

Sec. 112. NEW SECTION. 493B.1004 VOTING ON AMENDMENTS BY VOTING GROUPS.

1. The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this chapter, on a proposed amendment if the amendment would do any of the following:
 - a. Increase or decrease the aggregate number of authorized shares of the class.
 - b. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.
 - c. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of that class.
 - d. Change the designation, rights, preferences, or limitations of all or part of the shares of the class.
 - e. Change the shares of all or part of the class into a different number of shares of the same class.

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

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

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

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

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

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

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

Sec. 113. NEW SECTION. 493B.1005 AMENDMENT BEFORE ISSUANCE OF SHARES.

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

Sec. 114. NEW SECTION. 493B.1006 ARTICLES OF AMENDMENT.

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

1. The name of the corporation.

2. The text of each amendment adopted.

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

4. The date of each amendment's adoption.

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

6. If an amendment was approved by the shareholders:

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

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

Sec. 115. NEW SECTION. 493B.1007 RESTATED ARTICLES OF INCORPORATION.

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

2. The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section 493B.1003.

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

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

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

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

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

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

Sec. 116. NEW SECTION. 493B.1008 AMENDMENT PURSUANT TO REORGANIZATION.

1. A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by section 493B.202.

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

a. The name of the corporation.

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

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

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

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

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

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

Sec. 117. NEW SECTION. 493B.1009 EFFECT OF AMENDMENT.

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

PART B

Sec. 118. NEW SECTION. 493B.1020 AMENDMENT OF BYLAWS BY BOARD OF DIRECTORS OR SHAREHOLDERS.

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

a. The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part.

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

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

Sec. 119. NEW SECTION. 493B.1021 BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR SHAREHOLDERS.

1. If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders or voting groups

of shareholders than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

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

Sec. 120. NEW SECTION. 493B.1022 BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR DIRECTORS.

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

- a. If originally adopted by the shareholders, only by the shareholders.
- b. If originally adopted by the board of directors, either by the shareholders or by the board of directors.

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

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

DIVISION XI MERGER AND SHARE EXCHANGE

Sec. 121. NEW SECTION. 493B.1101 MERGER.

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

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

- a. The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge.
- b. The terms and conditions of the merger.
- c. The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

3. The plan of merger may set forth:

- a. Restated articles or amendments to the articles of incorporation of the surviving corporation.
- b. Other provisions relating to the merger.

Sec. 122. NEW SECTION. 493B.1102 SHARE EXCHANGE.

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

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

- a. The name of the corporation whose shares will be acquired and the name of the acquiring corporation.
- b. The terms and conditions of the exchange.
- c. The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

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

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

Sec. 123. NEW SECTION. 493B.1103 ACTION ON PLAN.

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

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

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

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

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

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

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

6. Separate voting by voting groups is required:

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

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

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

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

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

c. The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than twenty percent the total number of voting shares of the surviving corporation outstanding immediately before the merger.

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

8. As used in subsection 7:

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

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

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

Sec. 124. NEW SECTION. 493B.1104 MERGER OF SUBSIDIARY.

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

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

a. The names of the parent and subsidiary.

b. The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

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

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

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

Sec. 125. NEW SECTION. 493B.1105 ARTICLES OF MERGER OR SHARE EXCHANGE.

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

a. The plan of merger or share exchange.

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

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

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

(2) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.

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

Sec. 126. NEW SECTION. 493B.1106 EFFECT OF MERGER OR SHARE EXCHANGE.

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

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

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

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

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

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

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

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

Sec. 127. NEW SECTION. 493B.1107 MERGER OR SHARE EXCHANGE WITH FOREIGN CORPORATION.

1. One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

a. In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger.

b. In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated.

c. The foreign corporation complies with section 493B.1105 if it is the surviving corporation of the merger or acquiring corporation of the share exchange.

d. Each domestic corporation complies with the applicable provisions of sections 493B.1101 through 493B.1104 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section 493B.1105.

2. Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

a. To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange.

b. To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under division XIII.

3. This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

Sec. 128. NEW SECTION. 493B.1108 CONSIDERATION OF COMMUNITY INTERESTS IN CONSIDERATION OF ACQUISITION PROPOSALS.

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.

b. The effects of the action on the communities in which the corporation operates.

c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in paragraph 1, the board of directors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even

if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

DIVISION XII
SALE OF ASSETS

Sec. 129. NEW SECTION. 493B.1201 SALE OF ASSETS IN REGULAR COURSE OF BUSINESS AND MORTGAGE OF ASSETS.

1. A corporation may, on the terms and conditions and for the consideration determined by the board of directors do any of the following:

a. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business.

b. Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.

c. Transfer any or all of its property to a corporation all the shares of which are owned by the transferring corporation whether or not in the usual course of business.

2. Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection 1 is not required.

Sec. 130. NEW SECTION. 493B.1202 SALE OF ASSETS OTHER THAN IN REGULAR COURSE OF BUSINESS.

1. A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

2. For a transaction to be authorized both of the following must occur:

a. The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction.

b. The shareholders entitled to vote must approve the transaction.

3. The board of directors may condition its submission of the proposed transaction on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 493B.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

5. Unless the articles of incorporation or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by a majority of all the votes entitled to be cast on the transaction.

6. After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned subject to any contractual rights without further shareholder action.

7. A transaction that constitutes a distribution is governed by section 493B.640 and not by this section.

DIVISION XIII
DISSENTERS' RIGHTS
PART A

Sec. 131. NEW SECTION. 493B.1301 DEFINITIONS FOR DIVISION XIII.

In this division:

1. "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

2. "Dissenter" means a shareholder who is entitled to dissent from corporate action under section 493B.1302 and who exercises that right when and in the manner required by sections 493B.1320 through 493B.1328.

3. "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

4. "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

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

6. "Beneficial shareholder" means the person who is a beneficial owner of shares held by a nominee as the record shareholder.

7. "Shareholder" means the record shareholder or the beneficial shareholder.

Sec. 132. NEW SECTION. 493B.1302 SHAREHOLDERS' RIGHT TO DISSENT.

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

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

(1) Shareholder approval is required for the merger by section 493B.1103 or the articles of incorporation and the shareholder is entitled to vote on the merger.

(2) The corporation is a subsidiary that is merged with its parent under section 493B.1104.

b. Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan.

c. Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale.

d. An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it does any or all of the following:

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

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

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

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

(5) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section 493B.604.

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

e. Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

2. A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter is not entitled to challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

Sec. 133. NEW SECTION. 493B.1303 DISSENT BY NOMINEES AND BENEFICIAL OWNERS.

1. A record shareholder may assert dissenters' rights as to fewer than all the shares registered in that shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the shareholder dissents and the shareholder's other shares were registered in the names of different shareholders.

2. A beneficial shareholder may assert dissenters' rights as to shares held on the shareholder's behalf only if the shareholder does both of the following:

a. Submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights.

b. Does so with respect to all shares of which the shareholder is the beneficial shareholder or over which that beneficial shareholder has power to direct the vote.

PART B

Sec. 134. NEW SECTION. 493B.1320 NOTICE OF DISSENTERS' RIGHTS.

1. If proposed corporate action creating dissenters' rights under section 493B.1302 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this part and be accompanied by a copy of this part.

2. If corporate action creating dissenters' rights under section 493B.1302 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section 493B.1322.

Sec. 135. NEW SECTION. 493B.1321 NOTICE OF INTENT TO DEMAND PAYMENT.

1. If proposed corporate action creating dissenters' rights under section 493B.1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must do all of the following:

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

b. Not vote the dissenting shareholder's shares in favor of the proposed action.

2. A shareholder who does not satisfy the requirements of subsection 1, is not entitled to payment for the shareholder's shares under this part.

Sec. 136. NEW SECTION. 493B.1322 DISSENTERS' NOTICE.

1. If proposed corporate action creating dissenters' rights under section 493B.1302 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section 493B.1321.

2. The dissenters' notice must be sent no later than ten days after the corporate action by the shareholders was taken and must do all of the following:

a. State where the payment demand must be sent and where and when certificates for certificated shares must be deposited.

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

c. Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires

that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date.

d. Set a date by which the corporation must receive the payment demand, which date shall not be fewer than thirty nor more than sixty days after the date the subsection 1 notice is delivered.

e. Be accompanied by a copy of this division.

Sec. 137. NEW SECTION. 493B.1323 DUTY TO DEMAND PAYMENT.

1. A shareholder sent a dissenters' notice described in section 493B.1322 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice pursuant to section 493B.1322, subsection 2, paragraph "c", and deposit the shareholder's certificates in accordance with the terms of the notice.

2. The shareholder who demands payment and deposits the shareholder's shares under subsection 1 retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

3. A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this division.

Sec. 138. NEW SECTION. 493B.1324 SHARE RESTRICTIONS.

1. The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section 493B.1326.

2. The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

Sec. 139. NEW SECTION. 493B.1325 PAYMENT.

1. Except as provided in section 493B.1327, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section 493B.1323 the amount the corporation estimates to be the fair value of the dissenter's shares, plus accrued interest.

2. The payment must be accompanied by all of the following:

a. The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any.

b. A statement of the corporation's estimate of the fair value of the shares.

c. An explanation of how the interest was calculated.

d. A statement of the dissenter's right to demand payment under section 493B.1328.

e. A copy of this division.

Sec. 140. NEW SECTION. 493B.1326 FAILURE TO TAKE ACTION.

1. If the corporation does not take the proposed action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

2. If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section 493B.1322 and repeat the payment demand procedure.

Sec. 141. NEW SECTION. 493B.1327 AFTER-ACQUIRED SHARES.

1. A corporation may elect to withhold payment required by section 493B.1325 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

2. To the extent the corporation elects to withhold payment under subsection 1, after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section 493B.1328.

Sec. 142. NEW SECTION. 493B.1328 PROCEDURE IF SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER.

1. A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under section 493B.1325, or reject the corporation's offer under section 493B.1327 and demand payment of the fair value of the dissenter's shares and interest due, if any of the following apply:

a. The dissenter believes that the amount paid under section 493B.1325 or offered under section 493B.1327 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated.

b. The corporation fails to make payment under section 493B.1325 within sixty days after the date set for demanding payment.

c. The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

2. A dissenter waives the dissenter's right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand in writing under subsection 1 within thirty days after the corporation made or offered payment for the dissenter's shares.

PART C

Sec. 143. NEW SECTION. 493B.1330 COURT ACTION.

1. If a demand for payment under section 493B.1328 remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

2. The corporation shall commence the proceeding in the district court of the county where a corporation's principal office or, if none in this state, its registered office is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

3. The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

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

a. The amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation.

b. The fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under section 493B.1327.

Sec. 144. NEW SECTION. 493B.1331 COURT COSTS AND COUNSEL FEES.

1. The court in an appraisal proceeding commenced under section 493B.1330 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section 493B.1328.

2. The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable, for either of the following:

a. Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections 493B.1320 through 493B.1328.

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

3. If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

DIVISION XIV
DISSOLUTION
PART A

Sec. 145. NEW SECTION. 493B.1401 DISSOLUTION BY INCORPORATORS OR INITIAL DIRECTORS.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the corporation.
2. The date of its incorporation.
3. Either of the following:
 - a. That none of the corporation's shares has been issued.
 - b. That the corporation has not commenced business.
4. That no debt of the corporation remains unpaid.
5. That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.
6. That a majority of the incorporators or initial directors authorized the dissolution.

Sec. 146. NEW SECTION. 493B.1402 DISSOLUTION BY BOARD OF DIRECTORS AND SHAREHOLDERS.

1. A corporation's board of directors may propose dissolution for submission to the shareholders.

2. For a proposal to dissolve to be adopted both of the following must apply:

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

b. The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection 5.

3. The board of directors may condition its submission of the proposal for dissolution on any basis.

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section 493B.705. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

5. Unless the articles of incorporation or the board of directors acting pursuant to subsection 3 requires a greater vote or a vote by voting groups, the proposal to dissolve to be adopted must be approved by a majority of all the votes entitled to be cast on that proposal.

Sec. 147. NEW SECTION. 493B.1403 ARTICLES OF DISSOLUTION.

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

a. The name of the corporation.

b. The date dissolution was authorized.

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

(1) The number of votes entitled to be cast on the proposal to dissolve.

(2) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

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

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

Sec. 148. NEW SECTION. 493B.1404 REVOCATION OF DISSOLUTION.

1. A corporation may revoke its dissolution within one hundred twenty days of its effective date.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

3. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the corporation.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

f. If shareholder action was required to revoke the dissolution, the information required by section 493B.1403, subsection 1, paragraph "c" or "d".

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

Sec. 149. NEW SECTION. 493B.1405 EFFECT OF DISSOLUTION.

1. A dissolved corporation continues its corporate existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

a. Collecting its assets.

b. Disposing of its properties that will not be distributed in kind to its shareholders.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property among its shareholders according to their interests.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a corporation does not do any of the following:

a. Transfer title to the corporation's property.

- b. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records.
- c. Subject its directors or officers to standards of conduct different from those prescribed in division VIII.
- d. Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.
- e. Prevent commencement of a proceeding by or against the corporation in its corporate name.
- f. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.
- g. Terminate the authority of the registered agent of the corporation.

Sec. 150. NEW SECTION. 493B.1406 KNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

1. A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.
2. The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must do all of the following:
 - a. Describe information that must be included in a claim.
 - b. Provide a mailing address where a claim may be sent.
 - c. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim.
 - d. State that the claim will be barred if not received by the deadline.
3. A claim against the dissolved corporation is barred if either of the following occur:
 - a. A claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline.
 - b. A claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.
4. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Sec. 151. NEW SECTION. 493B.1407 UNKNOWN CLAIMS AGAINST DISSOLVED CORPORATION.

1. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.
2. The notice must meet all of the following requirements:
 - a. Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located.
 - b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.
 - c. State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.
3. If the dissolved corporation publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:
 - a. A claimant who did not receive written notice under section 493B.1406.
 - b. A claimant whose claim was timely sent to the dissolved corporation but not acted on.
 - c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
4. A claim may be enforced under this section in either of the following ways:
 - a. Against the dissolved corporation, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section shall not exceed the total amount of assets distributed to the shareholder in liquidation.

PART B

Sec. 152. NEW SECTION. 493B.1420 GROUNDS FOR ADMINISTRATIVE DISSOLUTION.

The secretary of state may commence a proceeding under section 493B.1421 to administratively dissolve a corporation if any of the following apply:

1. The corporation does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other law.
2. The corporation has not delivered an annual report to the secretary of state in a form that meets the requirements of section 493B.1622, within sixty days after it is due.
3. The corporation is without a registered agent or registered office in this state for sixty days or more.
4. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
5. The corporation's period of duration stated in its articles of incorporation expires.

Sec. 153. NEW SECTION. 493B.1421 PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION.

1. If the secretary of state determines that one or more grounds exist under section 493B.1420 for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the secretary of state's determination under section 493B.504.
2. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 493B.504, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under section 493B.504.
3. A corporation administratively dissolved continues its corporate existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under section 493B.1405 and notify claimants under sections 493B.1406 and 493B.1407.
4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

Sec. 154. NEW SECTION. 493B.1422 REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION.

1. A corporation administratively dissolved under section 493B.1421 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must meet all of the following requirements:
 - a. Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.
 - b. State that the ground or grounds for dissolution either did not exist or have been eliminated.
 - c. State a corporate name that satisfies the requirements of section 493B.401.
 - d. Contain a certificate from the department of revenue and finance reciting that all taxes owed by the corporation have been paid.
2. If the secretary of state determines that the application contains the information required by subsection 1 and that the information is correct, the secretary of state shall cancel the

certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 493B.504. If the corporate name in subsection 1, paragraph "c" is different than the corporate name in subsection 1, paragraph "a", the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

Sec. 155. NEW SECTION. 493B.1423 APPEAL FROM DENIAL OF REINSTATEMENT.

1. If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under section 493B.504 with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

PART C

Sec. 156. NEW SECTION. 493B.1430 GROUNDS FOR JUDICIAL DISSOLUTION.

The district court may dissolve a corporation in any of the following ways:

1. A proceeding by the attorney general, if it is established that either of the following apply:

a. The corporation obtained its articles of incorporation through fraud.

b. The corporation has continued to exceed or abuse the authority conferred upon it by law.

2. A proceeding by a shareholder if it is established that any of the following conditions exist:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and either irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

b. The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

c. The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

d. The corporate assets are being misapplied or wasted.

3. A proceeding by a creditor if it is established that either of the following apply:

a. The creditors claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

b. The corporation has admitted in writing that the creditors claim is due and owing and the corporation is insolvent.

4. A proceeding by the corporation to have its voluntary dissolution continued under court supervision.

Sec. 157. NEW SECTION. 493B.1431 PROCEDURE FOR JUDICIAL DISSOLUTION.

1. Venue for a proceeding by the attorney general to dissolve a corporation lies in Polk county. Venue for a proceeding brought by any other party named in section 493B.1430 lies in the county where a corporation's principal office or, if none in this state, its registered office is or was last located.

2. It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

Sec. 158. NEW SECTION. 493B.1432 RECEIVERSHIP OR CUSTODIANSHIP.

1. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

a. The receiver may do either or both of the following:

(1) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.

b. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

Sec. 159. NEW SECTION. 493B.1433 DECREE OF DISSOLUTION.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in section 493B.1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section 493B.1405 and the notification of claimants in accordance with sections 493B.1406 and 493B.1407.

PART D

Sec. 160. NEW SECTION. 493B.1440 DEPOSIT WITH STATE TREASURER.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or shareholder or that person's representative that amount.

DIVISION XV
FOREIGN CORPORATIONS
PART A

Sec. 161. NEW SECTION. 493B.1501 AUTHORITY TO TRANSACT BUSINESS REQUIRED.

1. A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

- a. Maintaining, defending, or settling any proceeding.
 - b. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.
 - c. Maintaining bank accounts.
 - d. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities.
 - e. Selling through independent contractors.
 - f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.
 - g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.
 - h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.
 - i. Owning, without more, real or personal property.
 - j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.
 - k. Transacting business in interstate commerce.
3. The list of activities in subsection 2 is not exhaustive.

Sec. 162. NEW SECTION. 493B.1502 CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT AUTHORITY.

1. A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

4. A foreign corporation is liable for a civil penalty of not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

Sec. 163. NEW SECTION. 493B.1503 APPLICATION FOR CERTIFICATE OF AUTHORITY.

1. A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth all of the following:

- a. The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 493B.1506.

- b. The name of the state or country under whose law it is incorporated.
 - c. Its date of incorporation and period of duration.
 - d. The street address of its principal office.
 - e. The address of its registered office in this state and the name of its registered agent at that office.
 - f. The names and usual business addresses of its current directors and officers.
2. The foreign corporation shall deliver with the completed application a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

Sec. 164. NEW SECTION. 493B.1504 AMENDED CERTIFICATE OF AUTHORITY.

1. A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes any of the following:
 - a. Its corporate name.
 - b. The period of its duration.
 - c. The state or country of its incorporation.
2. The requirements of section 493B.1503 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Sec. 165. NEW SECTION. 493B.1505 EFFECT OF CERTIFICATE OF AUTHORITY.

1. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.
2. A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided in this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.
3. This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

Sec. 166. NEW SECTION. 493B.1506 CORPORATE NAME OF FOREIGN CORPORATION.

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 493B.401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may do either of the following:
 - a. Add the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", to its corporate name for use in this state.
 - b. Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.
2. Except as authorized by subsections 3 and 4, the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the secretary of state from all of the following:
 - a. The corporate name of a corporation incorporated or authorized to transact business in this state.
 - b. A corporate name reserved or registered under section 493B.402 or 493B.403.
 - c. The fictitious name of another foreign corporation authorized to transact business in this state.
 - d. The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.
3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this

state that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if either of the following apply:

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

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

4. A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has done any of the following:

a. Merged with the other corporation.

b. Been formed by reorganization of the other corporation.

c. Acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 493B.401, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 493B.401 and obtains an amended certificate of authority under section 493B.1504.

Sec. 167. NEW SECTION. 493B.1507 REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION.

A foreign corporation authorized to transact business in this state must continuously maintain in this state both of the following:

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

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

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

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

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

Sec. 168. NEW SECTION. 493B.1508 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT OF FOREIGN CORPORATION.

1. A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

a. Its name.

b. The street address of its current registered office.

c. If the current registered office is to be changed, the street address of its new registered office.

d. The name of its current registered agent.

e. If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment.

f. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing

of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

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

Sec. 169. NEW SECTION. 493B.1509 RESIGNATION OF REGISTERED AGENT OF FOREIGN CORPORATION.

1. The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

2. After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The secretary of state shall mail the other copy of the foreign corporation to its principal office address shown in its most recent annual report.

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

Sec. 170. NEW SECTION. 493B.1510 SERVICE ON FOREIGN CORPORATION.

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation meets any of the following conditions:

- a. Has no registered agent or its registered agent cannot with reasonable diligence be served.
 - b. Has withdrawn from transacting business in this state under section 493B.1520.
 - c. Has had its certificate of authority revoked under section 493B.1531.
3. Service is perfected under subsection 2 at the earliest of:
- a. The date the foreign corporation receives the mail.
 - b. The date shown on the return receipt, if signed on behalf of the foreign corporation.
 - c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
4. A foreign corporation may also be served in any other manner permitted by law.

PART B

Sec. 171. NEW SECTION. 493B.1520 WITHDRAWAL OF FOREIGN CORPORATION.

1. A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

2. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth all of the following:

- a. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.
- b. That it is not transacting business in this state and that it surrenders its authority to transact business in this state.
- c. That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.
- d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph "c".

e. A commitment to notify the secretary of state in the future of any change in its mailing address.

3. After the withdrawal of the corporation is effective, service of process on the secretary of state under this section is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection 2.

PART C

Sec. 172. NEW SECTION. 493B.1530 GROUNDS FOR REVOCATION.

The secretary of state may commence a proceeding under section 493B.1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

1. The foreign corporation does not deliver its annual report to the secretary of state within sixty days after it is due.

2. The foreign corporation does not pay within sixty days after they are due any franchise taxes or penalties imposed by this chapter or other laws.

3. The foreign corporation is without a registered agent or registered office in this state for sixty days or more.

4. The foreign corporation does not inform the secretary of state under section 493B.1508 or 493B.1509 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance.

5. An incorporator, director, officer, or agent of the foreign corporation signed a document that person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.

6. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Sec. 173. NEW SECTION. 493B.1531 PROCEDURE FOR AND EFFECT OF REVOCATION.

1. If the secretary of state determines that one or more grounds exist under section 493B.1530 for revocation of a certificate of authority, the secretary of state shall serve the foreign corporation with written notice of the secretary's determination under section 493B.1510.

2. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 493B.1510, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under section 493B.1510.

3. The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

4. The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

5. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

Sec. 174. NEW SECTION. 493B.1532 APPEAL FROM REVOCATION.

1. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty days after service of the certificate of revocation is perfected under section 493B.1510. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

2. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

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

DIVISION XVI
RECORDS AND REPORTS
PART A

Sec. 175. NEW SECTION. 493B.1601 CORPORATE RECORDS.

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of the following records:

a. Its articles or restated articles of incorporation and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

d. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years.

e. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 493B.1620.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent annual report delivered to the secretary of state under section 493B.1622.

Sec. 176. NEW SECTION. 493B.1602 INSPECTION OF RECORDS BY SHAREHOLDERS.

1. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 493B.1601, subsection 5, if the shareholder gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

2. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection 3 and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken

by the shareholders or board of directors without a meeting, to the extent not subject to inspection under section 493B.1602, subsection 1.

b. Accounting records of the corporation.

c. The record of shareholders.

3. A shareholder may inspect and copy the records described in subsection 2 only if:

a. The shareholder's demand is made in good faith and for a proper purpose.

b. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect.

c. The records are directly connected with the shareholder's purpose.

4. The right of inspection granted by this section shall not be abolished or limited by a corporation's articles of incorporation or bylaws.

5. This section does not affect either of the following:

a. The right of a shareholder to inspect records under section 493B.720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

b. The power of a court, independently of this chapter, to compel the production of corporate records for examination.

Sec. 177. NEW SECTION. 493B.1603 SCOPE OF INSPECTION RIGHT.

1. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder the agent or attorney represents.

2. The right to copy records under section 493B.1602 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other technological means.

3. The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge shall not exceed the estimated cost of production or reproduction of the records.

4. The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 493B.1602, subsection 2, paragraph "c" by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

Sec. 178. NEW SECTION. 493B.1604 COURT-ORDERED INSPECTION.

1. If a corporation does not allow a shareholder who complies with section 493B.1602, subsection 1, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

2. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other records, the shareholder who complies with section 493B.1602, subsections 2 and 3 may apply to the district court in the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

PART B

Sec. 179. NEW SECTION. 493B.1620 FINANCIAL STATEMENTS FOR SHAREHOLDERS.

A corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that year. Upon written request from a shareholder, a corporation, at its expense, shall furnish to that shareholder the financial statements requested. If the annual financial statements are reported upon by a public accountant, that report must accompany them.

Sec. 180. NEW SECTION. 493B.1621 OTHER REPORTS TO SHAREHOLDERS.

1. If a corporation indemnifies or advances expenses to a director under section 493B.851 through 493B.854 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting.

2. If a corporation issues or authorizes the issuance of shares for promissory notes or for promises to render services in the future, the corporation shall report in writing to the shareholders the number of shares authorized or issued, and the consideration received by the corporation, with or before the notice of the next shareholders' meeting.

Sec. 181. NEW SECTION. 493B.1622 ANNUAL REPORT FOR SECRETARY OF STATE.

1. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing an annual report that sets forth all of the following:

- a. The name of the corporation and the state or country under whose law it is incorporated.
- b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.
- c. The address of its principal office.
- d. The names and business addresses of its directors and principal officers.
- e. The total number of authorized shares, itemized by class and series, if any, within each class.
- f. The total number of issued and outstanding shares, itemized by class and series, if any, within each class.
- g. A statement of the amount of agricultural land in this state owned by the corporation.
- h. A statement that the corporation is or is not a family farm corporation as defined in section 172C.1.

2. Information in the annual report must be current as of the first day of January of the year in which the report is due. The annual report shall be executed on behalf of the corporation and signed as provided in section 493B.120 or by any other person authorized by the board of directors of the corporation.

3. The first annual report shall be delivered to the secretary of state between January 1 and April 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 1 of the following calendar years.

4. If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the secretary of state within thirty days after the effective date of notice, it is deemed to be timely filed.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the annual report, provided that the form contains the information required in section 493B.502 or 493B.1508. If the secretary of state determines that an annual report does not contain the information required by this section

but otherwise meets the requirements of section 493B.502 or 493B.1508 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in section 493B.123, before returning the annual report to the corporation as provided in this section. A statement of change of registered office or agent pursuant to this subsection shall be executed by a person authorized to execute the annual report.

DIVISION XVII
TRANSITION PROVISIONS

Sec. 182. NEW SECTION. 493B.1701 APPLICATION TO EXISTING CORPORATIONS.

1. Except as provided in this subsection or chapters 504 or 504A, this chapter does not apply to or affect entities subject to chapters 504 or 504A. Such entities continue to be governed by all laws of this state applicable to them before the effective date of this Act as those laws are amended. This chapter does not derogate or limit the powers to which such entities are entitled.

2. Unless otherwise provided, this chapter does not apply to an entity subject to chapter 174, 176, 497, 498, 499, 499A, 524, 533, or 534 or a corporation organized on the mutual plan under chapter 491, or a telephone company organized as a corporation under chapter 491 qualifying pursuant to an internal revenue service letter ruling under I.R.C. § 501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to a chapter 499 corporation, unless such entity voluntarily elects to adopt the provisions of this chapter and complies with the procedure prescribed by subsection 3 of this section.

3. The procedure for the voluntary election referred to in subsection 2 is as follows:

a. A resolution reciting that the corporation voluntarily adopts this chapter and designating the address of its initial registered office and the name of its registered agent or agents at that office and, if the name of the corporation is not in compliance with the requirements of this chapter, amending the articles of incorporation of the corporation to change the name of the corporation to one complying with the requirements of this chapter, shall be adopted by the board of directors and shareholders by the procedure prescribed by this chapter for the amendment of articles of incorporation.

b. Upon adoption of the required resolution or resolutions, an instrument shall be executed by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing the instrument, which shall set forth all of the following:

(1) The name of the corporation.

(2) Each such resolution adopted by the corporation and the date of adoption of each resolution.

(3) The address of its registered office and the name of its registered agent.

c. The instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office, and shall be filed and recorded in the office of the county recorder. The corporation shall at the time it files the instrument with the secretary of state deliver also to the secretary of state for filing in the secretary of state's office any annual report which is then due.

If the county of the initial registered office as stated in the instrument is one which is other than the county where the principal place of business of the corporation, as designated in its articles of incorporation, was located, the secretary of state shall forward also to the county recorder of the county in which the principal place of business of the corporation was located a copy of the instrument and the secretary of state shall forward to the recorder of the county in which the initial registered office of the corporation is located, in addition to the original of the instrument, a copy of the articles of incorporation of the corporation together with all amendments to them as then on file in the secretary of state's office.

d. Upon the filing of the instrument by a corporation all of the following apply:

(1) All of the provisions of this chapter apply to the corporation.

(2) The secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative.

(3) The secretary of state shall not file the instrument with respect to a corporation unless at the time of filing the corporation is validly existing and in good standing in that office under the chapter under which it is incorporated. The corporation shall be considered validly existing and in good standing for the purpose of this chapter for a period of three months following the expiration date of the corporation, provided all annual reports due have been filed and all fees due in connection with the annual reports have been paid.

e. The provisions of this chapter becoming applicable to a corporation voluntarily electing to be governed by this chapter do not affect any right accrued or established, or any liability or penalty incurred, under the chapter under which it is incorporated prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election by the corporation to adopt the provisions of this chapter as provided in subsection 3.

4. Except as specifically provided in this chapter, this chapter applies to all domestic corporations in existence on the effective date of this Act that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

5. A corporation subject to this chapter which does not have a registered office or registered agent or both designated on the records of the secretary of state is subject to all of the following provisions:

a. The office of the corporation set forth in its first annual report filed under this chapter shall be deemed its registered office until December 31, 1990, or until it files a designation of registered office with the secretary of state, whichever is earlier.

b. The person signing the first annual report of the corporation filed under this chapter shall be deemed the registered agent until December 31, 1990, or a statement designating a registered agent has been filed with the secretary of state, whichever is earlier.

c. Section 502* does not apply to the corporation until December 31, 1990, or until the corporation files a designation of registered office and registered agent at that office with the secretary of state, whichever is earlier.

6. A corporation subject to this chapter is not subject to chapter 491, 492, 493, 494, 495, or 496.

Sec. 183. NEW SECTION. 493B.1702 APPLICATION TO QUALIFIED FOREIGN CORPORATIONS.

A foreign corporation authorized to transact business in this state on the effective date of this Act is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

Sec. 184. NEW SECTION. 493B.1703 SAVINGS PROVISIONS.

1. Except as provided in subsection 2, the repeal of a statute by this chapter does not affect:

a. The operation of the statute or any action taken under it before its repeal.

b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal.

c. Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal.

d. Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

2. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

*Section 493B.502 probably intended

Sec. 185. NEW SECTION. 493B.1704 PREEMPTIVE RIGHTS FOR EXISTING CORPORATIONS.

Notwithstanding any other provision of this chapter, a corporation which was incorporated under, or which elected to be governed by, chapter 496A prior to December 31, 1989, shall be governed by the following until December 31, 1992:

Except to the extent limited or denied by this section or by the articles of incorporation, shareholders have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

Unless otherwise provided in the articles of incorporation:

1. No preemptive right exists:

a. To acquire any shares issued to directors, officers, or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan approved by such a vote of shareholders.

b. To acquire any shares sold otherwise than for cash.

c. To acquire treasury shares of the corporation.

2. Holders of shares of any class that is preferred or limited as to dividends or assets are not entitled to any preemptive right.

3. Holders of shares of common stock are not entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

4. Holders of common stock without voting power have no preemptive right to shares of common stock with voting power.

5. The preemptive right is only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of the right.

Sec. 186. Section 491.1, Code 1989, is amended to read as follows:

491.1 WHO MAY INCORPORATE.

Any number of persons may become incorporated under this chapter prior to July 1, 1971 for the transaction of any lawful business, but the incorporation confers no power or privilege not possessed by natural persons, except as provided in this chapter. ~~All domestic corporations shall be organized under chapter 496A only, except for corporations which are to become subject to one or more of the following chapters: 174, 176, 490, 490A, 504A, 506, 508, 510*, 512, 514, 515, 515A, 518, 518A, 519, 524, 533, and 534. All domestic corporations shall be organized under chapter 493B, except as expressly provided otherwise in chapter 493B.~~

Sec. 187. NEW SECTION. 491.101A POISON PILL DEFENSE AUTHORIZED.

The terms and conditions of stock rights or options issued by the corporation may include, without limitation, restrictions, or conditions that preclude or limit the exercise, transfer, or receipt of such rights or options by a person, or group of persons, owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or a transferee of the offeror, or that invalidate or void such stock rights or options held by an offeror or a transferee of the offeror.

Sec. 188. NEW SECTION. 491.101B CONSIDERATION OF COMMUNITY INTERESTS IN CONSIDERATION OF ACQUISITION PROPOSALS.

1. A director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, may consider any or all of the following community interest factors, in addition to consideration of the effects of any action on shareholders:

a. The effects of the action on the corporation's employees, suppliers, creditors, and customers.

b. The effects of the action on the communities in which the corporation operates.

c. The long-term as well as short-term interests of the corporation and its shareholders, including the possibility that these interests may be best served by the continued independence of the corporation.

2. If on the basis of the community interest factors described in paragraph 1, the board of directors determines that a proposal or offer to acquire or merge the corporation is not in the best interests of the corporation, it may reject the proposal or offer. If the board of directors determines to reject any such proposal or offer, the board of directors has no obligation to facilitate, to remove any barriers to, or to refrain from impeding, the proposal or offer. Consideration of any or all of the community interest factors is not a violation of the business judgment rule or of any duty of the director to the shareholders, or a group of shareholders, even if the director reasonably determines that a community interest factor or factors outweigh the financial or other benefits to the corporation or a shareholder or group of shareholders.

Sec. 189. Section 504A.6, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

504A.6 CORPORATE NAME.

1. A corporate name shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by its articles of incorporation.

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

a. The corporate name of a nonprofit corporation or business corporation incorporated or authorized to conduct affairs or do business in this state.

b. A corporate name reserved under section 504A.7, or reserved or registered under the Iowa business corporation Act.

c. The fictitious name of a foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state because its real name is unavailable.

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

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

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

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

a. Has merged with the other corporation.

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

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

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

Sec. 190. Section 504A.67, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

504A.67 NAME OF A FOREIGN CORPORATION.

1. If the corporate name of a foreign corporation does not satisfy the requirements of section 504A.6, the foreign corporation, to obtain or maintain a certificate of authority to conduct affairs in this state, may use a fictitious name to transact business in this state if its real name

is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

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

a. The corporate name of a nonprofit or business corporation incorporated or authorized to conduct affairs or to transact business in this state.

b. A corporate name reserved under section 504A.7 or section 493B.402, or registered under section 493B.403.

c. The fictitious name of another foreign business or nonprofit corporation authorized to transact business or conduct affairs in this state.

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business or conduct affairs in this state, that is not distinguishable upon the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

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

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

4. A foreign corporation may use in this state the name, including a fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business or conduct affairs in this state and the foreign corporation meets one of the following conditions:

a. Has merged with the other corporation.

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

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

5. If a foreign corporation authorized to conduct affairs in this state changes its corporate name to one that does not satisfy the requirements of section 504A.6, it shall not conduct affairs in this state under the changed name until it adopts a name satisfying the requirements of section 504A.6 and obtains an amended certificate of authority.

Sec. 191. Section 508.12, Code 1989, is amended to read as follows:

508.12 REDOMESTICATION OF INSURERS.

An insurer which is organized under the laws of any state, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 491.33 or 493B.902 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state, and, upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately preceding its becoming a domestic corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer

shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

Sec. 192. Section 515.1, Code 1989, is amended to read as follows:

515.1 APPLICABILITY.

Corporations formed for the purpose of insurance, other than life insurance, shall be governed by the provisions of chapter 491, chapter 493B, or chapter 504A, except as modified by the provisions of this chapter.

Sec. 193. Section 515.99, Code 1989, is amended by striking the section and inserting in lieu thereof the following:

515.99 FOREIGN COMPANIES MAY BECOME DOMESTIC.

An insurer which is organized under the laws of any state, and is admitted to do business in this state for the purpose of writing insurance authorized by this chapter may become a domestic insurer by complying with section 491.33 or 493B.902 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state, and, upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately preceding its becoming a domestic corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

Sec. 194. Section 545.102, subsection 4, Code 1989, is amended by striking the subsection and inserting in lieu thereof the following:

4. Shall be distinguishable upon the records of the secretary of state from the name of a corporation or limited partnership organized under the law of this state or licensed or registered as a foreign corporation or foreign limited partnership in this state or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, without the written consent of the corporation or limited partnership, which consent shall be filed with the secretary of state, and provided the name is not identical.

Sec. 195. Chapter 496A is repealed.

Sec. 196. This Act is effective December 31, 1989.

Approved June 1, 1989

CHAPTER 289**HEALTH INSURANCE MAMMOGRAPHY COVERAGE***H.F. 199*

AN ACT relating to individual and group accident and sickness insurance, nonprofit health service plans, health maintenance organizations, and Medicare supplemental insurance policies, by mandating inclusion of minimum mammography examination coverage under certain conditions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. **NEW SECTION. 514C.4 MANDATED COVERAGE FOR MAMMOGRAPHY.**

1. A policy or contract providing for third-party payment or prepayment of health or medical expenses shall provide minimum mammography examination coverage, including, but not limited to, the following classes of third-party payment provider contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after July 1, 1989:

a. Individual or group accident and sickness insurance providing coverage on an expense-incurred basis.

b. An individual or group hospital or medical service contract issued pursuant to chapter 509, 514, or 514A.

c. An individual or group health maintenance organization contract regulated under chapter 514B.

d. An individual or group Medicare supplemental policy.

A long-term care policy or contract is specifically excluded from regulation under this section.

2. As used in this section, "minimum mammography examination coverage" means benefits which are better than or equal to the following minimum requirements:

a. One baseline mammogram for any woman who is thirty-five through thirty-nine years of age.

b. A mammogram every two years for any woman who is forty through forty-nine years of age, or more frequently if recommended by the woman's physician.

c. A mammogram every year for any woman who is fifty years of age or older.

3. Mammogram benefits may be subject to any policy or contract provisions which apply generally to other services covered by the policy or contract.

4. As used in this section:

a. "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the federal Social Security Amendments of 1965, as amended (Title I, Part I of Pub. L. No. 89-97).

b. "Medicare supplemental policy" means any individual or group accident and sickness insurance policy or certificate or individual subscriber contract delivered or issued for delivery to any resident of the state who is eligible for Medicare, except any long-term care insurance policy as defined in section 514G.4.

5. The commissioner of insurance shall adopt rules under chapter 17A necessary to implement this section no later than July 1, 1989.

Approved June 2, 1989