CHAPTER 1154

BUSINESS CORPORATIONS —
MISCELLANEOUS PROVISIONS — OTHER ENTITIES

H.F. 2509

AN ACT regarding business corporations, and providing an effective date.

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

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

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

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~~ a corporate ~~seals.~~ seal,

~~b. An attestation by the secretary or an assistant secretary.~~

~~c. An~~ attestation, acknowledgment, or verification~~, or proof~~.

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

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~~. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document, except as provided in sections 490.503 and 490.1509.

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

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

NEW SUBSECTION. 11. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

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

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

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

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

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

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~~ The document contains an ~~incorrect statement~~ inaccuracy.

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

c. The electronic transmission was defective.

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~~ inaccuracy or defect to be corrected.

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

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

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

2. The secretary of state files a document by ~~stamping or otherwise endorsing "filed", together with the secretary's name and official title and~~ recording it as filed on the date and time of receipt~~, on both the document and the receipt for the filing fee~~. After filing a document, except the biennial report required by section 490.1622, and except as provided in sections 490.503 and 490.1509, 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 a copy of the document with an acknowledgement of the date and time of filing.

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

490.127 EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.

A certificate ~~attached to~~ from the secretary of state delivered with 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 the secretary of state,~~ is conclusive evidence that the original document is on file with the secretary of state.

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

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

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

NEW SUBSECTION. 8A. "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

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

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

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

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

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~~ mail or other method of delivery; or by telephone, voice mail, or other electronic means. 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,~~ according to one of the following:

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

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

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.

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

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 490.832.~~ A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:

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

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

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

e. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 490.850, subsection 5, to any person for any action taken, or any failure to take any action, as a director, except liability for any of the following:

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

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

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

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

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

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

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

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

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

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

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

b. For purposes of this subsection, the following shall apply:

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

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

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

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

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

2. If the articles of incorporation prohibit the reissue of the 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.~~

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

NEW SUBSECTION. 7. This section shall not apply to distributions in liquidation under division XIV.

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

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

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~~ shareholders 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~~ corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

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

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. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

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

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

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

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

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

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

2. A shareholder or the shareholder's agent or attorney-in-fact 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~~ or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the electronic transmission.

3. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the ~~secretary or other officer or agent~~ inspector of election or the officer or agent of the corporation 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~~ or electronic transmission 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 490.731.

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

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

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 or section 490.722, subsection 2, 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 or section 490.722, subsection 2, is valid unless a court of competent jurisdiction determines otherwise.

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

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

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

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

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

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

2. The inspectors shall do all of the following:

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

b. Determine the shares represented at a meeting.

c. Determine the validity of proxies and ballots.

d. Count all votes.

e. Determine the result.

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

Sec. 22. NEW SECTION. 490.732 SHAREHOLDER AGREEMENTS.

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

a. Eliminates the board of directors or restricts the discretion or powers of the board of directors.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by section 490.626, subsection 2. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to recision of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of recision authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

4. An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traced[2] in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

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

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

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

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

490.740 DEFINITIONS.

In this part, unless the context otherwise requires:

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

2. "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

Sec. 24. NEW SECTION. 490.741 STANDING.

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

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

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

Sec. 25. NEW SECTION. 490.742 DEMAND.

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

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[2] See chapter 1175, §88 herein

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

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

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

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

Sec. 27. NEW SECTION. 490.744 DISMISSAL.

1. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection 2 or 6 has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation. A corporation moving to dismiss on this basis shall submit in support of the motion a short and concise statement of the reasons for its determination.

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

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

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

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

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

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

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

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

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

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

All discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or prevent undue prejudice to that party.

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

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

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

A derivative proceeding 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 interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

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

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

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

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

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

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

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

490.801 REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS.

1. Except as provided in ~~subsection 3~~ section 490.732, 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 by or under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation, or in an agreement authorized under section 490.732.

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

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.~~ The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

~~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 to a variable-range size board or vice versa.~~

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

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

490.809 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 or in the right of 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 or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation.

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

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

~~2.~~ 3. The court ~~that removes a~~, in addition to removing the 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.~~

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

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

490.821 ACTION WITHOUT MEETING.

1. ~~Unless~~ Except to the extent that the articles of incorporation or bylaws ~~provide otherwise~~ require that action by the board of directors be taken at a meeting, action required or permitted by this chapter to be taken ~~at a~~ by the board of ~~directors' meeting~~ directors 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~~ each director signs a consent describing the action to be taken~~, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken~~ and delivers it to the corporation.

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

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

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

Unless the articles of incorporation or bylaws require a different number, or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of either:

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

490.825 COMMITTEES.

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

2. ~~The~~ Unless this chapter provides otherwise, 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 490.824.

3. Sections 490.820 through 490.824~~, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors,~~ apply both to committees of the board and to 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~~ powers of the board of directors under section 490.801.

5. A committee shall not, however:

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

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

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

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

~~e.~~ d. 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 490.830.

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

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

490.830 ~~GENERAL~~ STANDARDS OF CONDUCT FOR DIRECTORS.

1. ~~A director~~ Each member of the board of directors, when discharging the duties of a director, shall ~~discharge that director's duties as a director, including the director's duties as a member of a committee~~ act 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.~~ b. In a manner the director reasonably believes to be in the best interests of the corporation.

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

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

~~2.~~ 4. In discharging ~~the director's~~ board or committee duties a director, who does not have knowledge that makes reliance unwarranted, 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:~~ persons specified in subsection 5.

5. A director is entitled to rely, in accordance with subsection 3 or 4, on 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~~ functions performed or the information, opinions, reports, or statements provided.

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

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

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

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 490.832.~~

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

490.831 STANDARDS OF LIABILITY FOR DIRECTORS.

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

a. That any provision in the articles of incorporation authorized by section 490.202, subsection 2, paragraph "d", or the protection afforded by section 490.832 if interposed as a bar to the proceeding by the director, does not preclude liability.

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

(1) Action not in good faith.

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

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

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

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

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

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

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

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

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

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

(2) The harm suffered was proximately caused by the director's challenged conduct.

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

c. A party seeking to hold the director liable for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have what-

ever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

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

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

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

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

Sec. 39. Section 490.832, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.832 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 the shareholders 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 of the following is true:

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. 40. Section 490.833, Code 2001, is amended to read as follows:

490.833 LIABILITY FOR UNLAWFUL DISTRIBUTION.

1. ~~Unless the director complies with the applicable standards of conduct described in section 490.830, a~~ A director who votes for or assents to a distribution ~~made in violation of this chapter or the articles of incorporation~~ in excess of what may be authorized and made pursuant to section 490.640, subsection 1, or section 490.1409, subsection 1, 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~~ section 490.640, subsection 1, or section 490.1409, subsection 1, if the party asserting liability establishes that when taking the action the director did not comply with section 490.830.

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

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

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

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

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

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

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

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

Sec. 41. Section 490.840, Code 2001, is amended to read as follows:

490.840 ~~REQUIRED~~ OFFICERS.

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

2. ~~A duly appointed~~ The board of directors may elect individuals to fill one or more offices of the corporation. An 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~~ assign to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for maintaining and authenticating the records of the corporation required to be kept under section 490.1601, subsections 1 and 5.

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

Sec. 42. Section 490.842, Code 2001, is amended to read as follows:

490.842 STANDARDS OF CONDUCT FOR OFFICERS.

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

a. In good faith.

b. With the care ~~an ordinarily prudent~~ that a person in a like position would reasonably 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~~ officer's duties an officer, who does not have knowledge that makes reliance unwarranted, is entitled to rely on ~~information, opinions, reports, or state-~~

~~ments, including financial statements and other financial data, if prepared or presented by either~~ any of the following:

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

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

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

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.~~ An officer shall not be liable as an officer to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, if the duties of the officer are performed in compliance with this section. Whether an officer who does not comply with this section shall have liability will depend in such instance on applicable law, including those principles of section 490.831 that have relevance.

~~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. 43. Section 490.843, Code 2001, is amended to read as follows:

490.843 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~~ time. If a resignation is made effective at a later ~~date~~ time and the ~~corporation~~ board or appointing officer accepts the future effective ~~date~~ time, ~~its~~ the board ~~of directors~~ or the appointing officer may fill the pending vacancy before the effective ~~date~~ time if the board ~~of directors~~ or appointing officer provides that the successor does not take office until the effective ~~date~~ time. ~~A resignation may be orally communicated provided that the resignation is effective only if written notice of the resignation is delivered within twenty-four hours of such oral communication.~~

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

a. The board of directors.

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

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

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

Sec. 44. Section 490.850, Code 2001, is amended to read as follows:

490.850 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" or "officer" means an individual who is or was a director or officer, respectively, of a corporation ~~or an individual~~ who, while a director or officer of ~~a~~ the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another ~~foreign or~~ domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other ~~enterprise~~ entity. A director or officer 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" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

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

a. A party to the proceeding.

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

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

~~4.~~ 5. "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.~~ 6. "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~~ officer, as contemplated in section 490.856, 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 or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other ~~enterprise~~ entity.

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

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

Sec. 45. Section 490.851, Code 2001, is amended to read as follows:

490.851 ~~AUTHORITY TO INDEMNIFY~~ PERMISSIBLE INDEMNIFICATION.

1. Except as otherwise provided in ~~subsection 4~~ this section, a corporation may indemnify an individual ~~made~~ who is 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 of the corporation.

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

c. In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful, or the individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation as authorized by section 490.202, subsection 2, paragraph "e".

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 relevant standard of conduct described in this section.

4. ~~A~~ Unless ordered by a court under section 490.854, subsection 1, paragraph "c", 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~~, except for reasonable expenses incurred in connection

with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1.

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~~ with respect to conduct for which the director was adjudged liable on the basis that ~~personal~~ the director received a financial benefit ~~was improperly received by the director~~ to which the director was not entitled, whether or not involving action in the director's official capacity.

~~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. 46. Section 490.852, Code 2001, is amended to read as follows:

490.852 MANDATORY INDEMNIFICATION.

~~Unless limited by its articles of incorporation, a~~ 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. 47. Section 490.853, Code 2001, is amended to read as follows:

490.853 ADVANCE FOR EXPENSES.

1. A corporation may, before final disposition of a proceeding, advance funds to 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~~ because the person is a director if ~~any of~~ the person delivers all of the following ~~apply~~ to the corporation:

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

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

~~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 the financial ability of the director to make repayment.

3. ~~Determinations and authorizations of payments~~ Authorizations under this section shall be made ~~in the manner specified in section 490.855~~ according to the[3] one of the following:

a. By the board of directors:

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

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

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

Sec. 48. Section 490.854, Code 2001, is amended to read as follows:

490.854 COURT-ORDERED INDEMNIFICATION.

1. ~~Unless a corporation's articles of incorporation provide otherwise, a~~ A director ~~of the~~

[3] See chapter 1175, §89 herein

~~corporation~~ who is a party to a proceeding because the person is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. ~~On~~ After receipt of an application, ~~the court~~ and after giving any notice ~~the court~~ it considers necessary ~~may order~~, the court shall do one of the following:

a. Order indemnification if ~~it~~ the court determines ~~either of the following:~~

~~1. The~~ that the director is entitled to mandatory indemnification under section 490.852~~, 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 490.851 or was adjudged liable as described in section 490.851, subsection 4, but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred.~~

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

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

(1) To indemnify the director.

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

2. If the court determines that the director is entitled to indemnification under subsection 1, paragraph "a", or to indemnification or advance for expenses under subsection 1, paragraph "b", it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection 1, paragraph "c", it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

Sec. 49. Section 490.855, Code 2001, is amended to read as follows:

490.855 DETERMINATION AND AUTHORIZATION OF INDEMNIFICATION.

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

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.~~ If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote.

~~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.~~ b. 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~~ there are fewer than two disinterested 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~~ do not qualify as disinterested directors may participate.

~~d.~~ c. By the shareholders, but shares owned by or voted under the control of ~~directors~~ a director who ~~are~~ at the time ~~parties to the proceeding~~ does not qualify as a disinterested director 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 there are fewer than two disinterested directors or 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"~~ "b", to select special legal counsel.

Sec. 50. Section 490.856, Code 2001, is amended to read as follows:

490.856 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 490.852, and is entitled to apply for court-ordered indemnification under section 490.854, in each case to the same extent as a director.~~

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

a. To the same extent as to a director.

~~3.~~ b. ~~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~~ If the person is an officer but not a director, to such further extent as may be provided by ~~its~~ the articles of incorporation, the bylaws, ~~general or specific action~~ a resolution of ~~its~~ the board of directors, or contract, except for either of the following:

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

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

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

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

(c) An intentional violation of criminal law.

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

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

Sec. 51. Section 490.857, Code 2001, is amended to read as follows:

490.857 INSURANCE.

A corporation may purchase and maintain insurance on behalf of an individual who is ~~or was~~ a director~~,~~ or officer~~, employee, or agent~~ of the corporation, or who, while a director~~,~~ or officer~~, employee, or agent~~ of the corporation, ~~is or was serving~~ serves at the ~~request of the corporation~~ corporation's request as a director, officer, partner, trustee, employee, or agent of another ~~foreign or~~ domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other ~~enterprise~~ entity, against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director~~,~~ or officer, ~~employee, or agent,~~ whether or not the corporation would have power to indemnify or advance expenses to that individual against the same liability under ~~section 490.851 or 490.852~~ this part.

Sec. 52. Section 490.858, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.858 VARIATION BY CORPORATE ACTION — APPLICATION OF PART.

1. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolu-

tion adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 490.851 or advance funds to pay for or reimburse expenses in accordance with section 490.853. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 490.853, subsection 3, and in section 490.855, subsection 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 490.853 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. Any provision pursuant to subsection 1 shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 490.1106, subsection 1, paragraph "c".

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

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

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

Sec. 53. NEW SECTION. 490.859 EXCLUSIVITY OF PART.

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

Sec. 54. Section 490.1001, subsection 1, Code 2001, is amended to read as follows:

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 or to delete a provision that is not required to be contained in the articles of incorporation.

Sec. 55. Section 490.1002, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1002 AMENDMENT BEFORE ISSUANCE OF SHARES.

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

Sec. 56. Section 490.1003, Code 2001, is amended to read as follows:

490.1003 AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS.

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

1. ~~A corporation's~~ The proposed amendment must be adopted by the 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.~~ 2. ~~The~~ Except as provided in section[4] 490.1005, 490.1007, and 490.1008, after adopting the proposed amendment, the board of directors must ~~recommend~~ submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approved the amendment, unless the board

[4] See chapter 1175, §90 herein

of directors ~~determines~~ makes a determination that because of ~~conflict~~ conflicts of interest or other special circumstances it should not make ~~no~~ such a recommendation ~~and communicates~~, in which case the ~~basis for its determination~~ board of directors must transmit to the shareholders ~~with the amendment~~ the basis for the determination.

~~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 to the shareholders on any basis.

4. ~~The corporation shall~~ If the amendment is required to be approved by the shareholders, and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the ~~proposed shareholders'~~ meeting ~~in accordance with section 490.705~~ of shareholders at which the amendment is to be submitted for approval. 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 must contain or be accompanied by a copy ~~or summary~~ of the amendment.

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

~~a. A~~ greater number of shares to be present, approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in section 490.1004, subsection 3, the approval of each such separate voting group at a meeting at which a quorum of the voting group consisting of at least 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~~ that voting group exists.

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

Sec. 57. Section 490.1004, subsections 1, 2, and 3, Code 2001, are amended to read as follows:

1. ~~The~~ If a corporation has more than one class of shares outstanding, 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 to the articles of incorporation if the amendment would do any of the following:

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

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

~~c.~~ b. 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~~ the class.

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

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

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

~~g.~~ f. 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~~,~~ or superior~~, or substantially equal~~ to the shares of the class.

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

~~i.~~ h. Cancel or otherwise affect rights to distributions ~~or dividends~~ that have accumulated but not yet been ~~declared~~ authorized 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 holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

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

Sec. 58. Section 490.1005, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1005 AMENDMENT BY BOARD OF DIRECTORS.

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval 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. If the corporation has only one class of shares outstanding:

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

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

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

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

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

Sec. 59. Section 490.1006, Code 2001, is amended to read as follows:

490.1006 ARTICLES OF AMENDMENT.

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

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

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

~~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. 60. Section 490.1007, Code 2001, is amended to read as follows:

490.1007 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~~ approval, to consolidate all amendments into a single document.

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

~~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 490.705. 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.~~ 3. A corporation ~~restating~~ that restates 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:~~ that states that the restated articles consolidate all amendments into a single document and, if a new amendment is included in the restated articles, that also include the statements required under section 490.1006.

~~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 490.1006.~~

~~5.~~ 4. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to ~~them~~ the original articles of incorporation.

~~6.~~ 5. 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 3.

Sec. 61. Section 490.1008, subsections 1, 3, and 4, Code 2001, are amended to read as follows:

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 490.202~~ the authority of law of the United States.

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

~~4.~~ 3. 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. 62. Section 490.1009, Code 2001, is amended to read as follows:

490.1009 EFFECT OF AMENDMENT.

An amendment to the 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.

Sec. 63. Section 490.1020, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1020 AMENDMENT OF BYLAWS BY BOARD OF DIRECTORS OR SHAREHOLDERS.

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

2. 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 section 490.1021 reserve that power exclusively to the shareholders in whole or in part.

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

Sec. 64. Section 490.1021, Code 2001, is amended to read as follows:

490.1021 BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR ~~SHAREHOLDERS~~ DIRECTORS.

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

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

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

2. A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the board of directors may provide that it can 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 to amend or repeal 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 ~~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. 65. Section 490.1101, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1101 DEFINITIONS.

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

1. "Interests" means the proprietary interests in an other entity.

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

3. "Organizational documents" means the basic document or documents that create, or determine the internal governance of, an other entity.

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

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

a. Merge under a plan of merger.

b. Acquire shares or interests of another corporation or an other entity in a share exchange.

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

6. "Share exchange" means a business combination pursuant to section 490.1103.

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

Sec. 66. Section 490.1102, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1102 MERGER.

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

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

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

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

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

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

b. The terms and conditions of the merger.

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

d. The articles of incorporation of any corporation, or the organizational documents of any other entity, to be created by the merger, or if a new corporation or other entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organizational documents.

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

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

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

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

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

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

Sec. 67. Section 490.1103, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1103 SHARE EXCHANGE.

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

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

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

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

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

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

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

a. The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests.

b. The terms and conditions of the share exchange.

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

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

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

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

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

b. Any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

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

Sec. 68. Section 490.1104, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1104 ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE.

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

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

2. Except as provided in subsection 7 and in section 490.1105, after adopting the plan of merger or share exchange the board of directors must submit the plan to the shareholders for

their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation, in which case the board of directors must transmit to the shareholders the basis for that determination.

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

4. If the plan of merger or share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice shall also include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice shall include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of the new corporation or other entity.

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

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

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

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.

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

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

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

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

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

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

8. If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other

person or other entity, approval of the plan of merger shall require the execution, by each such shareholder, of a separate written consent to become subject to such personal liability.

Sec. 69. Section 490.1105, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1105 MERGER BETWEEN PARENT AND SUBSIDIARY OR BETWEEN SUBSIDIARIES.

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

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

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

Sec. 70. Section 490.1106, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1106 ARTICLES OF MERGER OR SHARE EXCHANGE.

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

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

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

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

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

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

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

Sec. 71. Section 490.1107, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1107 EFFECT OF MERGER OR SHARE EXCHANGE.

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

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

b. The separate existence of every corporation or other entity that is merged into the survivor ceases.

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

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

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

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

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

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

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

3. Any shareholder of a domestic corporation that is a party to a merger or share exchange who, prior to the merger or share exchange, was liable for the liabilities or obligations of such corporation, shall not be released from such liabilities or obligations by reason of the merger or share exchange.

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

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

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

Sec. 72. Section 490.1108, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

490.1108 ABANDONMENT OF A MERGER OR SHARE EXCHANGE.

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

2. If a merger or share exchange is abandoned under subsection 1 after articles of merger or share exchange have been filed with the secretary of state but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share

exchange by an officer or other duly authorized representative, shall be delivered to the secretary of state for filing prior to the effective date of the merger or share exchange. Upon filing, the statement shall take effect and the merger or share exchange shall be deemed abandoned and shall not become effective.

Sec. 73. NEW SECTION. 490.1108A CONSIDERATION OF ACQUISITION PROPOSALS — COMMUNITY INTERESTS.

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 subsection 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. 74. Section 490.1110, subsection 2, paragraph f, subparagraph (2), subparagraph subdivision (a), Code 2001, is amended to read as follows:

(a) A merger of the corporation, other than a merger pursuant to section ~~490.1104~~ 490.1105.

Sec. 75. Section 490.1110, subsection 3, paragraph c, subparagraph (3), subparagraph subdivision (b), Code 2001, is amended to read as follows:

(b) Pursuant to a merger under section ~~490.1104~~ 490.1105.

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

490.1201 ~~SALE~~ DISPOSITION OF ASSETS ~~IN REGULAR COURSE OF BUSINESS AND MORTGAGE OF ASSETS~~ NOT REQUIRING SHAREHOLDER APPROVAL.

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

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

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

~~c.~~ 3. ~~Transfer~~ To transfer any or all of ~~its property to a corporation all the shares~~ the corporation's assets to one or more corporations or other entities all of the shares or interests 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.~~

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

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

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

1. A ~~corporation may sell~~ sale, 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~~ other disposition of assets, other than a disposition described in section 490.1201, requires approval of the ~~corporation's board of directors, if~~ corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least twenty-five percent of total assets at the end of the most recently completed fiscal year, and twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing business activity; but no presumption that the disposition will leave the corporation without a significant continuing business activity shall arise from the fact that the corporation's continuing business activity does not equal or exceed any of these percentages.

2. A disposition that requires approval of the shareholders under subsection 1 shall be initiated by a resolution by the board of directors ~~proposes and its~~ authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the 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~~ disposition, unless the board of directors ~~determines~~ makes a determination that because of ~~conflict~~ conflicts of interest or other special circumstances it should not make ~~no~~ such a recommendation ~~and communicates,~~ in which case the ~~basis for its determination~~ board of directors shall transmit to the shareholders ~~with~~ the ~~submission of the proposed transaction~~ basis for that determination.

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

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

4. ~~The~~ If a disposition is required to be approved by the shareholders under subsection 1, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the ~~proposed shareholders' meeting in accordance with section 490.705~~ meeting of shareholders at which the disposition is to be submitted for approval. The notice ~~must also~~ shall 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~~ and shall contain a description of the ~~transaction~~ disposition, including the terms and conditions of the disposition and the consideration to be received by the corporation.

5. Unless the articles of incorporation, bylaws, 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~~ greater number of votes to be present, the approval of a disposition by the shareholders shall require the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast on the ~~transaction~~ disposition exists.

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

7. ~~A transaction that constitutes a distribution is governed by section 490.640 and not by this section.~~ A disposition of assets in the course of dissolution under division XIV is not governed by this section.

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

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

490.1301 DEFINITIONS.

In this division, unless the context otherwise requires:

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

2. "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

3. "Corporation" means the issuer of the shares held by a shareholder demanding appraisal. In addition, for matters covered in sections 490.1322 through 490.1331, "corporation" includes the surviving entity in a merger.

4. "Fair value" means the value of the corporation's shares determined according to the following:

a. Immediately before the effectuation of the corporate action to which the shareholder objects.

b. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal.

c. Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to section 490.1302, subsection 1, paragraph "e".

With respect to shares of a corporation that is a bank holding company as defined in section 524.1801, the factors identified in section 524.1406, subsection 3, paragraph "a", shall also be considered in determining fair value.

5. "Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

6. "Preferred shares" means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

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

8. "Senior executive" means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

9. "Shareholder" means both a record shareholder and a beneficial shareholder.

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

490.1302 SHAREHOLDERS' RIGHT TO ~~DISSENT~~ APPRAISAL.

1. A shareholder is entitled to ~~dissent from~~ appraisal rights, and to 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 ~~490.1103 or the articles of incorporation and the shareholder is entitled to vote on the merger~~ 490.1104 and the shareholder is entitled to vote on the merger, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger.

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

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~~ exchange, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged.

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~~ disposition of assets pursuant to section 490.1202 if the shareholder is entitled to vote on the disposition.

d. An amendment of the articles of incorporation with respect to a class or series of shares 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~~ reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created ~~is to be acquired for cash under section 490.604~~.

~~(6) Extends, for the first time after being governed by this chapter, the period of duration of a corporation organized under chapter 491 or former chapter 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~~ other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by 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. Notwithstanding subsection 1, the availability of the appraisal rights under subsection 1, paragraphs "a" through "d", shall be limited in accordance with the following provisions:

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

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

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

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

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

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

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

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

(1) Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who fulfills either of the following:

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

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

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

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

(b) Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 490.832.

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

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

3. Notwithstanding any other provision of section 490.1302, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment, shall not apply to any corporate action that becomes effective within one year of that date if such action would otherwise afford appraisal rights.

~~2.~~ 4. A shareholder entitled to ~~dissent and obtain payment for the shareholder's shares~~

appraisal rights under this chapter is not entitled to challenge ~~the~~ a completed corporate action ~~creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.~~ for which appraisal rights are available unless such corporate action meets one of the following standards:

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

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

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

490.1303 ~~DISSENT~~ ASSERTION OF RIGHTS BY NOMINEES AND BENEFICIAL OWNERS.

1. A record shareholder may assert ~~dissenters'~~ appraisal rights as to fewer than all the shares registered in ~~that~~ the record shareholder's name but owned by a beneficial shareholder only if the record shareholder ~~dissents~~ objects with respect to all shares ~~beneficially~~ of the class or series owned by ~~any one person~~ the beneficial shareholder and notifies the corporation in writing of the name and address of each ~~person~~ beneficial shareholder on whose behalf ~~the shareholder asserts dissenters'~~ appraisal rights are being asserted. The rights of a ~~partial dissenter~~ record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection ~~are~~ shall be determined as if the shares as to which the record shareholder ~~dissents~~ objects and the record shareholder's other shares were registered in the names of different record shareholders.

2. A beneficial shareholder may assert ~~dissenters'~~ appraisal rights as to shares of any class or series held on ~~the shareholder's~~ behalf of the shareholder 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~~ assertion of such rights no later than the date referred to in section 490.1322, subsection 2, paragraph "b", subparagraph (2).

b. Does so with respect to all shares of ~~which the shareholder is~~ the class of[5] series that are beneficially owned by the beneficial shareholder ~~or over which that beneficial shareholder has power to direct the vote~~.

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

490.1320 NOTICE OF ~~DISSENTERS'~~ APPRAISAL RIGHTS.

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

2. ~~If corporate action creating dissenters' rights under~~ In a merger pursuant to section ~~490.1302 is taken without a vote of shareholders~~ 490.1105, the parent corporation ~~shall~~ must notify in writing all record shareholders of the subsidiary who are entitled to assert ~~dissenters'~~ appraisal rights that the corporate action ~~was taken and send them the dissenters' notice described~~ became effective. Such notice must be sent within ten days after the corporate action became effective and include the materials described in section 490.1322.

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

490.1321 NOTICE OF INTENT TO DEMAND PAYMENT.

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

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[5] See chapter 1175, §91 herein

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,~~ or cause or permit to be voted, any shares of such class or series 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. 83. Section 490.1322, Code 2001, is amended to read as follows:

490.1322 ~~DISSENTERS'~~ APPRAISAL NOTICE AND FORM.

1. If proposed corporate action ~~creating dissenters'~~ requiring appraisal rights under section 490.1302 ~~is authorized at a shareholders' meeting~~, subsection 1, becomes effective, the corporation ~~shall~~ must deliver a written ~~dissenters'~~ appraisal notice and form required by subsection 2, paragraph "a", to all shareholders who satisfied the requirements of section 490.1321. In the case of a merger under section 490.1105, the parent must deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

2. The ~~dissenters'~~ appraisal notice must be sent no earlier than the date the corporate action became effective and no later than ten days after ~~the proposed corporate action is authorized at a shareholders' meeting, or, if the corporate action is taken without a vote of the shareholders, no later than ten days after the corporate action is taken,~~ such date and must do all of the following:

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

b. State all of the following:

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

~~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.~~ (2) ~~Set a~~ A date by which the corporation must receive the ~~payment demand~~ form, which date shall not be fewer than ~~thirty~~ forty nor more than sixty days after the date the ~~dissenters' notice is delivered~~ appraisal notice and form are sent under subsection 1, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by such specified date.

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

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

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

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

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

490.1323 ~~DUTY TO DEMAND PAYMENT~~ PERFECTION OF RIGHTS — RIGHT TO WITHDRAW.

1. A shareholder ~~sent a dissenters'~~ who receives notice ~~described in~~ pursuant to section 490.1322 and who wishes to exercise appraisal rights must ~~demand payment,~~ certify on the form sent by the corporation whether the ~~shareholder~~ beneficial owner of such shares

acquired beneficial ownership of the shares before the date required to be set forth in the ~~dissenters~~' notice pursuant to section 490.1322, subsection 2, paragraph ~~"c",~~ "a". If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 490.1325. In addition, a shareholder who wishes to exercise appraisal rights must execute and return the form and, in a case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 490.1322, subsection 2, paragraph "b", subparagraph (2). Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection 2.

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.~~ A shareholder who has complied with subsection 1 may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation in writing by the date set forth in the appraisal notice pursuant to section 490.1322, subsection 2, paragraph "b", subparagraph (5). A shareholder who fails to so withdraw from the appraisal process shall not thereafter withdraw without the corporation's written consent.

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

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

490.1324 PAYMENT.

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

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

a. Financial statements of the corporation that issued the shares to be appraised, consisting of a 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, which estimate must equal or exceed the corporation's estimate given pursuant to section 490.1322, subsection 2, paragraph "b", subparagraph (3).

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

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

490.1325 AFTER-ACQUIRED SHARES.

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

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

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

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

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

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

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

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

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

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

490.1326 PROCEDURE IF SHAREHOLDER DISSATISFIED WITH PAYMENT OR OFFER.

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

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

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

490.1330 COURT ACTION.

1. If a ~~demand~~ shareholder makes demands for payment under section ~~490.1328~~ 490.1326 that 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 in cash to each ~~dissenter whose demand remains unsettled the amount demanded~~ shareholder the amount the shareholder demanded pursuant to section 490.1326 plus interest.

2. The corporation shall commence the proceeding in the district court of the county where ~~a~~ the corporation's principal office or, if none ~~in this state~~, its registered office, in this state 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 principal office or registered office of the domestic corporation merged with ~~or whose shares were acquired by~~ the foreign corporation was located at the time of the transaction.

3. The corporation shall make all ~~dissenters~~ shareholders, 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 a decision on the question of fair value. The appraisers shall have

the powers described in the order appointing them, or in any amendment to it. The ~~dissenters~~ shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other civil proceedings. There shall be no right to a jury trial.

5. Each ~~dissenter~~ shareholder 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~~ shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares.

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

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

Sec. 89. Section 490.1331, Code 2001, is amended to read as follows:

490.1331 COURT COSTS AND COUNSEL FEES.

1. The court in an appraisal proceeding commenced under section 490.1330 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~~ shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds ~~the dissenters~~ such shareholders acted arbitrarily, vexatiously, or not in good faith ~~in demanding payment under section 490.1328~~ with respect to the rights provided by this division.

2. The court in an appraisal proceeding 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~~ shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of ~~sections~~ section 490.1320 ~~through 490.1328~~, 490.1322, 490.1324, or 490.1325.

b. Against either the corporation or a ~~dissenter~~ shareholder demanding appraisal, 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 in an appraisal proceeding finds that the services of counsel for any ~~dissenter~~ shareholder were of substantial benefit to other ~~dissenters~~ shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to ~~these~~ such counsel reasonable fees to be paid out of the amounts awarded the ~~dissenters~~ shareholders who were benefited.

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

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

4. The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting ~~in accordance with section 490.705~~. 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, bylaws, or the board of directors acting pursuant to subsection 3 requires a greater vote, a greater number of shares to be present, or a vote by voting groups, adoption of the proposal to dissolve ~~to be adopted must be approved by a majority~~

~~of all~~ shall require the approval of the shareholders at a meeting at which the quorum consisting of at least a majority of the votes entitled to be cast ~~on that proposal~~ exists.

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

490.1403 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~~ a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.

~~(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.

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

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

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

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

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

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.

Sec. 94. Section 490.1407, Code 2001, is amended to read as follows:

490.1407 ~~UNKNOWN~~ OTHER CLAIMS AGAINST DISSOLVED CORPORATION.

1. A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the dissolved 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 dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within ~~five~~ three 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~~ three years after the publication date of the newspaper notice:

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

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 that is not barred by section 490.1406, subsection 2, or subsection 3 of this section, 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~~ Except as provided in section 490.1408, subsection 4, 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.

Sec. 95. NEW SECTION. 490.1408 COURT PROCEEDINGS.

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

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

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

4. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection 1, shall satisfy the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims shall not be enforced against a shareholder who received assets in liquidation.

Sec. 96. NEW SECTION. 490.1409 DIRECTOR DUTIES.

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

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

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

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

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

1. In a proceeding under section 490.1430, subsection 2, to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

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

3. If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the parties.

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

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

6. Upon entry of an order under subsection 3 or 5, the court shall dismiss the petition to dissolve the corporation under section 490.1430, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the

amounts awarded to the shareholder by the order of the court which shall be enforceable in the same manner as any other judgment.

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

8. Any payment by the corporation pursuant to an order under subsection 3 or 5, other than an award of fees and expenses pursuant to subsection 5, is subject to the provisions of section 490.640.

Sec. 99. Section 490.1603, Code 2001, is amended to read as follows:

490.1603 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~~ represented.

2. The right to copy records under section 490.1602 includes, if reasonable, the right to receive copies ~~made by photographic, xerographic, or other technological means~~ by xerographic or other means, including copies through an electronic transmission if available and so requested by the shareholder.

3. The corporation may comply at its expense with a shareholder's demand to inspect the record of shareholders under section 490.1602, subsection 2, paragraph "c", by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

~~3.~~ 4. 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, or transmission of the records.

~~4. The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 490.1602, 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. 100. NEW SECTION. 490.1605 INSPECTION OF RECORDS BY DIRECTORS.

1. A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

2. The district court of the county where the corporation's principal office, or if none in this state, its registered office, is located may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

3. If an order is issued, the court may include provisions protecting the corporation from undue burden or expense, and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

Sec. 101. NEW SECTION. 490.1606 EXCEPTION TO NOTICE REQUIREMENT.

1. Whenever notice is required to be given under any provision of this chapter to any shareholder, such notice shall not be required to be given if either of the following applies:

a. Notice of two consecutive annual meetings, and all notices of meetings during the period between such two consecutive annual meetings, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable.

b. All, but not less than two, payments of dividends on securities during a twelve-month period, or two consecutive payments of dividends on securities during a period of more than twelve months, have been sent to such shareholder at such shareholder's address as shown on the records of the corporation and have been returned undeliverable.

2. If any such shareholder shall deliver to the corporation a written notice setting forth such shareholder's then-current address, the requirement that notice be given to such shareholder shall be reinstated.

Sec. 102. Section 491.3, subsection 8, Code 2001, is amended to read as follows:

8. A corporation organized under or subject to this chapter may make indemnification as provided in sections 490.850 through ~~490.858~~ 490.859.

Sec. 103. Section 491.16, Code 2001, is amended to read as follows:

491.16 INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS — INSURANCE.

Sections 490.850 through ~~490.858~~ 490.859 apply to corporations organized under or subject to this chapter.

Sec. 104. Section 497.34, Code 2001, is amended to read as follows:

497.34 INDEMNIFICATION.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through ~~490.858~~ 490.859, provided that where sections 490.850 through ~~490.858~~ 490.859 provide for action by shareholders the sections are applicable to action by voting members of the cooperative association, and where sections 490.850 through ~~490.858~~ 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through ~~490.858~~ 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

Sec. 105. Section 498.36, Code 2001, is amended to read as follows:

498.36 INDEMNIFICATION.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through ~~490.858~~ 490.859, provided that where sections 490.850 through ~~490.858~~ 490.859 provide for action by shareholders the sections are applicable to action by voting members of the cooperative association, and where sections 490.850 through ~~490.858~~ 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through ~~490.858~~ 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

Sec. 106. Section 499.59A, Code 2001, is amended to read as follows:

499.59A INDEMNIFICATION.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances

authorized in sections 490.850 through ~~490.858~~ 490.859, provided that where sections 490.850 through ~~490.858~~ 490.859 provide for action by shareholders the sections are applicable to action by voting members of the cooperative association, and where sections 490.850 through ~~490.858~~ 490.859 refer to the corporation organized under chapter 490 the sections are applicable to the cooperative association organized under this chapter, and where sections 490.850 through ~~490.858~~ 490.859 refer to the director the sections are applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

Sec. 107. Section 499.69A, subsections 4 and 7, Code 2001, are amended to read as follows:

4. For a surviving cooperative association, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state and the issuance of a certificate of merger pursuant to section 499.68 or the date stated in the articles of merger, whichever is later. For a surviving qualified corporation, a qualified merger becomes effective upon the filing of the articles of merger with the secretary of state pursuant to section ~~490.1105~~ 490.1106 or the date stated in the articles, whichever is later.

7. A foreign cooperative association may participate in a qualified merger as provided in this section, if the foreign cooperative association complies with the requirements for a cooperative association under this section and the requirements for a foreign cooperative association under section 499.69. A foreign corporation may participate in a qualified merger as provided in this section if it complies with the requirements of a qualified corporation under this section and the requirements for a foreign corporation under section ~~490.1107~~ 490.1102.

Sec. 108. Section 508B.2, unnumbered paragraph 2, Code 2001, is amended to read as follows:

A plan of conversion may provide that a mutual company may convert into a domestic stock company, convert and merge, or convert and consolidate with a domestic stock company, as provided in chapter 490 or 491, whichever is applicable. However, the mutual company is not required to comply with sections 491.102 through 491.105 or sections ~~490.1101~~ 490.1102 and ~~490.1103~~ 490.1104 relating to approval of merger or consolidation plans by boards of directors and shareholders, if at the time of approval of the plan of conversion the board of directors approves the merger or consolidation and if at the time of approval of the plan by policyholders as provided in section 508B.6, the policyholders approve the merger or consolidation. This chapter supersedes any conflicting provisions of chapters 521 and 521A. A mutual company may convert, merge, or consolidate as part of a plan of conversion in which a majority or all of the common shares of the stock company are acquired by another corporation, which may be a corporation organized for that purpose, or in which the new stock company consolidates with a stock company to form another stock company.

Sec. 109. Section 504A.4, subsection 14, Code 2001, is amended to read as follows:

14. A corporation operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in sections 490.850 through ~~490.858~~ 490.859.

Sec. 110. Section 508B.13, Code 2001, is amended to read as follows:

508B.13 PROHIBITIONS ON CERTAIN OFFERS TO ACQUIRE SHARES.

Prior to and for a period of five years following the effective date of the conversion, and in the case of the plans of conversion specified in subsections 1 and 3 of section 508B.3, five years following the date of distribution of consideration to the policyholders in exchange for their membership interests, a person, other than the reorganized company, other than an employee benefit plan or employee benefit trust sponsored by the reorganized company, or as otherwise specifically provided for in the plan of conversion, shall not directly or indirectly acquire or offer to acquire the beneficial ownership of more than five percent of any class of voting security of the reorganized company, and a person, other than the reorganized company or other than an employee benefit plan or employee benefit trust sponsored by the reorganized com-

pany, who acquires five percent or more of any class of voting security of the reorganized company prior to the conversion or as specifically provided for in the plan of conversion, shall not directly or indirectly acquire or offer to acquire the beneficial ownership of additional voting securities of the reorganized company, unless the acquisition is approved by the commissioner as not being contrary to the interests of the policyholders of the reorganized company or its life insurance company subsidiary and by the board of directors of the reorganized company. The commissioner and the board of directors may consider the factors set forth in section ~~490.1108~~ 490.1108A. The provisions of section 521A.3, except subsection 4, paragraph "a", shall be applicable to a proposed acquisition subject to this section. An approved plan of conversion may include a stock option plan. As used in this section, "beneficial ownership" means, with respect to a security, the sole or shared power to vote or direct the voting of the security or the sole power to dispose or direct the disposition of the security.

Sec. 111. Section 508C.16, unnumbered paragraph 2, Code 2001, is amended to read as follows:

Sections 490.850 through ~~490.858~~ 490.859 apply to the association.

Sec. 112. Section 524.801, subsection 7, Code 2001, is amended to read as follows:

7. To indemnify a director, officer, or employee, or a former director, officer, or employee of the state bank in the manner and in the instances authorized by sections 490.850 through ~~490.858~~ 490.859.

Sec. 113. Section 524.1213, subsection 2, Code Supplement 2001, is amended to read as follows:

2. A united community bank office formed under this section shall have a united community bank office board, at least one-half or more of the members of which shall be residents of the county in which the united community bank office is located. The liability of the united community bank office board shall be limited as provided in section 524.614. The bank establishing and operating the united community bank office may indemnify members of the united community bank office board as agents of the bank in the manner and in the instances authorized by sections 490.850 through ~~490.858~~ 490.859.

Sec. 114. Section 524.1309, subsection 8, Code 2001, is amended to read as follows:

8. A shareholder of a state bank who objects to adoption by the state bank of a plan to cease to carry on the business of banking and to continue as a corporation subject to chapter 490, is entitled to ~~the rights and remedies of a dissenting shareholder~~ appraisal rights provided for in chapter 490, division XIII.

Sec. 115. Section 524.1402, subsection 2, Code 2001, is amended to read as follows:

2. In the case of a state bank which is a party to the plan, if the proposed merger will result in a state bank subject to this chapter, adoption of the plan by such state bank requires the affirmative vote of at least a majority of the directors and approval by the shareholders, in the manner and according to the procedures prescribed in section ~~490.1103~~ 490.1104, at a meeting called in accordance with the terms of that section. In the case of a national bank, or if the proposed merger will result in a national bank, adoption of the plan by each party to the merger shall require the affirmative vote of at least such directors and shareholders whose affirmative vote on the plan is required under the laws of the United States. Subject to applicable requirements of the laws of the United States in a case in which a national bank is a party to a plan, any modification of a plan which has been adopted shall be made by any method provided in the plan, or in the absence of such provision, by the same vote as required for adoption.

Sec. 116. Section 524.1406, Code 2001, is amended to read as follows:

524.1406 ~~RIGHTS~~ APPRAISAL RIGHTS OF ~~DISSENTING~~ SHAREHOLDERS.

1. A shareholder of a state bank, which is a party to a proposed merger plan which will result

in a state bank subject to this chapter, who objects to the plan is entitled to ~~the rights and remedies of a dissenting shareholder~~ appraisal rights as provided in chapter 490, division XIII.

2. If a shareholder of a national bank which is a party to a proposed merger plan which will result in a state bank, or a shareholder of a state bank which is a party to a plan which will result in a national bank, objects to the plan and complies with the requirements of the applicable laws of the United States, the resulting state bank or national bank, as the case may be, is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

3. a. Notwithstanding any contrary provision in chapter 490, division XIII, in determining the fair value of the shareholder's shares of a bank organized under this chapter or a bank holding company as defined in section 524.1801 in a transaction or event in which the shareholder is entitled to ~~the rights and remedies of a dissenting shareholder~~ appraisal rights, due consideration shall be given to valuation factors recognized for federal and estate tax purposes, including discounts for minority interests and discounts for lack of marketability. However, any payment made to ~~dissenting~~ shareholders under section ~~490.1325~~ 490.1324 shall be in an amount not less than the stockholders' equity in the bank disclosed in its last statement of condition filed under section 524.220 or the total equity capital of the bank holding company disclosed in the most recent report filed by the bank holding company with the board of governors of the federal reserve system, divided by the number of shares outstanding.

b. Prior to giving notice of a meeting at which a shareholder of a bank organized under this chapter or a bank holding company as defined in section 524.1801 would be entitled to ~~the rights and remedies of a dissenting shareholder~~ appraisal rights, such bank or bank holding company may seek a declaratory judgment to establish the fair value for purposes of section 490.1301, subsection 4, of shares held by such shareholders. Another cause of action or a counterclaim shall not be joined with such a declaratory action. A declaratory judgment shall be filed in the county where the principal place of business of the bank or bank holding company is located. The court shall appoint an attorney to represent minority shareholders. All shareholders of the bank or bank holding company shall be served with notice of the action and be advised of the name, address, and telephone number of the attorney appointed to represent minority shareholders. The attorney appointed to represent minority shareholders shall select an appraiser to give an opinion of the fair value of such shares. The bank or bank holding company may select an appraiser to give an opinion on the fair value of the shares of the bank or bank holding company. Any shareholder may participate individually and present evidence of the fair value of such shareholder's shares. All court costs, appraiser's fees, and the fees and expenses of the attorney appointed to represent the minority shareholders shall be assessed against the bank or the bank holding company. A judgment in the action shall not determine fair value for a share to be less than the stockholders' equity in the bank disclosed in its last statement of condition filed under section 524.220 or the total equity capital of the bank holding company disclosed in the most recent report filed by the bank holding company with the board of governors of the federal reserve system, divided by the number of shares outstanding. A final judgment in the action shall establish fair value for the purposes of chapter 490, division XIII and shall be disclosed to the shareholders in the notice to shareholders of the meeting to approve the transaction that gives rise to ~~dissenters'~~ appraisal rights. If the proposed transaction is approved by the shareholders, upon consummation of the proposed transaction the fair value so established shall be paid to each shareholder entitled to payment for the shareholder's shares upon receipt of such shareholder's share certificates.

Sec. 117. Section 524.1408, Code 2001, is amended to read as follows:

524.1408 MERGER OF CORPORATION SUBSTANTIALLY OWNED BY A STATE BANK.

A state bank owning at least ninety percent of the outstanding shares, of each class, of another corporation which it is authorized to own under this chapter, may merge the other corporation into itself without approval by a vote of the shareholders of either the state bank or the subsidiary corporation. The board of directors of the state bank shall approve a plan of merger, mail to shareholders of record of the subsidiary corporation, and prepare and execute articles

of merger in the manner provided for in section ~~490.1104~~ 490.1105. The articles of merger, together with the applicable filing and recording fees, shall be delivered to the superintendent who shall, if the superintendent approves of the proposed merger and if the superintendent finds the articles of merger satisfy the requirements of this section, deliver them to the secretary of state for filing and recording in the secretary of state's office, and they shall be filed in the office of the county recorder. The secretary of state upon filing the articles of merger shall issue a certificate of merger and send the certificate to the state bank and a copy of it to the superintendent.

Sec. 118. Section 524.1417, Code 2001, is amended to read as follows:

524.1417 ~~RIGHTS~~ APPRAISAL RIGHTS OF ~~DISSENTING~~ SHAREHOLDER OF CONVERTING STATE OR NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION.

1. A shareholder of a state bank ~~which~~ that converts into a national bank or federal savings association who objects to the plan of conversion is entitled to ~~the rights and remedies of a dissenting shareholder~~ appraisal rights as provided in chapter 490, division XIII.

2. If a shareholder of a national bank or federal savings association~~, which~~ that converts into a state bank~~,~~ objects to the plan of conversion and complies with the requirements of applicable laws of the United States, the resulting state bank is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

Sec. 119. Section 533.4, subsection 27, Code 2001, is amended to read as follows:

27. To provide indemnity for the director, officer, or employee in the same fashion that a corporation organized under chapter 490 could under sections 490.850 through ~~490.858~~ 490.859; however, where those sections provide for action by shareholders the provision is applicable to action by members of the credit union and where the sections have reference to the corporation organized under chapter 490, the provision is applicable to the association organized under this chapter.

Sec. 120. Section 534.504, Code 2001, is amended to read as follows:

534.504 MEETINGS OF STOCKHOLDERS.

Sections 490.701 through ~~490.731~~ 490.732 apply to stock associations.

Sec. 121. Section 534.605, subsection 4, Code Supplement 2001, is amended to read as follows:

4. An association operating under this chapter may indemnify any present or former director, officer, or employee in the manner and in the instances authorized in sections 490.850 through ~~490.858~~ 490.859. If the association is a mutual association, the references in those sections to stockholder shall be deemed to be references to members.

Sec. 122. Section 534.607, Code 2001, is amended to read as follows:

534.607 INDEMNIFICATION.

Except as otherwise provided in section 534.602, sections 490.850 through ~~490.858~~ 490.859 apply to associations incorporated under this chapter.

Sec. 123. Sections 490.1022, 490.1327, 490.1328, and 490.1621, Code 2001, are repealed.

Sec. 124. CODE EDITOR DIRECTIVE. The following division and part titles shall be changed by the Code editor:

1. Division XII shall be retitled DISPOSITION OF ASSETS.
2. Division XIII shall be retitled APPRAISAL RIGHTS.
3. Division XIII, Part A, shall be retitled RIGHT TO APPRAISAL AND PAYMENT FOR SHARES.
4. Division XIII, Part B, shall be retitled PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS.

Sec. 125. EFFECTIVE DATE. This Act takes effect January 1, 2003.

Approved May 7, 2002

CHAPTER 1155

UNIVERSITY OF IOWA
HOSPITALS AND CLINICS FACILITIES —
ISSUANCE OF BONDS

S.F. 2168

AN ACT authorizing the state board of regents to issue bonds to construct, improve, remodel, repair, furnish, and equip inpatient and outpatient facilities and patient care facilities at the university of Iowa hospitals and clinics.

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

Section 1. LEGISLATIVE FINDINGS. The general assembly finds that the hospitals at the state university of Iowa are inadequate to meet present and future demands for statewide specialty care, modern and emerging technology, and teaching services.

Sec. 2. BONDS AUTHORIZED.

1. The state board of regents is authorized to issue bonds as provided in chapter 263A in an amount not exceeding one hundred million dollars, except as provided in subsection 2. The bonds may be issued at such times and in such amounts as determined by the state board of regents. Bond proceeds shall be used to construct, improve, remodel, repair, furnish, and equip inpatient and outpatient facilities and patient care facilities, including facilities for image-guided radiation therapy services and mechanical and other supporting facilities at the university of Iowa hospitals and clinics.

2. Notwithstanding the limitation established in subsection 1, the amount of bonds issued as authorized in subsection 1 may be exceeded by the amount the state board of regents determines to be necessary to capitalize bond reserves and issuance costs.

Approved May 8, 2002