

## CHAPTER 491

### CORPORATIONS FOR PECUNIARY PROFIT

Applicable to domestic corporations organized prior to July 1, 1971; §491.1  
Reorganization option for cooperative associations, §499.43B

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### **491.1 Who may incorporate.**

Any number of persons may become incorporated under [this chapter](#) prior to July 1, 1971, for the transaction of any lawful business, but the incorporation confers no power or privilege not possessed by natural persons, except as provided in [this chapter](#). All domestic corporations shall be organized under [chapter 490](#), except as expressly provided otherwise in [chapter 490](#).

[C51, §673; R60, §1150; C73, §1058; C97, §1607; C24, 27, 31, 35, 39, §8339; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.1]

83 Acts, ch 101, §106; 89 Acts, ch 83, §65; 89 Acts, ch 288, §186

Referred to in [§521A.14](#)

Incorporation of mutual insurance holding companies resulting from reorganization of domestic mutual insurance companies, see [§521A.14](#)

### **491.2 Single person.**

Except as otherwise provided by law, a single person may incorporate under the provisions of [this chapter](#), thereby entitling that person to all the privileges and immunities provided herein, but if the person adopts the name of an individual or individuals as that of the corporation, the person must add thereto the word “incorporated”.

[C51, §702; R60, §1179; C73, §1088; C97, §1608; C24, 27, 31, 35, 39, §8340; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.2]

### **491.3 Powers.**

Among the powers of such corporations are the following:

1. To have perpetual succession.
2. To sue and be sued by its corporate name.
3. To have a common seal, which it may alter at pleasure.
4. To render the interests of the stockholders transferable.
5. To exempt the private property of its members from liability for corporate debts, except as otherwise declared.
6. To make contracts, acquire and transfer property — possessing the same powers in such respects as natural persons.
7. To establish bylaws, and make all rules and regulations necessary for the management of its affairs.
8. A corporation organized under or subject to [this chapter](#) may make indemnification as provided in [sections 490.850 through 490.859](#).

[C51, §674; R60, §1151; C73, §1059; C97, §1609; C24, 27, 31, 35, 39, §8341; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.3]

83 Acts, ch 71, §2; 90 Acts, ch 1205, §29; 2002 Acts, ch 1154, §102, 125

### **491.4 Repealed by 94 Acts, ch 1055, § 16.**

### **491.5 Articles adopted and filed.**

Before commencing any business except their own organization, they must adopt articles of incorporation, which must be signed and acknowledged by the incorporators. Said articles shall then be forwarded to the secretary of state. Upon the filing of such articles, the secretary of state shall issue a certificate of incorporation and record said articles in a book kept for that purpose.

Such articles shall contain:

1. Name of corporation and its principal place of business.
2. The objects for which it is formed.
3. The amount of authorized capital stock, the classes of stock and number of shares authorized, with the par value and conditions of each class of such shares, and the time when and conditions under which it is to be paid in.
4. The time of commencement and existence of the corporation.
5. The names and addresses of the incorporators and the officers or persons its affairs are to be conducted by, and the times when and manner in which such officers will be elected.
6. Whether private property is to be exempt from corporate debts.

7. The manner in which the articles may be amended.

8. Any provision eliminating or limiting the personal liability of a director to the corporation or its shareholders or members for money damages as provided in [section 490.202, subsection 2](#), paragraph “d”, except that [section 490.202, subsection 2](#), paragraph “d”, subparagraph (3), shall have no application.

9. Any provision permitting or making obligatory indemnification of a director as provided in [section 490.202, subsection 2](#), paragraph “e”, except that [section 490.202, subsection 2](#), paragraph “e”, subparagraph (3), shall have no application.

[C51, §675; R60, §1152; C73, §1060; C97, §1610; S13, §1610; C24, 27, 31, 35, 39, §8343; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.5]

87 Acts, ch 212, §2; 88 Acts, ch 1170, §3; 94 Acts, ch 1055, §4; 2003 Acts, ch 66, §5, 6

Referred to in [§491.10](#), [491.107](#)

#### **491.6 Filing or refusal to file.**

When articles of incorporation are presented to the secretary of state for the purpose of being filed, if the secretary is satisfied that they are in proper form to meet the requirements of law, that their object is a lawful one and not against public policy, that their plan for doing business, if any be provided for, is honest and lawful, the secretary shall file them; but if the secretary is of the opinion that they are not in proper form to meet the requirements of the law, or that their object is an unlawful one, or against public policy, or that their plan for doing business is dishonest or unlawful, the secretary shall refuse to file them.

[S13, §1610; C24, 27, 31, 35, 39, §8344; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.6]

Referred to in [§491.10](#), [491.107](#)

#### **491.7 Question of legality submitted.**

Should a question of doubt arise as to the legality of the articles, the secretary of state shall submit them to the attorney general whose duty it shall be to forthwith examine and return them with an opinion in writing touching the point or points concerning which inquiry has been made of the attorney general.

[S13, §1610; C24, 27, 31, 35, 39, §8345; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.7]

Referred to in [§491.10](#), [491.107](#)

#### **491.8 Action on opinion.**

If such opinion is in favor of the legality of the articles, and no other objections are apparent, they shall then, upon payment of the proper fee, be filed and otherwise dealt with as the law provides. If, however, such opinion be against their legality they shall not be filed.

[S13, §1610; C24, 27, 31, 35, 39, §8346; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.8]

Referred to in [§491.10](#), [491.107](#)

#### **491.9 Submission to executive council.**

Upon the rejection of any articles of incorporation by the secretary of state, except for the reason that they have been held by the attorney general to be illegal, they shall, if the person or persons presenting them so request, be submitted to the executive council, which shall, as soon as practicable, consider the said articles and if the council determines that the articles are in proper form, of honest purpose, not against public policy, nor otherwise objectionable, it shall so advise the secretary of state in writing, whereupon the secretary shall, upon the payment of the proper fees, file the same and proceed otherwise as the law directs; but if the council sustains the previous action of the secretary of state in rejecting said articles, such decision by the council shall be reported to the secretary of state in writing, and the secretary shall then return said articles to the person or persons presenting them with such explanation as shall be proper in the case.

[C13, §1610; C24, 27, 31, 35, 39, §8347; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.9]

Referred to in [§491.10](#), [491.107](#)

#### **491.10 Interpretative clause.**

Nothing in [sections 491.5 to 491.9](#) shall be construed as repealing or modifying any statute now in force in respect to the approval of articles of incorporation relating to insurance companies, building and loan associations or investment companies.

[S13, §1610; C24, 27, 31, 35, 39, §~~8348~~; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.10]

#### **491.11 Incorporation fee.**

Corporations organized for a period of years shall pay the secretary of state, before a certificate of incorporation is issued, a fee of fifty dollars.

[C97, §1610; S13, §1610; C24, 27, 31, 35, 39, §~~8349~~; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.11]

93 Acts, ch 126, §10

Referred to in [§491.28](#), [491.107](#)

See [§491.28](#)

#### **491.12 Repealed by 93 Acts, ch 126, § 35.**

#### **491.13 Place of business.**

Any corporation organized under the laws of this state shall fix upon and designate in its articles of incorporation its principal place of business which must be in this state, and if outside the limits of a city then its post-office address must be given. The place of business so designated shall not be changed except through an amendment to its articles of incorporation.

When a corporation changes its principal place of business from one county to another, an amendment for this purpose shall be filed with the secretary of state, recorded in the office of the recorder of deeds of the county of the previous place of business, and then said amendment together with the articles of incorporation and all amendments thereto shall be filed with the recorder of deeds of the county to which said corporation's principal place of business is changed.

[C97, §1612; S13, §1612; C24, 27, 31, 35, 39, §~~8353~~; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.13]

#### **491.14 Custody of office — business maintained.**

Its place of business shall be in charge of an agent of the corporation and shall be the place where it shall hold its stockholders' meetings, keep a record of its proceedings and its stock and transfer books. The board of directors may designate by resolution some other place in the county where business of the corporation is transacted as the place for holding a stockholders' meeting if notice is mailed to the stockholders at least twenty days prior to each meeting informing the stockholders of the place, date, and hour of the stockholders' meeting.

[C97, §1612; S13, §1612; C24, 27, 31, 35, 39, §~~8354~~; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.14]

#### **491.15 Service of original notice — secretary of state.**

Any corporation organized under the laws of this state that does not maintain an office in the county of its organization may file with the secretary of state a certified copy of a resolution of the board of directors of said corporation giving name and address in Iowa of a resident agent on whom the service of original notice of civil suit in the courts of this state may be served, or file with the secretary of state a written instrument duly signed and acknowledged authorizing the secretary of state to acknowledge service of notice or process for and in behalf of such corporation in this state and consenting that service of notice or process may be made upon the secretary of state. Failing which, or in the event such agent may not be found within the state, service of such process may then be made upon said corporation through the secretary of state by sending the original and two copies thereof to the secretary, and the secretary shall immediately upon its receipt acknowledge service thereon in behalf of the defendant corporation by writing thereon, giving the date thereof, and shall immediately return such notice or process by certified mail to the clerk of the court in which the suit is pending, addressed by the clerk's official title, and shall also forthwith mail a copy with a copy of the secretary's acknowledgment of service written thereon, by

certified mail addressed to the corporation at the address of its principal place of business as shown by the records in the secretary of state's office, and shall retain the second copy for the secretary's files.

[C97, §1612; S13, §1612; C24, 27, 31, 35, 39, §8355, 8356; C46, 50, §491.15, 491.16; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.15]

#### **491.16 Indemnification of officers, directors, employees, and agents — insurance.**

Sections 490.850 through 490.859 apply to corporations organized under or subject to [this chapter](#).

[C71, 73, 75, 77, 79, 81, §491.16]

83 Acts, ch 71, §3; 90 Acts, ch 1205, §30; 2002 Acts, ch 1154, §103, 125

#### **491.16A Directors and officers — duties and liabilities.**

Sections 490.830 through 490.842 apply to corporations organized under or subject to [this chapter](#).

2003 Acts, ch 66, §7

#### **491.17 Notice of incorporation.**

A notice must be published once each week for four weeks in succession in some newspaper as convenient as practicable to the principal place of business, which must contain:

1. The name of the corporation and its principal place of business.
2. The general nature of the business to be transacted.
3. The amount of capital stock authorized, and the times and conditions on which it is to be paid in.
4. The time of the commencement and existence of the corporation.
5. By what officers or persons its affairs are to be conducted, and the times when and manner in which they will be elected.
6. Whether private property is to be exempt from corporate debts.

[C51, §677, 678; R60, §1154, 1155; C73, §1062, 1063; C97, §1613; S13, §1613; C24, 27, 31, 35, 39, §8357; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.17]

Referred to in [§491.20](#), [491.32](#), [491.109](#)  
Legalizing Acts, chapter 591

#### **491.18 Proof of publication — filing.**

Proof of such publication, by affidavit of the publisher of the newspaper in which it is made, shall be filed with the secretary of state, and shall be evidence of the fact.

[C97, §1613; S13, §1613; C24, 27, 31, 35, 39, §8358; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.18]

#### **491.19 Commencement of business.**

The corporation may commence business as soon as the certificate is issued by the secretary of state, and its acts shall be valid if the publication in a newspaper is made within three months from the date of such certificate; providing that when the notice is not published within the time herein prescribed, but is subsequently published for the required time, and proof of the publication thereof filed with the secretary of state, the acts of such corporation after such publication shall be valid.

[C51, §679; R60, §1156; C73, §1064; C97, §1614; C24, 27, 31, 35, 39, §8359; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.19]

#### **491.20 Amendments — fees.**

Amendments to articles of incorporation making changes in any of the provisions of the articles may be made at any annual meeting of the stockholders or special meeting called for that purpose, and they shall be valid only when recorded, approved and published as the original articles are required to be, except where the amendment provides for changing the principal place of business from one county to another, in which event said amendment shall be published in both the counties of the former and new place of business. Publication shall be by notice setting out the substance of the amendment and, in the case of amended and

substituted articles, said notice shall contain the matters and things required to be published by [section 491.17](#), relating to original incorporations. If no increase is made in the amount of capital stock, a certificate fee of one dollar and a recording fee of fifty cents per page must be paid. Where capital stock is increased the certificate fee shall be omitted but there shall be paid a recording fee of fifty cents per page and in addition a filing fee which in case of corporations existing for a period of years shall be one dollar per thousand of such increase and in case of corporations empowered to exist perpetually shall be one dollar and ten cents per thousand of such increase. Corporations providing for perpetual existence by amendment to its articles shall, at the time of filing such amendment, pay to the secretary of state a fee of one hundred dollars together with a recording fee of fifty cents per page, and, for all authorized capital stock in excess of ten thousand dollars, an additional fee of one dollar ten cents per thousand.

Its articles of incorporation to the contrary notwithstanding, if three-fourths of the voting stock of any corporation organized under the provisions of [this chapter](#), with assets of the value of one million dollars or more, is owned by individuals owning not more than one share each of the voting stock thereof, said articles may be amended at any regular or special meeting of stockholders, when a notice in writing of the substance of the proposed amendment has been mailed by ordinary mail to each voting stockholder of such corporation not more than ninety nor less than sixty days prior to said meeting, by the affirmative vote of two-thirds of the voting stock represented at said meeting when said amendment is approved by the affirmative vote of two-thirds of the members of the board of directors at a meeting prior to the mailing of said notice.

If such corporation is renewed under the provisions of [section 491.25](#), the voting stock of dissenting stockholders or any portion thereof may be purchased by the corporation at its option as provided in said section.

[C51, §680; R60, §1157; C73, §1065; C97, §1615; S13, §1615; C24, 27, 31, 35, 39, §8360; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.20]

Referred to in [§491.24](#), [491.26](#), [491.107](#)  
Notice of amendment legalized, §591.11

#### **491.21 Signing and acknowledging of amendments.**

Such amendments need only be signed and acknowledged by such officers of the corporation as may be designated by the stockholders to perform such act.

[C97, §1615; S13, §1615; C24, 27, 31, 35, 39, §8361; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.21]

#### **491.22 Individual property liable.**

A failure to substantially comply with the foregoing requirements in relation to organization and publicity shall render the individual property of the stockholders liable for the corporate debts; but corporators and stockholders in railway and street railway companies shall be liable only for the amount of stock held by them therein.

[C51, §689; R60, §1166, 1338; C73, §1068; C97, §1616; C24, 27, 31, 35, 39, §8362; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.22]

#### **491.23 Dissolution — notice — filing with secretary of state.**

A corporation may be dissolved prior to the period fixed in the articles of incorporation, by unanimous consent, or in accordance with the provisions of its articles, and notice thereof must be given in the same manner and for the same time as is required for its organization; provided, however, that the notice of such dissolution shall be deemed sufficient if signed by the officers of such corporation and published as required by law. Notice thereof shall also be given by the filing in the office of the secretary of state the proof of publication of notice of dissolution and said proof shall be recorded by the secretary of state in the same manner as the recording of amendments, and a recording fee of one dollar shall apply thereto.

[C51, §682, 683; R60, §1159, 1160; C73, §1066, 1067; C97, §1617; C24, 27, 31, 35, 39, §8363; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 491.23]

94 Acts, ch 1055, §5

#### **491.24 Duration.**

Corporations for the construction and operation, or the operation alone, of steam railways, interurban railways, and street railways, or for the transaction of the business of life insurance, may be formed to endure fifty years; those for other purposes, not to exceed twenty years; provided, however, that in addition to the power herein granted to incorporate for a period of years, corporations hereafter organized or now existing may have perpetual existence by so providing in the articles of incorporation or by amendment thereto pursuant to [section 491.20](#).

[C51, §681; R60, §1158; C73, §1069; C97, §1618; S13, §1618; C24, 27, 31, 35, 39, §8364; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.24]

#### **491.25 Renewal — conditions.**

Corporations existing for a period of years may be renewed from time to time for the same or shorter periods, or may be renewed to exist perpetually, upon compliance with the provisions of [this section](#) and other applicable statutes.

The right of renewal is vested in the stockholders and shall be exercised by a resolution thereof adopted at any regular meeting or at any special meeting called for that purpose. Such resolution must be adopted by a majority of all the votes cast at such meeting, or by such other vote as is authorized or required in the company's existing articles of incorporation.

If the renewal instrument in proper form and the necessary fees are tendered to the secretary of state for filing three months or less either prior or subsequent to the corporation's expiration date, such renewal shall take effect immediately upon the expiration of the corporation's previous period of existence, and in such case, the corporate existence shall be considered as having been extended without interruption. If the renewal is filed more than three months before or after the expiration date, such renewal shall take effect upon the date such renewal with necessary fees is accepted and filed by the secretary of state; and in cases where filed more than three months after the expiration date, shall not be in legal effect a renewal unless the procedure provided for and the additional fees provided for in [section 491.28](#) are fully complied with and paid.

In all cases of renewal, those stockholders voting for such renewal must purchase at its real value the stock voted against such renewal, and shall have three years from the date such action for renewal was taken in which to purchase and pay for the stock voting against such renewal, which purchase price shall bear interest at the rate of five percent per annum from the date of such renewal action until paid.

[C51, §681; R60, §1158; C73, §1069; C97, §1618; S13, §1618; C24, 27, 31, 35, 39, §8365, §8366; C46, 50, §491.25, 491.26; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.25]

Referred to in [§491.20](#), [491.26](#)

#### **491.26 Stock of dissenting holders.**

The provisions of [section 491.25](#) shall not apply to any renewal voted before July 4, 1951, but all rights of any corporation described or referred to in the last two paragraphs of [section 491.20](#) to purchase stock of dissenting stockholders or any portion thereof are preserved to said corporation both before and after [this section](#) becomes operative.

[S13, §1618; C24, 27, 31, 35, 39, §8366; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.26]

#### **491.27 Execution of renewal — record required.**

After the action of the stockholders for the renewal of any corporation, a certificate, showing the proceedings resulting in the renewal, sworn to by the president and secretary of the corporation, or by other officers as may be designated by the stockholders, together with the articles of incorporation, which may be the original articles of incorporation or amended and substituted articles, shall be filed with the secretary of state and be recorded by the secretary in a book kept for that purpose.

[S13, §1618; C24, 27, 31, 35, 39, §8367; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.27]  
94 Acts, ch 1055, §6



#### **491.28 Filing with secretary of state — fees — certificate of renewal.**

Upon filing with the secretary of state the said certificate and articles of incorporation, and upon the payment to the secretary of state of the fees prescribed by [section 491.11](#) for newly organized corporations, the secretary of state shall issue a proper certificate for the renewal of the corporation.

Whenever, after timely notice has been received that its articles of incorporation will expire and the corporate existence of any corporation has expired and not been renewed within the period prescribed by statute, said corporation thereafter files with the secretary of state amended and substituted articles of incorporation for the purpose of renewing and extending its corporate existence, the secretary of state shall cause said corporation to file satisfactory proof that no judgments against said corporation or the stockholders thereof are outstanding which may be liens against said corporation and that there is no pending litigation involving said corporation or the corporate existence of said corporation. Upon the filing of said proof the secretary of state may acknowledge and file for record the amended and substituted articles of said corporation and issue a certificate of renewal upon the payment of the renewal fees required by statute, however, the secretary of state shall charge and collect an additional ten percent of said renewal fees for each month or major fraction thereof said corporation was delinquent in renewal of its corporate existence as a penalty, but in no instance shall such additional delinquency fee be less than one hundred dollars and not more than one thousand dollars. Said certificate of renewal when issued shall have the same force and effect as though issued upon proper and timely application by said corporation and it shall date from the expiration of the corporate period which it succeeds.

[S13, §1618; C24, 27, 31, 35, 39, §8368; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.28]  
Referred to in [§491.25](#)

#### **491.29 Erroneous certificate — correction.**

In all cases wherein the secretary of state has prior to April 10, 1931 issued to a corporation organized or purporting to have been organized under the laws of this state a certificate renewing and extending its corporate existence from an erroneous date or for a period of time in excess of that provided by law, the secretary of state shall, upon the surrender of such certificate, issue to such corporation a new certificate, extending and renewing the corporate existence thereof from the correct date or for the period of time provided by law.

[C31, 35, §8368-d1; C39, §8368.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.29]

#### **491.30 and 491.31 Repealed by 93 Acts, ch 126, § 35.**

#### **491.32 Notice of renewal — publication.**

Within three months after the filing of the certificate and articles of incorporation with the secretary of state, the corporation so renewed shall publish a notice of renewal. Said notice shall be published once each week for four weeks in succession in a newspaper as convenient as practicable to the principal place of business of the corporation, and proof of publication filed in the office of the secretary of state, and shall contain the matters and things required to be published by [section 491.17](#), relating to original incorporations.

[S13, §1618; C24, 27, 31, 35, 39, §8370; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.32]  
Notice of renewal legalized, §591.10

#### **491.33 Foreign insurance companies becoming domestic.**

The secretary of state upon a corporation complying with the provisions of [this section](#) and upon the filing of articles of incorporation and upon receipt of the fees as provided in [this chapter](#) shall issue a certificate of incorporation as of the date of the corporation's original incorporation in its state of original incorporation. The certificate of incorporation shall state on its face that it is issued in accordance with the provisions of [this section](#). The secretary of state shall then notify the appropriate officer of the state or country of the corporation's last domicile that the corporation is now a domestic corporation domiciled in this state. [This](#)



[section](#) applies to life insurance companies, and to insurance companies doing business under [chapter 515](#).

[C75, 77, 79, 81, §491.33; 81 Acts, ch 161, §1]

94 Acts, ch 1055, §7

Referred to in [§508.12](#), [515.78](#)

**491.34 and 491.35** Repealed by 69 Acts, ch 273, § 1827 – 1829.

**491.36 Foreign-trade zone corporation.**

A corporation may be organized under the laws of this state for the purpose of establishing, operating and maintaining a foreign-trade zone as defined in 19 United States Code, § 81(a). A corporation organized for the purposes set forth in [this section](#) has all powers necessary or convenient for applying for a grant of authority to establish, operate and maintain a foreign-trade zone under the provisions of 19 United States Code § 81(a), et seq., and rules promulgated thereunder, and for establishing, operating and maintaining a foreign-trade zone pursuant to that grant of authority.

[C81, §491.36]

**491.37** Repealed by 69 Acts, ch 273, § 1830.

**491.38 Consolidation of interstate bridge companies.**

Any corporation heretofore or hereafter organized under the laws of this state for the purpose of constructing and/or operating a bridge, one extremity of which shall rest in an adjacent state, may merge and/or consolidate the stock, property, rights, franchises, privileges, assets and liabilities of such corporation with the stock, property, rights, franchises, privileges, assets and liabilities of a corporation organized for a similar purpose under the laws of such adjacent state, upon such terms not in conflict with law as may be mutually agreed upon, and thereafter such merged and/or consolidated corporations shall be one corporation with such name as may be agreed upon, and shall have all of the property, rights, privileges, assets and franchises, and be subject to all of the liabilities, of the merging or consolidating corporations.

[C31, 35, §8375-d1; C39, **§8375.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.38]

**491.39 Legislative control.**

The articles of incorporation, bylaws, rules and regulations of corporations hereafter organized under the provisions of either [Title XII, subtitles 2 through 5](#), or [Title XIII, subtitle 1](#) or [2](#), or whose organization may be adopted or amended thereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, and every franchise obtained, used, or enjoyed by such corporation may be regulated, withheld, or be subject to conditions imposed upon the enjoyment thereof, whenever the general assembly shall deem necessary for the public good.

[C73, §1090; C97, §1619; C24, 27, 31, 35, 39, **§8376**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.39]

Iowa Constitution, Art. I, §21; Art. VIII, §12

United States Constitution, Art. I, §10

**491.40 Fraud — penalty for.**

Intentional fraud in failing to comply substantially with the articles of incorporation, or in deceiving the public or individuals in relation to their means or their liabilities, shall be a fraudulent practice. Any person who has sustained injury from such fraud may also recover damages therefor against those guilty of participating in such fraud.

[C51, §686; R60, §1163; C73, §1071; C97, §1620; C24, 27, 31, 35, 39, **§8377**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.40]

Referred to in [§491.41](#), [491.42](#)

#### **491.41 Diversion of funds — unlawful dividends.**

The diversion of the funds of the corporation to other objects than those mentioned in its articles and in the notice published, if any person be injured thereby, and the payment of dividends which leaves insufficient funds to meet the liabilities thereof, shall be such fraud as will subject those guilty thereof to the penalties of [section 491.40](#); and such dividends, or their equivalent, in the hands of stockholders, shall be subject to such liabilities. If the directors or other officers or agents of any corporation shall declare and pay any dividend when such corporation is known by them to be insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, all directors, officers, or agents knowingly consenting thereto shall be jointly and severally liable for all the debts of such corporation then existing, but dividends made in good faith before knowledge of the occurring of losses shall not come within the provisions of [this section](#).

[C51, §687, 688; R60, §1164, 1165; C73, §1072, 1073; C97, §1621; C24, 27, 31, 35, 39, §8378; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.41]

Referred to in [§491.42](#)

#### **491.42 Forfeiture.**

Any intentional violation by the board of directors or the managing officers of the corporation of the provisions of [sections 491.40](#) and [491.41](#) shall work a forfeiture of the corporate privileges, to be enforced as provided by law.

[C51, §690; R60, §1167; C73, §1074; C97, §1622; C24, 27, 31, 35, 39, §8379; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.42]

#### **491.43 Keeping false accounts.**

The intentional keeping of false books or accounts shall be a fraudulent practice on the part of any officer, agent, or employee of the corporation guilty thereof, or of anyone whose duty it is to see that such books or accounts are correctly kept.

[C51, §691; R60, §1168; C73, §1075; C97, §1623; C24, 27, 31, 35, 39, §8381; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.43]

#### **491.44 and 491.45 Reserved.**

#### **491.46 Books to show names of stockholders.**

The books of the corporation shall be kept to show the amount of capital stock actually paid in, the number of shares of stock issued, the original stockholders, and all transfers of shares of stock, and there shall be entered upon the books of the corporation the name of the person by and to whom stock is transferred, the numbers or other designations of the shares of stock and the date of transfer. [This section](#) does not create any rights or impose any duties inconsistent with the provisions of [chapter 554](#).

[C51, §692; R60, §1169; C73, §1078; C97, §1626; C24, 27, 31, 35, 39, §8385; C46, 50, §491.47; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.46]

Referred to in [§491.50](#)

#### **491.47 Names exhibited at meetings.**

It shall be the duty of the officer or agent of any corporation organized under the laws of the state of Iowa, or any foreign corporation qualified to do business in the state of Iowa and holding a meeting of its stockholders in the state of Iowa, who has charge of the stock records of such corporation to prepare and make, at least ten days before the holding of such meeting, a complete list of the stockholders entitled to vote thereat, arranged in alphabetical order. Such list shall be open and available at the place where said meeting is to be held for said ten days to the examination of any stockholder, and shall be kept at the time and place of meeting during the whole time thereof, and subject to the inspection of any stockholder who may be present at said meeting. The original or duplicate stock ledger of the corporation shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the corporation or to vote in person or by proxy at such meeting. Failure to comply with the requirements of [this section](#) shall not affect the validity of any action taken at such meeting. An officer or agent having charge of the transfer books who shall fail to prepare the

list of stockholders, or keep the same on file for a period of ten days, or produce and keep the same open for inspection at the meeting, as provided in [this section](#), shall be liable to any stockholder suffering damage on account of such failure, to the extent of such damage.

[C24, 27, 31, 35, 39, §8384; C46, 50, §491.46; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.47]  
Referred to in [§491.50](#)

#### **491.48 Stock certificates — signing.**

A corporation organized and existing under the laws, either general or special, of this state, may designate in its articles or bylaws the officer or officers who shall be empowered to sign stock certificates issued by the corporation. If the articles or bylaws provide for the signature of a registrar or the signature or countersignature of a transfer agent on stock certificates issued by it, the corporation may likewise provide in the articles or bylaws that in lieu of the actual signature of the officer or officers authorized to sign stock certificates, the facsimile thereof may be either engraved or printed thereon.

[C31, 35, §8385-d1; C39, §8385.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.48]

#### **491.49** Repealed by 65 Acts, ch 413, § 10102.

#### **491.50 Examination by stockholder.**

Any person who shall be a stockholder of record of any corporation organized under the laws of the state of Iowa or any foreign corporation authorized to transact business in the state of Iowa and maintaining its books and records in the state of Iowa shall have the right to examine in person or by duly authorized agent or attorney at any reasonable time or times and for any proper purpose the stock records, minutes and records of stockholders' meetings, and the books and records of account and to make extracts therefrom.

The provisions of [sections 491.46](#) and [491.47](#) and [this section](#) shall not apply to building and loan associations, savings and loan associations, deposit, loan and investment records of banks and trust companies, or insurance companies organized under the laws of the state of Iowa, and to whom the provisions of [this chapter](#) would otherwise be applicable.

[C51, §692; R60, §1169; C73, §1078; C97, §1626; C24, 27, 31, 35, 39, §8385, 8386; C46, 50, §491.47, 491.50; C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.50]

#### **491.51 through 491.53** Repealed by 65 Acts, ch 413, § 10102.

#### **491.54 Liability of collateral holder.**

No holder of stock as collateral security shall be liable for assessments on the same.

[C97, §1626; C24, 27, 31, 35, 39, §8390; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.54]

#### **491.55 Right to vote stock — attachment.**

Every executor, administrator, guardian, or trustee shall represent the stock in the person's hands at all corporate meetings, and may vote the same as a stockholder.

Every person who shall pledge the person's stock, in the absence of a written agreement to the contrary, may represent the same at all such meetings and vote accordingly.

The owner of corporate stock levied upon by attachment or other proceeding shall have the right to vote the same at all corporate meetings, until such time as the owner shall have been divested of title thereto by execution sale.

Nothing contained in [this section](#) shall in any manner conflict with any provision in the articles of incorporation, or the bylaws of the corporation issuing the stock.

[S13, §1641-a; C24, 27, 31, 35, 39, §8391; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.55]

#### **491.56 Expiration and closing of business.**

Corporations whose charters expire by limitation or the voluntary act of the stockholders may nevertheless continue to act for the purpose of winding up their affairs.

[C51, §694; R60, §1171; C73, §1080; C97, §1629; C24, 27, 31, 35, 39, §8392; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.56]

#### **491.57 Sinking fund and loaning thereof.**

For the purpose of repairs, rebuilding, enlarging, or to meet contingencies, or for the purpose of creating a sinking fund, the corporation may set apart a sum which it may loan, and take proper securities therefor.

[C51, §699; R60, §1176; C73, §1081; C97, §1630; C24, 27, 31, 35, 39, §8393; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.57]

#### **491.58 Liability of stockholders.**

Neither anything in [this chapter](#) contained, nor any provisions in the articles of corporation, shall exempt the stockholders from individual liability to the amount of the unpaid installments on the stock owned by them, or transferred by them for the purpose of defrauding creditors; and execution against the company may, to that extent, be levied upon the private property of any such individual. The foregoing provisions shall not apply to building and loan associations, and savings and loan associations.

[C51, §695; R60, §1172; C73, §1082; C97, §1631; C24, 27, 31, 35, 39, §8394; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.58]

#### **491.59 Levy on private property.**

In none of the cases contemplated in [this chapter](#) can the private property of the stockholders be levied upon for the payment of corporate debts while corporate property can be found with which to satisfy the same; but it will be sufficient proof that no property can be found, if an execution has issued on a judgment against the corporation, and a demand has been thereon made of some one of the last acting officers of the body for property on which to levy, and the officer neglects to point out any such property.

[C97, §1631; C24, 27, 31, 35, 39, §8395; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.59]  
Referred to in [§491.61](#)

#### **491.60 Suit by creditor — measure of recovery.**

In suits by creditors to recover unpaid installments upon shares of stock against any person who has in any manner obtained such stock of the corporation, the stockholder shall be liable for the difference between the amount paid by the stockholder to the corporation for said stock and the face value thereof.

[C97, §1631; C24, 27, 31, 35, 39, §8396; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.60]

#### **491.61 Corporate property exhausted.**

Before any stockholder can be charged with the payment of a judgment rendered for a corporate debt, an action shall be brought against the stockholder, in any stage of which the stockholder may point out corporate property subject to levy; and, upon the stockholder's satisfying the court of the existence of such property, by affidavit or otherwise, the cause may be continued, or execution against the stockholder stayed, until the property can be levied upon and sold, and the court may subsequently render judgment for any balance which there may be after disposing of the corporate property; but if a demand of property has been made as contemplated in [section 491.59](#), the costs of said action shall, in any event, be paid by the company or the defendant therein, but the stockholder shall not be permitted to controvert the validity of the judgment rendered against the corporation, unless it was rendered through fraud and collusion.

[C51, §696, 697; R60, §1173, 1174; C73, §1083, 1084; C97, §1632; C24, 27, 31, 35, 39, §8397; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.61]

#### **491.62 Indemnity — contribution.**

When the property of a stockholder is taken for a corporate debt, the stockholder may maintain an action against the corporation for indemnity, and against any of the other stockholders for contribution.

[C51, §698; R60, §1175; C73, §1085; C97, §1633; C24, 27, 31, 35, 39, §8398; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.62]

**491.63 Franchise sold on execution.**

The franchise of a corporation may be levied upon under execution and sold, but the corporation shall not become thereby dissolved, and no dissolution of the original corporation shall affect the franchise, and the purchaser becomes vested with all the powers of the corporation therefor. Such franchise shall be sold without appraisalment.

[C51, §700; R60, §1177; C73, §1086; C97, §1634; C24, 27, 31, 35, 39, §8399; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.63]

**491.64 Production of books.**

In proceedings by or against a corporation or a stockholder to charge the stockholder's private property, or the dividends received by the stockholder, the court may, upon motion of either party, upon cause shown for that purpose, compel the officers or agents of the corporation to produce the books and records of the corporation.

[C51, §701; R60, §1178; C73, §1087; C97, §1635; C24, 27, 31, 35, 39, §8400; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.64]

Similar provision, R.C.P. 1.512 et seq.

**491.65 Estoppel.**

No person or persons acting as a corporation shall be permitted to set up the want of a legal organization as a defense to an action against them as a corporation, nor shall any person sued on a contract made with such an acting corporation, or sued for an injury to its property, or a wrong done to its interests, be permitted to set up a want of such legal organization in the person's defense.

[C51, §704; R60, §1181; C73, §1089; C97, §1636; C24, 27, 31, 35, 39, §8401; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.65]

**491.66 Dissolution — receivership.**

Courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, and to appoint a receiver therefor, who shall be a resident of the state of Iowa. An action therefor may be instituted by the attorney general in the name of the state, reserving, however, to the stockholders and creditors all rights now possessed by them.

[C97, §1640; C24, 27, 31, 35, 39, §8402; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.66]

**491.67 Repealed by 79 Acts, ch 133, § 13.****491.68 False statements or pretenses.**

Every director, officer, or agent of any corporation or joint-stock association, who knowingly concurs in making, publishing, or posting, either generally or privately to the stockholders or other persons, any written report, exhibit, or statement of its affairs or pecuniary condition, or book or notice containing any material statement which is false, or any untrue or willfully or fraudulently exaggerated report, prospectus, account, statement of operations, values, business, profits, expenditures, or prospects, or any other paper or document intended to produce or give, or having a tendency to produce or give, the shares of stock in such corporation a greater value or a less apparent or market value than they really possess, is guilty of a fraudulent practice.

[S13, §1641-g; C24, 27, 31, 35, 39, §8404; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.68]

**491.69 through 491.71 Repealed by 75 Acts, ch 57, § 17.****491.72 through 491.100 Reserved.**

## CORPORATION MERGER OR CONSOLIDATION

### **491.101 Definitions.**

1. “*Merger*” means the uniting of two or more corporations into one corporation in such manner that the corporation resulting from the merger retains its corporate existence and absorbs the other constituent corporation or corporations which thereby lose their or its corporate existence.

2. “*Consolidation*” means the uniting of two or more corporations into a single new corporation, all of the constituent corporations thereby ceasing to exist as separate entities.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.101]

### **491.101A Poison pill defense authorized.**

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

89 Acts, ch 288, §187

### **491.101B Consideration of community interests in consideration of acquisition proposals.**

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

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

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

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

2. If on the basis of the community interest factors described in [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.

89 Acts, ch 288, §188

### **491.102 Procedure for merger.**

Any two or more corporations whether heretofore or hereafter organized may merge into one of such corporations in the following manner:

The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of mergers setting forth:

1. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

2. The terms and conditions of the proposed merger.

3. The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.

4. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.



5. Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.102]

Referred to in §508B.2, 515G.2, 521.2

#### **491.103 Procedure for consolidation.**

Any two or more corporations whether heretofore or hereafter organized may consolidate into a new corporation in the following manner:

The board of directors of each corporation, shall, by a resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

1. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

2. The terms and conditions of the proposed consolidation.

3. The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation.

4. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under [this chapter](#).

5. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.103]

Referred to in §508B.2, 515G.2, 521.2

#### **491.104 Meetings of shareholders.**

The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be delivered not less than twenty days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state the place, day, hour and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.104]

Referred to in §508B.2, 515G.2, 521.2

#### **491.105 Approval by shareholders.**

At each such meeting, a vote of the shareholders entitled to vote thereat shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting, of each of such corporations, unless any class of shares of any such corporations is entitled to vote as a class in respect thereof in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares of each such class of shares entitled to vote as a class in respect thereof and two-thirds of the total outstanding shares entitled to vote at such meeting. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.105]

Referred to in §508B.2, 515G.2, 521.2

#### **491.106 Articles of merger or consolidation.**

Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president, and verified by that person, attested by its secretary or an assistant secretary, and shall be acknowledged and shall set forth:

1. The plan of merger or the plan of consolidation.

2. As to each corporation, the number of shares outstanding, and the number of shares entitled to vote, and, if the shares of any class are entitled to vote as a class, the designation of each such class and the number of outstanding shares thereof entitled to vote.

3. As to each corporation, the number of shares voted for and against such plan respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.106]

#### **491.107 Filing articles of merger or consolidation.**

A duly executed and acknowledged copy of the articles of merger or consolidation shall be forwarded to the secretary of state for filing and recording as provided in [section 491.5](#).

The procedure set forth in [sections 491.6 to 491.9](#) of [this chapter](#) shall be applicable to the filing of articles of consolidation or merger.

If as the result of a consolidation a new Iowa corporation is formed then the fees provided for in [section 491.11](#) shall be applicable. If as the result of a merger an existing Iowa corporation becomes the survivor the articles of merger shall be deemed an amendment to its articles of incorporation and [section 491.20](#) shall be applicable.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.107]

94 Acts, ch 1055, §8

#### **491.108 Effective date of merger or consolidation.**

Upon the payment of all fees and charges and upon the filing of the articles of consolidation or merger with the secretary of state the secretary of state shall issue to the corporation or its representative a certificate of consolidation or a certificate of merger and upon the issuance of said certificate the merger or consolidation shall be effected.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.108]

#### **491.109 Notice.**

Notice of the articles of consolidation or merger shall be given as provided in [section 491.17](#).

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.109]

#### **491.110 Effect of merger or consolidation.**

When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

3. Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under [this chapter](#).

4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

5. Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors

nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

6. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under [this chapter](#) shall be deemed to be the articles of incorporation of the new corporation.

7. The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.110]

#### **491.111 Merger or consolidation of domestic and foreign corporations.**

One or more foreign corporations and one or more domestic corporations whether heretofore or hereafter organized may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

1. Each domestic corporation shall comply with the provisions of [this chapter](#) with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of the statutes of the state of Iowa with respect to foreign corporations if it is to do business in this state, and in every case it shall file with the secretary of state of this state:

a. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

b. The appointment of a resident agent as provided for in [section 490.501](#).

c. An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of [this division](#) with respect to the rights of dissenting shareholders.

Insofar as the state of Iowa is concerned, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.111]

93 Acts, ch 126, §11

#### **491.112 Rights of dissenting shareholders.**

If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of the shareholder's shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing said shares, such fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder

failing to make demand within the twenty-day period shall be conclusively presumed to have consented to the merger or consolidation and shall be bound by the terms thereof.

If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of the certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the state and judicial subdivision thereof in which the registered office or the principal place of business of the surviving or new corporation is situated, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of five percent per annum to the date of such judgment. The action shall be prosecuted as an equitable action and the practice and procedure shall conform to the practice and procedure in equity cases. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under the shareholder shall be conclusively presumed to have approved and ratified the merger or consolidation and shall be bound by the terms thereof.

The right of a dissenting shareholder to be paid the fair value of the shareholder's shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation.

Shares acquired by the corporation pursuant to the payment of the agreed value thereof or to the payment of judgment entered therefor as in [this section](#) provided may be held and disposed of by the corporation as it shall see fit.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.112]

#### **491.113 Issuance of stock.**

All stock issued in connection with such merger or consolidation shall be issued pursuant to the provisions of [chapter 492](#) and nothing in this amendment shall be construed as eliminating the requirements of said chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.113]

#### **491.114 Amana stock.**

Notwithstanding anything contained in [this chapter](#) and [chapters 492](#) and [502](#), a corporation organized under the laws of the state of Iowa having assets of the value of one million dollars or more, the articles of which provide that an individual may not vote more than one share of the common voting shares of stock of the corporation, and which give to children of the owners of shares of the common voting stock the right to purchase one common voting share of stock in the corporation upon attaining majority or within a fixed period thereafter, and which authorize the issuance, sale and delivery of not to exceed one share of the common voting stock to any one individual, may issue, sell and deliver its shares of common voting stock, whether held by it as treasury stock or whether issued as an original issue, for the following considerations and upon the following terms and conditions, and with the following limitations:

1. Such common voting stock may be issued, sold and delivered by the corporation either for cash or upon credit or time payments or installment payments or for a consideration

evidenced in part or in whole by the written agreement of the purchaser thereof to pay for the same, payment of said purchase price to be secured by a lien on said stock.

2. No such stock shall be issued, sold and delivered for a price less than the par value thereof at the time of such issuance, sale and delivery.

3. Not more than one share of said stock shall be so issued, sold and delivered to any one individual, but when issued, sold and delivered, said stock may be voted by the owner thereof, if the articles of incorporation or bylaws of such corporation, whether now in effect or hereafter adopted or amended, so provide, although a part or all of the price to be paid therefor may be owing to the corporation under said written agreement of the purchaser to pay for the same.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §491.114]

**491.115** Repealed by 77 Acts, ch 127, § 9.