CHAPTER 490

BUSINESS CORPORATIONS

Referred to in §9H.1, §9H.4, §10.1, §10B.1, §10B.4, §10B.7, §10D.1, §15E.202, §15E.204, §15E.205, §261B.3A, §312.8, §423.1, §455B.397, §455B.430, §468.327, §468.506, §491.1, §495.3, §496B.3, §496B.6, §496B.8, §496B.11, §496B.12, §496B.17, §496C.2, §496C.3, §496C.4, §496C.9, §496C.14, §496C.16, §496C.19, §496C.20, §496C.21, §496C.22, §497.34, §498.36, §499.43B, §499.54, §499.59A, §499.61, §499.69A, §501A.102, §504.1108, §506.12, §508B.2, §514.23, §515.1, §515G.2, §515G.3, §521.2, §521.17, §524.1309, §524.1809, §524.2001, §547.1, §556.1, §556.5, §558.72, §669.14

Chapter effective December 31, 1989; 89 Acts, ch 288, §196
Transition; application to existing corporations;
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DIVISION I

GENERAL PROVISIONS

PART A

490.101 Short title.

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

89 Acts, ch 288, §1

490.102 Reservation of power to amend or repeal.

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

89 Acts, ch 288, §2

490.103 through 490.119 Reserved.

PART B

490.120 Filing requirements.

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

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

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

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

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

6. Except as provided in **section 490.1622, subsection 2**, the document must be executed by one of the following methods:

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

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

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

7. *a.* 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 corporate seal, attestation, acknowledgment, or verification.

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

8. If the secretary of state has prescribed a mandatory form for the document under **section 490.121**, the document must be in or on the prescribed form.

9. The document must be delivered to the office of the secretary of state for filing. 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. 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.

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

12. Whenever a provision of **this chapter** permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside of the plan or filed document, all of the following provisions apply:

a. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

b. The facts may include, but are not limited to any of the following:

(1) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by any person or body, including the corporation or any other party to a plan or filed document.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

c. As used in **this subsection**:

(1) "*Filed document*" means a document filed with the secretary of state under any provision of **this chapter** except **division XV** or **section 490.1622**.

(2) "*Plan*" means a plan of merger or share exchange.

d. The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(1) The name and address of any person required in a filed document.

(2) The registered office of any entity required in a filed document.

(3) The registered agent of any entity required in a filed document.

(4) The number of authorized shares and designation of each class or series of shares.

(5) The effective date of a filed document.

(6) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

e. If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph "*b*", subparagraph (1), or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

89 Acts, ch 288, §3; 90 Acts, ch 1205, §16; 2002 Acts, ch 1154, §1, 2, 125; 2007 Acts, ch 140, §1; 2012 Acts, ch 1023, §157

Referred to in **§490.125**, **§490.140**, **§490.202**, **§490.601**, **§490.1006**, **§490.1102**, **§490.1103**, **§490.1601**, **§490.1622**

490.121 Forms.

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

(1) A foreign corporation's application for a certificate of authority to transact business in this state.

(2) A foreign corporation's application for a certificate of withdrawal.

(3) The biennial report.

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

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

89 Acts, ch 288, §4; 96 Acts, ch 1170, §2; 97 Acts, ch 171, §5; 2012 Acts, ch 1023, §157

Referred to in **§490.120**

490.122 Filing, service, and copying fees.

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

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

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

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

a. $1.00 a page for copying.

b. $5.00 for the certificate.

89 Acts, ch 288, §5; 90 Acts, ch 1205, §17; 97 Acts, ch 171, §6; 2008 Acts, ch 1162, §116, 155
Referred to in **§499.45**, **§499.54**, **§524.303**, **§524.1402**, **§524.1410**, **§524.1421**
Filing fee for biennial report; **§490.1622**
Authority to refund fees; 2012 Acts, ch 1131, §28; 2013 Acts, ch 135, §24, 52

490.123 Effective time and date of documents.

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, as evidenced by such means as the secretary of 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.

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

89 Acts, ch 288, §6; 2002 Acts, ch 1154, §3, 125
Referred to in **§490.1523**, **§490.1622**

490.124 Correcting filed documents.

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

a. The document contains an inaccuracy.

b. 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 inaccuracy or defect to be corrected.

(3) Correct the inaccuracy or defect.

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

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

89 Acts, ch 288, §7; 2002 Acts, ch 1154, §4, 125
Referred to in **§490.123**

490.125 Filing duty of secretary of state.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of **section 490.120**, the secretary of state shall file it.

2. The secretary of state files a document by recording it as filed on the date and time of receipt. 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 to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.

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

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

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

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

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

89 Acts, ch 288, §8; 96 Acts, ch 1170, §3; 97 Acts, ch 171, §7; 2002 Acts, ch 1154, §5, 125

490.126 Appeal from secretary of state's refusal to file document.

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

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

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

89 Acts, ch 288, §9

490.127 Evidentiary effect of copy of filed document.

A certificate from the secretary of state delivered with a copy of a document filed by the secretary of state is conclusive evidence that the original document is on file with the secretary of state.

89 Acts, ch 288, §10; 90 Acts, ch 1205, §18; 2002 Acts, ch 1154, §6, 125

490.128 Certificate of existence.

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

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

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

b. That one of the following apply:

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

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

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

d. That its most recent biennial report required by **section 490.1622** has been filed by the secretary of state.

e. If it is a domestic corporation, that articles of dissolution have not been filed.

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

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

89 Acts, ch 288, §11; 90 Acts, ch 1205, §19; 97 Acts, ch 171, §8

490.129 Penalty for signing false document.

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

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

89 Acts, ch 288, §12

490.130 Repealed by 91 Acts, ch 211, §13. See §9.7.

490.131 through 490.134 Reserved.

PART C

490.135 Secretary of state — powers.

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

89 Acts, ch 288, §14

490.136 through 490.139 Reserved.

PART D

490.140 Definitions.

In **this chapter**, unless the context requires otherwise:

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

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

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

4. *"Cooperative association"* means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. §1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. §1141(j)(a) or 7 U.S.C. §291.

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

6. *"Deliver"* or *"delivery"* means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with **section 490.141**, by electronic transmission.

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

8. *"Document"* means any of the following:

a. A tangible medium on which information is inscribed, and includes any writing or written instrument.

b. An electronic record.

9. *"Domestic unincorporated entity"* means an unincorporated entity whose internal affairs are governed by the laws of this state.

10. *"Effective date of notice"* is defined in **section 490.141**.

11. *"Electronic"* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

12. *"Electronic record"* means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with **section 490.141, subsection 10**.

13. *"Electronic transmission"* or *"electronically transmitted"* means any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which is all of the following:

a. Suitable for the retention, retrieval, and reproduction of information by the recipient.

b. Retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with **section 490.141, subsection 10**.

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

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

16. *"Expenses"* means reasonable expenses of any kind that are incurred in connection with a matter.

17. The phrase *"facts objectively ascertainable"* outside of a filed document or plan is defined in **section 490.120, subsection 12**.

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

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

20. *"Includes"* denotes a partial definition.

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

22. *"Means"* denotes an exhaustive definition.

23. *"Notice"* is defined in **section 490.141**.

24. *"Person"* means a person as defined in **section 4.1**.

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

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

27. *"Public corporation"* means a corporation that has a class of voting stock that is listed on a national securities exchange or held of record by more than two thousand shareholders.

28. *"Qualified director"* means the same as defined in **section 490.143**.

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

30. *"Secretary"* means the corporate officer to whom the board of directors has delegated responsibility under **section 490.840, subsection 3**, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

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

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

33. *"Sign"* or *"signature"* means, with present intent to authenticate or adopt a document, doing any of the following:

a. Executing or adopting a tangible symbol to a document, and includes any manual, facsimile, or conformed signature.

b. Attaching to or logically associating with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

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

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

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

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

38. *"Voting power"* means the current power to vote in the election of directors.

39. *"Writing"* or *"written"* means any information in the form of a document.

89 Acts, ch 288, §15; 91 Acts, ch 211, §3; 97 Acts, ch 171, §9; 2001 Acts, ch 142, §1; 2002 Acts, ch 1154, §7, 8, 125; 2007 Acts, ch 140, §2; 2011 Acts, ch 2, §1, 10; 2013 Acts, ch 31, §1, 2, 82

Referred to in §15E.202

490.141 Notice or other communication.

1. Notice under **this chapter** must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under **this chapter** must be in English.

2. A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with **this section**. If these methods of delivery are impracticable, a notice or other communication 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. Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be delivered to its registered agent at its registered office or to the secretary of the corporation at its principal office shown in its most recent biennial report or, in the case of a foreign corporation that has not yet delivered a biennial report, in its application for a certificate of authority.

4. Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by **subsection 10**.

5. Any consent under **subsection 4** may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if all of the following apply:

a. The corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with such consent.

b. Such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice or other communications; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

6. Unless otherwise agreed between the sender and the recipient, an electronic transmission is received when all of the following apply:

a. The electronic transmission enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission.

b. The electronic transmission is in a form capable of being processed by that system.

7. Receipt of an electronic acknowledgment from an information processing system described in **subsection 6**, paragraph *"a"*, establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

8. An electronic transmission is received under **this section** even if no individual is aware of its receipt.

9. Notice or other communication if in a comprehensible form or manner, is effective at the earliest of any of the following:

a. If in physical form, the earliest of when it is actually received or when it is left at any of the following:

(1) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under **section 490.1601, subsection 3**.

(2) A director's residence or usual place of business.

(3) The corporation's principal place of business.

b. If mailed by United States mail postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail.

c. If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received or as follows:

(1) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee.

(2) Five days after it is deposited in the United States mail.

d. If an electronic transmission, when it is received as provided in **subsection 6**.

e. If oral, when communicated.

10. A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if all of the following apply:

a. The electronic transmission is otherwise retrievable in perceivable form.

b. The sender and the recipient have consented in writing to the use of such form of electronic transmission.

11. If **this chapter** prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications, not inconsistent with **this section** or other provisions of **this chapter**, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

89 Acts, ch 288, §16; 97 Acts, ch 171, §10; 2002 Acts, ch 1154, §9, 125; 2013 Acts, ch 31, §3, 82

Referred to in **§490.140**, **§490.1620**

490.142 Number of shareholders.

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

a. Three or fewer co-owners.

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

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

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

89 Acts, ch 288, §17

490.143 Qualified director.

1. For purposes of **this chapter**, a "*qualified director*" is a director who takes action under any of the following provisions, if at the time action is to be taken any of the following applies:

a. Under **section 490.744**, the director does not have any of the following:

(1) A material interest in the outcome of the proceeding.

(2) A material relationship with a person who has such an interest.

b. Under **section 490.853** or **490.855**, all of the following apply:

(1) The director is not a party to the proceeding.

(2) The director is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under **section 490.870**, which transaction or disclaimer is challenged in the proceeding.

(3) The director does not have a material relationship with a director described in either subparagraph (1) or (2).

c. Under **section 490.862**, the director is not any of the following:

(1) A director as to whom the transaction is a director's conflicting interest transaction.

(2) A director who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction.

d. Under **section 490.870**, the director would be a qualified director under paragraph "*c*", if the business opportunity was a director's conflicting interest transaction.

2. For purposes of **this section**, all of the following apply:

a. "*Material interest*" means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

b. *"Material relationship"* means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

3. The presence of one or more of the following circumstances shall not automatically prevent a director from being a qualified director:

a. Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others.

b. Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is or was also a director.

c. With respect to action to be taken under **section 490.744**, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

2013 Acts, ch 31, §4, 82

Referred to in **§490.140**

490.144 Householding.

1. A corporation has delivered written notice or any other report or statement under **this chapter**, the articles of incorporation, or the bylaws to all shareholders who share a common address if all of the following apply:

a. The corporation delivers one copy of the notice, report, or statement to the common address.

b. The corporation addresses the notice, report, or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented.

c. Each of those shareholders consents to delivery of a single copy of such notice, report, or statement to the shareholders' common address. Any such consent shall be revocable by any of such shareholders who deliver written notice of revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports, or other statements to the revoking shareholder no later than thirty days after delivery of the written notice of revocation.

2. Any shareholder who fails to object by written notice to the corporation, within sixty days of written notice by the corporation of its intention to send single copies of notices, reports, or statements to shareholders who share a common address as permitted by **subsection 1**, shall be deemed to have consented to receiving such single copy at the common address.

2013 Acts, ch 31, §5, 82

DIVISION II

INCORPORATION

Referred to in **§15E.206**

490.201 Incorporators.

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

89 Acts, ch 288, §18

Referred to in **§15E.206**

490.202 Articles of incorporation.

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

a. A corporate name for the corporation that satisfies the requirements of **section 490.401**.

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

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

d. The name and address of each incorporator.

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

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

b. Provisions not inconsistent with law regarding:

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

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

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

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

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

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

d. (1) 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:

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

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

(c) A violation of **section 490.833**.

(d) An intentional violation of criminal law.

(2) 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.

e. A provision permitting or making obligatory indemnification of a director for liability, as defined in **section 490.850, subsection 3**, 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.

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

4. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with **section 490.120**.

89 Acts, ch 288, §19; 2002 Acts, ch 1154, §10, 125; 2003 Acts, ch 44, §80; 2007 Acts, ch 140, §3; 2012 Acts, ch 1023, §87

Referred to in **§490.831**, **§490.851**, **§490.853**, **§490.1113**, **§491.5**, **§524.1309**

490.203 Incorporation.

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

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

89 Acts, ch 288, §20

490.204 Liability for preincorporation transactions.

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

89 Acts, ch 288, §21

490.205 Organization of corporation.

1. After incorporation:

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

b. If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to do one of the following:

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

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

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

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

89 Acts, ch 288, §22

490.206 Bylaws.

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

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

89 Acts, ch 288, §23

490.207 Emergency bylaws.

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

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

b. Quorum requirements for the meeting.

c. Designation of additional or substitute directors.

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

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

a. The action binds the corporation.

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

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

89 Acts, ch 288, §24

DIVISION III

PURPOSES AND POWERS

490.301 Purposes.

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

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

89 Acts, ch 288, §25

Referred to in **§490.401**

490.302 General powers.

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

1. Sue and be sued, complain, and defend in its corporate name.
2. Have a corporate seal, which may be altered at will, and use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.
3. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation.
4. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.
5. Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.
6. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or other interests in, or obligations of, any other entity.
7. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.
8. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.
9. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity.
10. Conduct its business, locate offices, and exercise the powers granted by **this chapter** within or without this state.
11. Elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit.
12. Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents.
13. Make donations for the public welfare or for charitable, scientific, or educational purposes.
14. Transact any lawful business that will aid governmental policy.
15. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

89 Acts, ch 288, §26

490.303 Emergency powers.

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

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

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

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

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

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

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

a. Bind the corporation.

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

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

89 Acts, ch 288, §27

490.304 Ultra vires.

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

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

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

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

c. By the attorney general under **section 490.1430**.

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

89 Acts, ch 288, §28

DIVISION IV

NAMES

490.401 Corporate name.

1. A corporate name:

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

b. Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by **section 490.301** and its articles of incorporation.

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

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

b. A name reserved, registered, or protected as follows:

(1) For a limited liability partnership, **section 486A.1001** or **486A.1002**.

(2) For a limited partnership, **section 488.108**, **488.109**, or **488.810**.

(3) For a business corporation, **this section**, or **section 490.402**, **490.403**, or **490.1422**.

(4) For a limited liability company under **chapter 489**, **section 489.108**, **489.109**, or **489.706**.

(5) For a nonprofit corporation, **section 504.401**, **504.402**, **504.403**, or **504.1423**.

c. The fictitious name adopted by a foreign corporation or a not-for-profit foreign corporation authorized to transact business in this state because its real name is unavailable.

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

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

a. The other corporation consents to the use in writing and submits an undertaking in

form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation.

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

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

a. Has merged with the other corporation.

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

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

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

89 Acts, ch 288, §29; 90 Acts, ch 1205, §20 – 22; 96 Acts, ch 1170, §4; 2004 Acts, ch 1049, §183, 191, 192; 2006 Acts, ch 1089, §6; 2008 Acts, ch 1162, §138, 154, 155

Referred to in **§488.108**, **§490.202**, **§490.403**, **§490.1422**, **§490.1506**, **§504.401**, **§504.403**

490.402 Reserved name.

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

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

89 Acts, ch 288, §30

Referred to in **§488.108**, **§490.401**, **§490.1506**, **§504.401**, **§504.403**, **§504.1506**, **§524.310**

490.403 Registered name.

1. A foreign corporation may register its corporate name, or its corporate name with any addition required by **section 490.1506**, if the name is distinguishable upon the records of the secretary of state from the corporate names that are not available under **section 490.401, subsection 2**, paragraph *"b"*.

2. A foreign corporation registers its corporate name, or its corporate name with any addition required by **section 490.1506**, by delivering to the secretary of state for filing an application:

a. Setting forth its corporate name, or its corporate name with any addition required by **section 490.1506**, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged.

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

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

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

5. A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation

thereafter incorporated under **this chapter** or by another foreign corporation thereafter authorized to transact business in this state. The first registration terminates when the domestic corporation is incorporated with that name or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

89 Acts, ch 288, §31
Referred to in **§488.108**, **§490.401**, **§490.1506**, **§504.401**, **§504.403**, **§504.1506**, **§524.310**

DIVISION V

REGISTERED OFFICE AND AGENT — SERVICE

490.501 Registered office and registered agent.

Each corporation must continuously maintain in this state both of the following:

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

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

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

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

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

89 Acts, ch 288, §32
Referred to in **§491.111**, **§624.23**

490.502 Change of registered office or registered agent.

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

a. The name of the corporation.

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

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

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

2. If the street address of a registered agent's business office changes, the agent may change the street address of the registered office of any corporation for which the person is the registered agent by delivering a signed written notice of the change to the corporation and delivering to the secretary of state for filing a signed statement that complies with the requirements of **subsection 1** and recites that the corporation has been notified of the change.

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

4. A corporation may also change its registered office or registered agent in its biennial report as provided in **section 490.1622**.

89 Acts, ch 288, §33; 96 Acts, ch 1170, §5; 97 Acts, ch 171, §11; 2006 Acts, ch 1089, §7; 2013 Acts, ch 31, §6, 82
Referred to in **§490.1622**, **§490.1701**

490.503 Resignation of registered agent.

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

registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

89 Acts, ch 288, §34; 96 Acts, ch 1170, §6
Referred to in §490.120, §490.125

490.504 Service on corporation.

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

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

a. The date the corporation receives the mail.

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

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

3. A corporation may be served pursuant to **this section**, as provided in other provisions of **this chapter**, or as provided in **sections 617.3 through 617.6**, unless the manner of service is otherwise specifically provided for by statute.

89 Acts, ch 288, §35; 96 Acts, ch 1170, §7
Referred to in §490.1114, §490.1421, §490.1422, §490.1423, §624.23

DIVISION VI

SHARES AND SHAREHOLDERS' RIGHTS

Referred to in §490.140

PART A

490.601 Authorized shares.

1. The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations of that class or series. Except to the extent varied as permitted by **this section**, all shares of a class or series must have terms, including preferences, rights, and limitations that are identical with those of other shares of the same class or series.

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

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

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

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

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

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

(1) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event.

(2) For cash, indebtedness, securities, or other property.

(3) At prices and in amounts specified, or determined in accordance with a designated formula.

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

d. Have preference over any other class or series of shares with respect to distributions, including distributions upon the dissolution of the corporation.

4. The terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with **section 490.120, subsection 12**.

5. The terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

6. The description of the preferences, rights, and limitations of classes or series of shares in **subsection 3** is not exhaustive.

89 Acts, ch 288, §36; 2007 Acts, ch 140, §4

Referred to in **§490.602**

490.602 Terms of class or series determined by board of directors.

1. If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to do any of the following:

a. Classify any unissued shares into one or more series within a class.

b. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes.

c. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

2. If the board of directors acts pursuant to **subsection 1**, it must determine the terms, including the preferences, rights, and limitations, to the same extent permitted under **section 490.601**, of any of the following:

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

b. Any series within a class before the issuance of any shares of that series.

3. Before issuing any shares of a class or series created under **this section**, the corporation must deliver to the secretary of state for filing articles of amendment setting forth the terms determined under **subsection 1**.

89 Acts, ch 288, §37; 2007 Acts, ch 140, §5

Referred to in **§490.1005**

490.603 Issued and outstanding shares.

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

2. The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of **subsection 3** and to **section 490.640**.

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

89 Acts, ch 288, §38

490.604 Fractional shares.

1. A corporation may:

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

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

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

2. Each certificate representing scrip must be conspicuously labeled “scrip” and must contain the information required by **section 490.625, subsection 2**.

3. The holder of a fractional share is entitled to exercise the rights of a shareholder,

including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

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

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

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

89 Acts, ch 288, §39

490.605 through 490.619 Reserved.

PART B

490.620 Subscription for shares before incorporation.

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

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

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

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

5. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to **section 490.621**.

89 Acts, ch 288, §40; 2013 Acts, ch 31, §7, 82

Referred to in **§490.622**

490.621 Issuance of shares.

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

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

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

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

5. The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are

not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

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.

89 Acts, ch 288, §41; 2002 Acts, ch 1154, §11, 125

Referred to in **§490.620**, **§490.622**, **§490.1104**

490.622 Liability of shareholders.

1. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under **section 490.621**, or specified in the subscription agreement authorized under **section 490.620**.

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

89 Acts, ch 288, §42

490.623 Share dividends.

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

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

a. The articles of incorporation so authorize.

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

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

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

89 Acts, ch 288, §43

490.624 Share options.

1. A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, and the terms, including the consideration for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

2. The terms and conditions of such rights, options, or warrants, including those

outstanding on July 1, 1989, may include, without limitation, restrictions, or conditions that do any of the following:

a. Preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee or transferees of any such person or persons.

b. Invalidate or void such rights, options, or warrants held by any such person or persons or any such transferee or transferees.

3. The board of directors may authorize one or more officers to do all of the following:

a. Designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares.

b. Determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants, or other equity compensation awards and the terms thereof to be received by the recipients, provided that an officer shall not use such authority to designate the officer or any other persons the board of directors may specify as a recipient of such rights, options, warrants, or other equity compensation awards.

89 Acts, ch 288, §44; 2007 Acts, ch 140, §6; 2008 Acts, ch 1031, §55, 116; 2013 Acts, ch 31, §8, 82

490.624A Poison pill defense authorized.

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

89 Acts, ch 288, §45

490.625 Content of certificates.

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

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

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

b. The name of the person to whom issued.

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

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

4. Each share certificate:

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

b. May bear the corporate seal or its facsimile.

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

89 Acts, ch 288, §46

Referred to in **§490.604**, **§490.626**

490.626 Shares without certificates.

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors

of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

2. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by **section 490.625, subsections 2 and 3**, and, if applicable, **section 490.627**.

89 Acts, ch 288, §47
Referred to in **§490.627**, **§490.732**

490.627 Restriction on transfer of shares and other securities.

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

2. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by **this section** and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by **section 490.626, subsection 2**. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

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

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

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

c. For any other reasonable purpose.

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

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

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

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

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

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

89 Acts, ch 288, §48
Referred to in **§490.626**

490.628 Expense of issue.

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

89 Acts, ch 288, §49

490.629 Reversion of disbursements to cooperative associations.

1. As used in **this section**, "*disbursement*" means an amount of any distribution or any other increment or sum realized or accruing from stock or other equity interest in a cooperative association organized under **this chapter**.

2. Once a person's stock or other equity interest in a cooperative association organized under **this chapter** is deemed abandoned under **section 556.5**, any disbursement held by the cooperative association for or owing to the person shall be subject to the same requirements as provided in **section 499.30A** that apply to a cooperative association organized under **chapter 499**, including all of the following:

a. The retention of the disbursement in a reversion fund established by the cooperative association or the delivery of the disbursement to the treasurer of state.

b. The payment of the disbursement to a person filing a claim with the cooperative association who asserts an interest in the disbursement.

c. The forfeiture of the disbursement to the cooperative association, and the use of the forfeited disbursement by the cooperative association in order to teach and promote cooperation or provide for economic development, including creating economic opportunities for its shareholders.

2001 Acts, ch 142, §2
Referred to in §556.5

PART C

490.630 Shareholders' preemptive rights.

1. The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

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

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

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

c. There is no preemptive right with respect to:

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

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

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

(4) Shares sold otherwise than for money.

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

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

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

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

89 Acts, ch 288, §50; 2006 Acts, ch 1089, §8

490.631 Corporation's acquisition of its own shares.

1. A corporation may acquire its own shares and, except as may be otherwise provided pursuant to **section 490.632**, shares so acquired constitute authorized but unissued shares.

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.

89 Acts, ch 288, §51; 90 Acts, ch 1205, §23; 2002 Acts, ch 1154, §12, 125
Referred to in §490.1005

490.632 Reacquired shares as issued but not outstanding shares.

1. A corporation which, as of December 30, 1989, treated any of its shares which it had reacquired as issued but not outstanding shares may continue to treat those shares as issued but not outstanding shares.

2. If a corporation reacquires its own shares after December 30, 1989, but before January 1, 1991, those shares constitute issued but not outstanding shares as of and after their reacquisition if either of the following is applicable:

a. When the shares are reacquired, the articles of incorporation contain a provision specifying that reacquired shares constitute issued but not outstanding shares.

b. Prior to January 1, 1991, the board of directors adopts a resolution specifying that shares reacquired after December 30, 1989, and prior to January 1, 1991, constitute issued but not outstanding shares.

3. If a corporation reacquires its own shares after December 31, 1990, those shares constitute issued but not outstanding shares if, at the time they are reacquired by the corporation, either of the following is applicable:

a. The articles of incorporation contain a provision specifying that reacquired shares constitute issued but not outstanding shares.

b. The board of directors has adopted a resolution specifying that reacquired shares constitute issued but not outstanding shares.

4. Unless otherwise provided in its articles of incorporation, a corporation may at any time, by resolution adopted by its board of directors, cancel or otherwise restore to the status of authorized but unissued shares any of its shares which it has previously reacquired and treated as issued but not outstanding shares.

90 Acts, ch 1205, §24; 91 Acts, ch 97, §54

Referred to in **§490.631**

490.633 through 490.639 Reserved.

PART D

490.640 Distribution to shareholders.

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

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

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

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

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

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

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

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

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

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

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

c. In all other cases, as of:

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

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

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

7. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under **subsection 3** if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under **this section**. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

8. **This section** shall not apply to distributions in liquidation under **division XIV**.

89 Acts, ch 288, §52; 2002 Acts, ch 1154, §13, 125; 2008 Acts, ch 1015, §1

Referred to in **§490.603**, **§490.732**, **§490.833**, **§490.1434**

DIVISION VII

MEETINGS — NOTICE — VOTING

Referred to in **§490.140**

PART A

490.701 Annual meeting.

1. Unless directors are elected by written consent in lieu of an annual meeting as permitted by **section 490.704**, a corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders; provided, however, that if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to **section 490.728**, directors shall not be elected by less than unanimous consent.

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

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

89 Acts, ch 288, §53; 2013 Acts, ch 31, §9, 82

490.702 Special meeting.

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 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 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.

2. If not otherwise fixed under **section 490.703** or **490.707**, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

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

4. Only business with the purpose or purposes described in the meeting notice required by **section 490.705, subsection 3**, may be conducted at a special shareholders' meeting.

5. Notwithstanding **subsections 1 through 4**, a public corporation is required to hold a special meeting only 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 of at least fifty percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

89 Acts, ch 288, §54; 97 Acts, ch 117, §1, 2; 2002 Acts, ch 1154, §14, 125; 2011 Acts, ch 2, §2, 10

Referred to in **§490.703**

490.703 Court-ordered meeting.

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

a. On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting.

b. On application of a shareholder who signed a demand for a special meeting valid under **section 490.702** if any of the following applies:

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

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

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

89 Acts, ch 288, §55; 2013 Acts, ch 31, §10, 82

Referred to in **§490.702**, **§490.705**

490.704 Action without meeting.

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

2. Except in the case of a public corporation, the articles of incorporation may provide that any action required or permitted by **this chapter** to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consents in writing setting forth the action so taken are signed by the holders of outstanding shares having not less than the

minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent shall bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

3. If not otherwise fixed under **section 490.707** and if prior board action is not required respecting the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting shall be the first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under **section 490.707** and if prior board action is required respecting the action to be taken without a meeting, the record date shall be the close of business on the day the resolution of the board taking such prior action is adopted. No written consent shall be effective to take the corporate action referred to therein unless, within sixty days of the earliest date on which a consent delivered to the corporation as required by **this section** was signed, written consents signed by sufficient shareholders to take the action have been delivered to the corporation. A written consent may be revoked by a writing to that effect delivered to the corporation before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

4. A consent signed pursuant to the provisions of **this section** has the effect of a meeting vote and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent shall be effective when written consents signed by sufficient shareholders to take the action are delivered to the corporation.

5. *a.* If **this chapter** requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the action not more than ten days after any of the following:

(1) Written consents sufficient to take the action have been delivered to the corporation.

(2) Such later date that tabulation of consents is completed pursuant to an authorization under **subsection 4**.

b. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of **this chapter**, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

6. *a.* If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten days after any of the following:

(1) Written consents sufficient to take the action have been delivered to the corporation.

(2) Such later date that tabulation of consents is completed pursuant to an authorization under **subsection 4**.

b. The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of **this chapter**, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

7. The notice requirements in **subsections 5 and 6** shall not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirements shall not invalidate actions taken by written consent, provided that **this subsection** shall not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

89 Acts, ch 288, §56; 2002 Acts, ch 1154, §15, 125; 2013 Acts, ch 31, §11, 82

Referred to in **§490.701**, **§490.808**, **§490.1320**, **§490.1340**

490.705 Notice of meeting.

1. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. The notice shall include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining

shareholders entitled to notice of the meeting. If the board of directors has authorized participation by means of remote communication pursuant to **section 490.709** for any class or series of shareholders, the notice to such class or series of shareholders shall describe the means of remote communication to be used. Unless **this chapter** or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

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

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

4. If not otherwise fixed under **section 490.703** or **490.707**, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

5. Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under **section 490.707**, however, notice of the adjourned meeting must be given under **this section** to shareholders entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

89 Acts, ch 288, §57; 2013 Acts, ch 31, §12, 82
Referred to in **§490.702**

490.706 Waiver of notice.

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

2. A shareholder's attendance at a meeting:

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

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

89 Acts, ch 288, §58

490.707 Record date.

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

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

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

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

5. The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors shall be the record date for determining shareholders

entitled both to notice of and to vote at the shareholders' meeting unless, in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

89 Acts, ch 288, §59; 2013 Acts, ch 31, §13, 82
Referred to in §490.702, §490.704, §490.705, §490.720

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.

2002 Acts, ch 1154, §16, 125

490.709 Remote participation in annual and special meetings.

1. Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes such participation for such class or series. Participation by means of remote communication shall be subject to such guidelines and procedures as the board of directors adopts, and shall be in conformity with **subsection 2**.

2. Shareholders participating in a shareholders' meeting by means of remote communication shall be deemed present and may vote at such a meeting if the corporation has implemented reasonable measures to do all of the following:

a. Verify that each person participating remotely is a shareholder.

b. Provide such shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate, and to read or hear the proceedings of the meeting, substantially concurrently with such proceedings.

2013 Acts, ch 31, §14, 82
Referred to in §490.705

490.710 through 490.719 Reserved.

PART B

490.720 Shareholders' list for meeting.

1. After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. If the board of directors fixes a different record date under **section 490.707, subsection 5**, to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be arranged by voting group and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

2. The shareholders' list for notice must be available for inspection by any shareholder beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholders' list for voting must be similarly available for inspection promptly after the

record date for voting. A shareholder, or a shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements of **section 490.1602, subsection 4**, to copy a list, during regular business hours and at the person's expense, during the period it is available for inspection.

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

4. If the corporation refuses to allow a shareholder, or a shareholder's agent or attorney, to inspect a shareholders' list before or at the meeting, or copy a list as permitted by **subsection 2**, the district court of the county where a corporation's principal office or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

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

89 Acts, ch 288, §60; 91 Acts, ch 211, §4; 2013 Acts, ch 31, §15, 82

Referred to in **§490.1602**

490.721 Voting entitlement of shares.

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

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

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

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

89 Acts, ch 288, §61

490.722 Proxies.

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

2. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the 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.

3. An appointment of a proxy is revocable unless the appointment form 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**.

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

5. An appointment made irrevocable under **subsection 3** is revoked when the interest with which it is coupled is extinguished.

6. A transferee for value of shares subject to an irrevocable appointment may revoke the

appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

7. Subject to **section 490.724** and to any express limitation on the proxy's authority 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.

89 Acts, ch 288, §62; 2002 Acts, ch 1154, §17, 125; 2013 Acts, ch 31, §16, 82

490.723 Shares held by nominees.

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

2. The procedure may set forth:

a. The types of nominees to which it applies.

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

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

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

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

f. Other aspects of the rights and duties created.

89 Acts, ch 288, §63

490.724 Corporation's acceptance of votes.

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

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

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

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

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

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

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

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

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

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver,

or proxy appointment under **this section** is valid unless a court of competent jurisdiction determines otherwise.

89 Acts, ch 288, §64; 2002 Acts, ch 1154, §18, 125; 2003 Acts, ch 44, §81; 2013 Acts, ch 31, §17, 82

Referred to in **§490.722**

490.725 Quorum and voting requirements for voting groups.

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

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

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

4. An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in **subsection 2 or 3** is governed by **section 490.727**.

5. The election of directors is governed by **section 490.728**.

89 Acts, ch 288, §65

Referred to in **§490.726**

490.726 Action by single or multiple groups.

1. If the articles of incorporation or **this chapter** provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in **section 490.725**.

2. If the articles of incorporation or **this chapter** provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in **section 490.725**. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

89 Acts, ch 288, §66

490.727 Greater quorum or voting requirements.

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**.

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

89 Acts, ch 288, §67; 2002 Acts, ch 1154, §19, 125; 2003 Acts, ch 44, §82

Referred to in **§490.725**

490.728 Voting for directors — cumulative voting.

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

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

3. A statement included in the articles of incorporation that "[all] [a designated voting group of] shareholders are entitled to cumulate their votes for directors", or words of similar import, means that the shareholders designated are entitled to multiply the number of votes

they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among two or more candidates.

4. Shares otherwise entitled to be voted cumulatively shall not be voted cumulatively at a particular meeting unless any of the following applies:

a. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized.

b. A shareholder who has the right to cumulate the shareholder's votes gives notice to the corporation not less than forty-eight hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

89 Acts, ch 288, §68; 90 Acts, ch 1205, §25; 2002 Acts, ch 1154, §20, 125; 2013 Acts, ch 31, §18, 82; 2014 Acts, ch 1092, §104, 105

Referred to in **§490.701**, **§490.725**

Subsection 1 amended

Subsection 4, unnumbered paragraph 1 amended

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.

2002 Acts, ch 1154, §21, 125

PART C

490.730 Voting trusts.

1. One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee must prepare a list of the names and addresses of all voting trust beneficial owners, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

2. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name.

3. Limits, if any, on the duration of a voting trust shall be as set forth in the voting trust. A voting trust that became effective between December 31, 1989, and June 30, 2014, both dates inclusive, remains governed by the provisions of **this section** then in effect, unless the voting trust is amended to provide otherwise by unanimous agreement of the parties to the voting trust.

89 Acts, ch 288, §69; 2014 Acts, ch 1024, §1

Referred to in **§490.731**

Section amended

490.731 Voting agreements.

1. Two or more shareholders may provide for the manner in which they will vote their

shares by signing an agreement for that purpose. A voting agreement created under **this section** is not subject to **section 490.730**.

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

89 Acts, ch 288, §70

Referred to in **§490.722**

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.

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 the corporation becomes a public corporation. 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.

8. Limits, if any, on the duration of an agreement authorized by **this section** shall be as set forth in the agreement. An agreement that became effective between January 1, 2003, and June 30, 2014, both dates inclusive, unless the agreement provided otherwise, remains governed by the provisions of **this section** then in effect.

2002 Acts, ch 1154, §22, 125; 2002 Acts, ch 1175, §88; 2013 Acts, ch 31, §19, 82; 2014 Acts, ch 1024, §2, 3

Referred to in **§490.801**
Subsection 2, paragraph c stricken
NEW subsection 8

490.733 through 490.739 Reserved.

PART D

Referred to in **§490.809**

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.

89 Acts, ch 288, §71; 2002 Acts, ch 1154, §23, 125

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.

2002 Acts, ch 1154, §24, 125

Referred to in **§490.809**

490.742 Demand.

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

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

2. Ninety days have expired from the date delivery of 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.

2002 Acts, ch 1154, §25, 125; 2013 Acts, ch 31, §20, 82

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.

2002 Acts, ch 1154, §26, 125

Referred to in §490.747

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 5** 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 5**, the determination in **subsection 1** shall be made by any of the following:

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

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

3. *a.* 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 any of the following:

(1) That a majority of the board of directors did not consist of qualified directors at the time the determination was made.

(2) That the requirements of **subsection 1** have not been met.

b. 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.

4. If a majority of the board of directors consisted of qualified directors at the time the determination was made, the plaintiff shall have the burden of proving that the requirements of **subsection 1** have not been met; if not, the corporation shall have the burden of proving that the requirements of **subsection 1** have been met.

5. 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.

2002 Acts, ch 1154, §27, 125; 2012 Acts, ch 1023, §157; 2013 Acts, ch 31, §21, 82

Referred to in §490.143

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.

2002 Acts, ch 1154, §28, 125

Referred to in §490.747

490.746 Payment of expenses.

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

1. Order the corporation to pay the plaintiff's expenses 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 expenses incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

2002 Acts, ch 1154, §29, 125; 2013 Acts, ch 31, §22, 82

Referred to in §490.747

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**.

2002 Acts, ch 1154, §30, 125

Referred to in §490.740

490.748 Shareholder action to appoint custodian or receiver.

1. The district court may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder where it is established that any of the following applies:

a. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered.

b. The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

2. *a.* The district court may issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held.

b. The district court shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver.

c. The district court has jurisdiction over the corporation and all of its property, wherever located.

3. The district court may appoint an individual or domestic or foreign corporation, authorized to transact business in this state, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

4. The district court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers, all of the following apply:

a. A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation.

b. A receiver may do any of the following:

(1) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the district court.

(2) Sue and defend in the receiver's own name as receiver in all courts of this state.

5. The district court during a custodianship may redesignate the custodian as a receiver, and during a receivership may redesignate the receiver as a custodian, if doing so is in the best interests of the corporation.

6. The district court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

2013 Acts, ch 31, §23, 82

DIVISION VIII

DIRECTORS AND OFFICERS

Referred to in §490.1405

PART A

490.801 Requirement for and functions of board of directors.

1. Except as provided in **section 490.732**, each corporation must have a board of directors.

2. All corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and the business and affairs of the corporation shall be managed by or under the direction, and subject to the oversight, 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**.

89 Acts, ch 288, §72; 2002 Acts, ch 1154, §31, 125; 2013 Acts, ch 31, §24, 82

Referred to in §490.825

490.802 Qualifications of directors.

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

89 Acts, ch 288, §73

490.803 Number and election of directors.

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

2. *a.* 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.

b. Notwithstanding paragraph "*a*", the number of directors of a public corporation subject to **section 490.806A, subsection 1**, shall be increased or decreased only by the affirmative vote of a majority of its board of directors.

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** or **490.806A**.

89 Acts, ch 288, §74; 91 Acts, ch 211, §5; 2002 Acts, ch 1154, §32, 125; 2011 Acts, ch 2, §3, 10

490.804 Election of directors by certain classes of shareholders.

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

89 Acts, ch 288, §75

Referred to in §490.806A

490.805 Terms of directors generally.

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

2. The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under **section 490.806** or **490.806A**.

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

4. The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected, except as provided in **section 490.806A**.

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

89 Acts, ch 288, §76; 2011 Acts, ch 2, §4, 10

490.806 Staggered terms for directors.

Except as otherwise provided in **section 490.806A**, a corporation's articles of incorporation may provide for staggering the terms of its directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

89 Acts, ch 288, §77; 2011 Acts, ch 2, §5, 10

Referred to in **§490.803**, **§490.805**, **§490.806A**

490.806A Public corporations — staggered terms.

1. Except as provided in **subsection 2**, and notwithstanding anything to the contrary in the articles of incorporation or bylaws of a public corporation, the terms of directors of a public corporation shall be staggered by dividing the number of directors into three groups, as nearly equal in number as possible. The first group shall be referred to as "class I directors", the second group shall be referred to as "class II directors", and the third group shall be referred to as "class III directors".

a. On or before the date on which a public corporation first convenes an annual shareholders' meeting following the time the public corporation becomes subject to this subsection, the board of directors of the public corporation shall by majority vote designate from among its members directors to serve as class I directors, class II directors, and class III directors.

b. The terms of directors serving in office on the date that the public corporation becomes subject to **this subsection** shall be as follows:

(1) Class I directors shall continue in office until the first annual shareholders' meeting following the date that the public corporation becomes subject to **this subsection**, and until their successors are elected. The shareholders' meeting shall be conducted not less than eleven months following the last annual shareholders' meeting conducted before the public corporation became subject to **this subsection**.

(2) Class II directors shall continue in office until one year following the first annual shareholders' meeting described in subparagraph (1), and until their successors are elected.

(3) Class III directors shall continue in office until two years following the first annual shareholders' meeting described in subparagraph (1), and until their successors are elected.

c. At each annual shareholders' meeting of a public corporation subject to **this subsection**, the successors to the class of directors whose term expires at that meeting shall be elected to hold office for a term of three years following such meeting and until their successors are elected.

d. The board of directors of a public corporation subject to **this subsection** shall adopt an amendment to its articles of incorporation as provided in **section 490.1005A**.

e. Notwithstanding **this subsection**, the articles of incorporation of a public corporation may confer upon the holders of preferred shares the right to elect one or more directors pursuant to **section 490.804**, who shall serve for such term, and have such voting powers, as shall be stated in the articles of incorporation.

2. Every public corporation shall be subject to **subsection 1**, unless it is exempt pursuant to **this subsection**.

a. (1) In order for a public corporation in existence on March 23, 2011, to be exempt from **subsection 1**, its board of directors must adopt a resolution or take action under **section 490.821** expressly making an election to be exempt from the provisions of **subsection 1**. Such resolution or action must be adopted or taken within forty days after March 23, 2011.

(2) Upon adopting the resolution or taking board action under **section 490.821**, the public corporation is no longer subject to **subsection 1**, effective immediately unless otherwise provided for in the resolution or by the board action.

b. If on March 23, 2011, the articles of incorporation of the public corporation already

provide for staggering the terms of its directors under **section 490.806**, the public corporation shall be exempt from the provisions of **subsection 1**. In such event, no further corporate action is required, and the public corporation is not required to amend or modify any provision of its articles of incorporation or bylaws in order to be exempt from **subsection 1**.

c. A corporation that becomes a public corporation on or after March 23, 2011, is exempt from the provisions of **subsection 1**.

2011 Acts, ch 2, §6, 10
Referred to in **§490.803**, **§490.805**, **§490.1005A**

490.807 Resignation of directors.

1. A director may resign at any time by delivering a written resignation to the board of directors or its chair, or to the secretary of the corporation.

2. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that it is irrevocable.

89 Acts, ch 288, §78; 2013 Acts, ch 31, §25, 82
Referred to in **§490.810**

490.808 Removal of directors by shareholders.

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

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

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

4. A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and after notice stating that the purpose, or one of the purposes, of the meeting is removal of the director. A director shall not be removed pursuant to written consents under **section 490.704** unless written consents are obtained from the holders of all the outstanding shares of the corporation entitled to vote on the removal of the director.

89 Acts, ch 288, §79; 91 Acts, ch 211, §6

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 by or in the right of the corporation if the court finds that both of the following apply:

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

b. 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**.

3. The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

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

89 Acts, ch 288, §80; 2002 Acts, ch 1154, §33, 125

490.810 Vacancy on board.

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

a. The shareholders may fill the vacancy.

b. The board of directors may fill the vacancy.

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

1A. For a public corporation subject to **section 490.806A, subsection 1**, a vacancy on the board of directors, including but not limited to a vacancy resulting from an increase in the number of directors, shall be filled solely by the affirmative vote of a majority of the remaining directors, even though less than a quorum of the board.

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

3. A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under **section 490.807, subsection 2** or otherwise, may be filled before the vacancy occurs but the new director shall not take office until the vacancy occurs.

89 Acts, ch 288, §81; 2011 Acts, ch 2, §7, 10; 2013 Acts, ch 31, §26, 82

490.811 Compensation of directors.

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

89 Acts, ch 288, §82

490.812 through 490.819 Reserved.

PART B

490.820 Meetings.

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

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

89 Acts, ch 288, §83

Referred to in **§490.825**

490.821 Action without meeting.

1. Except to the extent that the articles of incorporation or bylaws require that action by the board of directors be taken at a meeting, action required or permitted by **this chapter** to be taken by the board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

2. Action taken under **this section** is 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 an action taken at a meeting of the board of directors and may be described as such in any document.

89 Acts, ch 288, §84; 2002 Acts, ch 1154, §34, 125

Referred to in **§490.806A**, **§490.825**

490.822 Notice of meeting.

1. Unless the articles of incorporation or bylaws provide otherwise, regular meetings of

the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

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

89 Acts, ch 288, §85
Referred to in §490.825

490.823 Waiver of notice.

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

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

89 Acts, ch 288, §86
Referred to in §490.825

490.824 Quorum and voting.

1. 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:

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

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

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

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

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

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

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

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

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

89 Acts, ch 288, §87; 2002 Acts, ch 1154, §35, 125; 2012 Acts, ch 1023, §157
Referred to in §490.825, §490.853

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 any committee.

2. 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** apply both to committees of the board and to committee members.

4. To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the 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. Adopt, amend, or repeal bylaws.

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.

89 Acts, ch 288, §88; 2002 Acts, ch 1154, §36, 125; 2003 Acts, ch 108, §90

490.826 Submission of matters for shareholder vote.

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

2013 Acts, ch 31, §27, 82

Referred to in **§490.1003**, **§490.1104**, **§490.1202**, **§490.1402**

490.827 through 490.829 Reserved.

PART C

490.830 Standards of conduct for directors.

1. Each member of the board of directors, when discharging the duties of a director, shall act in conformity with all of the following:

a. In good faith.

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 shall disclose, or cause to be disclosed, to the other board or committee members information which the director knows is not already known by them but is known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

4. 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 6**, 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.

5. In discharging 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 persons specified in **subsection 6**.

6. A director is entitled to rely, in accordance with **subsection 4 or 5**, 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 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.

89 Acts, ch 288, §89; 2002 Acts, ch 1154, §37, 125; 2013 Acts, ch 31, §28, 82
Referred to in **§490.825**, **§490.833**, **§491.16A**

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 of the following apply:

(1) No defense interposed by the director based on any of the following precludes liability:

(a) A provision in the articles of incorporation authorized by **section 490.202, subsection 2**, paragraph *"d"*.

(b) The protection afforded by section **490.861** for action taken in compliance with **section 490.862** or **490.863**.

(c) The protection afforded by **section 490.870**.

(2) The protection afforded by **section 490.870** 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 whatever 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.

89 Acts, ch 288, §90; 2002 Acts, ch 1154, §38, 125; 2003 Acts, ch 44, §83; 2008 Acts, ch 1015, §2; 2009 Acts, ch 133, §164; 2013 Acts, ch 31, §29, 30, 82

Referred to in **§490.842**, **§491.16A**

490.832 Director conflict of interest. Repealed by 2013 Acts, ch 31, §81, 82.

490.833 Liability for unlawful distribution.

1. A director who votes for or assents to a distribution 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 **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 both of the following:

a. Contribution from every other director who could be held liable under **subsection 1** for the unlawful distribution.

b. Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of **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 8**.

(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**.

89 Acts, ch 288, §92; 2002 Acts, ch 1154, §40, 125

Referred to in **§490.202**, **§490.831**, **§491.16A**

490.834 through 490.839 Reserved.

PART D

490.840 Officers.

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

2. The board of directors may elect individuals to fill one or more offices of the corporation. An officer may appoint one or more officers if authorized by the bylaws or the board of directors.

3. The bylaws or the board of directors shall 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.

89 Acts, ch 288, §93; 2002 Acts, ch 1154, §41, 125
Referred to in **§490.140**, **§491.16A**

490.841 Functions of officers.

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

89 Acts, ch 288, §94; 2013 Acts, ch 31, §31, 82
Referred to in **§491.16A**

490.842 Standards of conduct for officers.

1. An officer when performing in such capacity has the duty to act in conformity with all of the following:

a. In good faith.

b. With the care 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 officer's duties an officer, who does not have knowledge that makes reliance unwarranted, is entitled to rely on 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.

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

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 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.

89 Acts, ch 288, §95; 2002 Acts, ch 1154, §42, 125; 2013 Acts, ch 31, §32, 82
Referred to in **§491.16A**

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 time. If a

resignation is made effective at a later time and the board or appointing officer accepts the future effective time, the board or the appointing officer may fill the pending vacancy before the effective time if the board or appointing officer provides that the successor does not take office until the effective time.

2. 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.

89 Acts, ch 288, §96; 91 Acts, ch 211, §7; 2002 Acts, ch 1154, §43, 125

490.844 Contract rights of officers.

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

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

89 Acts, ch 288, §97

490.845 through 490.849 Reserved.

PART E

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.

2. *"Director"* or *"officer"* means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the individual's duties to the corporation also impose duties on, or otherwise involve services by, the individual 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. *"Liability"* means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or expenses incurred with respect to a proceeding.

4. *a.* *"Official capacity"* means:

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

(2) When used with respect to an officer, as contemplated in **section 490.856**, the office in a corporation held by the officer.

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

5. *"Party"* means an individual who was, is, or is threatened to be made a defendant or respondent in a proceeding.

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

89 Acts, ch 288, §98; 2002 Acts, ch 1154, §44, 125; 2005 Acts, ch 19, §72; 2013 Acts, ch 30, §116; 2013 Acts, ch 31, §33 – 35, 82

Referred to in **§490.202**, **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

490.851 Permissible indemnification.

1. Except as otherwise provided in **this section**, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if either of the following apply:

a. All of the following apply:

(1) The individual acted in good faith.

(2) The individual reasonably believed:

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

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

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

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

89 Acts, ch 288, §99; 2002 Acts, ch 1154, §45, 125; 2003 Acts, ch 44, §84, 116

Referred to in **§490.853**, **§490.854**, **§490.855**, **§490.858**, **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

490.852 Mandatory indemnification.

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.

89 Acts, ch 288, §100; 2002 Acts, ch 1154, §46, 125

Referred to in **§490.853**, **§490.854**, **§490.856**, **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

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 in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers all of the following to the corporation:

a. A signed written affirmation of the director's good faith belief that the relevant standard of conduct described in **section 490.851** has been met by the director 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. A signed written undertaking of the director to repay 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 **490.855** that the director has not met the relevant standard of conduct described in **section 490.851**.

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. Authorizations under **this section** shall be made according to any of the following:

a. By the board of directors as follows:

(1) If there are two or more qualified directors, by a majority vote of all the qualified 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 qualified directors appointed by such a vote.

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

b. By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director shall not be voted on the authorization.

89 Acts, ch 288, §101; 2002 Acts, ch 1154, §47, 125; 2002 Acts, ch 1175, §89; 2013 Acts, ch 31, §36, 82

Referred to in **§490.143**, **§490.854**, **§490.858**, **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

490.854 Court-ordered indemnification.

1. A director 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. After receipt of an application, and after giving any notice it considers necessary, the court shall do one of the following:

a. Order indemnification if the court determines that the director is entitled to mandatory indemnification under **section 490.852**.

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 **section 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.

89 Acts, ch 288, §102; 2002 Acts, ch 1154, §48, 125

Referred to in **§490.851**, **§490.853**, **§490.856**, **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

Section not amended; editorial change applied

490.855 Determination and authorization of indemnification.

1. A corporation shall not indemnify a director under **section 490.851** unless authorized for a specific proceeding after a determination has been made that indemnification is permissible 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. If there are two or more qualified directors, by the board of directors by a majority vote of all the qualified 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 qualified directors appointed by such a vote.

b. By special legal counsel selected in one of the following manners:

(1) Selected in the manner prescribed in paragraph *"a"*.

(2) If there are fewer than two qualified directors, selected by the board of directors, in which selection directors who are not qualified directors may participate.

c. By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director shall not be voted on the determination.

3. Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than two qualified directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled to select special legal counsel under **subsection 2**, paragraph *"b"*, subparagraph (2).

89 Acts, ch 288, §103; 2002 Acts, ch 1154, §49, 125; 2013 Acts, ch 31, §37, 82
Referred to in **§490.143**, **§490.853**, **§490.858**, **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

490.856 Indemnification of officers.

1. A corporation may indemnify and advance expenses under this part to an officer of the corporation who is 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.

b. If the person is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of 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 action taken or a failure to take an action 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.

89 Acts, ch 288, §104; 2002 Acts, ch 1154, §50, 125; 2003 Acts, ch 44, §85
Referred to in **§490.850**, **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

490.857 Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other 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, whether or not the corporation would have power to indemnify or advance expenses to that individual against the same liability under this part.

89 Acts, ch 288, §105; 2002 Acts, ch 1154, §51, 125
Referred to in **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

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 resolution 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. A right of indemnification or to advances for expenses created by this division or under **subsection 1** and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under **subsection 1**, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

3. 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*".

4. Subject to **subsection 2**, 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.

5. 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.

6. 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.

89 Acts, ch 288, §106; 2002 Acts, ch 1154, §52, 125; 2013 Acts, ch 31, §38, 39, 82
Referred to in **§490.854**, **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

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.

2002 Acts, ch 1154, §53, 125
Referred to in **§491.3**, **§491.16**, **§497.34**, **§498.36**, **§499.59A**, **§508C.16**, **§524.801**

PART F

490.860 Part definitions.

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

1. "*Control*", including the term "*controlled by*", means any of the following:

a. Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise.

b. Being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

2. "*Director's conflicting interest transaction*" means a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation to which, or respecting which, any of the following applies:

a. To which, at the relevant time, the director is a party.

b. Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director.

c. Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

3. "*Fair to the corporation*" means, for purposes of **section 490.861, subsection 2**,

paragraph "c", that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was all of the following:

a. Fair in terms of the director's dealings with the corporation.

b. Comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

4. *"Material financial interest"* means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

5. *"Related person"* means any of the following:

a. The director's spouse.

b. A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew, or spouse of any thereof, of the director or of the director's spouse.

c. An individual living in the same home as the director.

d. An entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified in **this subsection**.

e. A domestic or foreign person who is any of the following:

(1) A business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director.

(2) An unincorporated entity of which the director is a general partner or a member of the governing body.

(3) An individual, trust, or estate for whom or of which the director is a trustee, guardian, personal representative, or like fiduciary.

f. A person that is, or an entity that is controlled by, an employer of the director.

6. *"Relevant time"* means any of the following:

a. The time at which directors' action respecting the transaction is taken in compliance with **section 490.862**.

b. If the transaction is not brought before the board of directors of the corporation, or its committee, for action under **section 490.862**, the time at which the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

7. *"Required disclosure"* means disclosure of all of the following:

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

b. All facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

2013 Acts, ch 31, §40, 82; 2014 Acts, ch 1092, §106
Referred to in **§490.862**, **§490.863**, **§490.870**
Subsection 6, paragraph b amended

490.861 Judicial action.

1. A transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation, shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if it is not a director's conflicting interest transaction.

2. A director's conflicting interest transaction may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against a director of the corporation, in a proceeding by a shareholder or by or in the right of the corporation, on the ground that the director has an interest respecting the transaction, if any of the following apply:

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

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

c. The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

2013 Acts, ch 31, §41, 82
Referred to in **§490.831**, **§490.860**, **§490.862**, **§490.863**

490.862 Directors' action.

1. Directors' action respecting a director's conflicting interest transaction is effective for purposes of **section 490.861, subsection 2**, paragraph *"a"*, if the transaction has been authorized by the affirmative vote of a majority, but no fewer than two, of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with **subsection 2**, provided that all of the following apply:

a. The qualified directors have deliberated and voted outside the presence of and without the participation by any other director.

b. Where the action has been taken by a committee, all members of the committee were qualified directors, and any of the following apply:

(1) The committee was composed of all the qualified directors on the board of directors.

(2) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.

2. Notwithstanding **subsection 1**, when a transaction is a director's conflicting interest transaction only because a related person described in **section 490.860, subsection 5**, paragraph *"e"* or *"f"*, is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule, provided that the conflicted director discloses to the qualified directors voting on the transaction all of the following:

a. All information required to be disclosed that is not so violative.

b. The existence and nature of the director's conflicting interest.

c. The nature of the conflicted director's duty not to disclose the confidential information.

3. A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with **this section**.

4. Where directors' action under **this section** does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

2013 Acts, ch 31, §42, 82

Referred to in **§490.143**, **§490.831**, **§490.860**, **§490.861**, **§490.870**, **§490.1301**, **§490.1340**

490.863 Shareholders' action.

1. *a.* Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of **section 490.861, subsection 2**, paragraph *"b"*, if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after all of the following occur:

(1) Notice to shareholders describing the action to be taken respecting the transaction.

(2) Provision to the corporation of the information referred to in **subsection 2**.

(3) Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

b. In the case of shareholders' action at a meeting, the shareholders entitled to vote shall be determined as of the record date for notice of the meeting.

2. A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of shares that the director knows are not qualified shares under **subsection 3**, and the identity of the holders of those shares.

3. For purposes of **this section**, all of the following apply:

a. *"Holder"* means and *"held by"* refers to shares held by both a record shareholder, as defined in **section 490.1301, subsection 8**, and a beneficial shareholder, as defined in **section 490.1301, subsection 2**.

b. *"Qualified shares"* means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under **subsection 2** is notified, are held by any of the following:

(1) A director who has a conflicting interest respecting the transaction.

(2) A related person of the director, excluding a person described in **section 490.860, subsection 5**, paragraph *"f"*.

4. A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with **this section**. Subject to the provisions of **subsection 5**, shareholders' action that otherwise complies with **this section** is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

5. If a shareholders' vote does not comply with **subsection 1** solely because of a director's failure to comply with **subsection 2**, and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director, and may give such effect, if any, to the shareholders' vote, as the court considers appropriate in the circumstances.

6. Where shareholders' action under **this section** does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws, or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

2013 Acts, ch 31, §43, 82; 2013 Acts, ch 140, §71
Referred to in **§490.831**, **§490.861**, **§490.870**, **§490.1340**

490.864 through 490.869 Reserved.

PART G

490.870 Business opportunities.

1. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation and any of the following apply:

a. Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in **section 490.862**, as if the decision being made concerned a director's conflicting interest transaction.

b. Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedure set forth in **section 490.863**, as if the decision being made concerned a director's conflicting interest transaction; except that, rather than making the required disclosure as defined in **section 490.860**, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

2. In any proceeding seeking equitable relief or other remedy based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in **subsection 1** before taking advantage of the opportunity shall not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

2008 Acts, ch 1015, §3; 2013 Acts, ch 31, §44, 82
Referred to in **§490.143**, **§490.831**
Section not amended; editorial change applied

DIVISION IX

SPECIAL CLASSES

490.901 Foreign-trade zone corporation.

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

89 Acts, ch 288, §107

490.902 Foreign insurance companies becoming domestic.

The secretary of state, upon a corporation complying with **this section** and upon the filing of articles of incorporation and upon receipt of the fees as provided in **this chapter**, shall issue an acknowledgment of receipt of document as of the date of the filing of the articles of incorporation with the secretary of state. The acknowledgment of receipt of document shall state on its face that it is issued in accordance with **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**.

89 Acts, ch 288, §108; 96 Acts, ch 1170, §8

Referred to in **§508.12**, **§515.78**, **§515E.3A**

DIVISION X

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

PART A

490.1001 Amendment of articles of incorporation — authority to amend.

1. A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation 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.

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

89 Acts, ch 288, §109; 2002 Acts, ch 1154, §54, 125

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.

89 Acts, ch 288, §110; 2002 Acts, ch 1154, §55, 125

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. The proposed amendment must be adopted by the board of directors.

2. *a.* Except as provided in **sections 490.1005**, **490.1007**, and **490.1008**, after adopting the proposed amendment, the board of directors must submit the amendment to the

shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless any of the following apply:

(1) The board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation.

(2) **Section 490.826** applies.

b. If paragraph "*a*", subparagraph (1) or (2), applies, the board must transmit to the shareholders the basis for so proceeding.

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

4. 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 meeting of shareholders at which the amendment 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 proposed amendment and must contain or be accompanied by a copy of the amendment.

5. Unless the articles of incorporation, bylaws, or the board of directors acting pursuant to **subsection 3** requires a greater vote or 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 that voting group exists.

89 Acts, ch 288, §111; 2002 Acts, ch 1154, §56, 125; 2002 Acts, ch 1175, §90; 2013 Acts, ch 31, §45, 82

Referred to in **§490.1007**

490.1004 Voting on amendments by voting groups.

1. 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. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.

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 the class.

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

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

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

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 to the shares of the class.

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

h. Cancel or otherwise affect rights to distributions that have accumulated but not yet been 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.

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

89 Acts, ch 288, §112; 2002 Acts, ch 1154, §57, 125
Referred to in **§490.1003**, **§490.1104**

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 1 or 2**, to be made without shareholder approval.

89 Acts, ch 288, §113; 2002 Acts, ch 1154, §58, 125; 2007 Acts, ch 140, §7
Referred to in **§490.1003**, **§490.1102**, **§490.1104**

490.1005A Public corporation — amendment by board of directors.

1. The board of directors of a public corporation subject to **section 490.806A, subsection 1**, shall adopt an amendment to its articles of incorporation which includes all of the following:

a. A statement that the public corporation is subject to **section 490.806A, subsection 1**.

b. Any necessary changes to the articles of incorporation required to implement the requirements of **section 490.806A, subsection 1**, including by staggering the terms of the board of directors as described in that subsection.

2. Any amendment to the articles of incorporation as provided in **subsection 1** of **this section** shall be made without shareholder approval.

2011 Acts, ch 2, §8, 10

490.1006 Articles of amendment.

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, which shall set forth all of the following:

1. The name of the corporation.
2. The text of each amendment adopted, or the information required by **section 490.120, subsection 12**, paragraph *"e"*.
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,

which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with **section 490.120, subsection 12**.

4. If an amendment:

a. 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.

b. Is being filed pursuant to **section 490.120, subsection 12**, a statement to that effect.

89 Acts, ch 288, §114; 2002 Acts, ch 1154, §59, 125; 2007 Acts, ch 140, §8
Referred to in **§490.1007**

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 approval, to consolidate all amendments into a single document.

2. If the restated articles include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in **section 490.1003**.

3. A corporation 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 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**.

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

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 3**.

89 Acts, ch 288, §115; 2002 Acts, ch 1154, §60, 125
Referred to in **§490.1003**

490.1008 Amendment pursuant to reorganization.

1. A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of law of the United States.

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

a. The name of the corporation.

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

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

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

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

3. **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.

89 Acts, ch 288, §116; 2002 Acts, ch 1154, §61, 125
Referred to in **§490.1003**

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.

89 Acts, ch 288, §117; 2002 Acts, ch 1154, §62, 125

490.1010 through 490.1019 Reserved.

PART B

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.

89 Acts, ch 288, §118; 2002 Acts, ch 1154, §63, 125

490.1021 Bylaw increasing quorum or voting requirement for directors.

1. 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 by the board of directors.

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

89 Acts, ch 288, §119; 2002 Acts, ch 1154, §64, 125

Referred to in **§490.1020**

490.1022 Repealed by 2002 Acts, ch 1154, §123, 125.

DIVISION XI

MERGER, SHARE EXCHANGE, AND CONVERSION

Referred to in **§15E.208**

490.1101 Definitions.

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

1. *"Converted entity"* means a corporation or other entity into which a converting entity converts pursuant to **sections 490.1111 through 490.1114**.

2. *"Converting entity"* means a corporation or other entity that converts into an other entity or corporation pursuant to **section 490.1111**.

3. *"Governing statute"* of a corporation or other entity means the statute that governs the corporation or other entity's internal affairs.

4. *"Interests"* means the proprietary interests in an other entity.

5. *"Merger"* means a business combination pursuant to **section 490.1102**.

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

7. *"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.

8. *"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.

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

10. *"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.

89 Acts, ch 288, §121; 97 Acts, ch 117, §3; 97 Acts, ch 171, §12; 2002 Acts, ch 1154, §65, 125; 2008 Acts, ch 1162, §117, 155

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 of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with **section 490.120, subsection 12**.

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.

89 Acts, ch 288, §122; 97 Acts, ch 117, §4; 2002 Acts, ch 1154, §66, 125; 2007 Acts, ch 140, §9

Referred to in **§490.1101**, **§499.69A**, **§508B.2**, **§515G.2**

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 of a share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with **section 490.120, subsection 12**.

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.

89 Acts, ch 288, §123; 2002 Acts, ch 1154, §67, 125; 2007 Acts, ch 140, §10

Referred to in **§490.1101**

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. *a.* 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 any of the following apply:

(1) The board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation.

(2) **Section 490.826** applies.

b. If paragraph "*a*", subparagraph (1) or (2), applies, the board must transmit to the shareholders the basis for so proceeding.

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.

89 Acts, ch 288, §124; 2002 Acts, ch 1154, §68, 125; 2013 Acts, ch 31, §46, 82

Referred to in **§490.1302**, **§508B.2**, **§515G.2**, **§524.1402**

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.

89 Acts, ch 288, §125; 2002 Acts, ch 1154, §69, 125

Referred to in **§490.1104**, **§490.1110**, **§490.1301**, **§490.1302**, **§490.1320**, **§490.1322**, **§524.1408**

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 signed 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.

89 Acts, ch 288, §126; 2002 Acts, ch 1154, §70, 125; 2013 Acts, ch 31, §47, 82

Referred to in **§490.858**, **§499.69A**

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**.

89 Acts, ch 288, §127; 2002 Acts, ch 1154, §71, 125

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**, signed 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.

89 Acts, ch 288, §128; 2002 Acts, ch 1154, §72, 125; 2013 Acts, ch 31, §48, 82

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.

2002 Acts, ch 1154, §73, 125

Referred to in **§508B.13**

490.1109 Qualified merger — corporation and cooperative association.

A corporation and a cooperative association organized under **chapter 499** may merge as provided in **section 499.69A**.

97 Acts, ch 17, §1

490.1110 Business combinations with interested shareholders.

1. Notwithstanding any other provision of **this chapter**, a corporation shall not engage in any business combination with an interested shareholder for a period of three years following the time that the shareholder became an interested shareholder, unless any of the following apply:

a. Prior to the time the shareholder became an interested shareholder, the board of directors of the corporation approved either the business combination or the transaction which resulted in the shareholder becoming an interested shareholder.

b. Upon consummation of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least eighty-five percent of the voting stock of the corporation outstanding at the time the transaction commenced, excluding, for purposes of determining the number of shares outstanding, those shares owned by persons who are directors and officers, and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer.

c. At or subsequent to the time the shareholder became an interested shareholder, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders by the affirmative vote of at least sixty-six and two-thirds percent of the outstanding voting stock which is not owned by the interested shareholder. Such approval shall not be by written consent.

2. *a.* **This section** does not apply in any of the following circumstances:

(1) The corporation does not have a class of voting stock that is listed on a national securities exchange, authorized for quotation on the national association of securities dealers automated quotations – national market system, or held of record by more than two thousand shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder.

(2) The corporation's original articles of incorporation contain a provision expressly electing not to be governed by **this section**.

(3) The corporation, by action of its board of directors, adopts an amendment to its bylaws by no later than September 29, 1997, expressly electing not to be governed by **this section**, which amendment shall not be further amended by the board of directors.

(4) (a) The corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by **this section**, provided that, in addition to any other vote required by law, such amendment to the articles of incorporation or bylaws must be approved by the affirmative vote of a majority of the shares entitled to vote. An amendment adopted pursuant to this subparagraph is effective immediately in the case of a corporation that has never had a class of voting stock that falls within any of the three categories set out in subparagraph (1) and has not elected by a provision in its original articles of incorporation or any amendment to such articles to be governed by **this section**. In all other cases, an amendment adopted pursuant to this subparagraph is not effective until twelve months after the adoption of the amendment and does not apply to any business combination between the corporation and any person who became an interested shareholder of the corporation on or prior to such adoption.

(b) An amendment to the bylaws adopted pursuant to this subparagraph shall not be further amended by the board of directors.

(5) A shareholder becomes an interested shareholder inadvertently and both of the following apply:

(a) As soon as practicable the shareholder divests itself of ownership of sufficient shares so that the shareholder ceases to be an interested shareholder.

(b) The shareholder would not, at any time within the three-year period immediately prior to a business combination between the corporation and such shareholder, have been an interested shareholder but for the inadvertent acquisition of ownership.

(6) (a) The business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required in this subparagraph of a proposed transaction which satisfies all of the following:

(i) Constitutes a transaction described in subparagraph division (b).

(ii) Is with or by a person who either was not an interested shareholder during the previous three years or who became an interested shareholder with the approval of the corporation's board of directors or who became an interested shareholder during the time period described in subparagraph (7).

(iii) Is approved or not opposed by a majority of the members of the board of directors then in office who were directors prior to any person becoming an interested shareholder during the previous three years, or who were recommended for election or elected to succeed such directors by a majority of such directors.

(b) A proposed transaction under subparagraph division (a) is limited to the following:

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

(ii) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions and whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to a direct or indirect wholly owned subsidiary of the corporation or to the corporation itself, which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(iii) A proposed tender or exchange offer for fifty percent or more of the outstanding voting stock of the corporation.

(c) The corporation shall give no less than twenty days' notice to all interested shareholders prior to the consummation of any of the transactions described in subparagraph division (b), subparagraph subdivision (i) or (ii).

(7) The business combination is with an interested shareholder who becomes an interested shareholder of the corporation at a time when the corporation is not subject to **this section** pursuant to subparagraph (1), (2), (3), or (4).

b. Notwithstanding paragraph "*a*", subparagraphs (1) through (4), a corporation may elect under its original articles of incorporation or any amendment to such articles to be subject to **this section**. However, such amendment shall not apply to restrict a business combination between the corporation and an interested shareholder of the corporation if the interested shareholder became such prior to the effective date of the amendment.

3. As used in **this section**, unless the context otherwise requires:

a. "Affiliate" means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

b. "Associate", when used to indicate a relationship with a person, means any of the following:

(1) A corporation, partnership, unincorporated association, or other entity of which the person is a director, officer, or partner or is, directly or indirectly, the owner of twenty percent or more of any class of voting stock.

(2) A trust or other estate in which the person has at least a twenty percent beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity.

(3) A relative or spouse of the person, or any relative of the spouse, who has the same residence as the person.

c. "Business combination", with respect to a corporation and an interested shareholder of such corporation, means any of the following:

(1) A merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with the interested shareholder, or with any other corporation, partnership, unincorporated association, or other entity if the merger or consolidation is caused by the interested shareholder and as a result of such merger the surviving entity is not subject to **subsection 1**.

(2) A sales, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of such corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to ten percent or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation.

(3) A transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested shareholder, except for the following:

(a) Pursuant to the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of the corporation or such subsidiary which securities were outstanding prior to the time that the interested shareholder became an interested shareholder.

(b) Pursuant to a merger under **section 490.1105**.

(c) Pursuant to a distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of such corporation or any such subsidiary, which stock is distributed pro rata to all holders of a class or series of stock of the corporation subsequent to the time the interested shareholder became an interested shareholder.

(d) Pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of the stock.

(e) Any issuance or transfer of stock by the corporation, provided, however, that in no case under subparagraph divisions (c) and (d) and this subparagraph division shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of the voting stock of the corporation.

(4) A transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder.

(5) The receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of such corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs (1)

through (4), provided by or through the corporation or any direct or indirect majority-owned subsidiary.

d. *"Control"*, including the terms *"controlling"*, *"controlled by"*, and *"under common control with"*, means the ability, directly or indirectly, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of twenty percent or more of the outstanding voting stock of any corporation, partnership, unincorporated association, or other entity is presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding this paragraph, a presumption of control shall not apply where a person holds voting stock, in good faith and not for the purpose of circumventing **this section**, as an agent, bank, broker, nominee, custodian, or trustee for one or more owners who do not individually or as a group have control of such entity.

e. *"Interested shareholder"* means any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that is the owner of ten percent or more of the outstanding voting stock of the corporation, or is an affiliate or associate of the corporation and was the owner of ten percent or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder, and the affiliates and associates of such person. *"Interested shareholder"* does not include a person whose ownership of shares in excess of the ten percent limitation is the result of action taken solely by the corporation, provided that such person is an interested shareholder if, after such action by the corporation, the person acquires additional shares of voting stock of the corporation, other than as a result of further corporate action not caused, directly or indirectly, by such person. For purposes of determining whether a person is an interested shareholder, the outstanding voting stock of the corporation does not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

f. *"Owner"*, including the terms *"own"* and *"owned"* when used with respect to any stock, means a person that individually or with or through any of such person's affiliates or associates satisfies any of the following:

(1) Beneficially owns such stock, directly or indirectly.

(2) Has the right to do either of the following:

(a) Acquire such stock, whether such right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise. However, a person is not deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange.

(b) Vote such stock pursuant to any agreement, arrangement, or understanding. However, a person is not deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement, or understanding to vote such stock arises solely from the revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons.

(3) Has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of such stock with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock. However, an agreement, arrangement, or understanding for the purpose of voting such stock does not include voting pursuant to a revocable proxy or consent under subparagraph (2), subparagraph division (b).

g. *"Person"* means any individual, corporation, partnership, unincorporated association, or other entity.

h. *"Stock"* means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

i. *"Voting stock"* means, with respect to any corporation, stock of any class or series

entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity.

4. The articles of incorporation or bylaws shall not require, for any vote of shareholders required by **this section**, a greater vote of shareholders than that specified in **this section**.

97 Acts, ch 117, §5; 97 Acts, ch 188, §52; 98 Acts, ch 1100, §66; 2002 Acts, ch 1154, §74, 75, 125; 2009 Acts, ch 41, §263; 2012 Acts, ch 1023, §88, 89

490.1111 Conversion.

1. An other entity may convert to a domestic corporation, and a domestic corporation may convert to an other entity pursuant to **this section** and **sections 490.1112 through 490.1114** and a plan of conversion, if all of the following apply:

a. The other entity's governing statute authorizes the conversion.

b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute.

c. The other entity complies with its governing statute in effecting the conversion.

2. A plan of conversion must be in a record and must include all of the following:

a. The name and form of the converting entity before conversion.

b. The name and form of the converted entity after conversion.

c. The terms and conditions of the conversion, including the manner and basis for converting interests in the converting entity into any combination of money, interests in the converted entity, and other consideration.

d. The organizational documents or articles of incorporation and bylaws of the converted entity.

2008 Acts, ch 1162, §118, 155

Referred to in **§490.1101**, **§490.1302**

490.1112 Action on plan of conversion by converting domestic corporation.

1. In the case of a domestic corporation that is being converted into an other entity all of the following apply:

a. The plan of conversion must be adopted by the domestic corporation's board of directors.

b. After adopting the plan of conversion, the domestic corporation's board of directors must submit the plan to the domestic corporation's 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.

c. The domestic corporation must notify each shareholder of the domestic corporation, 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 of conversion and must contain or be accompanied by a copy or summary of the plan of conversion. The notice shall include or be accompanied by a copy of the organizational documents as they will be in effect immediately after the conversion.

d. The domestic corporation's board of directors may condition its submission of the plan of conversion to the domestic corporation's shareholders on any basis.

e. Unless the articles of incorporation, bylaws, or the board of directors of the domestic corporation require a greater vote or a greater number of votes to be present, the approval of the plan of conversion shall require the approval of the domestic corporation's 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 classes or series of shares is entitled to vote as a separate group on the plan of conversion, 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 conversion by that voting group is present.

f. If any provision of the articles of incorporation, bylaws, or an agreement of the domestic

corporation to which any of the directors or shareholders of the domestic corporation are parties, adopted or entered into before the effective date of **this section**, applies to a merger of the corporation and the document does not refer to a conversion of the corporation, the provision shall be deemed to apply to a conversion of the corporation until such provision is subsequently amended.

g. If as a result of the conversion as provided in **this subsection**, one or more shareholders of the domestic corporation would become subject to owner liability for the debts, obligations, or liabilities of any other person or entity, approval of the plan of conversion shall require the execution, by each such shareholder of the domestic corporation, of a separate written consent to become so subject to such owner liability.

2. After a conversion is approved as provided in **subsection 1**, and at any time before a filing is made under **section 490.1113**, a domestic corporation that is being converted may amend its plan of conversion or abandon the planned conversion as follows:

a. As provided in the plan of conversion.

b. Except as prohibited by the plan of conversion, by the same consent as was required to approve the plan of conversion.

2008 Acts, ch 1162, §119, 155; 2009 Acts, ch 41, §147
Referred to in **§490.1101**, **§490.1111**, **§490.1302**

490.1113 Filings required for conversion — effective date.

1. After a plan of conversion is approved, all of the following apply:

a. A domestic corporation that is being converted into an other entity shall deliver to the secretary of state for filing articles of conversion, which must include all of the following:

(1) A statement that the domestic corporation has been converted into an other entity.

(2) The name and form of the other entity and the jurisdiction of its governing statute.

(3) The date the conversion is effective under the governing statute of the converted entity.

(4) A statement that the conversion was approved as required by **this chapter**.

(5) A statement that the conversion was approved as required by the governing statute of the converted entity.

(6) If the converted entity is a foreign other entity not authorized to transact business in this state, the street and mailing address of an office which the secretary of state may use for the purposes of **section 490.1114, subsection 3**.

b. If the converting entity is not a converting domestic corporation, the converting entity shall deliver to the secretary of state for filing articles of incorporation, which must include, in addition to the information required by **section 490.202**, all of the following:

(1) A statement that the domestic corporation was converted from an other entity.

(2) The name and form of the other entity and the jurisdiction of its governing statute.

(3) A statement that the conversion was approved in a manner that complied with the other entity's governing statute.

2. A conversion becomes effective according to the following:

a. If the converted entity is a domestic corporation, when the articles of incorporation are filed.

b. If the converted entity is not a domestic corporation, as provided by the governing statute of the converted other entity.

2008 Acts, ch 1162, §120, 155
Referred to in **§490.1101**, **§490.1111**, **§490.1112**, **§490.1302**

490.1114 Effect of conversion.

1. A domestic corporation or other entity that has been converted pursuant to **this division** is for all purposes the same domestic corporation or other entity that existed before the conversion.

2. When a conversion takes effect, all of the following apply:

a. All property owned by the converting entity remains vested in the converted entity.

b. All debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity.

c. An action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred.

d. The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests or other securities, or into cash or other property in accordance with the plan of conversion; and the shareholders or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity.

e. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity.

f. Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

g. Except as otherwise agreed, the conversion does not dissolve a converting domestic corporation for the purposes of **division XIV**.

3. A converted entity that is a foreign other entity consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation, if before the conversion the converting corporation was subject to suit in this state on the obligation. A converted other entity that is a foreign other entity and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under **this subsection**. Service on the secretary of state under **this subsection** is made in the same manner and with the same consequences as in **section 490.504**.

2008 Acts, ch 1162, §121, 155; 2013 Acts, ch 90, §146
Referred to in **§490.1101**, **§490.1111**, **§490.1113**, **§490.1302**

DIVISION XII

DISPOSITION OF ASSETS

490.1201 Disposition of assets not requiring shareholder approval.

Approval of the shareholders of a corporation is not required to do any of the following, unless the articles of incorporation otherwise provide:

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

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

3. To transfer any or all of 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.

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

89 Acts, ch 288, §129; 2002 Acts, ch 1154, §76, 125
Referred to in **§490.1202**

490.1202 Shareholder approval of certain dispositions.

1. A sale, lease, exchange, or other disposition of assets, other than a disposition described in **section 490.1201**, requires approval of the 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.* A disposition that requires approval of the shareholders under **subsection 1** shall be initiated by a resolution by the board of directors 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 disposition, unless any of the following apply:

(1) The board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation.

(2) **Section 490.826** applies.

b. If paragraph *"a"*, subparagraph (1) or (2), applies, the board shall transmit to the shareholders the basis for so proceeding.

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

4. 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 meeting of shareholders at which the disposition is to be submitted for approval. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the disposition and shall contain a description of the 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 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 disposition exists.

6. After a 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 of other parties to the disposition.

7. 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**.

89 Acts, ch 288, §130; 2002 Acts, ch 1154, §77, 125; 2013 Acts, ch 31, §49, 82

Referred to in **§490.1302**

DIVISION XIII

APPRAISAL RIGHTS

Referred to in **§490.1107**, **§499.69A**, **§524.1309**, **§524.1406**, **§524.1417**

PART A

RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

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*".

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. "*Interested transaction*" means a corporate action described in **section 490.1302, subsection 1**, other than a merger pursuant to **section 490.1105**, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition, all of the following apply:

a. *"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; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the 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 is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group.

b. *"Excluded shares"* means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

c. *"Interested person"* means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action was or had any of the following:

(1) Was the beneficial owner of twenty percent or more of the voting power of the corporation, other than as owner of excluded shares.

(2) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent or more of the directors to the board of directors of the corporation.

(3) 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 490.862**.

(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.

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

8. *"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.

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

10. *"Shareholder"* means both a record shareholder and a beneficial shareholder.

89 Acts, ch 288, §131; 2000 Acts, ch 1211, §2; 2002 Acts, ch 1154, §78, 125; 2012 Acts, ch 1023, §157; 2013 Acts, ch 31, §50, 82; 2014 Acts, ch 1001, §1

Referred to in **§490.863**, **§490.1430**

Subsection 4, paragraph b stricken and paragraph a, subparagraphs (1) – (3) redesignated as unnumbered paragraph 1, paragraphs a – c

490.1302 Shareholders' right to appraisal.

1. A shareholder is entitled to 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 merger to which the corporation is a party if either of the following apply:

(1) Shareholder approval is required for the merger by **section 490.1104** 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 and the merger is governed by **section 490.1105**.

b. Consummation of a 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 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 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 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.

e. Any 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.

f. Consummation of a conversion of the corporation to an other entity pursuant to **sections 490.1111 through 490.1114**.

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 which is any of the following:

(1) A covered security under section 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended.

(2) Traded in an organized market and has at least two thousand shareholders and a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than ten percent of such shares.

(3) Issued by an open-end management investment company registered with the United States securities and exchange commission under the federal Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.

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 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 the corporate action is an interested transaction.

3. Notwithstanding any other provision of **this section**, 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.

89 Acts, ch 288, §132; 2002 Acts, ch 1154, §79, 125; 2008 Acts, ch 1162, §122, 155; 2013 Acts, ch 31, §51 – 55, 82; 2013 Acts, ch 140, §72

Referred to in **§490.1301**, **§490.1320**, **§490.1321**, **§490.1322**, **§490.1340**

490.1303 Assertion of rights by nominees and beneficial owners.

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

2. A beneficial shareholder may assert appraisal rights as to shares of any class or series held on 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 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 the class or series that are beneficially owned by the beneficial shareholder.

89 Acts, ch 288, §133; 2002 Acts, ch 1154, §80, 125; 2002 Acts, ch 1175, §91

490.1304 through 490.1319 Reserved.

PART B

PROCEDURE FOR EXERCISE OF
APPRAISAL RIGHTS

490.1320 Notice of appraisal rights.

1. Where any proposed corporate action specified 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 appraisal rights under this part. 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. In a merger pursuant to **section 490.1105**, the parent corporation must notify in writing

all record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate action 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**.

3. Where any corporate action specified in **section 490.1302, subsection 1**, is to be approved by written consent of the shareholders pursuant to **section 490.704**, all of the following apply:

a. Written notice that appraisal rights are, are not, or may be available must be sent to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of **this chapter**.

b. Written notice that appraisal rights are, are not, or may be available must be delivered together with the notice to nonconsenting and nonvoting shareholders required by **section 490.704, subsections 5 and 6**, may include the materials described in **section 490.1322** and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of **this chapter**.

4. Where corporate action described in **section 490.1302, subsection 1**, is proposed, or a merger pursuant to **section 490.1105** is effected, the notice referred to in **subsection 1 or 3**, if the corporation concludes that appraisal rights are or may be available, and in **subsection 2** shall be accompanied by all of the following:

a. The annual financial statements specified in **section 490.1620, subsection 1**, of the corporation that issued the shares that may be subject to appraisal, which shall be as of a date ending not more than sixteen months before the date of the notice and shall comply with **section 490.1620, subsection 2**; provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information.

b. The latest available quarterly financial statements of such corporation, if any.

5. The right to receive the information described in **subsection 4** may be waived in writing by a shareholder before or after the corporate action.

89 Acts, ch 288, §134; 2002 Acts, ch 1154, §81, 125; 2013 Acts, ch 31, §56, 82
Referred to in **§490.1331**

490.1321 Notice of intent to demand payment.

1. If a corporate action specified in **section 490.1302, subsection 1,** is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must do all of the following:

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

b. Not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed action.

2. If a corporate action specified in **section 490.1302, subsection 1**, is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not sign a consent in favor of the proposed action with respect to that class or series of shares.

3. A shareholder who fails to satisfy the requirements of **subsection 1 or 2,** is not entitled to payment under this part.

89 Acts, ch 288, §135; 2002 Acts, ch 1154, §82, 125; 2013 Acts, ch 31, §57, 82
Referred to in **§490.1322**

490.1322 Appraisal notice and form.

1. If proposed corporate action requiring appraisal rights under **section 490.1302, subsection 1**, becomes effective, the corporation must send a written appraisal notice and the form required by **subsection 2**, paragraph "*a*", to all shareholders who satisfied the requirements of **section 490.1321**, **subsection 1**, or **section 490.1321, subsection 2**. In the case of a merger under **section 490.1105**, the parent must deliver an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

2. The appraisal notice must be delivered no earlier than the date the corporate action

specified in **section 490.1302, subsection 1**, became effective and no later than ten days after such date and must do all of the following:

a. Supply a form that does all of the following:

(1) Specifies the first date of any announcement to shareholders made prior to the date the corporate action became effective of the principal terms of the proposed corporate action, if any.

(2) If such announcement was made, requires the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date.

(3) Requires the shareholder asserting appraisal rights to certify that such shareholder did not vote for or consent to 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).

(2) A date by which the corporation must receive the form, which date shall not be fewer than forty nor more than sixty days after the date the appraisal notice is 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).

c. Be accompanied by a copy of **this division**.

89 Acts, ch 288, §136; 91 Acts, ch 211, §8; 2002 Acts, ch 1154, §83, 125; 2013 Acts, ch 31, §58 – 61, 82

Referred to in **§490.1301**, **§490.1303**, **§490.1320**, **§490.1323**, **§490.1324**, **§490.1325**, **§490.1331**

490.1323 Perfection of rights — right to withdraw.

1. A shareholder who receives notice pursuant to **section 490.1322** and who wishes to exercise appraisal rights must sign and return the form sent by the corporation and, in the 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). In addition, if applicable, the shareholder must certify on the form whether the beneficial owner of such shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to **section 490.1322, subsection 2**, paragraph "*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 signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to **subsection 2**.

2. 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 sign 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 notice described in **section 490.1322, subsection 2**, shall not be entitled to payment under **this division**.

89 Acts, ch 288, §137; 2002 Acts, ch 1154, §84, 125; 2003 Acts, ch 44, §86; 2013 Acts, ch 31, §62, 82

Referred to in **§490.1301**, **§490.1322**, **§490.1324**

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. (1) The annual financial statements specified in **section 490.1620, subsection 1**, of the corporation that issued the shares to be appraised, which shall be of a date ending not more than sixteen months before the date of payment and shall comply with **section 490.1620, subsection 2**; provided that, if such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information.

(2) The latest available quarterly financial statements of such corporation, 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 the payment to the shareholder pursuant to **subsection 1** in full satisfaction of the corporation's obligations under **this chapter**.

89 Acts, ch 288, §138; 2002 Acts, ch 1154, §85, 125; 2003 Acts, ch 44, §87; 2013 Acts, ch 31, §63, 82

Referred to in **§490.1301**, **§490.1325**, **§490.1326**, **§490.1331**

490.1325 After-acquired shares.

1. A corporation may elect to withhold payment required by **section 490.1324** from any shareholder who was required to, but 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*".

89 Acts, ch 288, §139; 91 Acts, ch 211, §9; 2002 Acts, ch 1154, §86, 125; 2013 Acts, ch 31, §64, 82

Referred to in **§490.1301**, **§490.1323**, **§490.1324**, **§490.1326**, **§490.1330**, **§490.1331**

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.

89 Acts, ch 288, §140; 91 Acts, ch 211, §10; 97 Acts, ch 171, §13; 2002 Acts, ch 1154, §87, 125

Referred to in **§490.1301**, **§490.1324**, **§490.1325**, **§490.1330**, **§490.1331**

490.1327 and 490.1328 Repealed by 2002 Acts, ch 1154, §123, 125.

490.1329 Reserved.

PART C

490.1330 Court action.

1. If a shareholder makes a demand for payment under **section 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 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 the corporation's principal office or, if none, 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 the foreign corporation was located at the time of the transaction.

3. The corporation shall make all 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 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 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 shareholder's shares, plus interest, exceeds the amount paid by the corporation to the shareholder for such shares.

b. The fair value, plus interest, of the shareholder's shares for which the corporation elected to withhold payment under **section 490.1325**.

89 Acts, ch 288, §143; 2000 Acts, ch 1211, §1; 2002 Acts, ch 1154, §88, 125; 2014 Acts, ch 1001, §2

Referred to in **§490.1301**, **§490.1331**

Subsection 6 stricken

490.1331 Court costs and expenses.

1. The court in an appraisal proceeding commenced under **section 490.1330** shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against the corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by **this division**.

2. The court in an appraisal proceeding may also assess the expenses for the respective parties, in amounts the court finds equitable, for any of the following:

a. Against the corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of **section 490.1320**, **490.1322**, **490.1324**, or **490.1325**.

b. Against either the corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the 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 expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated, and that such expenses should not be assessed against the corporation, the court may direct that such expenses be paid out of the amounts awarded the 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 expenses of the suit.

89 Acts, ch 288, §144; 2002 Acts, ch 1154, §89, 125; 2013 Acts, ch 31, §65, 82

Referred to in **§490.1301**

490.1332 through 490.1339 Reserved.

490.1340 Other remedies limited.

1. The legality of a proposed or completed corporate action described in **section 490.1302, subsection 1**, shall not be contested, nor may the corporate action be enjoined, set aside, or rescinded, in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

2. **Subsection 1** does not apply to a corporate action that meets any of the following conditions:

a. Was not authorized and approved in accordance with the applicable provisions of any of the following:

(1) Division X, XI, or XII of **this chapter**.

(2) The articles of incorporation or bylaws.

(3) The resolution of the board of directors authorizing the corporate action.

b. Was procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading.

c. Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in **section 490.862** and has been approved by the shareholders in the same manner as is provided in **section 490.863** as if the interested transaction were a director's conflicting interest transaction.

d. Is approved by less than unanimous consent of the voting shareholders pursuant to **section 490.704**, if all of the following apply:

(1) The challenge to the corporate action is brought by a shareholder who did not consent

and as to whom notice of the approval of the corporate action was not effective at least ten days before the corporate action was effected.

(2) The proceeding challenging the corporate action is commenced within ten days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

2013 Acts, ch 31, §66, 82

DIVISION XIV

DISSOLUTION

Referred to in §15E.207, §490.640, §490.1114, §490.1202

PART A

Referred to in §15E.208

490.1401 Dissolution by incorporators or initial directors.

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing articles of dissolution that set forth all of the following:

1. The name of the corporation.
2. The date of its incorporation.
3. Either of the following:

a. That none of the corporation's shares has been issued.

b. That the corporation has not commenced business.

4. That no debt of the corporation remains unpaid.
5. That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued.
6. That a majority of the incorporators or initial directors authorized the dissolution.

89 Acts, ch 288, §145

490.1402 Dissolution by board of directors and shareholders.

1. A corporation's board of directors may propose dissolution for submission to the shareholders.

2. For a proposal to dissolve to be adopted both of the following must apply:

a. (1) The board of directors must recommend dissolution to the shareholders unless any of the following apply:

(a) The board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation.

(b) **Section 490.826** applies.

(2) If paragraph "*a*", subparagraph (1) or (2), applies, it must communicate the basis for so proceeding.

b. The shareholders entitled to vote must approve the proposal to dissolve as provided in **subsection 5**.

3. The board of directors may condition its submission of the proposal for dissolution on any basis.

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

89 Acts, ch 288, §146; 2002 Acts, ch 1154, §90, 125; 2013 Acts, ch 31, §67, 82

Referred to in §490.1434

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, 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. 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.

89 Acts, ch 288, §147; 2002 Acts, ch 1154, §91, 125

Referred to in **§490.1404**, **§490.1434**

490.1404 Revocation of dissolution.

1. A corporation may revoke its dissolution within one hundred twenty days of the effective date of its articles of dissolution.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

3. After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the corporation.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect.

e. If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization.

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

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

89 Acts, ch 288, §148; 2002 Acts, ch 1154, §92, 125; 2003 Acts, ch 44, §88

Referred to in **§524.1306**

490.1405 Effect of dissolution.

1. A dissolved corporation continues its corporate existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including any of the following:

a. Collecting its assets.

b. Disposing of its properties that will not be distributed in kind to its shareholders.

c. Discharging or making provision for discharging its liabilities.

d. Distributing its remaining property among its shareholders according to their interests.

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a corporation does not do any of the following:

a. Transfer title to the corporation's property.

b. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records.

c. Subject its directors or officers to standards of conduct different from those prescribed in **division VIII**.

d. Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws.

e. Prevent commencement of a proceeding by or against the corporation in its corporate name.

f. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution.

g. Terminate the authority of the registered agent of the corporation.

89 Acts, ch 288, §149
Referred to in **§490.1421**, **§490.1433**, **§490.1434**

490.1406 Known claims against dissolved corporation.

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

2. The written notice must do all of the following:

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

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

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

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

3. A claim against the dissolved corporation is barred if either of the following occur:

a. A claimant who was given written notice under **subsection 2** does not deliver the claim to the dissolved corporation by the deadline.

b. A claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of **this section**, *"claim"* does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

89 Acts, ch 288, §150; 2002 Acts, ch 1154, §93, 125
Referred to in **§490.1407**, **§490.1409**, **§490.1421**, **§490.1433**, **§490.1434**

490.1407 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 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 three years after the publication date of the newspaper notice:

a. A claimant who 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 in either of the following ways:

a. Against the dissolved corporation, to the extent of its undistributed assets.

b. 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.

89 Acts, ch 288, §151; 2002 Acts, ch 1154, §94, 125
Referred to in **§490.1408**, **§490.1409**, **§490.1421**, **§490.1433**, **§490.1434**

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.

2002 Acts, ch 1154, §95, 125
Referred to in **§490.1407**, **§490.1409**

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**.

2002 Acts, ch 1154, §96, 125
Referred to in **§490.833**

490.1410 through 490.1419 Reserved.

PART B

Referred to in **§249A.40**

490.1420 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under **section 490.1421** to administratively dissolve a corporation if any of the following apply:

1. The corporation has not delivered a biennial report to the secretary of state in a form that meets the requirements of **section 490.1622**, within sixty days after it is due, or has not

paid any fee, tax, or penalty due to the secretary of state under **this chapter** or law other than **this chapter**, within sixty days after it is due.

2. The corporation is without a registered agent or registered office in this state for sixty days or more.

3. The corporation does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

4. The corporation's period of duration stated in its articles of incorporation expires.

89 Acts, ch 288, §152; 96 Acts, ch 1170, §9, 10; 97 Acts, ch 171, §14; 2010 Acts, ch 1100, §18
Referred to in **§490.1421**

490.1421 Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under **section 490.1420** for dissolving a corporation, the secretary of state shall serve the corporation with written notice of the secretary of state's determination under **section 490.504**.

2. If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under **section 490.504**, the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under **section 490.504**.

3. A corporation administratively dissolved continues its corporate existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under **section 490.1405** and notify claimants under **sections 490.1406** and **490.1407**.

4. The administrative dissolution of a corporation does not terminate the authority of its registered agent.

5. The secretary of state's administrative dissolution of a corporation pursuant to **this section** appoints the secretary of state the corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the corporation was authorized to transact business in this state. Service of process on the secretary of state under **this subsection** is service on the corporation. Upon receipt of process, the secretary of state shall serve a copy of the process on the corporation as provided in **section 490.504**. **This subsection** does not preclude service on the corporation's registered agent, if any.

89 Acts, ch 288, §153; 96 Acts, ch 1170, §11
Referred to in **§490.1420**, **§490.1422**

490.1422 Reinstatement following administrative dissolution.

1. A corporation administratively dissolved under **section 490.1421** may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the corporation at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution have been eliminated.

c. If the application is received more than five years after the effective date of dissolution, state a corporate name that satisfies the requirements of **section 490.401**.

d. State the federal tax identification number of the corporation.

2. *a.* The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the departments of revenue and workforce development. The departments of revenue and workforce development shall report to the secretary of state the tax status of the corporation. If either department reports to the secretary of state that a filing delinquency or liability exists against the corporation, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. (1) If the secretary of state determines that the application contains the information required by **subsection 1**, and that a delinquency or liability reported pursuant to paragraph "*a*" has been satisfied, and that the information is correct, the secretary of state shall cancel

the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the certificate of reinstatement, and deliver a copy to the corporation under **section 490.504**.

(2) If the corporate name in **subsection 1**, paragraph "*c*", is different than the corporate name in **subsection 1**, paragraph "*a*", the certificate of reinstatement shall constitute an amendment to the articles of incorporation insofar as it pertains to the corporate name. A corporation shall not relinquish the right to retain its corporate name if the reinstatement is effective within five years of the effective date of the corporation's dissolution.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

89 Acts, ch 288, §154; 92 Acts, ch 1244, §46; 93 Acts, ch 17, §1; 93 Acts, ch 126, §7, 8; 94 Acts, ch 1053, §1; 96 Acts, ch 1170, §12, 13; 2003 Acts, ch 145, §286; 2006 Acts, ch 1089, §9 – 12; 2010 Acts, ch 1040, §2

Referred to in **§249A.40**, **§488.108**, **§490.401**, **§504.401**, **§504.403**

490.1423 Appeal from denial of reinstatement.

1. If the secretary of state denies a corporation's application for reinstatement following administrative dissolution, the secretary of state shall serve the corporation under **section 490.504** with a written notice that explains the reason or reasons for denial.

2. The corporation may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved corporation or may take other action the court considers appropriate.

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

89 Acts, ch 288, §155

490.1424 through 490.1429 Reserved.

PART C

490.1430 Grounds for judicial dissolution.

1. The district court may dissolve a corporation in any of the following ways:

a. A proceeding by the attorney general, if it is established that any of the following apply:

(1) The corporation obtained its articles of incorporation through fraud.

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law.

b. A proceeding by a shareholder if it is established that any of the following conditions exist:

(1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and either irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

(2) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent.

(3) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

(4) The corporate assets are being misapplied or wasted.

c. A proceeding by a creditor if it is established that any of the following apply:

(1) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

(2) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

d. A proceeding by the corporation to have its voluntary dissolution continued under court supervision.

e. A proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

2. **Subsection 1**, paragraph *"b"*, shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares which are any of the following:

a. Listed on the New York stock exchange, the American stock exchange, or on any exchange owned or operated by the NASDAQ stock market, l.l.c., or listed or quoted on a system owned or operated by the national association of securities dealers, inc.

b. Not so listed or quoted, but are held by at least three hundred shareholders and the shares outstanding have a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than ten percent of such shares.

3. As used in **this section**, *"beneficial shareholder"* has the meaning specified in **section 490.1301, subsection 2**.

89 Acts, ch 288, §156; 2013 Acts, ch 31, §68, 82
Referred to in **§490.304**, **§490.1431**, **§490.1433**, **§490.1434**

490.1431 Procedure for judicial dissolution.

1. Venue for a proceeding by the attorney general to dissolve a corporation lies in Polk county. Venue for a proceeding brought by any other party named in **section 490.1430** lies in the county where a corporation's principal office or, if none in this state, its registered office is or was last located.

2. It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

3. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

4. Within ten days of the commencement of a proceeding to dissolve a corporation under **section 490.1430, subsection 1**, paragraph *"b"*, 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**.

89 Acts, ch 288, §157; 2002 Acts, ch 1154, §97, 125; 2013 Acts, ch 31, §69, 82

490.1432 Receivership or custodianship.

1. Unless an election to purchase has been filed under **section 490.1434**, a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has jurisdiction over the corporation and all its property wherever located.

2. The court may appoint an individual or a domestic or foreign corporation authorized to transact business in this state as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

a. The receiver may do either or both of the following:

(1) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court.

(2) Sue and defend in the receiver's own name as receiver of the corporation in all courts of this state.

b. The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

4. The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

5. The court from time to time during the receivership or custodianship may order compensation paid and expenses paid or reimbursed to the receiver or custodian from the assets of the corporation or proceeds from the sale of the assets.

89 Acts, ch 288, §158; 2013 Acts, ch 31, §70, 82

490.1433 Decree of dissolution.

1. If after a hearing the court determines that one or more grounds for judicial dissolution described in **section 490.1430** exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the secretary of state, who shall file it.

2. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with **section 490.1405** and the notification of claimants in accordance with **sections 490.1406** and **490.1407**.

89 Acts, ch 288, §159

Referred to in **§602.8102(68)**

490.1434 Election to purchase in lieu of dissolution.

1. In a proceeding under **section 490.1430, subsection 1, paragraph *"b"***, to dissolve a corporation, 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 1, paragraph *"b"***, 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 1, paragraph *"b"***, 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 1, paragraph *"b"***, 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 1, paragraph *"b"***, 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 1**, paragraph "*b*", subparagraph (2) or (4), 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**.

2002 Acts, ch 1154, §98, 125; 2013 Acts, ch 31, §71, 82
Referred to in **§490.1431**, **§490.1432**
Effective date of notice, see **§490.141**

490.1435 through 490.1439 Reserved.

PART D

490.1440 Deposit with state treasurer.

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the treasurer of state or other appropriate state official for safekeeping. When the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the treasurer of state or other appropriate state official shall pay the creditor, claimant, or shareholder or that person's representative that amount.

89 Acts, ch 288, §160
Referred to in **§489.1112**, **§524.1305**, **§524.1310**, **§533.404**, **§556.6**

DIVISION XV

FOREIGN CORPORATIONS

Referred to in §490.120, §524.1805

PART A

490.1501 Authority to transact business required.

1. A foreign corporation shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of **subsection 1**:

a. Maintaining, defending, or settling any proceeding.

b. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

i. Owning, without more, real or personal property.

j. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature.

k. Transacting business in interstate commerce.

3. The list of activities in **subsection 2** is not exhaustive.

89 Acts, ch 288, §161

490.1502 Consequences of transacting business without authority.

1. A foreign corporation transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

4. A foreign corporation is liable for a civil penalty of not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under **this subsection**.

5. Notwithstanding **subsections 1 and 2**, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

89 Acts, ch 288, §162

490.1503 Application for certificate of authority.

1. A foreign corporation may apply for a certificate of authority to transact business in

this state by delivering an application to the secretary of state for filing. The application must set forth all of the following:

a. The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of **section 490.1506**.

b. The name of the state or country under whose law it is incorporated.

c. Its date of incorporation and period of duration.

d. The street address of its principal office.

e. The address of its registered office in this state and the name of its registered agent at that office.

f. The names and usual business addresses of its current directors and officers.

2. The foreign corporation shall deliver the completed application to the secretary of state, and also deliver to the secretary of state a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated which is dated no earlier than ninety days prior to the date the application is filed with the secretary of state.

89 Acts, ch 288, §163; 96 Acts, ch 1170, §14

Referred to in **§490.1504**, **§490.1510**

490.1504 Amended certificate of authority.

1. A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes any of the following:

a. Its corporate name.

b. The period of its duration.

c. The state or country of its incorporation.

2. The requirements of **section 490.1503** for obtaining an original certificate of authority apply to obtaining an amended certificate under **this section**.

89 Acts, ch 288, §164

Referred to in **§490.1506**

490.1505 Effect of certificate of authority.

1. A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in **this chapter**.

2. A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided in **this chapter** is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

3. **This chapter** does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

89 Acts, ch 288, §165

490.1506 Corporate name of foreign corporation.

1. If the corporate name of a foreign corporation does not satisfy the requirements of **section 490.401**, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may do either of the following:

a. Add the word "corporation", "incorporated", "company", or "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", to its corporate name for use in this state.

b. Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

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

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

b. A name reserved, registered, or protected as provided in **section 490.402** or **490.403**.

c. The fictitious name of another foreign corporation authorized to transact business in this state.

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

3. A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation incorporated or authorized to transact business in this state that is not distinguishable upon the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if either of the following apply:

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

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

4. A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation has filed documentation satisfactory to the secretary of state of the occurrence of any of the following:

a. The foreign corporation has merged with the other corporation.

b. The foreign corporation has been formed by reorganization of the other corporation.

c. The foreign corporation has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of **section 490.401**, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of **section 490.401** and obtains an amended certificate of authority under **section 490.1504**.

89 Acts, ch 288, §166; 96 Acts, ch 1170, §15; 2006 Acts, ch 1089, §13

Referred to in **§490.403**, **§490.1503**

490.1507 Registered office and registered agent of foreign corporation.

A foreign corporation authorized to transact business in this state must continuously maintain in this state both of the following:

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

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

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

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

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

89 Acts, ch 288, §167

490.1508 Change of registered office or registered agent of foreign corporation.

1. A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

a. Its name.

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

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

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

2. If the street address of a registered agent's business office changes, the agent may change the street address of the registered office of any foreign corporation for which the person is the registered agent by notifying the corporation in writing of the change, and signing and delivering to the secretary of state for filing a statement of change that complies with the requirements of **subsection 1** and recites that the corporation has been notified of the change.

3. A corporation may also change its registered office or registered agent in its biennial report as provided in **section 490.1622**.

89 Acts, ch 288, §168; 96 Acts, ch 1170, §16; 97 Acts, ch 171, §15; 2013 Acts, ch 31, §72, 82
Referred to in **§490.1530**, **§490.1622**

490.1509 Resignation of registered agent of foreign corporation.

1. The registered agent of a foreign corporation may resign the agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail to the corporation at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the corporation, including the date the copies were sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement was filed.

89 Acts, ch 288, §169; 96 Acts, ch 1170, §17
Referred to in **§490.120**, **§490.125**, **§490.1530**

490.1510 Service on foreign corporation.

1. The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

2. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report if the foreign corporation meets any of the following conditions:

a. Has no registered agent or its registered agent cannot with reasonable diligence be served.

b. Has withdrawn from transacting business in this state under **section 490.1520**.

c. Has had its certificate of authority revoked under **section 490.1531**.

3. *a.* A foreign corporation that does not have a current certificate of authority to transact business in this state under **section 490.1503** may be served, with respect to an in rem action, in the manner provided in **subsections 2 and 4**, addressed to the secretary of the foreign corporation at its principal office as found either in the records of the jurisdiction of incorporation or in public records filed by it with an agency of the United States or any state having regulatory authority over the foreign corporation's business and affairs.

b. For purposes of paragraph "*a*", "*in rem action*" means an action, statutory notice, or demand involving the title to real estate or tangible personal property sited in Iowa; the partition or the foreclosure of a lien or mortgage against real estate; or the determination of the priorities of liens or claims against such real estate or personal property.

4. Service is perfected under **subsection 2 or 3** at the earliest of:

a. The date the foreign corporation receives the mail.

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

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

5. A foreign corporation may also be served in any other manner permitted by law.

89 Acts, ch 288, §170; 97 Acts, ch 171, §16; 2011 Acts, ch 56, §1, 2
Referred to in **§490.1531**, **§490.1532**

490.1511 through 490.1519 Reserved.

PART B

490.1520 Withdrawal of foreign corporation.

1. A foreign corporation authorized to transact business in this state shall not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

2. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth all of the following:

a. The name of the foreign corporation and the name of the state or country under whose law it is incorporated.

b. That it is not transacting business in this state and that it surrenders its authority to transact business in this state.

c. That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph "c".

3. After the withdrawal of the corporation is effective, service of process on the secretary of state under **this section** is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign corporation at the mailing address set forth under **subsection 2**.

89 Acts, ch 288, §171; 96 Acts, ch 1170, §18

Referred to in **§490.1510**

490.1521 and 490.1522 Reserved.

490.1523 Transfer of authority.

1. A foreign business corporation authorized to transact business in this state that converts to a foreign nonprofit corporation or to any form of foreign unincorporated entity that is required to obtain a certificate of authority or make a similar type of filing with the secretary of state if it transacts business in this state shall file with the secretary of state an application for transfer of authority signed by any officer or other duly authorized representative. The application shall set forth all of the following:

a. The name of the corporation.

b. The type of unincorporated entity to which it has been converted and the jurisdiction whose laws govern its internal affairs.

c. Any other information that would be required in a filing under the laws of this state by an unincorporated entity of the type the corporation has become seeking authority to transact business in this state.

2. The application for transfer of authority shall be delivered to the secretary of state for filing and shall take effect at the effective time provided in **section 490.123**.

3. Upon the effectiveness of the application for transfer of authority, the authority of the corporation under **this chapter** to transact business in this state shall be transferred without interruption to the converted entity which shall thereafter hold such authority subject to the provisions of the laws of this state applicable to that type of unincorporated entity.

2013 Acts, ch 31, §73, 82

490.1524 through 490.1529 Reserved.

PART C

490.1530 Grounds for revocation.

The secretary of state may commence a proceeding under **section 490.1531** to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

1. The foreign corporation does not deliver its biennial report to the secretary of state in a form that meets the requirements of **section 490.1622** within sixty days after it is due.

2. The foreign corporation is without a registered agent or registered office in this state for sixty days or more.

3. The foreign corporation does not inform the secretary of state under **section 490.1508** or **490.1509** that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance.

4. An incorporator, director, officer, or agent of the foreign corporation signed a document that person knew was false in any material respect with intent that the document be delivered to the secretary of state for filing.

5. The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

89 Acts, ch 288, §172; 90 Acts, ch 1205, §27; 96 Acts, ch 1170, §19; 97 Acts, ch 171, §17
Referred to in **§490.1531**

490.1531 Procedure for and effect of revocation.

1. If the secretary of state determines that one or more grounds exist under **section 490.1530** for revocation of a certificate of authority, the secretary of state shall serve the foreign corporation with written notice of the secretary's determination under **section 490.1510**.

2. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under **section 490.1510**, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the foreign corporation under **section 490.1510**.

3. The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

4. The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under **this subsection** is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent biennial report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none is on file, in its application for a certificate of authority.

5. Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

89 Acts, ch 288, §173; 97 Acts, ch 171, §18
Referred to in **§490.1510**, **§490.1530**

490.1532 Appeal from revocation.

1. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority to the district court within thirty days after service of the certificate of revocation is perfected under **section 490.1510**. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

2. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

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

89 Acts, ch 288, §174

DIVISION XVI

RECORDS AND REPORTS

PART A

490.1601 Corporate records.

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in the form of a document, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

5. A corporation shall keep a copy of the following records at its principal office:

a. Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in **section 490.120, subsection 12**, paragraph "*e*", regarding facts on which a filed document is dependent.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

d. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years.

e. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under **section 490.1620**.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent biennial report delivered to the secretary of state under **section 490.1622**.

89 Acts, ch 288, §175; 97 Acts, ch 171, §19; 2007 Acts, ch 140, §11, 12; 2013 Acts, ch 31, §74, 82

Referred to in **§490.141**, **§490.840**, **§490.1602**

490.1602 Inspection of records by shareholders.

1. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in **section 490.1601, subsection 5**, if the shareholder gives the corporation signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

2. For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its internet site or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

3. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of **subsection 4** and gives the

corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under **subsection 1**.

b. Accounting records of the corporation.

c. The record of shareholders.

4. A shareholder may inspect and copy the records described in **subsection 3** only if all of the following apply:

a. The shareholder's demand is made in good faith and for a proper purpose.

b. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect.

c. The records are directly connected with the shareholder's purpose.

5. The right of inspection granted by **this section** shall not be abolished or limited by a corporation's articles of incorporation or bylaws.

6. **This section** does not affect any of the following:

a. The right of a shareholder to inspect records under **section 490.720** or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

b. The power of a court, independently of **this chapter**, to compel the production of corporate records for examination.

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

89 Acts, ch 288, §176; 2013 Acts, ch 31, §75, 82

Referred to in **§490.720**, **§490.1603**, **§490.1604**

490.1603 Scope of inspection right.

1. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

2. The right to copy records under **section 490.1602** includes, if reasonable, the right to receive copies 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** by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

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, reproduction, or transmission of the records.

89 Acts, ch 288, §177; 2002 Acts, ch 1154, §99, 125; 2013 Acts, ch 31, §76, 82

490.1604 Court-ordered inspection.

1. If a corporation does not allow a shareholder who complies with **section 490.1602, subsection 1**, to inspect and copy any records required by that subsection to be available for inspection, the district court of the county where the corporation's principal office or, if none in this state, its registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

2. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other records, the shareholder who complies with **section 490.1602** may apply to the district court in the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under **this subsection** on an expedited basis.

3. If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because

it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

4. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

89 Acts, ch 288, §178; 2013 Acts, ch 31, §77, 82

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.

2002 Acts, ch 1154, §100, 125

490.1606 Exception to notice requirement.

1. Whenever notice would otherwise be required to be given under any provision of **this chapter** to a shareholder, such notice need not be given if any of the following apply:

a. Notices to the shareholders 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 or could not be delivered.

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 or could not be delivered.

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.

2002 Acts, ch 1154, §101, 125; 2013 Acts, ch 31, §78, 82

490.1607 through 490.1619 Reserved.

PART B

490.1620 Financial statements for shareholders.

1. Except as provided in **subsection 4**, a corporation shall prepare and make available to its shareholders, as provided in **subsection 3**, annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements

are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

2. If the annual financial statements are reported upon by a public accountant, the report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records which does all of the following:

a. States such person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation.

b. Describes any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

3. Within one hundred twenty days after the close of each fiscal year, the corporation shall deliver the annual financial statements described in **subsections 1** and **2** to any person who was a shareholder of the corporation at the end of such fiscal year. Thereafter, on written request from a shareholder to whom the statements were not delivered, the corporation shall deliver to the shareholder the latest financial statements. The corporation may fulfill its obligation to deliver the financial statements under **this subsection** by any of the following methods:

a. By any means authorized under **section 490.141**.

b. By making the financial statements available to a shareholder via internet access without charge notwithstanding the lack of consent otherwise required by **section 490.141, subsection 10**, paragraph "*b*", and by notifying the shareholder of instructions for access.

c. If the corporation is a public corporation, by delivering the specified financial statements, or otherwise making them available, in any manner permitted by the applicable rules and regulations of the United States securities and exchange commission.

d. If the corporation is not a public corporation, by filing annual financial reports in compliance with state or federal law, provided that such reports meet all the following requirements:

(1) Contain a balance sheet as of the end of the fiscal year and an income statement for that fiscal year.

(2) Are required by state or federal law to be filed with a state or federal agency within one hundred twenty days after the close of each fiscal year.

(3) Are available to the public, including via internet access, without charge.

4. A corporation with fewer than one hundred shareholders as of the end of the corporation's fiscal year, or that operates on a cooperative basis as defined under 26 U.S.C. §1381, shall be excused from complying with **this section** if the corporation prepares annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year and an income statement for that fiscal year. Upon written request from a shareholder, the corporation shall, at its expense, deliver to the shareholder the requested financial statements as provided in **subsection 3**, paragraph "*a*" or "*b*". If the annual financial statements are reported upon by a public accountant, the report must accompany them.

89 Acts, ch 288, §179; 2013 Acts, ch 31, §79, 82; 2014 Acts, ch 1024, §4

Referred to in **§490.1320**, **§490.1324**, **§490.1601**

Section amended

490.1621 Other reports to shareholders. Repealed by 2002 Acts, ch 1154, §123, 125.

490.1622 Biennial report for secretary of state.

1. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report that sets forth all of the following:

a. The name of the corporation and the state or country under whose law it is incorporated.

b. The address of its registered office and the name of its registered agent at that office in this state, together with the consent of any new registered agent.

c. The address of its principal office.

d. The names and addresses of the president, secretary, treasurer, and one member of the board of directors.

2. Information in the biennial report must be current as of the date the report is delivered to the secretary of state for filing. The report shall be executed on behalf of the corporation and signed as provided in **section 490.120** or by any other person authorized by the board of directors of the corporation.

3. The first biennial report shall be delivered to the secretary of state between January 1 and April 1 of the first even-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent biennial reports must be delivered to the secretary of state between January 1 and April 1 of the following even-numbered calendar years. A filing fee for the biennial report shall be determined by the secretary of state. For purposes of **this section**, each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

4. If a biennial report does not contain the information required by **this section**, the secretary of state shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in **section 490.502** or **490.1508**. If the secretary of state determines that a biennial report does not contain the information required by **this section** but otherwise meets the requirements of **section 490.502** or **490.1508** for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change of registered office or registered agent, effective as provided in **section 490.123**, before returning the biennial report to the corporation as provided in **this section**. A statement of change of registered office or agent pursuant to **this subsection** shall be executed by a person authorized to execute the biennial report.

89 Acts, ch 288, §181; 96 Acts, ch 1170, §20, 21; 97 Acts, ch 171, §20; 2010 Acts, ch 1100, §19
Referred to in **§490.120**, **§490.125**, **§490.128**, **§490.502**, **§490.1420**, **§490.1508**, **§490.1530**, **§490.1601**

DIVISION XVII

TRANSITION PROVISIONS

490.1701 Application to existing corporations.

1. Except as provided in **this subsection** or **chapter 504, Code 1989**, or current **chapter 504**, **this chapter** does not apply to or affect entities subject to **chapter 504, Code 1989**, or current **chapter 504**. Such entities continue to be governed by all laws of this state applicable to them before December 31, 1989, as those laws are amended. **This chapter** does not derogate or limit the powers to which such entities are entitled.

2. *a.* Unless otherwise provided, **this chapter** does not apply to an entity subject to **chapter 174**, **497**, **498**, **499**, **499A**, **524**, or **533** or a corporation organized on the mutual plan under **chapter 491**, or a telephone company organized as a corporation under **chapter 491** qualifying pursuant to an internal revenue service letter ruling under Internal Revenue Code §501(c)(12) as a nonprofit corporation entitled to distribute profits in a manner similar to a **chapter 499** corporation, unless such entity voluntarily elects to adopt the provisions of **this chapter** and complies with the procedure prescribed by **subsection 3** of **this section**.

b. A corporation organized under **chapter 496C** may voluntarily elect to adopt the provisions of **this chapter** by complying with the provisions prescribed by **subsection 3**.

3. The procedure for the voluntary election referred to in **subsection 2** is as follows:

a. The corporation shall amend or restate its articles of incorporation to indicate that the corporation adopts **this chapter** and to designate the address of its initial registered office and the name of its registered agent at that office and, if the name of the corporation is not

in compliance with the requirements of **this chapter**, to change the name of the corporation to one complying with the requirements of **this chapter**.

b. (1) The instrument shall be delivered to the secretary of state for filing and recording in the secretary of state's office. If the corporation was organized under **chapter 524** or **533**, the instrument shall also be filed and recorded in the office of the county recorder. The corporation shall at the time it files the instrument with the secretary of state deliver also to the secretary of state for filing in the secretary of state's office any biennial report which is then due.

(2) If the county of the initial registered office as stated in the instrument for a corporation organized under **chapter 524** or **533** is one which is other than the county where the principal place of business of the corporation, as designated in its articles of incorporation, was located, the corporation shall forward to the county recorder of the county in which the principal place of business of the corporation was located a copy of the instrument and the corporation shall forward to the recorder of the county in which the initial registered office of the corporation is located, in addition to a copy of the original instrument, a copy of the articles of incorporation of the corporation together with all amendments to them as then on file in the secretary of state's office. The corporation shall, through an officer or director, certify to the secretary of state that a copy has been sent to each applicable county recorder, including the date each copy was sent.

c. Upon the filing of the instrument by a corporation all of the following apply:

(1) All of the provisions of **this chapter** apply to the corporation.

(2) The secretary of state shall issue a certificate as to the filing of the instrument and deliver the certificate to the corporation or its representative.

(3) The secretary of state shall not file the instrument with respect to a corporation unless at the time of filing the corporation is validly existing and in good standing in that office under the chapter under which it is incorporated. The corporation shall be considered validly existing and in good standing for the purpose of **this chapter** for a period of three months following the expiration date of the corporation, provided all biennial reports due have been filed and all fees due in connection with the biennial reports have been paid.

d. The provisions of **this chapter** becoming applicable to a corporation voluntarily electing to be governed by **this chapter** do not affect any right accrued or established, or any liability or penalty incurred, under the chapter under which it is incorporated prior to the filing by the secretary of state in the secretary of state's office of the instrument manifesting the election by the corporation to adopt the provisions of **this chapter** as provided in **this subsection**.

4. Except as specifically provided in **this chapter**, **this chapter** applies to all domestic corporations in existence on December 31, 1989, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

5. A corporation subject to **this chapter** which does not have a registered office or registered agent or both designated on the records of the secretary of state is subject to all of the following provisions:

a. The office of the corporation set forth in its first biennial report filed under **this chapter** shall be deemed its registered office until December 31, 1990, or until it files a designation of registered office with the secretary of state, whichever is earlier.

b. The person signing the first biennial report of the corporation filed under **this chapter** shall be deemed the registered agent until December 31, 1990, or a statement designating a registered agent has been filed with the secretary of state, whichever is earlier.

c. **Section 490.502** does not apply to the corporation until December 31, 1990, or until the corporation files a designation of registered office and registered agent at that office with the secretary of state, whichever is earlier.

6. A corporation subject to **this chapter** is not subject to **chapter 491**, **492**, **493**, or **495**.

89 Acts, ch 288, §182; 93 Acts, ch 126, §9; 97 Acts, ch 107, §6; 97 Acts, ch 171, §21 – 24; 2002 Acts, ch 1017, §5, 8; 2003 Acts, ch 66, §1, 2; 2003 Acts, ch 108, §91; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §394; 2006 Acts, ch 1010, §126; 2006 Acts, ch 1089, §14; 2012 Acts, ch 1017, §89; 2012 Acts, ch 1023, §157

Referred to in **§496C.14**, **§496C.19**, **§515G.3**

490.1702 Application to qualified foreign corporations.

A foreign corporation authorized to transact business in this state on December 31, 1989, is subject to **this chapter** but is not required to obtain a new certificate of authority to transact business under **this chapter**.

89 Acts, ch 288, §183

490.1703 Savings provisions.

1. Except as provided in **subsection 2**, the repeal of a statute by 1989 Iowa Acts, ch. 288, and the amendment or repeal of a statute by 2002 Iowa Acts, ch. 1154, does not affect:

a. The operation of the statute or any action taken under it before its amendment or repeal.

b. Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its amendment or repeal.

c. Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its amendment or repeal.

d. Any proceeding, reorganization, or dissolution commenced under the statute before its amendment or repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been amended or repealed.

2. If a penalty or punishment imposed for violation of a statute repealed by 1989 Iowa Acts, ch. 288, is reduced by 1989 Iowa Acts, ch. 288, the penalty or punishment if not already imposed shall be imposed in accordance with **this chapter**.

3. In the event that any provision of **this chapter** is deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., the provisions of **this chapter** shall control to the maximum extent permitted by section 102(a)(2) of that federal Act.

89 Acts, ch 288, §184; 90 Acts, ch 1168, §53; 2003 Acts, ch 66, §3; 2013 Acts, ch 31, §80, 82; 2014 Acts, ch 1026, §143

Code editor directive applied

490.1704 Preemptive rights for existing corporations. Repealed by 2006 Acts, ch 1089, §16.

490.1705 Reinstatement of corporations existing prior to December 31, 1989. Repealed by 2006 Acts, ch 1030, §86; 2006 Acts, ch 1089, §16.