



TERRY E. BRANSTAD  
GOVERNOR

OFFICE OF THE GOVERNOR

KIM REYNOLDS  
LT. GOVERNOR

April 4, 2012

The Honorable Matt Schultz  
Secretary of State of Iowa  
State Capitol Building  
LOCAL

Dear Mr. Secretary:

I hereby transmit:

Senate File 2260, an Act revising the Iowa Nonprofit Corporation Act.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry E. Branstad".

Terry E. Branstad  
Governor

cc: Secretary of the Senate  
Clerk of the House



Senate File 2260

AN ACT

REVISING THE IOWA NONPROFIT CORPORATION ACT.

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

Section 1. Section 504.141, Code 2011, is amended by adding the following new subsections:

NEW SUBSECTION. 11A. "*Domestic unincorporated entity*" means an unincorporated entity whose internal affairs are governed by the laws of this state.

NEW SUBSECTION. 17A. "*Foreign unincorporated entity*" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

NEW SUBSECTION. 25A. "*Organic law*" means a statute principally governing the internal affairs of a domestic or foreign business corporation, nonprofit corporation, or unincorporated entity.

NEW SUBSECTION. 25B. "*Organic record*" means a public organic record or private organic record.

NEW SUBSECTION. 27A. "*Private organic record*" means any record, other than a public organic record, if any, that determines the internal governance of an unincorporated entity. Where a private organic record has been amended or restated, "*private organic record*" means the private organic record as last amended or restated.

NEW SUBSECTION. 29A. "*Public organic record*" means the record, if any, that is filed of public record, to create an unincorporated entity. Where a public organic record has been

amended or restated, "public organic record" means the public organic record as last amended or restated.

NEW SUBSECTION. 29B. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

NEW SUBSECTION. 34A. a. "Unincorporated entity" means an organization or other legal entity that is not a corporation and that either has a separate legal existence or has the power to acquire an estate in real property in the entity's own name. "Unincorporated entity" includes a general partnership, limited liability company, limited partnership, business or statutory trust, joint stock association, and unincorporated nonprofit association.

b. "Unincorporated entity" does not include a domestic or foreign business corporation, a nonprofit corporation, an estate, a trust, a governmental subdivision, a state, the United States, or a foreign government.

Sec. 2. Section 504.141, subsection 15, Code 2011, is amended to read as follows:

15. "Entity" includes a ~~corporation and foreign corporation;~~ business corporation; domestic or foreign business corporation; limited liability company and domestic or foreign limited liability company; ~~profit and nonprofit unincorporated association;~~ corporation sole; business trust, domestic or foreign unincorporated entity; estate, partnership; ~~trust, and two or more persons having a joint or common economic interest; and;~~ state; ~~the United States, and;~~ governmental subdivision; ~~and~~ foreign government.

Sec. 3. Section 504.622, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 01. A membership in a public benefit or mutual benefit corporation may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws.

Sec. 4. Section 504.622, subsection 1, Code 2011, is amended to read as follows:

1. A To the extent the articles of incorporation or bylaws do not address the termination or suspension of a member, a member of a public benefit or mutual benefit corporation shall not be expelled or suspended, and a membership or memberships in such a corporation shall not be terminated or suspended except pursuant to a procedure which is fair and reasonable and

is carried out in good faith.

Sec. 5. Section 504.701, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 7. The articles of incorporation or bylaws may provide that an annual or regular meeting of members is not required to be held at a geographic location if the meeting is held by means of the internet or other electronic communications technology in a manner pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrent with the occurrence of the proceedings, vote on matters submitted to the members, pose questions, and make comments.

Sec. 6. Section 504.702, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 6. The articles of incorporation or bylaws may provide that a special meeting of members is not required to be held at a geographic location if the meeting is held by means of the internet or other electronic communications technology in a manner pursuant to which the members have the opportunity to read or hear the proceedings substantially concurrent with the occurrence of the proceedings, vote on matters submitted to the members, pose questions, and make comments.

Sec. 7. NEW SECTION. 504.709 **Conduct of meetings.**

1. At each meeting of members, an individual shall preside as chair. The chair shall be appointed as follows:

*a.* As provided in the articles of incorporation or bylaws.  
*b.* In the absence of a provision in the articles of incorporation or bylaws, by the board of directors.

*c.* In the absence of both a provision in the articles of incorporation or bylaws and an appointment of the chair by the board, by the members at the meeting.

2. Except as provided in the articles of incorporation or bylaws, the chair 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 the members.

4. The chair 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 are closed, no ballots, proxies, or votes, or any otherwise

permissible revocations or changes thereto may be accepted.

Sec. 8. NEW SECTION. 504.719 Inspectors of election.

1. A corporation with members may appoint one or more inspectors to act at a meeting of members and to make a report in the form of a record of the inspectors' determinations. Each inspector shall execute the duties of inspector impartially and according to the best of the inspector's ability.

2. The inspectors shall do all of the following:

- a. Ascertain the number of members and their voting power.
- b. Determine the members present at the meeting.
- c. Determine the validity of proxies and ballots.
- d. Count all votes.
- e. Determine the result of the voting.

3. An inspector may, but is not required to, be a director, member of a designated body, member, officer, or employee of the corporation. A person who is a candidate for an office to be filled at the meeting shall not be an inspector at that meeting.

Sec. 9. Section 504.801, subsection 2, Code 2011, is amended to read as follows:

2. Except as otherwise provided in this chapter or subsection 3, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, and subject to the oversight of, its board of directors.

Sec. 10. Section 504.826, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 7. A corporation may create or authorize the creation of one or more advisory committees whose members are not required to be directors. An advisory committee is not a committee of the board of directors and shall not exercise any powers of the board.

Sec. 11. Section 504.831, subsection 5, paragraph c, Code 2011, is amended to read as follows:

c. A committee of the board or advisory committee of which the director is not a member, as to matters within ~~its~~ the committee's or advisory committee's jurisdiction, if the director reasonably believes the committee or advisory committee merits confidence.

Sec. 12. NEW SECTION. 504.836 Business opportunities.

1. A director's taking advantage, directly or indirectly, of a business opportunity shall 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 a corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated respecting the business opportunity, the director brings the opportunity to the attention of the corporation and action is taken by the directors, a committee of the directors, or the members disclaiming the corporation's interest in the opportunity in compliance with the procedures set forth in section 504.833, as if the decision being made concerned a conflict of interest transaction.

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 first been presented to the corporation, or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation under the circumstances.

Sec. 13. Section 504.1101, subsection 1, Code 2011, is amended to read as follows:

1. Subject to the limitations set forth in section 504.1102, one or more nonprofit corporations may merge with or into any one or more business corporations or nonprofit corporations or ~~limited liability companies~~ unincorporated entities, if the plan of merger is approved as provided in section 504.1103.

Sec. 14. Section 504.1101, subsection 2, paragraphs a, c, and d, Code 2011, are amended to read as follows:

a. The name of each corporation or ~~limited liability company~~ unincorporated entity planning to merge and the name of the surviving corporation into which each plans to merge.

c. The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation or ~~limited liability company~~ unincorporated entity.

d. If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or ~~limited liability company~~ unincorporated entity or into cash or other property in whole or in part.

Sec. 15. Section 504.1101, subsection 3, paragraph a, Code

2011, is amended to read as follows:

a. Any amendments to the articles of incorporation or bylaws of the surviving corporation or ~~limited liability company~~ organic record of the surviving unincorporated entity to be effected by the planned merger.

Sec. 16. Section 504.1102, subsection 1, paragraph d, unnumbered paragraph 1, Code 2011, is amended to read as follows:

A business or mutual benefit corporation or ~~limited liability company~~ an unincorporated entity, provided that all of the following apply where the public benefit or religious corporation is not the surviving entity in the merger:

Sec. 17. Section 504.1102, subsection 1, paragraph d, subparagraph (2), Code 2011, is amended to read as follows:

(2) The business or mutual benefit corporation or ~~limited liability company~~ unincorporated entity shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition.

Sec. 18. Section 504.1106, subsection 1, Code 2011, is amended to read as follows:

1. Except as provided in section 504.1102, one or more foreign business or nonprofit corporations or foreign unincorporated entities may merge with one or more domestic nonprofit corporations if all of the following conditions are met:

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

b. The foreign corporation or foreign unincorporated entity complies with section 504.1104 if it is the surviving corporation of the merger.

c. Each domestic nonprofit corporation complies with the applicable provisions of sections 504.1101 through 504.1103 and, if it is the surviving corporation of the merger, with section 504.1104.

Sec. 19. Section 504.1106, subsection 2, Code 2011, is amended to read as follows:

2. Upon the merger taking effect, the surviving foreign business or nonprofit corporation, or foreign unincorporated entity, is deemed to have irrevocably appointed the secretary

of state as its agent for service of process in any proceeding brought against it.

  
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JOHN P. KIBBIE  
President of the Senate

  
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KRAIG PAULSEN  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2260, Eighty-fourth General Assembly.

  
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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved April 4, 2012

  
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TERRY E. BRANSTAD  
Governor