



TERRY E. BRANSTAD  
GOVERNOR

OFFICE OF THE GOVERNOR

KIM REYNOLDS  
LT. GOVERNOR

April 5, 2013

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

Dear Mr. Secretary:

I hereby transmit:

House File 469, an Act relating to business corporations, including by providing for their organization and operation; providing for the relationship between shareholders, directors, and officers; and including effective date provisions.

The above House File is hereby approved this date.

Sincerely,

A handwritten signature in black ink that reads "Terry E. Branstad".

Terry E. Branstad  
Governor

cc: Secretary of the Senate  
Clerk of the House



House File 469

AN ACT

RELATING TO BUSINESS CORPORATIONS, INCLUDING BY PROVIDING FOR THEIR ORGANIZATION AND OPERATION; PROVIDING FOR THE RELATIONSHIP BETWEEN SHAREHOLDERS, DIRECTORS, AND OFFICERS; AND INCLUDING EFFECTIVE DATE PROVISIONS.

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

DIVISION I

PRINCIPAL PROVISIONS

Section 1. Section 490.140, subsections 3, 6, 9, and 26, Code 2013, are amended to read as follows:

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, printing text in italics, or boldface, or contrasting color, or typing in capitals, or underlined, is conspicuous.

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

9. "*Electronic transmission*" or "*electronically transmitted*" means any form or process of communication not directly involving the physical transfer of paper that or another tangible medium, which is suitable 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.

26. "*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, or electronic 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.

Sec. 2. Section 490.140, Code 2013, is amended by adding the following new subsections:

NEW SUBSECTION. 7A. "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.

NEW SUBSECTION. 7B. "Domestic unincorporated entity" means an unincorporated entity whose internal affairs are governed by the laws of this state.

NEW SUBSECTION. 8A. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

NEW SUBSECTION. 8B. "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.

NEW SUBSECTION. 11A. "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

NEW SUBSECTION. 21B. "Qualified director" means the same as defined in section 490.143.

NEW SUBSECTION. 32. "Writing" or "written" means any information in the form of a document.

Sec. 3. Section 490.141, Code 2013, is amended to read as follows:

490.141 Notice or other communication.

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

2. ~~Notice~~ A notice or other communication may be communicated in person; by mail or other given or sent by any method of delivery; or by telephone, voice mail, or other, except that electronic means transmissions must be in accordance with this section. ~~If these forms of personal~~

notice 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. Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective according to one of the following:~~

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

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

~~4. Written notice~~ Notice or other communication to a domestic or foreign corporation authorized to transact business in this state may be ~~addressed~~ delivered to its registered agent at its registered office or to the secretary of the corporation ~~or its secretary~~ 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.

~~5. 9. Except as provided in subsection 3, written notice, Notice or other communication if in a comprehensible form or manner, is effective at the earliest of any of the following:~~

~~a. When received. 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. Five days after its deposit in the United States mail, if If mailed postpaid by United States mail postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail.~~

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

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

~~(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.

~~7.~~ 11. If this chapter prescribes notice requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice 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.

Sec. 4. NEW SECTION. 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.

Sec. 5. NEW SECTION. 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.

Sec. 6. Section 490.502, subsection 2, Code 2013, is amended to read as follows:

2. If ~~a registered agent changes~~ the street address of ~~the~~ a registered agent's business office changes, the ~~registered~~ agent may change the street address of the registered office of any corporation for which the person is the registered agent by ~~notifying~~ delivering a signed written notice of the change to the corporation ~~in writing of the change and signing, either manually or in facsimile,~~ 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.

Sec. 7. Section 490.620, subsection 4, Code 2013, is amended to read as follows:

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.

Sec. 8. Section 490.624, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 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.

Sec. 9. Section 490.701, subsection 1, Code 2013, is amended to read as follows:

1. A 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.

Sec. 10. Section 490.703, Code 2013, is amended to read as follows:

**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 ~~either:~~ 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 ~~either~~ 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.

Sec. 11. Section 490.704, Code 2013, is amended to read as follows:

**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. A written consent shall bear the date of signature of each shareholder who signs the consent and no written consent is effective to take the corporate action referred to in the consent unless, within sixty days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders to take action are delivered to the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporate action. 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 490.703 or 490.707,~~



~~the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection 1. 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 ~~under~~ 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. If this chapter requires that notice of proposed action be given to shareholders not entitled to vote and the action is to be taken by consent of the voting shareholders, the corporation must give all shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to shareholders not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.~~

~~6. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those shareholders who have not consented in writing. If~~

~~the taking of that corporate action requires the giving of notice under section 490.1320, subsection 2, the notice of the action shall set forth the matters described in section 490.1322.~~

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.

Sec. 12. Section 490.705, subsections 1 and 5, Code 2013,



are amended to read as follows:

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.

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 ~~persons who are shareholders as of the new record date~~ entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Sec. 13. Section 490.707, Code 2013, is amended to read as follows:

**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.

Sec. 14. NEW SECTION. 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.

Sec. 15. Section 490.720, Code 2013, is amended to read as follows:

**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. ~~The~~ 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 ~~3~~ 4, to copy ~~the~~ 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 ~~shareholders'~~ shareholders' 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 ~~the~~ a shareholders' list before or at the meeting, or copy ~~the~~ 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 ~~the~~ a shareholders' list does not affect the validity of action taken at the meeting.

Sec. 16. Section 490.722, subsection 2, Code 2013, is amended by striking the subsection.

Sec. 17. Section 490.724, subsection 4, Code 2013, is amended to read as follows:

4. The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section ~~or section 490.722, subsection 2,~~ are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

Sec. 18. Section 490.728, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 4. Shares otherwise entitled to vote 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.

Sec. 19. Section 490.732, subsection 4, Code 2013, is amended to read as follows:

4. An agreement authorized by this section shall cease to be effective when ~~shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association~~ 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.

Sec. 20. Section 490.742, subsection 2, Code 2013, is amended to read as follows:

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.

Sec. 21. Section 490.744, Code 2013, is amended to read as follows:



**490.744 Dismissal.**

1. A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection 2 or ~~6~~ 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 ~~6~~ 5, the determination in subsection 1 shall be made by ~~one~~ any of the following:

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

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

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

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

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

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

~~4.~~ 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 ~~one~~ any of the following:

(1) That a majority of the board of directors did not consist of ~~independent~~ 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.

~~5. 4. If a majority of the board of directors does not consist~~ consisted of ~~independent~~ qualified directors at the time the determination ~~is~~ was made, the ~~corporation~~ 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. ~~If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection 1 have not been met.~~

~~6. 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.~~

Sec. 22. Section 490.746, Code 2013, is amended to read as follows:

**490.746 Payment of expenses.**

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

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

2. Order the plaintiff to pay any defendant's ~~reasonable expenses, including attorney fees~~ incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose.

Sec. 23. NEW SECTION. **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.

Sec. 24. Section 490.801, Code 2013, is amended to read as follows:

**490.801 Requirement for and ~~duties~~ 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.

Sec. 25. Section 490.807, Code 2013, is amended to read as follows:

**490.807 Resignation of directors.**

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

2. A resignation is effective when the ~~notice~~ resignation is delivered unless the ~~notice~~ 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.

Sec. 26. Section 490.810, subsection 2, Code 2013, is amended to read as follows:

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.

**Sec. 27. NEW SECTION. 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.

Sec. 28. Section 490.830, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. 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.

Sec. 29. Section 490.831, subsection 1, paragraph a, subparagraph (1), Code 2013, is amended to read as follows:

(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", ~~or the.~~

(b) ~~The protection afforded by section 490.832 if interposed as a bar to the proceeding by the director, does not preclude liability~~ 490.861 for action taken in compliance with section 490.862 or 490.863.

(c) The protection afforded by section 490.870.

Sec. 30. Section 490.831, subsection 3, paragraphs a and b, Code 2013, are amended to read as follows:

a. In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section ~~490.832~~ 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 ~~490.832~~ 490.861.

Sec. 31. Section 490.841, Code 2013, is amended to read as follows:

**490.841 ~~Duties~~ Functions of officers.**

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

Sec. 32. Section 490.842, subsection 1, unnumbered paragraph 1, Code 2013, is amended to read as follows:

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

Sec. 33. Section 490.850, subsection 2, Code 2013, is amended to read as follows:

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 ~~director's~~ individual's duties to the corporation also impose duties on, or otherwise involve services by, ~~that director~~ 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.

Sec. 34. Section 490.850, subsections 3 and 4, Code 2013, are amended by striking the subsections.

Sec. 35. Section 490.850, subsection 5, Code 2013, is amended to read as follows:

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

Sec. 36. Section 490.853, Code 2013, is amended to read as follows:

**490.853 Advance for expenses.**

1. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by ~~a director~~ an individual who is a party to a the proceeding because ~~the person is a director if the person~~ 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 ~~director has met 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. ~~The director's~~ 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 ~~section~~



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 ~~one~~ any of the following:

a. By the board of directors as follows:

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

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

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

Sec. 37. Section 490.855, Code 2013, is amended to read as follows:

**490.855 Determination and authorization of indemnification.**

1. A corporation shall not indemnify a director under section 490.851 unless authorized for a specific proceeding after a determination has been made that indemnification ~~of the director~~ 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 ~~disinterested~~ qualified directors, by the board of directors by a majority vote of all the ~~disinterested~~ 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 ~~disinterested~~ 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 ~~disinterested~~ qualified

directors, selected by the board of directors, in which selection directors who ~~do not qualify as disinterested~~ 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 ~~does not qualify as a disinterested~~ 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 ~~disinterested~~ qualified directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled ~~under subsection 2, paragraph "b",~~ to select special legal counsel under subsection 2, paragraph "b", subparagraph (2).

Sec. 38. Section 490.858, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. 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.

Sec. 39. Section 490.858, subsection 3, Code 2013, is amended to read as follows:

3. A Subject to subsection 1A, 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.

Sec. 40. NEW SECTION. 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, at the time 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.

Sec. 41. NEW SECTION. 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.

Sec. 42. NEW SECTION. 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.

Sec. 43. NEW SECTION. 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 7, and a beneficial shareholder, as defined in 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.

Sec. 44. Section 490.870, subsection 1, paragraphs a and b, Code 2013, are amended to read as follows:

a. Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section ~~490.832~~ 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 ~~490.832~~ 490.863, as if the decision being made concerned a director's conflicting interest transaction; except that, rather than making the disclosure "required disclosure" as ~~required~~ defined in section ~~490.832~~ 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.

Sec. 45. Section 490.1003, subsection 2, Code 2013, is amended to read as follows:

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, ~~in which case the~~

(2) Section 490.826 applies.

b. If paragraph "a", subparagraph (1) or (2), applies, the board ~~of directors~~ must transmit to the shareholders the basis for ~~the determination~~ so proceeding.

Sec. 46. Section 490.1104, subsection 2, Code 2013, is amended to read as follows:

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 the 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, ~~in which case.~~

(2) Section 490.826 applies.

b. If paragraph "a", subparagraph (1) or (2), applies, the board ~~of directors~~ must transmit to the shareholders the basis for ~~that determination~~ so proceeding.

Sec. 47. Section 490.1106, subsection 1, unnumbered paragraph 1, Code 2013, is amended to read as follows:

After a plan of merger or share exchange has been adopted and approved as required by this chapter, articles of merger or share exchange shall be ~~executed~~ 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:

Sec. 48. Section 490.1108, subsection 2, Code 2013, is amended to read as follows:

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

Sec. 49. Section 490.1202, subsection 2, Code 2013, is amended to read as follows:

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 the 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, ~~in which case.~~

(2) Section 490.826 applies.

b. If paragraph "a", subparagraph (1) or (2), applies, the board of ~~directors~~ shall transmit to the shareholders the basis for that ~~determination~~ so proceeding.

Sec. 50. Section 490.1301, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. "*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.

Sec. 51. Section 490.1302, subsection 2, paragraph a, Code



2013, is amended by striking the paragraph and inserting in lieu thereof the following:

*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.

Sec. 52. Section 490.1302, subsection 2, paragraph b, subparagraph (1), Code 2013, is amended to read as follows:

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

Sec. 53. Section 490.1302, subsection 2, paragraph d, Code 2013, is amended by striking the paragraph and inserting in lieu thereof the following:

*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.

Sec. 54. Section 490.1302, subsection 2, paragraph e, Code 2013, is amended by striking the paragraph.

Sec. 55. Section 490.1302, subsection 4, Code 2013, is amended by striking the subsection.

Sec. 56. Section 490.1320, Code 2013, is amended to read as follows:

**490.1320 Notice of appraisal rights.**

1. ~~If~~ Where any proposed corporate action described 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.

Sec. 57. Section 490.1321, Code 2013, is amended to read as follows:

**490.1321 Notice of intent to demand payment.**

1. If ~~proposed a~~ corporate action ~~requiring appraisal rights under~~ 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 ~~does not~~ fails to satisfy the requirements of subsection 1 or 2, is not entitled to payment under this part.

Sec. 58. Section 490.1322, subsection 1, Code 2013, is amended to read as follows:

1. If proposed corporate action requiring appraisal rights under section 490.1302, subsection 1, becomes effective, the corporation must ~~deliver~~ 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 ~~a written~~ an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

Sec. 59. Section 490.1322, subsection 2, unnumbered paragraph 1, Code 2013, is amended to read as follows:

The appraisal notice must be ~~sent~~ 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:

Sec. 60. Section 490.1322, subsection 2, paragraph a, Code

2013, is amended to read as follows:

a. ~~Be accompanied by~~ Supply a form that ~~specifies~~ 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 first announcement to shareholders of the principal terms of the proposed corporate action and requires, 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 whether or not beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date, and that the such shareholder did not vote for or consent to the transaction.

Sec. 61. Section 490.1322, subsection 2, paragraph b, subparagraph (2), Code 2013, is amended to read as follows:

(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 ~~and form are~~ 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.

Sec. 62. Section 490.1323, subsections 1 and 3, Code 2013, are amended to read as follows:

1. A shareholder who receives notice pursuant to section 490.1322 and who wishes to exercise appraisal rights must ~~certify on~~ 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 ~~executed~~ signed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection 2.

3. A shareholder who does not ~~execute~~ 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.

Sec. 63. Section 490.1324, subsection 2, paragraph a, Code 2013, is amended to read as follows:

a. (1) ~~Financial~~ The annual financial statements specified in section 490.1620, subsection 1, of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year which shall be of a date ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the 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 interim quarterly financial statements of such corporation, if any.

Sec. 64. Section 490.1325, subsection 1, Code 2013, is amended to read as follows:

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".

Sec. 65. Section 490.1331, Code 2013, is amended to read as follows:

**490.1331 Court costs and ~~counsel fees~~ 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 ~~fees and expenses of counsel and experts~~ for the respective parties, in amounts the court finds equitable, for ~~either~~ 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 ~~fees and~~ expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this chapter.

3. If the court in an appraisal proceeding finds that the ~~services of counsel for~~ expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated, and that ~~the fees for those services~~ such expenses should not be assessed against the corporation, the court may ~~award to such counsel reasonable fees to~~ 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 ~~all costs and~~ expenses of the suit, ~~including~~ counsel fees.

Sec. 66. NEW SECTION. 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.

Sec. 67. Section 490.1402, subsection 2, paragraph a, Code 2013, is amended to read as follows:

*a.* (1) The board of directors must recommend dissolution to the shareholders unless ~~the~~ 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 ~~and communicates.~~

(b) Section 490.826 applies.

(2) If paragraph "a", subparagraph (1) or (2), applies, it must communicate the basis for its determination to the shareholders so proceeding.

Sec. 68. Section 490.1430, Code 2013, is amended to read as follows:

**490.1430** Grounds for judicial dissolution.

1. The district court may dissolve a corporation in any of

the following ways:

1. a. A proceeding by the attorney general, if it is established that ~~either~~ any of the following apply:

a. (1) The corporation obtained its articles of incorporation through fraud.

b. (2) The corporation has continued to exceed or abuse the authority conferred upon it by law.

2. b. A proceeding by a shareholder if it is established that any of the following conditions exist:

a. (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.

b. (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.

c. (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.

d. (4) The corporate assets are being misapplied or wasted.

3. c. A proceeding by a creditor if it is established that ~~either~~ any of the following apply:

a. (1) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent.

b. (2) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

4. 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.

Sec. 69. Section 490.1431, subsection 4, Code 2013, is amended to read as follows:

4. Within ten days of the commencement of a proceeding ~~under section 490.1430, subsection 2,~~ to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities exchange 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.

Sec. 70. Section 490.1432, subsections 1 and 5, Code 2013, are amended to read as follows:

1. ~~A~~ 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 ~~exclusive~~ jurisdiction over the corporation and all its property wherever located.

5. The court from time to time during the receivership or custodianship may order compensation paid and ~~expense disbursements or reimbursements made~~ expenses paid or reimbursed to the receiver or custodian ~~and the receiver's or custodian's counsel~~ from the assets of the corporation or proceeds from the sale of the assets.

Sec. 71. Section 490.1434, subsections 1, 2, 4, and 5, Code 2013, are amended to read as follows:

1. In a proceeding under section 490.1430, subsection 2 1, paragraph "b", to dissolve a corporation ~~that has no shares~~

~~listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association,~~ the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

2. An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under section 490.1430, subsection 2 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 2 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.

4. If the parties are unable to reach an agreement as provided for in subsection 3, the court, upon application of any party, shall stay the section 490.1430, subsection 2 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 2 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 2 1, paragraph "b" or "d", 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.

Sec. 72. Section 490.1508, subsection 2, Code 2013, is amended to read as follows:

2. If ~~a registered agent changes~~ the street address of the a registered agent's business office changes, the ~~registered~~ agent may change the street address of the registered office of any foreign corporation for which the agent person is the registered agent by notifying the corporation in writing of the change, and signing, ~~either manually or in facsimile~~, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 1 and recites that the corporation has been notified of the change.

Sec. 73. NEW SECTION. 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.

Sec. 74. Section 490.1601, subsection 4, Code 2013, is amended to read as follows:

4. A corporation shall maintain its records in ~~written~~ the form of a document, including an electronic record, or in another form capable of conversion into ~~written~~ paper form within a reasonable time.

Sec. 75. Section 490.1602, Code 2013, is amended to read as follows:

**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 ~~3~~ 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, ~~records of any action of~~ 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, ~~or board of directors, or a committee of the board~~ without a meeting, to the extent not subject to inspection under subsection ~~1 of this section.~~

*b.* Accounting records of the corporation.

*c.* The record of shareholders.

~~3.~~ 4. A shareholder may inspect and copy the records described in subsection ~~2~~ 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.

~~4.~~ 5. The right of inspection granted by this section shall not be abolished or limited by a corporation's articles of incorporation or bylaws.

~~5.~~ 6. This section does not affect ~~either~~ 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.

Sec. 76. Section 490.1603, subsection 3, Code 2013, is amended to read as follows:

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

Sec. 77. Section 490.1604, subsection 2, Code 2013, is amended to read as follows:

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, ~~subsections 2 and 3~~ may apply to the district court in the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

Sec. 78. Section 490.1606, subsection 1, Code 2013, is amended to read as follows:

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

a. ~~Notice~~ 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.

Sec. 79. Section 490.1620, Code 2013, is amended by striking the section and inserting in lieu thereof the following:

**490.1620 Financial statements for shareholders.**

1. A corporation shall deliver to its shareholders



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 send the annual financial statements to each shareholder. Thereafter, on written request from a shareholder to whom the statements were not sent, the corporation shall send the shareholder the latest financial statements. A public corporation may fulfill its responsibilities under this section 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.

Sec. 80. Section 490.1703, Code 2013, is amended by adding the following new subsection:

NEW SUBSECTION. 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.

Sec. 81. REPEAL. Section 490.832, Code 2013, is repealed.

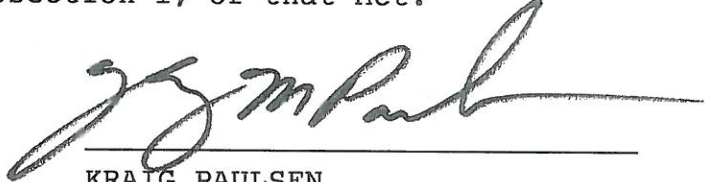
Sec. 82. EFFECTIVE DATE. This division of this Act takes effect January 1, 2014.

DIVISION II  
FUTURE PROVISIONS

Sec. 83. Section 490.140, subsection 21A, Code 2013, is amended by striking the subsection and inserting in lieu thereof the following:

21A. "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.

Sec. 84. EFFECTIVE DATE. This division of this Act takes effect upon the repeal of 2011 Iowa Acts, chapter 2, as provided in section 9, subsection 1, of that Act.

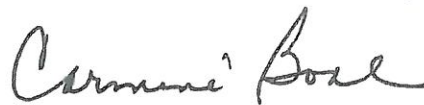


KRAIG PAULSEN  
Speaker of the House



PAM JOCHUM  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 469, Eighty-fifth General Assembly.



CARMINE BOAL  
Chief Clerk of the House

Approved April 5, 2013



TERRY E. BRANSTAD  
Governor