

Senate Study Bill 3163

Bill Text

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1 1 Section 1. Section 490.120, subsections 4, 7, 9, and 10,
1 2 Code 2001, are amended to read as follows:

1 3 4. The document must be typewritten or printed. If the
1 4 document is electronically transmitted, it must be in a format
1 5 that can be retrieved or reproduced in typewritten or printed
1 6 form.

1 7 7. The person executing the document shall sign it and
1 8 state beneath or opposite the person's signature, the person's
1 9 name and the capacity in which the person signs. The document
1 10 may, but need not, contain

~~—~~
~~—~~
1 11
~~—~~
~~a. The~~
~~— a corporate~~

~~— seals.~~
~~— seal.~~
1 12

~~— b. An attestation by the secretary or an assistant~~
~~—~~
1 13
~~— secretary.~~

~~—~~
1 14
~~— c. An~~
~~— attestation, acknowledgment, or verification~~

~~— , or~~
~~—~~
1 15

~~— proof~~
~~—~~

1 16 The secretary of state may accept for filing a document
1 17 containing a copy of a signature, however made.

1 18 9. The document must be delivered to the office of the
1 19 secretary of state for filing

~~— and must be accompanied by the~~
~~—~~

1 20

~~— correct filing fee~~
~~—~~

~~—~~
1 21 Delivery may be made by electronic
1 22 transmission if and to the extent permitted by the secretary
1 23 of state. If it is filed in typewritten or printed form and
1 24 not transmitted electronically, the secretary of state may
1 25 require one exact or conformed copy to be delivered with the
1 26 document, except as provided in sections 490.503 and 490.1509.

1 26 10.

~~The secretary of state may adopt rules for the~~

1 27

~~electronic filing of documents and the certification of~~

1 28

~~electronically filed documents.~~

~~When the document is~~

1 29 delivered to the office of the secretary of state for filing,
1 30 the correct filing fee, and any franchise tax, license fee, or
1 31 penalty, shall be paid in a manner permitted by the secretary
1 32 of state.

1 33 Sec. 2. Section [490.120](#), Code 2001, is amended by adding
1 34 the following new subsection:

1 35 NEW SUBSECTION. 11. The secretary of state may adopt
2 1 rules for the electronic filing of documents and the
2 2 certification of electronically filed documents.

2 3 Sec. 3. Section [490.123](#), subsection 1, Code 2001, is
2 4 amended to read as follows:

2 5 1. Except as provided in subsection 2 and section 490.124,
2 6 subsection 3, a document accepted for filing is effective at
2 7 the later of the following times:

2 8 a. At the date and time of filing

~~on the date it is filed~~

2 9 as evidenced by such means as the secretary of

~~state's date~~

2 10

~~and time endorsement on the original document~~

~~state may use~~

2 11 for the purpose of recording the date and time of filing.

2 12 b. At the time specified in the document as its effective
2 13 time on the date it is filed.

2 14 Sec. 4. Section [490.124](#), subsections 1 and 2, Code 2001,
2 15 are amended to read as follows:

2 16 1. A domestic or foreign corporation may correct a
2 17 document filed by the secretary of state if the document
2 18 satisfies one

~~or both~~

~~of the following~~

~~requirements~~

2 19 a.

~~Contains~~

~~The document contains an~~

~~incorrect statement~~

2 20 inaccuracy.

2 21 b.

~~Was~~

~~The document was~~ defectively executed, attested,
2 22 sealed, verified, or acknowledged.

2 23 c. The electronic transmission was defective.

2 24 2. A document is corrected by complying with both of the
2 25 following:

2 26 a. By preparing articles of correction that satisfy all of
2 27 the following requirements:

- 2 28 (1) Describe the document, including its filing date, or
2 29 attach a copy of it to the articles.
2 30 (2) Specify the

~~incorrect statement and the reason it is~~

2 31

~~incorrect or the manner in which the execution was defective~~

2 32 inaccuracy or defect to be corrected.

2 33 (3) Correct the

~~incorrect statement or defective execution~~

2 34 inaccuracy or defect.

2 35 b. By delivering the articles to the secretary of state
3 1 for filing.

3 2 Sec. 5. Section [490.125](#), subsection 2, Code 2001, is
3 3 amended to read as follows:

3 4 2. The secretary of state files a document by

~~stamping or~~

3 5

~~otherwise endorsing "filed", together with the secretary's~~

3 6

~~name and official title and~~

~~recording it as filed on the date~~

3 7 and time of receipt

~~, on both the document and the receipt for~~

3 8

~~the filing fee~~

3 9 After filing a document, except the biennial

3 10 report required by section 490.1622, and except as provided in

3 11 sections 490.503 and 490.1509, the secretary of state shall

3 12 deliver

~~the document, with the filing fee receipt, or~~

3 13

~~acknowledgment of receipt if no fee is required, attached,~~

~~to~~

3 14 the domestic or foreign corporation or its representative a

3 15 copy of the document with an acknowledgement of the date and

3 16 time of filing.

3 17 Sec. 6. Section [490.127](#), Code 2001, is amended to read as
3 18 follows:

3 19 490.127 EVIDENTIARY EFFECT OF COPY OF FILED DOCUMENT.

3 20 A certificate

~~attached to~~

~~from the secretary of state~~

3 21 delivered with a copy of a document filed by the secretary of

3 22 state

~~, bearing the secretary of state's signature, which may~~

~~be in facsimile, and the seal of the secretary of state,~~

- is

3 23 conclusive evidence that the original document is on file with
3 24 the secretary of state.

3 25 Sec. 7. Section [490.140](#), subsection 6, Code Supplement
3 26 2001, is amended to read as follows:

3 27 6. "Deliver"

~~includes mail~~

- or "delivery" means any method

3 28 of delivery used in conventional commercial practice,
3 29 including delivery in person, and by mail, commercial
3 30 delivery, and electronic transmission.

3 31 Sec. 8. Section [490.140](#), Code Supplement 2001, is amended
3 32 by adding the following new subsections:

3 33 NEW SUBSECTION. 8A. "Electronic transmission" or
3 34 "electronically transmitted" means any process of
3 35 communication not directly involving the physical transfer of
4 1 paper that is suitable for the retention, retrieval, and
4 2 reproduction of information by the recipient.

4 3 NEW SUBSECTION. 23A. "Sign" or "signature" includes any
4 4 manual, facsimile, conformed, or electronic signature.

4 5 NEW SUBSECTION. 28. "Voting power" means the current
4 6 power to vote in the election of directors.

4 7 Sec. 9. Section [490.141](#), subsections 1, 2, 3, and 5, Code
4 8 2001, are amended to read as follows:

4 9 1. Notice under this chapter must be in writing unless
4 10 oral notice is reasonable under the circumstances. Notice by
4 11 electronic transmission is written notice.

4 12 2. Notice may be communicated in person; by

~~telephone,~~

-
4 13

~~telegraph, teletype, or other form of wire or wireless~~

-
4 14

~~communication; or by mail or private carrier~~

- mail or other

4 15 method of delivery; or by telephone, voice mail, or other
4 16 electronic means. If these forms of personal notice are
4 17 impracticable, notice may be communicated by a newspaper of
4 18 general circulation in the area where published; or by radio,
4 19 television, or other form of public broadcast communication.

4 20 3. Written notice by a domestic or foreign corporation to
4 21 its shareholder, if in a comprehensible form, is effective
4 22

~~when mailed,~~

- according to one of the following:

4 23 a. Upon deposit in the United States mail, if mailed
4 24 postpaid and correctly addressed to the shareholder's address
4 25 shown in the corporation's current record of shareholders.

4 26 b. When electronically transmitted to the shareholder in a
4 27 manner authorized by the shareholder.

4 28 5. Except as provided in subsection 3, written notice, if
4 29 in a comprehensible form, is effective at the earliest of the
4 30 following:

4 31 a. When received.

4 32 b. Five days after its deposit in the United States mail,

4 33

~~as evidenced by the postmark,~~

- if mailed postpaid and correctly
4 34 addressed.

4 35 c. On the date shown on the return receipt, if sent by
5 1 registered or certified mail, return receipt requested, and
5 2 the receipt is signed by or on behalf of the addressee.

5 3 Sec. 10. Section [490.202](#), subsection 2, Code 2001, is
5 4 amended to read as follows:

5 5 2. The articles of incorporation may set forth any or all
5 6 of the following:

5 7 a. The names and addresses of the individuals who are to
5 8 serve as the initial directors.

5 9 b. Provisions not inconsistent with law regarding:

5 10 (1) The purpose or purposes for which the corporation is
5 11 organized.

5 12 (2) Managing the business and regulating the affairs of
5 13 the corporation.

5 14 (3) Defining, limiting, and regulating the powers of the
5 15 corporation, its board of directors, and shareholders.

5 16 (4) A par value for authorized shares or classes of
5 17 shares.

5 18 (5) The imposition of personal liability on shareholders
5 19 for the debts of the corporation to a specified extent and
5 20 upon specified conditions.

5 21 c. Any provision that under this chapter is required or
5 22 permitted to be set forth in the bylaws.

5 23 d.

~~A provision consistent with section 490.832.~~

- A

5 24 provision eliminating or limiting the liability of a director
5 25 to the corporation or its shareholders for money damages for
5 26 any action taken, or any failure to take any action, as a
5 27 director, except liability for any of the following:

5 28 (1) The amount of a financial benefit received by a
5 29 director to which the director is not entitled.

5 30 (2) An intentional infliction of harm on the corporation
5 31 or the shareholders.

5 32 (3) A violation of section 490.833.

5 33 (4) An intentional violation of criminal law.

5 34 e. A provision permitting or making obligatory

5 35 indemnification of a director for liability, as defined in
6 1 section 490.850, subsection 5, to any person for any action
6 2 taken, or any failure to take any action, as a director,

6 3 except liability for any of the following:

6 4 (1) Receipt of a financial benefit to which the person is
6 5 not entitled.

6 6 (2) An intentional infliction of harm on the corporation
6 7 or its shareholders.

6 8 (3) A violation of section 490.833.

6 9 (4) An intentional violation of criminal law.

6 10 f. A provision eliminating or limiting the liability of a
6 11 director to the corporation or its shareholders for money
6 12 damages for any action taken, or any failure to take any
6 13 action, as a director, except liability for any of the
6 14 following:

6 15 (1) The amount of a financial benefit received by a
6 16 director to which the director is not entitled.

6 17 (2) An intentional infliction of harm on the corporation
6 18 or the shareholders.

6 19 (3) A violation of section 490.833.

6 20 (4) An intentional violation of criminal law.

6 21 A provision shall not eliminate or limit the liability of a
6 22 director for an act or omission occurring prior to the date
6 23 when the provision in the articles of incorporation becomes
6 24 effective.

6 25 Sec. 11. Section [490.621](#), Code 2001, is amended by adding
6 26 the following new subsection:

6 27 NEW SUBSECTION. 6. a. An issuance of shares or other
6 28 securities convertible into or rights exercisable for shares,
6 29 in a transaction or a series of integrated transactions,
6 30 requires approval of the shareholders, at a meeting at which a
6 31 quorum exists consisting of at least a majority of the votes
6 32 entitled to be cast on the matter, if both of the following
6 33 conditions are satisfied:

6 34 (1) The shares, other securities, or rights are issued for
6 35 consideration other than cash or cash equivalents.

7 1 (2) The voting power of shares that are issued and
7 2 issuable as a result of the transaction or series of
7 3 integrated transactions will comprise more than twenty percent
7 4 of the voting power of the shares of the corporation that were
7 5 outstanding immediately before the transaction.

7 6 b. (1) For purposes of determining the voting power of
7 7 shares issued and issuable as a result of a transaction or
7 8 series of integrated transactions, the voting power of shares
7 9 shall be the greater of the following:

7 10 (a) The voting power of the shares to be issued.

7 11 (b) The voting power of the shares that would be
7 12 outstanding after giving effect to the conversion of
7 13 convertible shares and other securities and the exercise of
7 14 rights to be issued.

7 15 (2) A series of transactions is integrated if consummation
7 16 of one transaction is made contingent on consummation of one
7 17 or more of the other transactions.

7 18 Sec. 12. Section [490.631](#), subsections 2 and 3, Code 2001,
7 19 are amended to read as follows:

7 20 2. If the articles of incorporation prohibit the reissue
7 21 of the acquired shares, the number of authorized shares is
7 22 reduced by the number of shares acquired

~~7 23 , effective upon~~

~~7 24~~

~~7 25 amendment of the articles of incorporation~~

~~7 26~~

~~7 27 3. The board of directors may adopt articles of amendment~~

~~7 28~~

~~7 29 under this section without shareholder action, and deliver~~

~~7 30~~

~~7 31 them to the secretary of state for filing. The articles must~~

~~7 32~~

~~7 33 set forth all of the following:~~

~~7 34~~

~~7 35 a. The name of the corporation.~~

~~7 36~~

~~7 37 b. The reduction in the number of authorized shares,~~

~~7 38~~

~~7 39 itemized by class and series.~~

~~7 40~~

~~c. The total number of authorized shares, itemized by~~

7 32

~~class and series, remaining after reduction of the shares.~~

7 33 Sec. 13. Section [490.640](#), Code 2001, is amended by adding
7 34 the following new subsection:

7 35 NEW SUBSECTION. 7. This section shall not apply to
8 1 distributions in liquidation under division XIV.

8 2 Sec. 14. Section [490.702](#), subsection 1, Code 2001, is
8 3 amended to read as follows:

8 4 1. Except as provided in subsection 5, a corporation shall
8 5 hold a special meeting of shareholders upon the occurrence of
8 6 either of the following:

8 7 a. On call of its board of directors or the person or
8 8 persons authorized to call a special meeting by the articles
8 9 of incorporation or bylaws.

8 10 b. If the holders of at least ten percent of all the votes
8 11 entitled to be cast on any issue proposed to be considered at
8 12 the proposed special meeting sign, date, and deliver to the
8 13

~~corporation's secretary~~

- corporation one or more written

8 14 demands for the meeting describing the purpose or purposes for
8 15 which it is to be held, provided that the articles of
8 16 incorporation may fix a lower percentage or a higher
8 17 percentage not exceeding twenty-five percent of all the votes
8 18 entitled to be cast on any issue proposed to be considered.
8 19 Unless otherwise provided in the articles of incorporation, a
8 20 written demand for a special meeting may be revoked by a
8 21 writing to that effect received by the corporation prior to
8 22 the receipt by the corporation of demands sufficient in number
8 23 to require the holding of a special meeting.

8 24 Sec. 15. Section [490.704](#), subsection 2, Code 2001, is
8 25 amended to read as follows:

8 26 2. A written consent shall bear the date of signature of
8 27 each shareholder who signs the consent and no written consent
8 28 is effective to take the corporate action referred to in the
8 29 consent unless, within sixty days of the earliest dated
8 30 consent delivered in the manner required by this section to
8 31 the corporation, written consents signed by a sufficient
8 32 number of holders to take action are delivered to the
8 33 corporation. A written consent may be revoked by a writing to
8 34 that effect received by the corporation prior to the receipt
8 35 by the corporation of unrevoked written consents sufficient in
9 1 number to take corporate action.

9 2 Sec. 16. NEW SECTION. [490.708](#) CONDUCT OF THE MEETING.

9 3 1. At each meeting of shareholders, a chairperson shall
9 4 preside. The chairperson shall be appointed as provided in
9 5 the bylaws or, in the absence of such provisions, by the
9 6 board.

9 7 2. The chairperson, unless the articles of incorporation
9 8 or bylaws provide otherwise, shall determine the order of
9 9 business and shall have the authority to establish rules for
9 10 the conduct of the meeting.

9 11 3. Any rules adopted for, and the conduct of, the meeting
9 12 shall be fair to shareholders.

9 13 4. The chairperson of the meeting shall announce at the
9 14 meeting when the polls close for each matter voted upon. If
9 15 no announcement is made, the polls shall be deemed to have
9 16 closed upon the final adjournment of the meeting. After the
9 17 polls close, no ballots, proxies, or votes nor any revocations
9 18 or changes to any votes may be accepted.

9 19 Sec. 17. Section [490.722](#), subsections 2, 3, 4, and 8, Code

9 20 2001, are amended to read as follows:

9 21 2. A shareholder ~~or the shareholder's agent or attorney-~~
9 22 ~~in-fact~~ may appoint a proxy to vote or otherwise act for the
9 23 shareholder by signing an appointment form

~~, either personally~~

9 24

~~or by the shareholder's attorney in fact~~

~~or by an electronic~~

9 25 transmission. An electronic transmission must contain or be
9 26 accompanied by information from which one can determine that
9 27 the shareholder, the shareholder's agent, or the shareholder's
9 28 attorney-in-fact authorized the electronic transmission.

9 29 3. An appointment of a proxy is effective when a signed
9 30 appointment form or an electronic transmission of the
9 31 appointment is received by the

~~secretary or other officer or~~

9 32

~~agent~~

~~inspector of election or the officer or agent of the~~

9 33 corporation authorized to tabulate votes. An appointment is
9 34 valid for eleven months unless a longer period is expressly
9 35 provided in the appointment

~~form~~

10 1 4. An appointment of a proxy is revocable

~~by the~~

10 2

~~shareholder~~

~~unless the appointment form~~

~~conspicuously~~

~~or~~

10 3 electronic transmission states that it is irrevocable and the
10 4 appointment is coupled with an interest. Appointments coupled
10 5 with an interest include, but are not limited to, the
10 6 appointment of:

10 7 a. A pledgee.

10 8 b. A person who purchased or agreed to purchase the
10 9 shares.

10 10 c. A creditor of the corporation who extended it credit
10 11 under terms requiring the appointment.

10 12 d. An employee of the corporation whose employment
10 13 contract requires the appointment.

10 14 e. A party to a voting agreement created under section
10 15 490.731.

10 16 8. Subject to section 490.724 and to any express
10 17 limitation on the proxy's authority

~~appearing on the face of~~

10 18 stated in the appointment form or electronic transmission, a
10 19 corporation is entitled to accept the proxy's vote or other
10 20 action as that of the shareholder making the appointment.

10 21 Sec. 18. Section 490.724, subsections 4 and 5, Code 2001,
10 22 are amended to read as follows:

10 23 4. The corporation and its officer or agent who accepts or
10 24 rejects a vote, consent, waiver, or proxy appointment in good

10 25 faith and in accordance with the standards of this section or
10 26 section 490.722, subsection 2, are not liable in damages to
10 27 the shareholder for the consequences of the acceptance or
10 28 rejection.

10 29 5. Corporate action based on the acceptance or rejection
10 30 of a vote, consent, waiver, or proxy appointment under this
10 31 section or section 490.722, subsection 2, is valid unless a
10 32 court of competent jurisdiction determines otherwise.

10 33 Sec. 19. Section 490.727, subsection 1, Code 2001, is
10 34 amended to read as follows:

10 35 1. The articles of incorporation or bylaws may provide for
11 1 a greater quorum or voting requirement for shareholders or
11 2 voting groups of shareholders than is provided for by this
11 3 chapter.

11 4 Sec. 20. Section 490.728, subsection 1, Code 2001, is
11 5 amended to read as follows:

11 6 1. Unless otherwise provided in the articles of
11 7 incorporation, directors are elected by a

~~majority~~

~~plurality~~

11 8 of the votes cast by the shares entitled to vote in the
11 9 election at a meeting at which a quorum is present.

11 10 Sec. 21. NEW SECTION. 490.729 INSPECTORS OF ELECTION.

11 11 1. A corporation having any shares listed on a national
11 12 securities exchange or regularly traded in a market maintained
11 13 by one or more members of a national or affiliated securities
11 14 association shall, and any other corporation may, appoint one
11 15 or more inspectors to act at a meeting of shareholders and
11 16 make a written report of the inspectors' determinations. Each
11 17 inspector shall take and sign an oath faithfully to execute
11 18 the duties of inspector with strict impartiality and according
11 19 to the best of the inspector's ability.

11 20 2. The inspectors shall do all of the following:

11 21 a. Ascertain the number of shares outstanding and the
11 22 voting power of each.

11 23 b. Determine the shares represented at a meeting.

11 24 c. Determine the validity of proxies and ballots.

11 25 d. Count all votes.

11 26 e. Determine the result.

11 27 3. An inspector may be an officer or employee of the
11 28 corporation.

11 29 Sec. 22. NEW SECTION. 490.732 SHAREHOLDER AGREEMENTS.

11 30 1. An agreement among the shareholders of a corporation
11 31 that complies with this section is effective among the
11 32 shareholders and the corporation even though it is
11 33 inconsistent with one or more other provisions of this chapter
11 34 in that it does one of the following:

11 35 a. Eliminates the board of directors or restricts the
12 1 discretion or powers of the board of directors.

12 2 b. Governs the authorization or making of distributions
12 3 whether or not in proportion to ownership of shares, subject
12 4 to the limitations in section 490.640.

12 5 c. Establishes who shall be directors or officers of the
12 6 corporation, or their terms of office or manner of selection
12 7 or removal.

12 8 d. Governs, in general or in regard to specific matters,
12 9 the exercise or division of voting power by or between the
12 10 shareholders and directors or by or among any of them,
12 11 including use of weighted voting rights or director proxies.

12 12 e. Establishes the terms and conditions of any agreement
12 13 for the transfer or use of property or the provision of
12 14 services between the corporation and any shareholder,
12 15 director, officer, or employee of the corporation, or among
12 16 any of them.

12 17 f. Transfers to one or more shareholders or other persons
12 18 all or part of the authority to exercise the corporate powers

12 19 or to manage the business and affairs of the corporation,
12 20 including the resolution of any issue about which there exists
12 21 a deadlock among directors or shareholders.

12 22 g. Requires dissolution of the corporation at the request
12 23 of one or more of the shareholders or upon the occurrence of a
12 24 specified event or contingency.

12 25 h. Otherwise governs the exercise of the corporate powers
12 26 or the management of the business and affairs of the
12 27 corporation or the relationship among the shareholders, the
12 28 directors, and the corporation, or among any of them, and is
12 29 not contrary to public policy.

12 30 2. An agreement authorized by this section must satisfy
12 31 all of the following requirements:

12 32 a. Be set forth in one of the following places and
12 33 manners:

12 34 (1) The articles of incorporation or bylaws and approved
12 35 by all persons who are shareholders at the time of the
13 1 agreement.

13 2 (2) In a written agreement that is signed by all persons
13 3 who are shareholders at the time of the agreement and is made
13 4 known to the corporation.

13 5 b. Be subject to amendment only by all persons who are
13 6 shareholders at the time of the amendment, unless the
13 7 agreement provides otherwise.

13 8 c. Be valid for ten years, unless the agreement provides
13 9 otherwise.

13 10 3. The existence of an agreement authorized by this
13 11 section shall be noted conspicuously on the front or back of
13 12 each certificate for outstanding shares or on the information
13 13 statement required by section 490.626, subsection 2. If at
13 14 the time of the agreement the corporation has shares
13 15 outstanding represented by certificates, the corporation shall
13 16 recall the outstanding certificates and issue substitute
13 17 certificates that comply with this section. The failure to
13 18 note the existence of the agreement on the certificate or
13 19 information statement shall not affect the validity of the
13 20 agreement or any action taken pursuant to it. Any purchaser
13 21 of shares who, at the time of purchase, did not have knowledge
13 22 of the existence of the agreement shall be entitled to
13 23 rescission of the purchase. A purchaser shall be deemed to have
13 24 knowledge of the existence of the agreement if its existence
13 25 is noted on the certificate or information statement for the
13 26 shares in compliance with this section and, if the shares are
13 27 not represented by a certificate, the information statement is
13 28 delivered to the purchaser at or prior to the time of purchase
13 29 of the shares. An action to enforce the right of rescission
13 30 authorized by this subsection must be commenced within the
13 31 earlier of ninety days after discovery of the existence of the
13 32 agreement or two years after the time of purchase of the
13 33 shares.

13 34 4. An agreement authorized by this section shall cease to
13 35 be effective when shares of the corporation are listed on a
14 1 national securities exchange or regularly traded in a market
14 2 maintained by one or more members of a national or affiliated
14 3 securities association. If the agreement ceases to be
14 4 effective for any reason, the board of directors may, if the
14 5 agreement is contained or referred to in the corporation's
14 6 articles of incorporation or bylaws, adopt an amendment to the
14 7 articles of incorporation or bylaws, without shareholder
14 8 action, to delete the agreement and any references to it.

14 9 5. An agreement authorized by this section that limits the
14 10 discretion or powers of the board of directors shall relieve
14 11 the directors of, and impose upon the person or persons in
14 12 whom such discretion or powers are vested, liability for acts
14 13 or omissions imposed by law on directors to the extent that
14 14 the discretion or powers of the directors are limited by the
14 15 agreement.

14 16 6. The existence or performance of an agreement authorized
14 17 by this section shall not be a ground for imposing personal
14 18 liability on any shareholder for the acts or debts of the
14 19 corporation even if the agreement or its performance treats
14 20 the corporation as if it were a partnership or results in
14 21 failure to observe the corporate formalities otherwise
14 22 applicable to the matters governed by the agreement.

14 23 7. Incorporators or subscribers for shares may act as
14 24 shareholders with respect to an agreement authorized by this
14 25 section if no shares have been issued when the agreement is
14 26 made.

14 27 Sec. 23. Section [490.740](#), Code 2001, is amended by
14 28 striking the section and inserting in lieu thereof the
14 29 following:

14 30 490.740 DEFINITIONS.

14 31 In this part, unless the context otherwise requires:

14 32 1. "Derivative proceeding" means a civil suit in the right
14 33 of a domestic corporation or, to the extent provided in
14 34 section 490.747, in the right of a foreign corporation.

14 35 2. "Shareholder" includes a beneficial owner whose shares
15 1 are held in a voting trust or held by a nominee on the
15 2 beneficial owner's behalf.

15 3 Sec. 24. NEW SECTION. 490.741 STANDING.

15 4 A shareholder shall not commence or maintain a derivative
15 5 proceeding unless the shareholder satisfies both of the
15 6 following:

15 7 1. Was a shareholder of the corporation at the time of the
15 8 act or omission complained of or became a shareholder through
15 9 transfer by operation of law from one who was a shareholder at
15 10 that time.

15 11 2. Fairly and adequately represents the interests of the
15 12 corporation in enforcing the right of the corporation.

15 13 Sec. 25. NEW SECTION. 490.742 DEMAND.

15 14 A shareholder shall not commence a derivative proceeding
15 15 until both of the following have occurred:

15 16 1. A written demand has been made upon the corporation to
15 17 take suitable action.

15 18 2. Ninety days have expired from the date the demand was
15 19 made, unless the shareholder has earlier been notified that
15 20 the demand has been rejected by the corporation or unless
15 21 irreparable injury to the corporation would result by waiting
15 22 for the expiration of the ninety-day period.

15 23 Sec. 26. NEW SECTION. 490.743 STAY OF PROCEEDINGS.

15 24 If the corporation commences an inquiry into the
15 25 allegations made in the demand or complaint, the court may
15 26 stay any derivative proceeding for a period of time as the
15 27 court deems appropriate.

15 28 Sec. 27. NEW SECTION. 490.744 DISMISSAL.

15 29 1. A derivative proceeding shall be dismissed by the court
15 30 on motion by the corporation if one of the groups specified in
15 31 subsection 2 or 6 has determined in good faith after
15 32 conducting a reasonable inquiry upon which its conclusions are
15 33 based that the maintenance of the derivative proceeding is not
15 34 in the best interests of the corporation. A corporation
15 35 moving to dismiss on this basis shall submit in support of the
16 1 motion a short and concise statement of the reasons for its
16 2 determination.

16 3 2. Unless a panel is appointed pursuant to subsection 6,
16 4 the determination in subsection 1 shall be made by one of the
16 5 following:

16 6 a. A majority vote of independent directors present at a
16 7 meeting of the board of directors if the independent directors
16 8 constitute a quorum.

16 9 b. A majority vote of a committee consisting of two or
16 10 more independent directors appointed by majority vote of
16 11 independent directors present at a meeting of the board of
16 12 directors, whether or not such independent directors

16 13 constitute a quorum.

16 14 3. None of the following shall by itself cause a director
16 15 to be considered not independent for purposes of this section:

16 16 a. The nomination or election of the director by persons
16 17 who are defendants in the derivative proceeding or against
16 18 whom action is demanded.

16 19 b. The naming of the director as a defendant in the
16 20 derivative proceeding or as a person against whom action is
16 21 demanded.

16 22 c. The approval by the director of the act being
16 23 challenged in the derivative proceeding or demand if the act
16 24 resulted in no personal benefit to the director.

16 25 4. If a derivative proceeding is commenced after a
16 26 determination has been made rejecting a demand by a
16 27 shareholder, the complaint shall allege with particularity
16 28 facts establishing one of the following:

16 29 a. That a majority of the board of directors did not
16 30 consist of independent directors at the time the determination
16 31 was made.

16 32 b. That the requirements of subsection 1 have not been
16 33 met.

16 34 All discovery and other proceedings shall be stayed during
16 35 the pendency of any motion to dismiss unless the court finds
17 1 upon the motion of any party that particularized discovery is
17 2 necessary to preserve evidence or prevent undue prejudice to
17 3 that party.

17 4 5. If a majority of the board of directors does not
17 5 consist of independent directors at the time the determination
17 6 is made, the corporation shall have the burden of proving that
17 7 the requirements of subsection 1 have been met. If a majority
17 8 of the board of directors consists of independent directors at
17 9 the time the determination is made, the plaintiff shall have
17 10 the burden of proving that the requirements of subsection 1
17 11 have not been met.

17 12 6. The court may appoint a panel of one or more
17 13 independent persons upon motion by the corporation to make a
17 14 determination whether the maintenance of the derivative
17 15 proceeding is in the best interests of the corporation. In
17 16 such case, the plaintiff shall have the burden of proving that
17 17 the requirements of subsection 1 have not been met.

17 18 Sec. 28. NEW SECTION. 490.745 DISCONTINUANCE OR
17 19 SETTLEMENT.

17 20 A derivative proceeding shall not be discontinued or
17 21 settled without the court's approval. If the court determines
17 22 that a proposed discontinuance or settlement will
17 23 substantially affect the interests of the corporation's
17 24 shareholders or a class of shareholders, the court shall
17 25 direct that notice be given to the shareholders affected.

17 26 Sec. 29. NEW SECTION. 490.746 PAYMENT OF EXPENSES.

17 27 On termination of the derivative proceeding, the court may
17 28 do either of the following:

17 29 1. Order the corporation to pay the plaintiff's reasonable
17 30 expenses, including attorney fees incurred in the proceeding,
17 31 if it finds that the proceeding has resulted in a substantial
17 32 benefit to the corporation.

17 33 2. Order the plaintiff to pay any defendant's reasonable
17 34 expenses, including attorney fees incurred in defending the
17 35 proceeding, if it finds that the proceeding was commenced or
18 1 maintained without reasonable cause or for an improper
18 2 purpose.

18 3 Sec. 30. NEW SECTION. 490.747 APPLICABILITY TO FOREIGN
18 4 CORPORATIONS.

18 5 In any derivative proceeding in the right of a foreign
18 6 corporation, the matters covered by this part shall be
18 7 governed by the laws of the jurisdiction of incorporation of
18 8 the foreign corporation except for sections 490.743, 490.745,
18 9 and 490.746.

18 10 Sec. 31. Section [490.801](#), Code 2001, is amended to read as
18 11 follows:

18 12 490.801 REQUIREMENT FOR AND DUTIES OF BOARD OF DIRECTORS.

18 13 1. Except as provided in

~~subsection 3~~

~~section 490.732,~~

18 14 each corporation must have a board of directors.

18 15 2. All corporate powers shall be exercised by or under the
18 16 authority of, and the business and affairs of the corporation
18 17 managed by or under the direction of, its board of directors,
18 18 subject to any limitation set forth in the articles of
18 19 incorporation, or in an agreement authorized under section
18 20 490.732.

18 21

~~3. A corporation having fifty or fewer shareholders may~~

18 22

~~dispense with or limit the authority of a board of directors~~

18 23

~~by describing in its articles of incorporation who will~~

18 24

~~perform some or all of the duties of a board of directors.~~

18 25 Sec. 32. Section [490.803](#), subsections 2, 3, and 4, Code
18 26 2001, are amended to read as follows:

18 27 2.

~~If a board of directors has power to fix or change the~~

18 28

~~number of directors, the board may increase or decrease by~~

18 29

~~thirty percent or less the number of directors last approved~~

18 30

~~by the shareholders, but only the shareholders may increase or~~

18 31

~~decrease by more than thirty percent the number of directors~~

18 32

~~last approved by the shareholders.~~

~~The number of directors~~

18 33 may be increased or decreased from time to time by amendment
18 34 to, or in the manner provided in, the articles of
18 35 incorporation or the bylaws.

19 1

~~3. The articles of incorporation or bylaws may establish a~~

19 2

~~variable range for the size of the board of directors by~~

19 3

~~fixing a minimum and maximum number of directors. If a~~

19 4

~~variable range is established, the number of directors may be~~

19 5

~~fixed or changed from time to time, within the minimum and~~

19 6

~~maximum, by the shareholders or the board of directors. After~~

19 7

~~shares are issued, only the shareholders may change the range~~

19 8

~~for the size of the board or change from a fixed to a~~

19 9

~~variable range size board or vice versa.~~

19 10

~~4.~~

~~3.~~ Directors are elected at the first annual
19 11 shareholders' meeting and at each annual meeting thereafter
19 12 unless their terms are staggered under section 490.806.

19 13 Sec. 33. Section 490.809, Code 2001, is amended to read as
19 14 follows:

19 15 490.809 REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING.

19 16 1. The district court of the county where a corporation's
19 17 principal office or, if none in this state, its registered
19 18 office is located may remove a director of the corporation
19 19 from office in a proceeding commenced

~~either~~

~~by or in the~~
19 20 right of the corporation

~~or by its shareholders holding at~~

19 21

~~least twenty percent of the outstanding shares of any class~~

~~if~~

19 22 the court finds that both of the following apply:

19 23 a. The director engaged in fraudulent

~~or dishonest~~

~~conduct~~

19 24 with respect to the corporation or its shareholders, grossly
19 25 abused the position of director, or intentionally inflicted
19 26 harm on the corporation.

19 27 b.

~~Removal is~~

~~Considering the director's course of conduct~~

19 28 and the inadequacy of other available remedies, removal would
19 29 be in the best interest of the corporation.

19 30 2. A shareholder proceeding on behalf of the corporation

19 31 under subsection 1 shall comply with all of the requirements
19 32 of division VII, part D, except section 490.741.
19 33

~~2.~~
- 3. The court

~~that removes a~~
~~, in addition to removing~~
19 34 the director, may bar the director from reelection for a
19 35 period prescribed by the court.
20 1

~~3. If shareholders commence a proceeding under subsection~~
-
20 2

~~1, they shall make the corporation a party defendant.~~
-

20 3 4. This section does not limit the equitable powers of the
20 4 court to order other relief.
20 5 Sec. 34. Section [490.821](#), Code 2001, is amended to read as
20 6 follows:
20 7 490.821 ACTION WITHOUT MEETING.
20 8 1.

~~Unless~~
- Except to the extent that the articles of
20 9 incorporation or bylaws

~~provide otherwise~~
- require that action
20 10 by the board of directors be taken at a meeting, action
20 11 required or permitted by this chapter to be taken

~~at a~~
- by the
20 12 board of

~~directors' meeting~~
- directors may be taken without a
20 13 meeting if

~~the action is taken by all members of the board.~~
-
20 14

~~The action must be evidenced by one or more written consents~~
-
20 15 each director signs a consent describing the action to be
20 16 taken

~~, signed by each director, and included in the minutes or~~
-
20 17

~~filed with the corporate records reflecting the action taken~~
-
20 18 and delivers it to the corporation.

20 19 2. Action taken under this section is
-
~~effective when the~~

20 20

~~last director signs the consent, unless the consent specifies~~
-

20 21

~~a different effective date~~

~~the act of the board of directors~~

20 22 when one or more consents signed by all the directors are
20 23 delivered to the corporation. The consent may specify the
20 24 time at which the action taken is to be effective. A
20 25 director's consent may be withdrawn by revocation signed by
20 26 the director and delivered to the corporation prior to
20 27 delivery to the corporation of unrevoked written consents
20 28 signed by all the directors.

20 29 3. A consent signed under this section has the effect of

~~a~~

20 30

~~meeting vote~~

~~an action taken at a meeting of the board of~~

20 31 directors and may be described as such in any document.

20 32 Sec. 35. Section [490.824](#), subsection 1, unnumbered
20 33 paragraph 1, Code 2001, is amended to read as follows:

20 34 Unless the articles of incorporation or bylaws require a
20 35 different number, or unless otherwise specifically provided in
21 1 this chapter, a quorum of a board of directors consists of
21 2 either:

21 3 Sec. 36. Section [490.825](#), Code 2001, is amended to read as
21 4 follows:

21 5 490.825 COMMITTEES.

21 6 1. Unless this chapter, the articles of incorporation, or
21 7 the bylaws provide otherwise, a board of directors may create
21 8 one or more committees and appoint one or more members of the
21 9 board of directors to serve on

~~them~~

~~any committee.~~

~~Each~~

21 10

~~committee may have two or more members, who serve at the~~

21 11

~~pleasure of the board of directors.~~

21 12 2.

~~The~~

~~Unless this chapter provides otherwise, the~~

21 13 creation of a committee and appointment of members to it must
21 14 be approved by the greater of either:

21 15 a. A majority of all the directors in office when the
21 16 action is taken.

21 17 b. The number of directors required by the articles of
21 18 incorporation or bylaws to take action under section 490.824.

21 19 3. Sections 490.820 through 490.824

~~, which govern~~

21 20

~~meetings, action without meetings, notice and waiver of~~

21 21

~~notice, and quorum and voting requirements of the board of~~

21 22

~~directors,~~

~~apply both to committees of the board and to their~~

21 23 members

~~as well~~

21 24 4. To the extent specified by the board of directors or in

21 25 the articles of incorporation or bylaws, each committee may

21 26 exercise the

~~authority~~

~~powers of the board of directors under~~

21 27 section 490.801.

21 28 5. A committee shall not, however:

21 29 a. Authorize or approve distributions, except according to

21 30 formula or method, or within limits, prescribed by the board

21 31 of directors.

21 32 b. Approve or propose to shareholders action that this

21 33 chapter requires be approved by shareholders.

21 34 c. Fill vacancies on the board of directors or, subject to

21 35 subsection 7, on any of its committees.

22 1

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

22 2

~~490.1002.~~

22 3

~~e.~~

~~d. Adopt, amend, or repeal bylaws.~~

22 4

~~f. Approve a plan of merger not requiring shareholder~~

22 5

~~approval.~~

22 6

~~g. Authorize or approve reacquisition of shares, except~~

22 7

~~according to a formula or method prescribed by the board of~~

22 8

~~directors.~~

22 9

~~h. Authorize or approve the issuance or sale or contract~~

22 10

~~for sale of shares, or determine the designation and relative~~

22 11

~~rights, preferences, and limitations of a class or series of~~

22 12

~~shares, except that the board of directors may authorize a~~

22 13

~~committee or a senior executive officer of the corporation to~~

22 14

~~do so within limits specifically prescribed by the board of~~

22 15

~~directors.~~

22 16 6. The creation of, delegation of authority to, or action
22 17 by a committee does not alone constitute compliance by a
22 18 director with the standards of conduct described in section
22 19 490.830.

22 20 7. The board of directors may appoint one or more
22 21 directors as alternate members of any committee to replace any
22 22 absent or disqualified member during the member's absence or
22 23 disqualification. Unless the articles of incorporation or the
22 24 bylaws or the resolution creating the committee provide
22 25 otherwise, in the event of the absence or disqualification of
22 26 a member of a committee, the member or members present at any
22 27 meeting and not disqualified from voting, unanimously, may
22 28 appoint another director to act in place of the absent or
22 29 disqualified member.

22 30 Sec. 37. Section [490.830](#), Code 2001, is amended to read as
22 31 follows:

22 32 490.830

~~GENERAL~~

~~STANDARDS OF CONDUCT FOR DIRECTORS.~~

22 33 1.

~~A director~~

~~Each member of the board of directors, when~~
22 34 ~~discharging the duties of a director, shall~~

~~discharge that~~

22 35

~~director's duties as a director, including the director's~~

23 1

~~duties as a member of a committee~~

~~act in conformity with all~~

23 2 of the following:

23 3 a. In good faith.

23 4

~~b. With the care an ordinarily prudent person in a like~~

23 5

~~position would exercise under similar circumstances.~~

23 6

~~c.~~

~~- b.~~ In a manner the director reasonably believes to be
23 7 in the best interests of the corporation.
23 8 2. The members of the board of directors or a committee of
23 9 the board, when becoming informed in connection with their
23 10 decision-making function or devoting attention to their
23 11 oversight function, shall discharge their duties with the care
23 12 that a person in a like position would reasonably believe
23 13 appropriate under similar circumstances.
23 14 3. In discharging board or committee duties, a director
23 15 who does not have knowledge that makes reliance unwarranted is
23 16 entitled to rely on the performance by any of the persons
23 17 specified in subsection 5 to whom the board may have
23 18 delegated, formally or informally by course of conduct, the
23 19 authority or duty to perform one or more of the board's
23 20 functions that are delegable under applicable law.
23 21

~~- 2.~~

~~- 4.~~ In discharging

~~the director's~~

~~board or committee~~

23 22 duties a director, who does not have knowledge that makes
23 23 reliance unwarranted, is entitled to rely on information,
23 24 opinions, reports, or statements, including financial
23 25 statements and other financial data, if prepared or presented
23 26 by any of the

~~following:~~

~~- persons specified in subsection 5.~~

23 27 5. A director is entitled to rely, in accordance with
23 28 subsection 3 or 4, on any of the following:

23 29 a. One or more officers or employees of the corporation
23 30 whom the director reasonably believes to be reliable and
23 31 competent in the

~~matters presented~~

~~functions performed or the~~

23 32 information, opinions, reports, or statements provided.

23 33 b. Legal counsel, public accountants, or other persons as
23 34 to matters involving skills or expertise the director
23 35 reasonably believes are either of the following:

24 1 (1) Matters within the particular person's professional or
24 2 expert competence.

24 3 (2) Matters as to which the particular person merits
24 4 confidence.

24 5 c. A committee of the board of directors of which the
24 6 director is not a member if the director reasonably believes
24 7 the committee merits confidence.

24 8

~~3. A director is not acting in good faith if the director~~

~~24 9~~

~~has knowledge concerning the matter in question that makes~~

~~24 10~~

~~reliance otherwise permitted by subsection 2 unwarranted.~~

~~24 11~~

~~4. A director is not liable for any action taken as a~~

~~24 12~~

~~director, or any failure to take any action, if the director~~

24 13

~~performed the duties of the director's office in compliance~~

24 14

~~with this section, or if, and to the extent that, liability~~

24 15

~~for any such action or failure to act has been limited by the~~

24 16

~~articles of incorporation pursuant to section 490.832.~~

24 17 Sec. 38. Section [490.831](#), Code 2001, is amended by
24 18 striking the section and inserting in lieu thereof the
24 19 following:

24 20 490.831 STANDARDS OF LIABILITY FOR DIRECTORS.

24 21 1. A director shall not be liable to the corporation or
24 22 its shareholders for any decision as director to take or not
24 23 to take action, or any failure to take any action, unless the
24 24 party asserting liability in a proceeding establishes both of
24 25 the following:

24 26 a. That any provision in the articles of incorporation
24 27 authorized by section 490.202, subsection 2, paragraph "d", or
24 28 the protection afforded by section 490.861 for action taken in
24 29 compliance with section 490.862 or 490.863 if interposed as a
24 30 bar to the proceeding by the director, does not preclude
24 31 liability.

24 32 b. That the challenged conduct consisted or was the result
24 33 of one of the following:

24 34 (1) Action not in good faith.

24 35 (2) A decision that satisfies one of the following:

25 1 (a) That the director did not reasonably believe to be in
25 2 the best interests of the corporation.

25 3 (b) As to which the director was not informed to an extent
25 4 the director reasonably believed appropriate in the
25 5 circumstances.

25 6 (3) A lack of objectivity due to the director's familial,
25 7 financial, or business relationship with, or a lack of
25 8 independence due to the director's domination or control by,
25 9 another person having a material interest in the challenged
25 10 conduct, which also meets both of the following criteria:

25 11 (a) Which relationship or which domination or control
25 12 could reasonably be expected to have affected the director's
25 13 judgment respecting the challenged conduct in a manner adverse
25 14 to the corporation.

25 15 (b) After a reasonable expectation to such effect has been
25 16 established, the director shall not have established that the
25 17 challenged conduct was reasonably believed by the director to
25 18 be in the best interests of the corporation.

25 19 (4) A sustained failure of the director to devote
25 20 attention to ongoing oversight of the business and affairs of
25 21 the corporation, or a failure to devote timely attention, by
25 22 making, or causing to be made, appropriate inquiry, when
25 23 particular facts and circumstances of significant concern
25 24 materialize that would alert a reasonably attentive director
25 25 to the need for such oversight, attention, or inquiry.

25 26 (5) Receipt of a financial benefit to which the director
25 27 was not entitled or any other breach of the director's duties
25 28 to deal fairly with the corporation and its shareholders that
25 29 is actionable under applicable law.

25 30 2. a. A party seeking to hold the director liable for

25 31 money damages shall also have the burden of establishing both
25 32 of the following:

25 33 (1) That harm to the corporation or its shareholders has
25 34 been suffered.

25 35 (2) The harm suffered was proximately caused by the
26 1 director's challenged conduct.

26 2 b. A party seeking to hold the director liable for other
26 3 money payment under a legal remedy, such as compensation for
26 4 the unauthorized use of corporate assets, shall also have
26 5 whatever persuasion burden may be called for to establish that
26 6 the payment sought is appropriate in the circumstances.

26 7 c. A party seeking to hold the director liable for other
26 8 money payment under an equitable remedy, such as profit
26 9 recovery by or disgorgement to the corporation, shall also
26 10 have whatever persuasion burden may be called for to establish
26 11 that the equitable remedy sought is appropriate in the
26 12 circumstances.

26 13 3. This section shall not do any of the following:

26 14 a. In any instance where fairness is at issue, such as
26 15 consideration of the fairness of a transaction to the
26 16 corporation under section 490.861, subsection 2, paragraph
26 17 "c", alter the burden of proving the fact or lack of fairness
26 18 otherwise applicable.

26 19 b. Alter the fact or lack of liability of a director under
26 20 another section of this chapter, such as the provisions
26 21 governing the consequences of an unlawful distribution under
26 22 section 490.833 or a transactional interest under section
26 23 490.861.

26 24 c. Affect any rights to which the corporation or a
26 25 shareholder may be entitled under another statute of this
26 26 state or the United States.

26 27 Sec. 39. Section [490.833](#), Code 2001, is amended to read as
26 28 follows:

26 29 490.833 LIABILITY FOR UNLAWFUL DISTRIBUTION.

26 30 1.

~~Unless the director complies with the applicable~~

26 31

~~standards of conduct described in section 490.830, a~~

~~A~~

26 32 director who votes for or assents to a distribution

~~made in~~

26 33

~~violation of this chapter or the articles of incorporation~~

~~in~~

26 34 excess of what may be authorized and made pursuant to section

26 35 490.640, subsection 1, or section 490.1409, subsection 1, is

27 1 personally liable to the corporation for the amount of the

27 2 distribution that exceeds what could have been distributed

27 3 without violating

~~this chapter or the articles of~~

27 4

~~incorporation~~

~~section 490.640, subsection 1, or section~~

27 5 490.1409, subsection 1, if the party asserting liability

27 6 establishes that when taking the action the director did not

27 7 comply with section 490.830.

27 8 2. A director held liable for an unlawful distribution

27 9 under subsection 1 is entitled to

~~contribution from~~
- both of
27 10 the following:
27 11 a.

~~Every~~
- Contribution from every other director who

~~voted~~

27 12

~~for or assented to the distribution without complying with the~~

27 13

~~applicable standards of conduct described in section 490.830~~

27 14 could be held liable under subsection 1 for the unlawful

27 15 distribution.

27 16 b.

~~Each~~

- Recoupment from each shareholder

~~for~~

- of the pro

27 17 rata portion of the amount of the unlawful distribution the

27 18 shareholder accepted, knowing the distribution was made in

27 19 violation of

~~this chapter or the articles of incorporation~~

27 20 section 490.640, subsection 1, or section 490.1409, subsection
27 21 1.

27 22 3. a. A proceeding to enforce the liability of a director
27 23 under subsection 1 is barred unless it is commenced within two
27 24 years after one of the following dates:

27 25 (1) The date on which the effect of the distribution was
27 26 measured under section 490.640, subsection 5 or 7.

27 27 (2) The date as of which the violation of section 490.640,
27 28 subsection 1, occurred as the consequence of disregard of a
27 29 restriction in the articles of incorporation.

27 30 (3) The date on which the distribution of assets to
27 31 shareholders under section 490.1409, subsection 1, was made.

27 32 b. A proceeding to enforce contribution or recoupment
27 33 under subsection 2 is barred unless it is commenced within one
27 34 year after the liability of the claimant has been finally
27 35 adjudicated under subsection 1.

28 1 Sec. 40. Section 490.840, Code 2001, is amended to read as
28 2 follows:

28 3 490.840

~~REQUIRED~~

- OFFICERS.

28 4 1. A corporation has the

~~officers~~

- offices described in its

28 5 bylaws or

~~appointed~~

- designated by the board of directors in

28 6 accordance with the bylaws.

28 7 2.

~~A duly appointed~~

~~The board of directors may elect~~

28 8 individuals to fill one or more offices of the corporation.

28 9 An officer may appoint one or more officers

~~or assistant~~

~~-~~

28 10

~~officers~~

~~if authorized by the bylaws or the board of~~

28 11 directors.

28 12 3. The bylaws or the board of directors shall

~~delegate~~

~~-~~

28 13 assign to one of the officers responsibility for preparing

28 14 minutes of the directors' and shareholders' meetings and for

28 15 maintaining and authenticating the records of the corporation

28 16 required to be kept under section 490.1601, subsections 1 and

28 17 5.

28 18 4. The same individual may simultaneously hold more than

28 19 one office in a corporation.

28 20 Sec. 41. Section 490.842, Code 2001, is amended to read as

28 21 follows:

28 22 490.842 STANDARDS OF CONDUCT FOR OFFICERS.

28 23 1. An officer

~~with discretionary authority shall discharge~~

~~-~~

28 24

~~the officer's duties under that authority~~

~~when performing in~~

28 25 such capacity shall act in conformity with all of the

28 26 following:

28 27 a. In good faith.

28 28 b. With the care

~~an ordinarily prudent~~

~~that a person in a~~

28 29 like position would reasonably exercise under similar

28 30 circumstances.

28 31 c. In a manner the officer reasonably believes to be in

28 32 the best interests of the corporation.

28 33 2. In discharging the

~~person's~~

~~officer's duties an~~

28 34 officer, who does not have knowledge that makes reliance

28 35 unwarranted, is entitled to rely on

~~information, opinions,~~

~~-~~

29 1

~~reports, or statements, including financial statements and~~

~~-~~

29 2

~~other financial data, if prepared or presented by either~~

~~any~~

29 3 of the following:

29 4 a. The performance of properly delegated responsibilities

29 5 by one or more employees of the corporation whom the officer

29 6 reasonably believes to be reliable and competent in performing

29 7 the responsibilities delegated.

~~a.~~
~~b.~~

~~One~~

~~Information, opinions, reports, or statements,
29 9 including financial statements and other financial data,
29 10 prepared or presented by one or more~~

~~officers or
employees of~~

~~29 11 the corporation whom the officer reasonably believes to be
29 12 reliable and competent in the matters presented.
29 13~~

~~b.~~

~~c. Legal counsel, public accountants, or other persons
29 14 retained by the corporation as to matters involving skills or
29 15 expertise the officer reasonably believes are matters within
29 16 the particular person's professional or expert competence, or
29 17 in which the particular person merits confidence.
29 18 3.~~

~~An officer is not acting in good faith if the officer~~

~~29 19~~

~~has knowledge concerning the matter in question that makes~~

~~29 20~~

~~reliance otherwise permitted by subsection 2 unwarranted.~~

~~An~~

~~29 21 officer shall not be liable as an officer to the corporation
29 22 or its shareholders for any decision to take or not to take
29 23 action, or any failure to take any action, if the duties of
29 24 the officer are performed in compliance with this section.
29 25 Whether an officer who does not comply with this section shall
29 26 have liability will depend in such instance on applicable law,
29 27 including those principles of section 490.831 that have
29 28 relevance.
29 29~~

~~4. An officer is not liable for any action taken as an~~

~~29 30~~

~~officer, or any failure to take any action, if the officer~~

~~29 31~~

~~performed the duties of the officer's office in compliance~~

~~29 32~~

~~with this section.~~

~~29 33 Sec. 42. Section [490.843](#), Code 2001, is amended to read as
29 34 follows:~~

~~29 35 490.843 RESIGNATION AND REMOVAL OF OFFICERS.~~

~~30 1 1. An officer may resign at any time by delivering notice
30 2 to the corporation. A resignation is effective when the
30 3 notice is delivered unless the notice specifies a later
30 4 effective~~

~~date~~

- time. If a resignation is made effective at a
30 5 later

~~date~~
- time and the

~~corporation~~
- board or appointing
30 6 officer accepts the future effective

~~date~~
- time,

~~its~~
- the board
30 7

~~of directors~~
- or the appointing officer may fill the pending
30 8 vacancy before the effective

~~date~~
- time if the board

~~of~~
-
30 9

~~directors~~
- or appointing officer provides that the successor
30 10 does not take office until the effective

~~date~~
- time.

~~A~~
-
30 11

~~resignation may be orally communicated provided that the~~
-
30 12

~~resignation is effective only if written notice of the~~
-
30 13

~~resignation is delivered within twenty four hours of such oral~~
-
30 14

~~communication.~~
-
30 15 2.

~~A board of directors may remove any~~
- An officer may be

30 16 removed at any time with or without cause by any of the
30 17 following:

30 18 a. The board of directors.

30 19 b. The officer who appointed such officer, unless the
30 20 bylaws of the board of directors provide otherwise.

30 21 c. Any other officer if authorized by the bylaws of the
30 22 board of directors.

30 23 3. In this section, "appointing officer" means the
30 24 officer, including any successor to that officer, who
30 25 appointed the officer resigning or being removed.

30 26 Sec. 43. Section 490.850, Code 2001, is amended to read as
30 27 follows:

30 28 490.850 DEFINITIONS.

30 29 As used in this part of this chapter, unless the context
30 30 otherwise requires:

30 31 1. "Corporation" includes any domestic or foreign
30 32 predecessor entity of a corporation in a merger

~~or other~~

30 33

~~transaction in which the predecessor's existence ceased upon~~

30 34

~~consummation of the transaction~~

30 35 2. "Director" or "officer" means an individual who is or
31 1 was a director or officer, respectively, of a corporation

~~or~~

31 2

~~an individual~~

- who, while a director or officer of

~~a~~

- the

31 3 corporation, is or was serving at the corporation's request as
31 4 a director, officer, partner, trustee, employee, or agent of
31 5 another

~~foreign or~~

- domestic or foreign corporation,

31 6 partnership, joint venture, trust, employee benefit plan, or
31 7 other

~~enterprise~~

- entity. A director or officer is considered

31 8 to be serving an employee benefit plan at the corporation's
31 9 request if the director's duties to the corporation also
31 10 impose duties on, or otherwise involve services by, that
31 11 director to the plan or to participants in or beneficiaries of
31 12 the plan. "Director" or "officer" includes, unless the
31 13 context requires otherwise, the estate or personal
31 14 representative of a director or officer.

31 15 3. "Disinterested director" means a director who at the
31 16 time of a vote referred to in section 490.853, subsection 3,
31 17 or a vote or selection referred to in section 490.855,
31 18 subsection 2 or 3, is not either of the following:

31 19 a. A party to the proceeding.

31 20 b. An individual having a familial, financial,
31 21 professional, or employment relationship with the director
31 22 whose indemnification or advance for expenses is the subject
31 23 of the decision being made, which relationship would, in the
31 24 circumstances, reasonably be expected to exert an influence on
31 25 the director's judgment when voting on the decision being
31 26 made.

31 27

~~3.~~

- 4. "Expenses"

~~include~~

- includes counsel fees.

~~4.~~

- 5. "Liability" means the obligation to pay a judgment,
31 29 settlement, penalty, fine, including an excise tax assessed
31 30 with respect to an employee benefit plan, or reasonable
31 31 expenses incurred with respect to a proceeding.
31 32

~~5.~~

- 6. "Official capacity" means:
31 33 a. When used with respect to a director, the office of
31 34 director in a corporation.
31 35 b. When used with respect to an

~~individual other than a~~

~~director~~
32 1

- officer, as contemplated in section 490.856, the
32 2 office in a corporation held by the officer

~~or the employment~~

~~or agency relationship undertaken by the employee or agent on~~
32 3

~~behalf of the corporation~~
32 4

- entity.
32 5 "Official capacity" does not include service for any other
32 6

~~foreign or~~

- domestic or foreign corporation or any partnership,
32 7 joint venture, trust, employee benefit plan, or other
32 8

~~enterprise~~

~~entity.~~

32 9

~~6.~~

- 7. "Party"

~~includes~~

- means an individual who was, is, or
32 10 is threatened to be made a

~~named~~

- defendant or respondent in a
32 11 proceeding.
32 12

~~7.~~

- 8. "Proceeding" means any threatened, pending, or
32 13 completed action, suit, or proceeding, whether civil,
32 14 criminal, administrative, or investigative and whether formal
32 15 or informal.
32 16 Sec. 44. Section [490.851](#), Code 2001, is amended to read as
32 17 follows:
32 18 490.851

~~AUTHORITY TO INDEMNIFY~~

- PERMISSIBLE

32 19 INDEMNIFICATION.

32 20 1. Except as otherwise provided in

~~subsection 4~~

- ~~this~~

32 21 section, a corporation may indemnify an individual

~~made~~

- ~~who is~~

32 22 a party to a proceeding because the individual is

~~or was~~

- a

32 23 director against liability incurred in the proceeding if all
32 24 of the following apply:

32 25 a. The individual acted in good faith.

32 26 b. The individual reasonably believed:

32 27 (1) In the case of conduct in the individual's official
32 28 capacity

~~with the corporation~~

- , that the individual's conduct

32 29 was in the corporation's best interests.

32 30 (2) In all other cases, that the individual's conduct was
32 31 at least not opposed to the corporation's best interests.

32 32 c. In the case of any criminal proceeding, the individual
32 33 had no reasonable cause to believe the individual's conduct
32 34 was unlawful, or the individual engaged in conduct for which
32 35 broader indemnification has been made permissible or

33 1 obligatory under a provision of the articles of incorporation
33 2 as authorized by section 490.202, subsection 2, paragraph "e".

33 3 2. A director's conduct with respect to an employee
33 4 benefit plan for a purpose the director reasonably believed to
33 5 be in the interests of the participants in and beneficiaries
33 6 of the plan is conduct that satisfies the requirement of
33 7 subsection 1, paragraph "b", subparagraph (2).

33 8 3. The termination of a proceeding by judgment, order,
33 9 settlement, conviction, or upon a plea of nolo contendere or
33 10 its equivalent is not, of itself, determinative that the
33 11 director did not meet the relevant standard of conduct
33 12 described in this section.

33 13 4.

~~A~~

- Unless ordered by a court under section 490.854,

33 14 subsection 1, paragraph "c", a corporation shall not indemnify
33 15 a director under this section in either of the following
33 16 circumstances:

33 17 a. In connection with a proceeding by or in the right of
33 18 the corporation

~~in which the director was adjudged liable to~~

-
33 19

~~the corporation~~

- , except for reasonable expenses incurred in

33 20 connection with the proceeding if it is determined that the
33 21 director has met the relevant standard of conduct under
33 22 subsection 1.

33 23 b. In connection with any

~~other~~

- proceeding

~~charging~~

33 24

~~improper personal benefit to the director, whether or not~~

33 25

~~involving action in the director's official capacity, in~~

~~with~~

33 26 respect to conduct for which the director was adjudged liable

33 27 on the basis that

~~personal~~

~~the director received a financial~~

33 28 benefit

~~was improperly received by the director~~

~~to which the~~

33 29 director was not entitled, whether or not involving action in

33 30 the director's official capacity.

33 31

~~5. Indemnification permitted under this section in~~

33 32

~~connection with a proceeding by or in the right of the~~

33 33

~~corporation is limited to reasonable expenses incurred in~~

33 34

~~connection with the proceeding.~~

33 35 Sec. 45. Section [490.852](#), Code 2001, is amended to read as

34 1 follows:

34 2 490.852 MANDATORY INDEMNIFICATION.

34 3

~~Unless limited by its articles of incorporation, a~~

~~A~~

34 4 corporation shall indemnify a director who was wholly

34 5 successful, on the merits or otherwise, in the defense of any

34 6 proceeding to which the director was a party because the

34 7 director is or was a director of the corporation against

34 8 reasonable expenses incurred by the director in connection

34 9 with the proceeding.

34 10 Sec. 46. Section [490.853](#), Code 2001, is amended to read as

34 11 follows:

34 12 490.853 ADVANCE FOR EXPENSES.

34 13 1. A corporation may, before final disposition of a

34 14 proceeding, advance funds to pay for or reimburse the

34 15 reasonable expenses incurred by a director who is a party to a

34 16 proceeding

~~in advance of final disposition of the proceeding~~

34 17 because the person is a director if

~~any of~~

~~the person delivers~~

34 18 all of the following

~~apply~~

~~to the corporation:~~

34 19 a.

~~The director furnishes the corporation a~~

~~A written~~

34 20 affirmation of the director's good faith belief that the
34 21 director has met the relevant standard of conduct described in
34 22 section 490.851 or that the proceeding involved conduct for
34 23 which liability has been eliminated under a provision of the
34 24 articles of incorporation as authorized by section 490.202,
34 25 subsection 2, paragraph "d".

34 26 b.

~~The director furnishes the corporation a~~

~~The director's~~

34 27 written undertaking

~~, executed personally or on the director's~~

34 28

~~behalf,~~

~~to repay~~

~~the advance~~

~~any funds advanced if the~~

34 29 director is not entitled to mandatory indemnification under
34 30 section 490.852 and it is ultimately determined under section
34 31 490.854 or section 490.855 that the director

~~did not meet that~~

34 32 has not met the relevant standard of conduct described in

34 33 section 490.851.

34 34

~~c. A determination is made that the facts then known to~~

34 35

~~those making the determination would not preclude~~

35 1

~~indemnification under this part.~~

35 2 2. The undertaking required by subsection 1, paragraph

35 3 "b", must be an unlimited general obligation of the director

35 4 but need not be secured and may be accepted without reference

35 5 to the financial ability of the director to make repayment.

35 6 3.

~~Determinations and authorizations~~

~~Authorizations of~~

35 7 payments under this section shall be made

~~in the manner~~

35 8

~~specified in section 490.855~~

~~according to the one of the~~

35 9 following:

35 10 a. By the board of directors:

35 11 (1) If there are two or more disinterested directors, by a

35 12 majority vote of all the disinterested directors, a majority

35 13 of whom shall for such purpose constitute a quorum, or by a

35 14 majority of the members of a committee of two or more

35 15 disinterested directors appointed by such a vote.
35 16 (2) If there are fewer than two disinterested directors,
35 17 by the vote necessary for action by the board in accordance
35 18 with section 490.824, subsection 3, in which authorization
35 19 directors who do not qualify as disinterested directors may
35 20 participate.
35 21 b. By the shareholders, but shares owned by or voted under
35 22 the control of a director who at the time does not qualify as
35 23 a disinterested director may not be voted on the
35 24 authorization.
35 25 Sec. 47. Section [490.854](#), Code 2001, is amended to read as
35 26 follows:
35 27 490.854 COURT-ORDERED INDEMNIFICATION.
35 28 1.

~~Unless a corporation's articles of incorporation~~

35 29

~~provide otherwise, a~~

~~A director~~

~~of the corporation~~

~~who is a~~

35 30 party to a proceeding because the person is a director may
35 31 apply for indemnification or an advance for expenses to the
35 32 court conducting the proceeding or to another court of
35 33 competent jurisdiction.

~~On~~

~~After receipt of an application,~~

35 34

~~the court~~

~~and after giving any notice~~

~~the court~~

~~it considers~~

35 35 necessary

~~may order~~

~~, the court shall do one of the following:~~

36 1 a. Order indemnification if

~~it~~

~~the court determines~~

~~either~~

36 2

~~of the following:~~

36 3

~~1. The~~

~~that the director is entitled to mandatory~~

36 4 indemnification under section 490.852

~~, in which case the court~~

36 5

~~shall also order the corporation to pay the directors~~

36 6

~~reasonable expenses incurred to obtain court ordered~~

36 7

~~indemnification~~

36 8

~~2. The director is fairly and reasonably entitled to~~

36 9

~~indemnification in view of all the relevant circumstances,~~

36 10

~~whether or not the director met the standard of conduct set~~

36 11

~~forth in section 490.851 or was adjudged liable as described~~

36 12

~~in section 490.851, subsection 4, but if the director was~~

36 13

~~adjudged so liable the director's indemnification is limited~~

36 14

~~to reasonable expenses incurred.~~

36 15 b. Order indemnification or advance for expenses if the
36 16 court determines that the director is entitled to
36 17 indemnification or advance for expenses pursuant to a
36 18 provision authorized by section 490.858, subsection 1.

36 19 c. Order indemnification or advance for expenses if the
36 20 court determines, in view of all the relevant circumstances,
36 21 that it is fair and reasonable to do one of the following:

36 22 (1) To indemnify the director.

36 23 (2) To advance expenses to the director, even if the
36 24 director has not met the relevant standard of conduct set
36 25 forth in section 490.851, subsection 1, failed to comply with
36 26 section 490.853 or was adjudged liable in a proceeding
36 27 referred to in subsection 490.851, subsection 4, paragraph "a"
36 28 or "b", but if the director was adjudged so liable the
36 29 director's indemnification shall be limited to reasonable
36 30 expenses incurred in connection with the proceeding.

36 31 2. If the court determines that the director is entitled
36 32 to indemnification under subsection 1, paragraph "a", or to
36 33 indemnification or advance for expenses under subsection 1,
36 34 paragraph "b", it shall also order the corporation to pay the
36 35 director's reasonable expenses incurred in connection with
37 1 obtaining court-ordered indemnification or advance for
37 2 expenses. If the court determines that the director is
37 3 entitled to indemnification or advance for expenses under
37 4 subsection 1, paragraph "c", it may also order the corporation
37 5 to pay the director's reasonable expenses to obtain court-
37 6 ordered indemnification or advance for expenses.

37 7 Sec. 48. Section 490.855, Code 2001, is amended to read as
37 8 follows:

37 9 490.855 DETERMINATION AND AUTHORIZATION OF
37 10 INDEMNIFICATION.

37 11 1. A corporation shall not indemnify a director under
37 12 section 490.851 unless authorized

~~in the~~
~~for a specific~~
~~case~~

37 13 proceeding after a determination has been made that
37 14 indemnification of the director is permissible

~~in the~~

37 15

~~circumstances~~

~~because the director has met the relevant~~

37 16 standard of conduct set forth in section 490.851.

37 17 2. The determination shall be made by any of the

37 18 following:

37 19 a.

~~By the board of directors by majority vote of a quorum~~

37 20

~~consisting of directors not at the time parties to the~~

37 21

~~proceeding.~~

~~If there are two or more disinterested directors,~~

37 22 by the board of directors by a majority vote of all the

37 23 disinterested directors, a majority of whom shall for such

37 24 purpose constitute a quorum, or by a majority of the members

37 25 of a committee of two or more disinterested directors

37 26 appointed by such a vote.

37 27

~~b. If a quorum cannot be obtained under paragraph "a", by~~

37 28

~~majority vote of a committee duly designated by the board of~~

37 29

~~directors, in which designation directors who are parties may~~

37 30

~~participate, consisting solely of two or more directors not at~~

37 31

~~the time parties to the proceeding.~~

37 32

~~c.~~

~~b. By special legal counsel:~~

37 33 (1) Selected

~~by the board of directors or its committee~~

~~in~~

37 34 the manner prescribed in paragraph "a"

~~or "b"~~

37 35 (2) If

~~a quorum of the board of~~
~~there are fewer than two~~
38 1 disinterested directors

~~cannot be obtained under paragraph "a"~~
38 2

~~and a committee cannot be designated under paragraph "b",~~
38 3 selected by

~~majority vote of~~
~~the~~
~~full~~

~~board of directors, in~~
38 4 which selection directors who

~~are parties~~
~~do not qualify as~~
38 5 disinterested directors may participate.
38 6

~~d.~~
~~c.~~ By the shareholders, but shares owned by or voted
38 7 under the control of

~~directors~~
~~a director~~ who
~~are~~

~~at the time~~
38 8

~~parties to the proceeding~~
~~does not qualify as a disinterested~~
38 9 director shall not be voted on the determination.
38 10 3. Authorization of indemnification

~~and evaluation as to~~
38 11

~~reasonableness of expenses~~
~~shall be made in the same manner as~~
38 12 the determination that indemnification is permissible, except
38 13 that if there are fewer than two disinterested directors or if
38 14 the determination is made by special legal counsel,
38 15 authorization of indemnification

~~and evaluation as to~~
38 16

~~reasonableness of expenses~~
~~shall be made by those entitled~~
38 17 under subsection 2, paragraph

~~"c"~~
~~"b"~~, to select special legal
38 18 counsel.
38 19 Sec. 49. Section 490.856, Code 2001, is amended to read as
38 20 follows:

38 21 490.856 INDEMNIFICATION OF OFFICERS

~~EMPLOYEES, AND~~

38 22

~~AGENTS~~

38 23

~~Unless a corporation's articles of incorporation provide~~

38 24

~~otherwise all of the following apply:~~

38 25

~~1. An officer of the corporation who is not a director is~~

38 26

~~entitled to mandatory indemnification under section 490.852,~~

38 27

~~and is entitled to apply for court ordered indemnification~~

38 28

~~under section 490.854, in each case to the same extent as a~~

38 29

~~director.~~

38 30

~~2.~~

~~1.~~

~~The~~

~~A corporation may indemnify and advance expenses~~

38 31 under this part to an officer

~~, employee, or agent~~

~~of the~~

38 32 corporation who is

~~not a director to~~

~~a party to the proceeding~~

38 33 because the person is an officer, according to all of the

38 34 following:

38 35 a. To the same extent as to a director.

39 1

~~3.~~

~~b.~~

~~A corporation may also indemnify and advance~~

39 2

~~expenses to an officer, employee, or agent who is not a~~

39 3

~~director to the extent, consistent with law, that~~

~~- If the~~

39 4 person is an officer but not a director, to such further
39 5 extent as may be provided by

~~- its~~

~~- the~~ articles of

39 6 incorporation, the bylaws,

~~- general or specific action~~

~~- a~~

39 7 resolution of

~~- its~~

~~- the~~ board of directors, or contract, except

39 8 for either of the following:

39 9 (1) Liability in connection with a proceeding by or in the
39 10 right of the corporation other than for reasonable expenses
39 11 incurred in connection with the proceeding.

39 12 (2) Liability arising out of conduct that constitutes any
39 13 of the following:

39 14 (a) Receipt by the officer of a financial benefit to which
39 15 the officer is not entitled.

39 16 (b) An intentional infliction of harm on the corporation
39 17 or the shareholders.

39 18 (c) An intentional violation of criminal law.

39 19 2. The provisions of subsection 1, paragraph "b", shall
39 20 apply to an officer who is also a director if the basis on
39 21 which the officer is made a party to a proceeding is an act or
39 22 omission solely as an officer.

39 23 3. An officer of a corporation who is not a director is
39 24 entitled to mandatory indemnification under section 490.852,
39 25 and may apply to a court under section 490.854 for
39 26 indemnification or an advance for expenses, in each case to
39 27 the same extent to which a director may be entitled to
39 28 indemnification or advance for expenses under those
39 29 provisions.

39 30 Sec. 50. Section [490.857](#), Code 2001, is amended to read as
39 31 follows:

39 32 490.857 INSURANCE.

39 33 A corporation may purchase and maintain insurance on behalf
39 34 of an individual who is

~~- or was~~

~~- a~~ director

~~-~~

~~- or~~ officer

~~-~~

~~-~~

39 35

~~- employee, or agent~~

~~- of~~ the corporation, or who, while a
40 1 director

~~-~~

~~- or~~ officer

~~- employee, or agent~~

~~- of~~ the corporation,
40 2

~~- is or was~~ serving

~~- serves~~ at the

~~- request of~~ the corporation

40 3 corporation's request as a director, officer, partner,
40 4 trustee, employee, or agent of another

~~foreign or~~

~~domestic or~~

40 5 foreign corporation, partnership, joint venture, trust,
40 6 employee benefit plan, or other

~~enterprise~~

~~entity, against~~

40 7 liability asserted against or incurred by that individual in
40 8 that capacity or arising from the individual's status as a
40 9 director

~~or officer,~~

~~employee, or agent,~~

~~whether or not the~~

40 10 corporation would have power to indemnify or advance expenses
40 11 to that individual against the same liability under

~~section~~

40 12

~~490.851 or 490.852~~

~~this part.~~

40 13 Sec. 51. Section [490.858](#), Code 2001, is amended by
40 14 striking the section and inserting in lieu thereof the
40 15 following:

40 16 490.858 VARIATION BY CORPORATE ACTION APPLICATION OF
40 17 PART.

40 18 1. A corporation may, by a provision in its articles of
40 19 incorporation or bylaws or in a resolution adopted or a
40 20 contract approved by its board of directors or shareholders,
40 21 obligate itself in advance of the act or omission giving rise
40 22 to a proceeding to provide indemnification in accordance with
40 23 section 490.851 or advance funds to pay for or reimburse
40 24 expenses in accordance with section 490.853. Any such
40 25 obligatory provision shall be deemed to satisfy the
40 26 requirements for authorization referred to in section 490.853,
40 27 subsection 3, and in section 490.855, subsection 3. Any such
40 28 provision that obligates the corporation to provide
40 29 indemnification to the fullest extent permitted by law shall
40 30 be deemed to obligate the corporation to advance funds to pay
40 31 for or reimburse expenses in accordance with section 490.853
40 32 to the fullest extent permitted by law, unless the provision
40 33 specifically provides otherwise.

40 34 2. Any provision pursuant to subsection 1 shall not
40 35 obligate the corporation to indemnify or advance expenses to a
41 1 director of a predecessor of the corporation, pertaining to
41 2 conduct with respect to the predecessor, unless otherwise
41 3 specifically provided. Any provision for indemnification or
41 4 advance for expenses in the articles of incorporation, bylaws,
41 5 or a resolution of the board of directors or shareholders of a
41 6 predecessor of the corporation in a merger or in a contract to
41 7 which the predecessor is a party, existing at the time the
41 8 merger takes effect, shall be governed by section 490.1106,
41 9 subsection 1, paragraph "c".

41 10 3. A corporation may, by a provision in its articles of
41 11 incorporation, limit any of the rights to indemnification or
41 12 advance for expenses created by or pursuant to this part.

41 13 4. This part does not limit a corporation's power to pay
41 14 or reimburse expenses incurred by a director or an officer in
41 15 connection with the director's or officer's appearance as a

41 16 witness in a proceeding at a time when the director or officer
41 17 is not a party.

41 18 5. This part does not limit a corporation's power to
41 19 indemnify, advance expenses to, or provide or maintain
41 20 insurance on behalf of an employee or agent.

41 21 Sec. 52. NEW SECTION. 490.859 EXCLUSIVITY OF PART.

41 22 A corporation may provide indemnification or advance
41 23 expenses to a director or an officer only as permitted by this
41 24 part.

41 25 Sec. 53. NEW SECTION. 490.860 DEFINITIONS.

41 26 In this part:

41 27 1. "Conflicting interest" with respect to a corporation
41 28 means the interest a director of the corporation has
41 29 respecting a transaction effected or proposed to be effected
41 30 by the corporation, or by a subsidiary of the corporation or
41 31 any other entity in which the corporation has a controlling
41 32 interest, if either of the following applies:

41 33 a. Whether or not the transaction is brought before the
41 34 board of directors of the corporation for action, the director
41 35 knows at the time of commitment that the director or a related
42 1 person is a party to the transaction or has a beneficial
42 2 financial interest in or is so closely linked to the
42 3 transaction and is of such financial significance to the
42 4 director or a related person that the interest would
42 5 reasonably be expected to exert an influence on the director's
42 6 judgment if the director were called upon to vote on the
42 7 transaction.

42 8 b. The transaction is brought, or is of such character and
42 9 significance to the corporation that it would in the normal
42 10 course be brought, before the board of directors of the
42 11 corporation for action, and the director knows at the time of
42 12 commitment that any of the following persons is either a party
42 13 to the transaction or has a beneficial financial interest in
42 14 or is so closely linked to the transaction and is of such
42 15 financial significance to the person that the interest would
42 16 reasonably be expected to exert an influence on the director's
42 17 judgment if the director were called upon to vote on the
42 18 transaction:

42 19 (1) An entity, other than the corporation, of which the
42 20 director is a director, general partner, manager, member,
42 21 agent, or employee.

42 22 (2) A person that controls one or more of the entities
42 23 specified in subparagraph (1) or an entity that is controlled
42 24 by, or is under common control with, one or more of the
42 25 entities specified in subparagraph (1).

42 26 (3) An individual who is a general partner, principal,
42 27 comember, or employer of the director.

42 28 2. "Director's conflicting interest transaction" with
42 29 respect to a corporation means a transaction effected or
42 30 proposed to be effected by the corporation, or by a subsidiary
42 31 of the corporation or any other entity in which the
42 32 corporation has a controlling interest, respecting which a
42 33 director of the corporation has a conflict of interest.

42 34 3. "Related person" of a director means any of the
42 35 following:

43 1 a. The spouse of the director, or a parent or a sibling of
43 2 a spouse of a director.

43 3 b. A child, grandchild, sibling, or parent of the
43 4 director, or a spouse of a child, grandchild, sibling, or
43 5 parent of the director.

43 6 c. An individual having the same home as the director.

43 7 d. A trust or estate of which an individual specified in
43 8 this subsection is a substantial beneficiary.

43 9 e. A trust, estate, incompetent, conservatee, or minor of
43 10 which the director is a fiduciary.

43 11 4. "Required disclosure" means disclosure by the director
43 12 who has a conflicting interest of both of the following:

43 13 a. The existence and nature of the director's conflicting
43 14 interest.

43 15 b. All facts known to the director respecting the subject
43 16 matter of the transaction that an ordinarily prudent person
43 17 would reasonably believe to be material to a judgment about
43 18 whether or not to proceed with the transaction.

43 19 5. "Time of commitment" respecting a transaction means the
43 20 time when the transaction is consummated or, if made pursuant
43 21 to contract, the time when the corporation, or its subsidiary
43 22 or the entity in which it has a controlling interest, becomes
43 23 contractually obligated so that its unilateral withdrawal from
43 24 the transaction would entail significant loss, liability, or
43 25 other damage.

43 26 Sec. 54. NEW SECTION. 490.861 JUDICIAL ACTION.

43 27 1. A transaction effected or proposed to be effected by a
43 28 corporation, or by a subsidiary of the corporation or any
43 29 other entity in which the corporation has a controlling
43 30 interest, that is not a director's conflicting interest
43 31 transaction shall not be enjoined, set aside, or give rise to
43 32 an award of damages or other sanctions, in a proceeding by a
43 33 shareholder or by or in the right of the corporation, because
43 34 a director of the corporation, or any person with whom or
43 35 which the director has a personal, economic, or other

44 1 association, has an interest in the transaction.

44 2 2. A director's conflicting interest transaction shall not
44 3 be enjoined, set aside, or give rise to an award of damages or
44 4 other sanctions, in a proceeding by a shareholder or by or in
44 5 the right of the corporation, because the director, or any
44 6 person with whom or which the director has a personal,
44 7 economic, or other association, has an interest in the
44 8 transaction, if any one of the following is true:

44 9 a. Directors' action respecting the transaction was at any
44 10 time taken in compliance with section 490.862.

44 11 b. Shareholders' action respecting the transaction was at
44 12 any time taken in compliance with section 490.863.

44 13 c. The transaction, judged according to the circumstances
44 14 at the time of commitment, is established to have been fair to
44 15 the corporation.

44 16 Sec. 55. NEW SECTION. 490.862 DIRECTORS' ACTION.

44 17 1. Directors' action respecting a transaction is effective
44 18 for purposes of section 490.861, subsection 2, paragraph "a",
44 19 if the transaction received the affirmative vote of a
44 20 majority, but no fewer than two, of those qualified directors
44 21 on the board of directors or on a duly empowered committee of
44 22 the board who voted on the transaction after either required
44 23 disclosure to them, to the extent the information was not
44 24 known by them, or compliance with subsection 2. However,
44 25 action by a committee is so effective only if both of the
44 26 following are satisfied:

44 27 a. All its members are qualified directors.

44 28 b. Its members are either all the qualified directors on
44 29 the board or are appointed by the affirmative vote of a
44 30 majority of the qualified directors on the board.

44 31 2. If a director has a conflicting interest respecting a
44 32 transaction but neither the director nor a related person of
44 33 the director specified in section 490.860, subsection 3,
44 34 paragraph "a", is a party to the transaction, and if the
44 35 director has a duty under law or professional canon, or a duty
45 1 of confidentiality to another person, respecting information
45 2 relating to the transaction such that the director shall not
45 3 make the disclosure described in section 490.860, subsection
45 4 4, paragraph "b", then disclosure is sufficient for purposes
45 5 of subsection 1 if the director does both of the following:

45 6 a. Discloses to the directors voting on the transaction
45 7 the existence and nature of the director's conflicting
45 8 interest and informs them of the character and limitations
45 9 imposed by that duty before their vote on the transaction.

45 10 b. Plays no part, directly or indirectly, in their
45 11 deliberations or vote.

45 12 3. A majority, but no fewer than two, of all the qualified
45 13 directors on the board of directors, or on the committee,
45 14 constitutes a quorum for purposes of action that complies with
45 15 this section. Directors' action that otherwise complies with
45 16 this section is not affected by the presence or vote of a
45 17 director who is not a qualified director.

45 18 4. For purposes of this section, "qualified director"
45 19 means, with respect to a director's conflicting interest
45 20 transaction, any director who does not have either a
45 21 conflicting interest respecting the transaction, or a
45 22 familial, financial, professional, or employment relationship
45 23 with a second director who does have a conflicting interest
45 24 respecting the transaction, which relationship would, in the
45 25 circumstances, reasonably be expected to exert an influence on
45 26 the first director's judgment when voting on the transaction.

45 27 5. Directors' action complying with subsection 1 may be
45 28 taken at any time, before or after the transaction, and may
45 29 deal with a single transaction or a specified category of
45 30 similar transactions.

45 31 Sec. 56. NEW SECTION. 490.863 SHAREHOLDERS' ACTION.

45 32 1. Shareholders' action respecting a transaction is
45 33 effective for purposes of section 490.861, subsection 2,
45 34 paragraph "b", if a majority of the votes entitled to be cast
45 35 by the holders of all qualified shares were cast in favor of
46 1 the transaction after all of the following occurred:

46 2 a. Notice to shareholders describing the director's
46 3 conflicting interest transaction.

46 4 b. Provision of the information referred to in subsection
46 5 4.

46 6 c. Required disclosure to the shareholders who voted on
46 7 the transaction, to the extent the information was not known
46 8 by them.

46 9 2. For purposes of this section, "qualified shares" means
46 10 any shares entitled to vote with respect to the director's
46 11 conflicting interest transaction except shares that, to the
46 12 knowledge, before the vote, of the secretary, or other officer
46 13 or agent of the corporation authorized to tabulate votes, are
46 14 beneficially owned, or the voting of which is controlled, by a
46 15 director who has a conflicting interest respecting the
46 16 transaction or by a related person of the director, or both.

46 17 3. A majority of the votes entitled to be cast by the
46 18 holders of all qualified shares constitutes a quorum for
46 19 purposes of action that complies with this section. Subject
46 20 to the provisions of subsections 4 and 5, shareholders' action
46 21 that otherwise complies with this section is not affected by
46 22 the presence of holders, or the voting of shares that are not
46 23 qualified shares.

46 24 4. For purposes of compliance with subsection 1, a
46 25 director who has a conflicting interest respecting the
46 26 transaction shall, before the shareholders' vote, inform the
46 27 secretary, or other officer or agent of the corporation
46 28 authorized to tabulate votes, of the number, and the identity
46 29 of persons holding or controlling the vote, of all shares that
46 30 the director knows are beneficially owned, or the voting of
46 31 which is controlled, by the director or by a related person of
46 32 the director, or both.

46 33 5. If a shareholders' vote does not comply with subsection
46 34 1 solely because of a failure of a director to comply with
46 35 subsection 4, and if the director establishes that the
47 1 director's failure did not determine and was not intended by
47 2 the director to influence the outcome of the vote, the court
47 3 may, with or without further proceedings respecting section
47 4 490.861, subsection 2, paragraph "c", take such action
47 5 respecting the transaction and the director, and give such
47 6 effect, if any, to the shareholders' vote, as it considers

47 7 appropriate in the circumstances.

47 8 6. Action that complies with subsection 1 may be taken at
47 9 any time, before or after the transaction, and may deal with a
47 10 single transaction or a specified category of similar
47 11 transactions.

47 12 Sec. 57. Section [490.1001](#), subsection 1, Code 2001, is
47 13 amended to read as follows:

47 14 1. A corporation may amend its articles of incorporation
47 15 at any time to add or change a provision that is required or
47 16 permitted in the articles of incorporation

~~or to delete a~~

47 17

~~provision not required in the articles of incorporation.~~

47 18

~~Whether a provision is required or permitted in the articles~~

47 19

~~of incorporation is determined~~

~~as of the effective date of the~~

47 20 amendment or to delete a provision that is not required to be
47 21 contained in the articles of incorporation.

47 22 Sec. 58. Section [490.1002](#), Code 2001, is amended by
47 23 striking the section and inserting in lieu thereof the
47 24 following:

47 25 490.1002 AMENDMENT BEFORE ISSUANCE OF SHARES.

47 26 If a corporation has not yet issued shares, its board of
47 27 directors, or its incorporators if it has no board of
47 28 directors, may adopt one or more amendments to the
47 29 corporation's articles of incorporation.

47 30 Sec. 59. Section [490.1003](#), Code 2001, is amended to read
47 31 as follows:

47 32 490.1003 AMENDMENT BY BOARD OF DIRECTORS AND SHAREHOLDERS.

47 33 If a corporation has issued shares, an amendment to the
47 34 articles of incorporation shall be adopted in the following
47 35 manner:

48 1 1.

~~A corporation's~~

~~The proposed amendment must be adopted~~

48 2 by the board of directors

~~may propose one or more amendments~~

48 3

~~to the articles of incorporation for submission to the~~

48 4

~~shareholders~~

48 5

~~2. For the amendment to be adopted both of the following~~

48 6

~~must occur:~~

48 7

~~a.~~

~~2.~~

~~The~~

~~Except as provided in section 490.1005,
48 8 490.1007, and 490.1008, after adopting the proposed amendment,
48 9 the board of directors must~~

~~recommend~~

~~submit the amendment to
48 10 the shareholders for their approval. The board of directors
48 11 must also transmit to the shareholders a recommendation that
48 12 the shareholders approved the amendment, unless the board of
48 13 directors~~

~~determines~~

~~makes a determination that because of
48 14 conflict of interest or other special circumstances it should
48 15 not make~~

~~no~~

~~such a recommendation~~

~~and communicates~~

~~, in which
48 16 case the~~

~~basis for its determination~~

~~board of directors must
48 17 transmit to the shareholders~~

~~with the amendment~~

~~the basis for
48 18 the determination.
48 19~~

~~b. The shareholders entitled to vote on the amendment must~~

~~48 20~~

~~approve the amendment as provided in subsection 5.~~

~~48 21 3. The board of directors may condition its submission of
48 22 the~~

~~proposed~~

~~amendment to the shareholders on any basis.
48 23 4.~~

~~The corporation shall~~

~~If the amendment is required to
48 24 be approved by the shareholders, and the approval is to be
48 25 given at a meeting, the corporation must notify each
48 26 shareholder, whether or not entitled to vote, of the~~

~~proposed~~

~~48 27~~

~~shareholders'~~

~~meeting~~

~~in accordance with section 490.705~~

~~of~~

~~48 28 shareholders at which the amendment is to be submitted for
48 29 approval. The notice~~

~~of meeting~~

- must

~~also~~

- state that the

48 30 purpose, or one of the purposes, of the meeting is to consider
48 31 the proposed amendment and must contain or be accompanied by a
48 32 copy

~~or summary~~

- of the amendment.

48 33 5. Unless

~~this chapter,~~

- the articles of incorporation,

48 34 bylaws, or the board of directors acting pursuant to
48 35 subsection 3 requires a greater vote or

~~a vote by voting~~

-
49 1

~~groups, the amendment to be adopted must be approved by both~~

-
49 2

~~of the following:~~

-
49 3

~~a. A~~

- greater number of shares to be present, approval of

49 4 the amendment requires the approval of the shareholders at a
49 5 meeting at which a quorum consisting of at least a majority of
49 6 the votes entitled to be cast on the amendment exists, and, if
49 7 any class or series of shares is entitled to vote as a
49 8 separate group on the amendment, except as provided in section
49 9 490.1004, subsection 3, the approval of each such separate
49 10 voting group at a meeting at which a quorum of the voting
49 11 group consisting of at least a majority of the votes entitled
49 12 to be cast on the amendment by

~~any voting group with respect~~

-
49 13

~~to which the amendment would create dissenters' rights~~

- that

49 14 voting group exists.

49 15

~~b. The votes required by sections 490.725 and 490.726 by~~

-
49 16

~~every other voting group entitled to vote on the amendment.~~

-
49 17 Sec. 60. Section 490.1004, subsections 1, 2, and 3, Code
49 18 2001, are amended to read as follows:

49 19 1.

~~The~~

- If a corporation has more than one class of shares

49 20 outstanding, the holders of the outstanding shares of a class
49 21 are entitled to vote as a separate voting group, if
49 22 shareholder voting is otherwise required by this chapter, on a
49 23 proposed amendment to the articles of incorporation if the

49 24 amendment would do any of the following:

49 25

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

49 26

~~shares of the class.~~

49 27

~~b.~~

- a. Effect an exchange or reclassification of all or
49 28 part of the shares of the class into shares of another class.

49 29

~~c.~~

- b. Effect an exchange or reclassification, or create
49 30 the right of exchange, of all or part of the shares of another
49 31 class into shares of that class.

49 32

~~d.~~

- c. Change the
~~designation,~~
- rights, preferences, or
49 33 limitations of all or part of the shares of the class.

49 34

~~e.~~

- d. Change the shares of all or part of the class into a
49 35 different number of shares of the same class.

50 1

~~f.~~

- e. Create a new class of shares having rights or
50 2 preferences with respect to distributions or to dissolution
50 3 that are prior

- or superior

~~, or substantially equal~~

- to

- the

50 4 shares of the class.

50 5

~~g.~~

- f. Increase the rights, preferences, or number of
50 6 authorized shares of any class that, after giving effect to
50 7 the amendment, have rights or preferences with respect to
50 8 distributions or to dissolution that are prior

- or superior

50 9

~~or substantially equal~~

- to the shares of the class.

50 10

~~h.~~

- g. Limit or deny an existing preemptive right of all or
50 11 part of the shares of the class.
50 12

~~i.~~

- h. Cancel or otherwise affect rights to distributions
50 13

~~or dividends~~

- that have accumulated but not yet been

~~declared~~

50 14 authorized on all or part of the shares of the class.

50 15 2. If a proposed amendment would affect a series of a
50 16 class of shares in one or more of the ways described in
50 17 subsection 1, the holders of shares of that series are
50 18 entitled to vote as a separate voting group on the proposed
50 19 amendment.

50 20 3. If a proposed amendment that entitles the holders of
50 21 two or more classes or series of shares to vote as separate
50 22 voting groups under this section would affect those two or
50 23 more classes or series in the same or a substantially similar
50 24 way, the holders of shares of all the classes or series so
50 25 affected must vote together as a single voting group on the
50 26 proposed amendment, unless otherwise provided in the articles
50 27 of incorporation or required by the board of directors.

50 28 Sec. 61. Section 490.1005, Code 2001, is amended by
50 29 striking the section and inserting in lieu thereof the
50 30 following:

50 31 490.1005 AMENDMENT BY BOARD OF DIRECTORS.

50 32 Unless the articles of incorporation provide otherwise, a
50 33 corporation's board of directors may adopt amendments to the
50 34 corporation's articles of incorporation without shareholder
50 35 approval for any of the following purposes:

51 1 1. To extend the duration of the corporation if it was
51 2 incorporated at a time when limited duration was required by
51 3 law.

51 4 2. To delete the names and addresses of the initial
51 5 directors.

51 6 3. To delete the name and address of the initial
51 7 registered agent or registered office, if a statement of
51 8 change is on file with the secretary of state.

51 9 4. If the corporation has only one class of shares
51 10 outstanding:

51 11 a. To change each issued and unissued authorized share of
51 12 the class into a greater number of whole shares of that class.

51 13 b. To increase the number of authorized shares of the
51 14 class to the extent necessary to permit the issuance of shares
51 15 as a share dividend.

51 16 5. To change the corporate name by substituting the word
51 17 "corporation", "incorporated", "company", "limited", or the
51 18 abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar
51 19 word or abbreviation in the name, or by adding, deleting, or
51 20 changing a geographical attribution for the name.

51 21 6. To reflect a reduction in authorized shares, as a
51 22 result of the operation of section 490.631, subsection 2, when
51 23 the corporation has acquired its own shares and the articles
51 24 of incorporation prohibit the reissue of the acquired shares.

51 25 7. To delete a class of shares from the articles of
51 26 incorporation, as a result of the operation of section
51 27 490.631, subsection 2, when there are no remaining shares of
51 28 the class because the corporation has acquired all shares of
51 29 the class and the articles of incorporation prohibit the
51 30 reissue of the acquired shares.

51 31 8. To make any change expressly permitted by section
51 32 490.602, subsection 4, to be made without shareholder
51 33 approval.
51 34 Sec. 62. Section [490.1006](#), Code 2001, is amended to read
51 35 as follows:
52 1 490.1006 ARTICLES OF AMENDMENT.
52 2

~~A corporation amending its articles of incorporation~~

~~After~~

52 3 an amendment to the articles of incorporation has been adopted
52 4 and approved in the manner required by this chapter and by the
52 5 articles of incorporation, the corporation shall deliver to
52 6 the secretary of state, for filing, articles of amendment
52 7

~~setting~~

~~, which shall set forth the following:~~

- 52 8 1. The name of the corporation.
- 52 9 2. The text of each amendment adopted.
- 52 10 3. If an amendment provides for an exchange,
52 11 reclassification, or cancellation of issued shares, provisions
52 12 for implementing the amendment if not contained in the
52 13 amendment itself.
- 52 14 4. The date of each amendment's adoption.
- 52 15 5. If an amendment was adopted by the incorporators or
52 16 board of directors without shareholder

~~action~~

~~approval, a~~

52 17 statement

~~to that effect~~

~~that the amendment was duly approved~~

52 18 by the incorporators or by the board of directors, as the case
52 19 may be, and that shareholder

~~action~~

~~approval was not required.~~

52 20 6. If an amendment

~~was approved~~

~~required approval by the~~

52 21 shareholders

~~;~~

~~, a statement that the amendment was duly~~

52 22 approved by the shareholders in the manner required by this
52 23 chapter and by the articles of incorporation.

52 24

~~a. The designation, number of outstanding shares, number~~

~~of votes entitled to be cast by each voting group entitled to~~

~~vote separately on the amendment, and number of votes of each~~

52 26

~~voting group indisputably represented at the meeting.~~

52 27

~~52 28~~

52 28

~~b. Either the total number of votes cast for and against~~

~~52 29~~

~~the amendment by each voting group entitled to vote separately~~

~~52 30~~

~~on the amendment or the total number of undisputed votes cast~~

~~52 31~~

~~for the amendment by each voting group and a statement that~~

~~52 32~~

~~the number cast for the amendment by each voting group was~~

~~52 33~~

~~sufficient for approval by that voting group.~~

52 34 Sec. 63. Section [490.1007](#), Code 2001, is amended to read
52 35 as follows:

53 1 490.1007 RESTATED ARTICLES OF INCORPORATION.

53 2 1. A corporation's board of directors may restate its
53 3 articles of incorporation at any time with or without
53 4 shareholder

~~action~~

~~approval, to consolidate all amendments~~

53 5 into a single document.

53 6 2.

~~The restatement may~~

~~If the restated articles include~~

53 7 one or more new amendments

~~to the articles. If the~~

~~53 8~~

~~restatement includes an amendment requiring~~

~~that require~~

53 9 shareholder approval,

~~it~~

~~the amendments must be adopted and~~

53 10 approved as provided in section 490.1003.

53 11

~~3. If the board of directors submits a restatement for~~

~~53 12~~

~~shareholder action, the corporation shall notify each~~

~~53 13~~

~~shareholder whether or not entitled to vote, of the proposed~~

~~53 14~~

~~shareholders' meeting in accordance with section 490.705. The~~

~~53 15~~

~~notice must also state that the purpose, or one of the~~

53 16

~~purposes, of the meeting is to consider the proposed~~

53 17

~~restatement and contain or be accompanied by a copy of the~~

53 18

~~restatement that identifies any amendment or other change it~~

53 19

~~would make in the articles.~~

53 20

~~4.~~

~~3. A corporation~~

~~restating~~

~~that restates its articles~~

53 21 of incorporation shall deliver to the secretary of state for
53 22 filing articles of restatement setting forth the name of the
53 23 corporation and the text of the restated articles of
53 24 incorporation together with a certificate

~~setting forth:~~

~~that~~

53 25 states that the restated articles consolidate all amendments
53 26 into a single document and, if a new amendment is included in
53 27 the restated articles, that also include the statements
53 28 required under section 490.1006.

53 29

~~a. Whether the restatement contains an amendment to the~~

53 30

~~articles requiring shareholder approval and, if it does not,~~

53 31

~~that the board of directors adopted the restatement.~~

53 32

~~b. If the restatement contains an amendment to the~~

53 33

~~articles requiring shareholder approval, the information~~

53 34

~~required by section 490.1006.~~

53 35

~~5.~~

~~4. Duly adopted restated articles of incorporation~~

54 1 supersede the original articles of incorporation and all
54 2 amendments to

~~them~~

~~the original articles of incorporation.~~

54 3

~~6.~~

~~5. The secretary of state may certify restated articles~~

54 4 of incorporation

~~as the articles of incorporation currently~~

54 5 in effect, without including the certificate information

54 6 required by subsection

~~4~~

~~3.~~

54 7 Sec. 64. Section [490.1008](#), subsections 1, 3, and 4, Code
54 8 2001, are amended to read as follows:

54 9 1. A corporation's articles of incorporation may be
54 10 amended without action by the board of directors or
54 11 shareholders to carry out a plan of reorganization ordered or
54 12 decreed by a court of competent jurisdiction under

~~federal~~

54 13

~~statute if the articles of incorporation after amendment~~

54 14

~~contain only provisions required or permitted by section~~

54 15

~~490.202~~

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

54 16

~~3. Shareholders of a corporation undergoing reorganization~~

54 17

~~do not have dissenters' rights except as and to the extent~~

54 18

~~provided in the reorganization plan.~~

54 19

~~4.~~

~~3. This section does not apply after entry of a final
54 20 decree in the reorganization proceeding even though the court
54 21 retains jurisdiction of the proceeding for limited purposes
54 22 unrelated to consummation of the reorganization plan.~~

54 23 Sec. 65. Section [490.1009](#), Code 2001, is amended to read
54 24 as follows:

54 25 490.1009 EFFECT OF AMENDMENT.

54 26 An amendment to the articles of incorporation does not
54 27 affect a cause of action existing against or in favor of the
54 28 corporation, a proceeding to which the corporation is a party,
54 29 or the existing rights of persons other than shareholders of
54 30 the corporation. An amendment changing a corporation's name
54 31 does not abate a proceeding brought by or against the
54 32 corporation in its former name.

54 33 Sec. 66. Section [490.1020](#), Code 2001, is amended by
54 34 striking the section and inserting in lieu thereof the

54 35 following:

55 1 490.1020 AMENDMENT OF BYLAWS BY BOARD OF DIRECTORS OR
55 2 SHAREHOLDERS.

55 3 1. A corporation's shareholders may amend or repeal the
55 4 corporation's bylaws.

55 5 2. A corporation's board of directors may amend or repeal
55 6 the corporation's bylaws unless either of the following apply:

55 7 a. The articles of incorporation or section 490.1021
55 8 reserve that power exclusively to the shareholders in whole or
55 9 in part.

55 10 b. The shareholders in amending, repealing, or adopting a
55 11 bylaw expressly provide that the board of directors shall not
55 12 amend, repeal, or reinstate that bylaw.

55 13 Sec. 67. Section [490.1021](#), Code 2001, is amended to read
55 14 as follows:

55 15 490.1021 BYLAW INCREASING QUORUM OR VOTING REQUIREMENT FOR
55 16

~~SHAREHOLDERS~~

~~DIRECTORS.~~

55 17 1.

~~If authorized by the articles of incorporation, the~~

55 18

~~shareholders may adopt or amend a bylaw that fixes a greater~~

~~A~~

55 19 bylaw that increases a quorum or voting requirement for the
55 20 board of directors may be amended or repealed as follows:

55 21 a. If adopted by the shareholders, only by the
55 22 shareholders, unless the bylaws otherwise provide.

55 23 b. If adopted by the board of directors, either by the
55 24 shareholders or

~~voting groups of shareholders than is required~~

55 25

~~by this chapter~~

~~by the board of directors.~~

~~The adoption or~~

55 26

~~amendment of a bylaw that adds, changes, or deletes a greater~~

55 27 2. A bylaw adopted or amended by the shareholders that
55 28 increases a quorum or voting requirement for the board of
55 29 directors may provide that it can be amended or repealed only
55 30 by a specified vote of either the shareholders or the board of
55 31 directors.

55 32 3. Action by the board of directors under subsection 1 to
55 33 amend or repeal a bylaw that changes the quorum or voting
55 34 requirement for the board of directors must meet the same
55 35 quorum requirement and be adopted by the same vote

~~and voting~~

56 1

~~groups~~

~~required to take action under the quorum and voting~~

56 2 requirement then in effect or proposed to be adopted,

56 3 whichever is greater.

56 4

~~2. A bylaw that fixes a greater quorum or voting~~

56 5

~~requirement for shareholders under subsection 1 shall not be~~

56 6

~~adopted, amended, or repealed by the board of directors.~~

56 7 Sec. 68. Section [490.1101](#), Code 2001, is amended by
56 8 striking the section and inserting in lieu thereof the
56 9 following:

56 10 490.1101 DEFINITIONS.

56 11 As used in this division, unless the context otherwise
56 12 requires:

56 13 1. "Interests" means the proprietary interests in another
56 14 entity.

56 15 2. "Merger" means a business combination pursuant to
56 16 section 490.1102.

56 17 3. "Organizational documents" means the basic document or
56 18 documents that create, or determine the internal governance
56 19 of, another entity.

56 20 4. "Other entity" means any association or legal entity,
56 21 other than a domestic or foreign corporation, organized to
56 22 conduct business, including, without limitation, limited
56 23 partnerships, general partnerships, limited liability
56 24 partnerships, limited liability companies, joint ventures,
56 25 joint stock companies, and business trusts.

56 26 5. "Party to a merger" or "party to a share exchange"
56 27 means any domestic or foreign corporation or other entity that
56 28 will accomplish one of the following during a merger:

56 29 a. Merge under a plan of merger.

56 30 b. Acquire shares or interests of another corporation or
56 31 another entity in a share exchange.

56 32 c. Have all of its shares or interests or all of one or
56 33 more classes or series of its shares or interests acquired in
56 34 a share exchange.

56 35 6. "Share exchange" means a business combination pursuant
57 1 to section 490.1103.

57 2 7. "Survivor" in a merger means the corporation or other
57 3 entity into which one or more other corporations or other
57 4 entities are merged. A survivor of a merger may preexist the
57 5 merger or be created by the merger.

57 6 Sec. 69. Section [490.1102](#), Code 2001, is amended by
57 7 striking the section and inserting in lieu thereof the
57 8 following:

57 9 490.1102 MERGER.

57 10 1. One or more domestic corporations may merge with a
57 11 domestic or foreign corporation or other entity pursuant to a
57 12 plan of merger.

57 13 2. A foreign corporation, or domestic or foreign other
57 14 entity, may be a party to the merger, or may be created by the
57 15 terms of the plan of merger, only if both of the following are
57 16 satisfied:

57 17 a. The merger is permitted by the laws under which the
57 18 corporation or other entity is organized or by which it is
57 19 governed.

57 20 b. In effecting the merger, the corporation or other
57 21 entity complies with such laws and with its articles of
57 22 incorporation or organizational documents.

57 23 3. The plan of merger must include all of the following:

57 24 a. The name of each corporation or other entity that will
57 25 merge and the name of the corporation or other entity that
57 26 will be the survivor of the merger.

57 27 b. The terms and conditions of the merger.

57 28 c. The manner and basis of converting the shares of each
57 29 merging corporation and interests of each merging other entity
57 30 into shares, or other securities interests, obligations,
57 31 rights to acquire shares or other securities, cash, other
57 32 property, or any combination of the foregoing.

57 33 d. The articles of incorporation of any corporation, or
57 34 the organizational documents of any other entity, to be
57 35 created by the merger, or if a new corporation or other entity
58 1 is not to be created by the merger, any amendments to the
58 2 survivor's articles of incorporation or organizational
58 3 documents.

58 4 e. Any other provisions required by the laws under which
58 5 any party to the merger is organized or by which it is
58 6 governed, or by the articles of incorporation or
58 7 organizational documents of any such party.

58 8 4. The terms described in subsection 3, paragraphs "b" and
58 9 "c", may be made dependent on facts ascertainable outside the
58 10 plan of merger, provided that those facts are objectively
58 11 ascertainable. The term "facts" includes, but is not limited
58 12 to, the occurrence of any event, including a determination or
58 13 action by any person or body, including the corporation.

58 14 5. The plan of merger may also include a provision that
58 15 the plan may be amended prior to filing the articles of merger
58 16 with the secretary of state, provided that if the shareholders
58 17 of a domestic corporation that is a party to the merger are
58 18 required or permitted to vote on the plan, the plan must
58 19 provide that subsequent to approval of the plan by such
58 20 shareholders the plan shall not be amended to change any of
58 21 the following:

58 22 a. Change the amount or kind of shares or other
58 23 securities, interests, obligations, rights to acquire shares
58 24 or other securities, cash, or other property to be received by
58 25 the shareholders of or owners of interests in any party to the
58 26 merger upon conversion of their shares or interests under the
58 27 plan.

58 28 b. Change the articles of incorporation of any
58 29 corporation, or the organizational documents of any other
58 30 entity, that will survive or be created as a result of the
58 31 merger, except for changes permitted by section 490.1005 or by
58 32 comparable provisions of the laws under which the foreign
58 33 corporation or other entity is organized or governed.

58 34 c. Change any of the other terms or conditions of the plan
58 35 if the change would adversely affect such shareholders in any
59 1 material respect.

59 2 Sec. 70. Section [490.1103](#), Code 2001, is amended by
59 3 striking the section and inserting in lieu thereof the
59 4 following:

59 5 490.1103 SHARE EXCHANGE.

59 6 1. Either of the following may occur through a share
59 7 exchange:

59 8 a. A domestic corporation may acquire all of the shares of
59 9 one or more classes or series of shares of another domestic or
59 10 foreign corporation, or all of the interests of one or more
59 11 classes or series of interests of a domestic or foreign other
59 12 entity, in exchange for shares or other securities, interests,
59 13 obligations, rights to acquire shares or other securities,
59 14 cash, other property, or any combination of the foregoing,
59 15 pursuant to a plan of share exchange.

59 16 b. All of the shares of one or more classes or series of
59 17 shares of a domestic corporation may be acquired by another
59 18 domestic or foreign corporation or other entity, in exchange
59 19 for shares or other securities, interests, obligations, rights
59 20 to acquire shares or other securities, cash, other property,
59 21 or any combination of the foregoing, pursuant to a plan of
59 22 share exchange.

59 23 2. A foreign corporation, or a domestic or foreign other
59 24 entity, may be a party to the share exchange only if both of

59 25 the following conditions are met:

59 26 a. The share exchange is permitted by the laws under which
59 27 the corporation or other entity is organized or by which it is
59 28 governed.

59 29 b. In effecting the share exchange, the corporation or
59 30 other entity complies with such laws and with its articles of
59 31 incorporation or organizational documents.

59 32 3. The plan of share exchange must include all of the
59 33 following:

59 34 a. The name of each corporation or other entity whose
59 35 shares or interests will be acquired and the name of the
60 1 corporation or other entity that will acquire those shares or
60 2 interests.

60 3 b. The terms and conditions of the share exchange.

60 4 c. The manner and basis of exchanging shares of a
60 5 corporation or interests in an other entity whose shares or
60 6 interests will be acquired under the share exchange into
60 7 shares or other securities, interests, obligations, rights to
60 8 acquire shares or other securities, cash, other property, or
60 9 any combination of the foregoing.

60 10 d. Any other provisions required by the laws under which
60 11 any party to the share exchange is organized or by the
60 12 articles of incorporation or organizational documents of any
60 13 such party.

60 14 4. The terms described in subsection 3, paragraphs "b" and
60 15 "c", may be made dependent on facts ascertainable outside the
60 16 plan of share exchange, provided that those facts are
60 17 objectively ascertainable. The term "facts" includes, but is
60 18 not limited to, the occurrence of any event, including a
60 19 determination or action by any person or body, including the
60 20 corporation.

60 21 5. The plan of share exchange may also include a provision
60 22 that the plan may be amended prior to filing of the articles
60 23 of share exchange with the secretary of state, provided that
60 24 if the shareholders of a domestic corporation that is a party
60 25 to the share exchange are required or permitted to vote on the
60 26 plan, the plan must provide that subsequent to approval of the
60 27 plan by such shareholders the plan shall not be amended to
60 28 change either of the following:

60 29 a. The amount or kind of shares or other securities,
60 30 interests, obligations, rights to acquire shares or other
60 31 securities, cash, or other property to be issued by the
60 32 corporation or to be received by the shareholders of or owners
60 33 of interests in any party to the share exchange in exchange
60 34 for their shares or interests under the plan.

60 35 b. Any of the terms or conditions of the plan if the
61 1 change would adversely affect such shareholders in any
61 2 material respect.

61 3 6. This section does not limit the power of a domestic
61 4 corporation to acquire shares of another corporation or
61 5 interests in an other entity in a transaction other than a
61 6 share exchange.

61 7 Sec. 71. Section [490.1104](#), Code 2001, is amended by
61 8 striking the section and inserting in lieu thereof the
61 9 following:

61 10 490.1104 ACTION ON A PLAN OF MERGER OR SHARE EXCHANGE.

61 11 In the case of a domestic corporation that is a party to a
61 12 merger or share exchange:

61 13 1. The plan of merger or share exchange must be adopted by
61 14 the board of directors.

61 15 2. Except as provided in subsection 7 and in section
61 16 490.1105, after adopting the plan of merger or share exchange
61 17 the board of directors must submit the plan to the
61 18 shareholders for their approval. The board of directors must
61 19 also transmit to the shareholders a recommendation that the
61 20 shareholders approve the plan, unless the board of directors
61 21 makes a determination that because of conflicts of interest or

61 22 other special circumstances it should not make such a
61 23 recommendation, in which case the board of directors must
61 24 transmit to the shareholders the basis for that determination.
61 25 3. The board of directors may condition its submission of
61 26 the plan of merger or share exchange to the shareholders on
61 27 any basis.

61 28 4. If the plan of merger or share exchange is required to
61 29 be approved by the shareholders, and if the approval is to be
61 30 given at a meeting, the corporation must notify each
61 31 shareholder, whether or not entitled to vote, of the meeting
61 32 of shareholders at which the plan is to be submitted for
61 33 approval. The notice must state that the purpose, or one of
61 34 the purposes, of the meeting is to consider the plan and must
61 35 contain or be accompanied by a copy or summary of the plan.
62 1 If the corporation is to be merged into an existing
62 2 corporation or other entity, the notice shall also include or
62 3 be accompanied by a copy or summary of the articles of
62 4 incorporation or organizational documents of that corporation
62 5 or other entity. If the corporation is to be merged into an
62 6 existing corporation or other entity that is to be created
62 7 pursuant to the merger, the notice shall include or be
62 8 accompanied by a copy or summary of the articles of
62 9 incorporation or organizational documents of the new
62 10 corporation or other entity.

62 11 5. Unless the articles of incorporation, bylaws, or the
62 12 board of directors require a greater vote or a greater number
62 13 of votes to be present, the approval of the plan of merger or
62 14 share exchange shall require the approval of the shareholders
62 15 at a meeting at which a quorum consisting of at least a
62 16 majority of the votes entitled to be cast on the plan exists,
62 17 and, if any class or series of shares is entitled to vote as a
62 18 separate group on the plan of merger or share exchange, the
62 19 approval of each such separate voting group at a meeting at
62 20 which a quorum of the voting group consisting of at least a
62 21 majority of the votes entitled to be cast on the merger or
62 22 share exchange by that voting group is present.

62 23 6. Separate voting by voting groups is required for each
62 24 of the following:

62 25 a. On a plan of merger, by each class or series of shares
62 26 that are to be converted, pursuant to the provisions of the
62 27 plan of merger, into shares or other securities, interests,
62 28 obligations, rights to acquire shares or other securities,
62 29 cash, other property, or any combination of the foregoing, or
62 30 would have a right to vote as a separate group on a provision
62 31 in the plan that, if contained in a proposed amendment to
62 32 articles of incorporation, would require action by separate
62 33 voting groups under section 490.1004.

62 34 b. On a plan of share exchange, by each class or series of
62 35 shares included in the exchange, with each class or series
63 1 constituting a separate voting group.

63 2 c. On a plan of merger or share exchange, if the voting
63 3 group is entitled under the articles of incorporation to vote
63 4 as a voting group to approve a plan of merger or share
63 5 exchange.

63 6 7. Unless the articles of incorporation otherwise provide,
63 7 approval by the corporation's shareholders of a plan of merger
63 8 or share exchange is not required if all of the following
63 9 conditions are satisfied:

63 10 a. The corporation will survive the merger or is the
63 11 acquiring corporation in a share exchange.

63 12 b. Except for amendments permitted by section 490.1005,
63 13 its articles of incorporation will not be changed.

63 14 c. Each shareholder of the corporation whose shares were
63 15 outstanding immediately before the effective date of the
63 16 merger or share exchange will hold the same number of shares,
63 17 with identical preferences, limitations, and relative rights,
63 18 immediately after the effective date of change.

63 19 d. The issuance in the merger or share exchange of shares
63 20 or other securities convertible into or rights exercisable for
63 21 shares does not require a vote under section 490.621,
63 22 subsection 6.

63 23 8. If as a result of a merger or share exchange one or
63 24 more shareholders of a domestic corporation would become
63 25 subject to personal liability for the obligations or
63 26 liabilities of any other person or other entity, approval of
63 27 the plan of merger shall require the execution, by each such
63 28 shareholder, of a separate written consent to become subject
63 29 to such personal liability.

63 30 Sec. 72. Section [490.1105](#), Code 2001, is amended by
63 31 striking the section and inserting in lieu thereof the
63 32 following:

63 33 490.1105 MERGER BETWEEN PARENT AND SUBSIDIARY OR BETWEEN
63 34 SUBSIDIARIES.

63 35 1. A domestic parent corporation that owns shares of a
64 1 domestic or foreign subsidiary corporation that carry at least
64 2 ninety percent of the voting power of each class and series of
64 3 the outstanding shares of the subsidiary that have voting
64 4 power may merge the subsidiary into itself or into another
64 5 such subsidiary, or merge itself into the subsidiary, without
64 6 the approval of the board of directors or shareholders of the
64 7 subsidiary unless the articles of incorporation of any of the
64 8 corporations otherwise provide, and unless, in the case of a
64 9 foreign subsidiary, approval by the subsidiary's board of
64 10 directors or shareholders is required by the laws under which
64 11 the subsidiary is organized.

64 12 2. If under subsection 1 approval of a merger by the
64 13 subsidiary's shareholders is not required, the parent
64 14 corporation shall, within ten days after the effective date of
64 15 the merger, notify each of the subsidiary's shareholders that
64 16 the merger has become effective.

64 17 3. Except as provided in subsections 1 and 2, a merger
64 18 between a parent and subsidiary shall be governed by the
64 19 provisions of this division, applicable to mergers generally.

64 20 Sec. 73. Section [490.1106](#), Code 2001, is amended by
64 21 striking the section and inserting in lieu thereof the
64 22 following:

64 23 490.1106 ARTICLES OF MERGER OR SHARE EXCHANGE.

64 24 1. After a plan of merger or share exchange has been
64 25 adopted and approved as required by this chapter, articles of
64 26 merger or share exchange shall be executed on behalf of each
64 27 party to the merger or share exchange by any officer or other
64 28 duly authorized representative. The articles shall set forth
64 29 the following:

64 30 a. The names of the parties to the merger or share
64 31 exchange and the date on which the merger or share exchange
64 32 occurred or is to be effective.

64 33 b. If the articles of incorporation of the survivor of a
64 34 merger are amended, or if a new corporation is created as a
64 35 result of a merger, the amendments to the survivor's articles
65 1 of incorporation or the articles of incorporation of the new
65 2 corporation.

65 3 c. If the plan of merger or share exchange required
65 4 approval by the shareholders of a domestic corporation that
65 5 was a party to the merger or share exchange, a statement that
65 6 the plan was duly approved by the shareholders and, if voting
65 7 by any separate voting group was required, by each such
65 8 separate voting group, in the manner required by this chapter
65 9 and the articles of incorporation.

65 10 d. If the plan of merger or share exchange did not require
65 11 approval by the shareholders of a domestic corporation that
65 12 was a party to the merger or share exchange, a statement to
65 13 that effect.

65 14 e. As to each foreign corporation and each other entity
65 15 that was a party to the merger or share exchange, a statement

65 16 that the plan and the performance of its terms were duly
65 17 authorized by all action required by the laws under which the
65 18 corporation or other entity is organized or by which it is
65 19 governed, and by its articles of incorporation or
65 20 organizational documents.

65 21 2. Articles of merger or share exchange shall be delivered
65 22 to the secretary of state for filing by the survivor of the
65 23 merger or the acquiring corporation in a share exchange and
65 24 shall take effect on the effective date of the merger or share
65 25 exchange.

65 26 Sec. 74. Section [490.1107](#), Code 2001, is amended by
65 27 striking the section and inserting in lieu thereof the
65 28 following:

65 29 490.1107 EFFECT OF MERGER OR SHARE EXCHANGE.

65 30 1. When a merger becomes effective, certain acts shall
65 31 occur as follows:

65 32 a. The corporation or other entity that is designated in
65 33 the plan of merger as the survivor continues or comes into
65 34 existence, as the case may be.

65 35 b. The separate existence of every corporation or other
66 1 entity that is merged into the survivor ceases.

66 2 c. All property owned by, and every contract right
66 3 possessed by, each corporation or other entity that merges
66 4 into the survivor is vested in the survivor without reversion
66 5 or impairment.

66 6 d. All liabilities of each corporation or other entity
66 7 that is merged into the survivor are vested in the survivor.

66 8 e. The name of the survivor may, but need not be,
66 9 substituted in any pending proceeding for the name of any
66 10 party to the merger whose separate existence ceased in the
66 11 merger.

66 12 f. The articles of incorporation or organizational
66 13 documents of the survivor are amended to the extent provided
66 14 in the plan of merger.

66 15 g. The articles of incorporation or organizational
66 16 documents of a survivor that is created by the merger become
66 17 effective.

66 18 h. The shares of each corporation that is a party to the
66 19 merger, and the interests in another entity that is a party to
66 20 a merger, that are to be converted under the plan of merger
66 21 into shares, interests, obligations, rights to acquire
66 22 securities, other securities, cash, other property, or any
66 23 combination of the foregoing, are converted, and the former
66 24 holders of such shares or interests are entitled only to the
66 25 rights provided to them in the plan of merger or to any rights
66 26 they may have under division XIII.

66 27 2. When a share exchange becomes effective, the shares of
66 28 each domestic corporation that are to be exchanged for shares
66 29 or other securities, interests, obligations, rights to acquire
66 30 shares or securities, other securities, cash, other property,
66 31 or any combination of the foregoing, are entitled only to the
66 32 rights provided to them in the plan of share exchange or to
66 33 any rights they may have under division XIII.

66 34 3. Any shareholder of a domestic corporation that is a
66 35 party to a merger or share exchange who, prior to the merger
67 1 or share exchange, was liable for the liabilities or
67 2 obligations of such corporation, shall not be released from
67 3 such liabilities or obligations by reason of the merger or
67 4 share exchange.

67 5 4. Upon a merger becoming effective, a foreign
67 6 corporation, or a foreign other entity that is the survivor of
67 7 the mergers, is deemed to do both of the following:

67 8 a. Appoint the secretary of state as its agent for service
67 9 of process in a proceeding to enforce the rights of
67 10 shareholders of each domestic corporation that is a party to
67 11 the merger who exercise appraisal rights.

67 12 b. Agree that it will promptly pay the amount, if any, to

67 13 which such shareholders are entitled under division XIII.

67 14 Sec. 75. Section [490.1108](#), Code 2001, is amended by

67 15 striking the section and inserting in lieu thereof the

67 16 following:

67 17 490.1108 ABANDONMENT OF A MERGER OR SHARE EXCHANGE.

67 18 1. Unless otherwise provided in a plan of merger or share
67 19 exchange or in the laws under which a foreign corporation or a
67 20 domestic or foreign other entity that is a party to a merger
67 21 or a share exchange is organized or by which it is governed,
67 22 after the plan has been adopted and approved as required by
67 23 this division, and at any time before the merger or share
67 24 exchange has become effective, it may be abandoned by any
67 25 party to the merger or share exchange without action by the
67 26 party's shareholders or owners of interests, in accordance
67 27 with any procedures set forth in the plan of merger or share
67 28 exchange or, if no such procedures are set forth in the plan,
67 29 in the manner determined by the board of directors of a
67 30 corporation, or the managers of any other entity, subject to
67 31 any contractual rights of other parties to the merger or share
67 32 exchange.

67 33 2. If a merger or share exchange is abandoned under
67 34 subsection 1 after articles of merger or share exchange have
67 35 been filed with the secretary of state but before the merger
68 1 or share exchange has become effective, a statement that the
68 2 merger or share exchange has been abandoned in accordance with
68 3 this section, executed on behalf of a party to the merger or
68 4 share exchange by an officer or other duly authorized
68 5 representative, shall be delivered to the secretary of state
68 6 for filing prior to the effective date of the merger or share
68 7 exchange. Upon filing, the statement shall take effect and
68 8 the merger or share exchange shall be deemed abandoned and
68 9 shall not become effective.

68 10 Sec. 76. Section [490.1201](#), Code 2001, is amended to read
68 11 as follows:

68 12 490.1201

~~SALE~~

~~DISPOSITION OF ASSETS~~

~~IN REGULAR COURSE OF~~

68 13

~~BUSINESS AND MORTGAGE OF ASSETS~~

~~NOT REQUIRING SHAREHOLDER~~

68 14 APPROVAL.

68 15

~~1. A corporation may, on the terms and conditions and for~~

68 16

~~the consideration determined by the board of directors~~

68 17 Approval of the shareholders of a corporation is not required

68 18 to do any of the following, unless the articles of

68 19 incorporation otherwise provide:

68 20

~~a.~~

~~1.~~

~~Sell~~

~~To sell, lease, exchange, or otherwise dispose~~

68 21 of

~~all, or substantially all, of its property~~

- any or all of
68 22 the corporation's assets in the usual and regular course of
68 23 business.
68 24
.
~~b.~~
- 2.
.
~~Mortgage~~
- To mortgage, pledge, dedicate to the
68 25 repayment of indebtedness, whether with or without recourse,
68 26 or otherwise encumber any or all of
.
~~its property~~
- the
68 27 corporation's assets, whether or not in the usual and regular
68 28 course of business.
68 29
.
~~c.~~
- 3.
.
~~Transfer~~
- To transfer any or all of
.
~~its property to a~~
-
68 30
.
~~corporation all the shares~~
- the corporation's assets to one or
68 31 more corporations or other entities all of the shares or
68 32 interests of which are owned by the transferring corporation
68 33
.
~~whether or not in the usual course of business~~
-
68 34
.
~~2. Unless the articles of incorporation require it,~~
-
68 35
.
~~approval by the shareholders of a transaction described in~~
-
69 1
.
~~subsection 1 is not required.~~
-
69 2 4. To distribute assets pro rata to the holders of one or
69 3 more classes or series of the corporation's shares.
69 4 Sec. 77. Section [490.1202](#), Code 2001, is amended to read
69 5 as follows:
69 6 490.1202
.
~~SALE OF ASSETS OTHER THAN IN REGULAR COURSE OF~~
-
69 7
.
~~BUSINESS~~
- SHAREHOLDER APPROVAL OF CERTAIN DISPOSITIONS.
69 8 1. A
.
~~corporation may sell~~
- sale, lease, exchange, or
69 9
.

~~otherwise dispose of all, or substantially all, of its~~

69 10

~~property, with or without the good will, otherwise than in the~~

69 11

~~usual and regular course of business, on the terms and~~

69 12

~~conditions and for the consideration determined by~~

~~other~~

69 13 disposition of assets, other than a disposition described in

69 14 section 490.1201, requires approval of the

~~corporation's board~~

69 15

~~of directors, if~~

~~corporation's shareholders if the disposition~~

69 16 would leave the corporation without a significant continuing

69 17 business activity. If a corporation retains a business

69 18 activity that represented at least twenty-five percent of

69 19 total assets at the end of the most recently completed fiscal

69 20 year, and twenty-five percent of either income from continuing

69 21 operations before taxes or revenues from continuing operations

69 22 for that fiscal year, in each case of the corporation and its

69 23 subsidiaries on a consolidated basis, the corporation will

69 24 conclusively be deemed to have retained a significant

69 25 continuing business activity; but no presumption that the

69 26 disposition will leave the corporation without a significant

69 27 continuing business activity shall arise from the fact that

69 28 the corporation's continuing business activity does not equal

69 29 or exceed any of these percentages.

69 30 2. A disposition that requires approval of the

69 31 shareholders under subsection 1 shall be initiated by a

69 32 resolution by the board of directors

~~proposes and its~~

69 33 authorizing the disposition. After adoption of such a

69 34 resolution, the board of directors shall submit the proposed

69 35 disposition to the shareholders for their approval. The board

70 1 of directors shall also transmit to the shareholders a

70 2 recommendation that the shareholders approve the proposed

70 3

~~transaction.~~

70 4

~~2. For a transaction to be authorized both of the~~

70 5

~~following must occur:~~

70 6

~~a. The board of directors must recommend the proposed~~

70 7

~~transaction to the shareholders~~

~~- disposition, unless the board~~
70 8 of directors
.
~~- determines~~
~~- makes a determination~~ that because of
70 9
.
~~- conflict~~
~~- conflicts~~ of interest or other special circumstances
70 10 it should not make
.
~~- no~~
~~- such a~~ recommendation
.
~~- and communicates~~
~~-~~
70 11 in which case the
.
~~- basis for its determination~~
~~- board of~~
70 12 directors shall transmit to the shareholders
.
~~- with~~
~~- the~~
70 13
.
~~- submission of the proposed transaction~~
~~- basis for that~~
70 14 determination.
70 15
.
~~- b. The shareholders entitled to vote must approve the~~
~~-~~
70 16
.
~~- transaction.~~
~~-~~
70 17 3. The board of directors may condition its submission of
70 18 a disposition to the
.
~~- proposed transaction~~
~~- shareholders under~~
70 19 subsection 2 on any basis.
70 20 4.
.
~~- The~~
~~- If a disposition is required to be approved by the~~
70 21 shareholders under subsection 1, and if the approval is to be
70 22 given at a meeting, the corporation shall notify each
70 23 shareholder, whether or not entitled to vote, of the
.
~~- proposed~~
~~-~~
70 24
.
~~- shareholders' meeting in accordance with section 490.705~~
~~-~~
70 25 meeting of shareholders at which the disposition is to be
70 26 submitted for approval. The notice
.
~~- must also~~
~~- shall~~ state that
70 27 the purpose, or one of the purposes, of the meeting is to
70 28 consider the
.
~~- sale, lease, exchange, or other~~
~~- disposition~~

~~of~~

70 29

~~all, or substantially all, the property of the corporation and~~

70 30

~~contain or be accompanied by~~
~~and shall contain~~ a description

70 31 of the

~~transaction~~

~~disposition, including the terms and~~
70 32 conditions of the disposition and the consideration to be
70 33 received by the corporation.

70 34 5. Unless the articles of incorporation, bylaws, or the
70 35 board of directors acting pursuant to subsection 3 require a
71 1 greater vote or a

~~vote by voting groups, the transaction to be~~

71 2

~~authorized must be approved by a majority of all~~
~~greater~~

71 3 number of votes to be presented, the approval of a disposition

71 4 by the shareholders shall require the approval of the

71 5 shareholders at a meeting at which a quorum consisting of at

71 6 least a majority of the votes entitled to be cast on the

71 7

~~transaction~~

~~disposition exists.~~

71 8 6. After a

~~sale, lease, exchange, or other disposition of~~

71 9

~~property is authorized, the transaction~~

~~disposition has been~~

71 10 approved by the shareholders under subsection 2, and at any

71 11 time before the disposition has been consummated, it may be

71 12 abandoned by the corporation without action by the

71 13 shareholders, subject to any contractual rights

~~without~~

71 14

~~further shareholder action~~

~~of other parties to the~~

71 15 disposition.

71 16 7.

~~A transaction that constitutes a distribution is~~

71 17

~~governed by section 490.640 and not by this section.~~

~~A~~

71 18 disposition of assets in the course of dissolution under

71 19 division XIV is not governed by this section.

71 20 8. The assets of a direct or indirect consolidated

71 21 subsidiary shall be deemed the assets of the parent

71 22 corporation for the purposes of this section.

71 23 Sec. 78. Section [490.1301](#), Code 2001, is amended by

71 24 striking the section and inserting in lieu thereof the

71 25 following:

71 26 490.1301 DEFINITIONS.

71 27 In this division, unless the context otherwise requires:

71 28 1. "Affiliate" means a person that directly or indirectly
71 29 through one or more intermediaries controls, is controlled by,
71 30 or is under common control with another person or is a senior
71 31 executive thereof. For purposes of section 490.1302,
71 32 subsection 2, paragraph "d", a person is deemed to be an
71 33 affiliate of its senior executives.

71 34 2. "Beneficial shareholder" means a person who is the
71 35 beneficial owner of shares held in a voting trust or by a
72 1 nominee on the beneficial owner's behalf.

72 2 3. "Corporation" means the issuer of the shares held by a
72 3 shareholder demanding appraisal. In addition, for matters
72 4 covered in sections 490.1322 through 490.1331, "corporation"
72 5 includes the surviving entity in a merger.

72 6 4. "Fair value" means the value of the corporation's
72 7 shares determined according to the following:

72 8 a. Immediately before the effectuation of the corporate
72 9 action to which the shareholder objects.

72 10 b. Using customary and current valuation concepts and
72 11 techniques generally employed for similar businesses in the
72 12 context of the transaction requiring appraisal.

72 13 c. Without discounting for lack of marketability or
72 14 minority status except, if appropriate, for amendments to the
72 15 articles pursuant to section 490.1302, subsection 1, paragraph
72 16 "e".

72 17 5. "Interest" means interest from the effective date of
72 18 the corporate action until the date of payment, at the rate of
72 19 interest on judgments in this state on the effective date of
72 20 the corporate action.

72 21 6. "Preferred shares" means a class or series of shares
72 22 whose holders have preference over any other class or series
72 23 with respect to distributions.

72 24 7. "Record shareholder" means the person in whose name
72 25 shares are registered in the records of the corporation or the
72 26 beneficial owner of shares to the extent of the rights granted
72 27 by a nominee certificate on file with the corporation.

72 28 8. "Senior executive" means the chief executive officer,
72 29 chief operating officer, chief financial officer, and anyone
72 30 in charge of a principal business unit or function.

72 31 9. "Shareholder" means both a record shareholder and a
72 32 beneficial shareholder.

72 33 Sec. 79. Section [490.1302](#), Code 2001, is amended to read
72 34 as follows:

72 35 490.1302 SHAREHOLDERS' RIGHT TO

~~DISSENT~~

~~APPRAISAL.~~

73 1 1. A shareholder is entitled to

~~dissent from~~

~~appraisal~~

73 2 rights, and to obtain payment of the fair value of the
73 3 shareholder's shares, in the event of

~~any of the following~~

73 4 corporate actions:

73 5 a. Consummation of a

~~plan of~~

~~merger to which the~~

73 6 corporation is a party if either of the following apply:

73 7 (1) Shareholder approval is required for the merger by
73 8 section

~~490.1103 or the articles of incorporation and the~~

73 9

~~shareholder is entitled to vote on the merger~~

~~490.1104 and the~~

73 10 shareholder is entitled to vote on the merger, except that

73 11 appraisal rights shall not be available to any shareholder of

73 12 the corporation with respect to shares of any class or series

73 13 that remain outstanding after consummation of the merger.

73 14 (2) The corporation is a subsidiary

~~that is merged with~~

73 15

~~its parent under~~

~~and the merger is governed by section~~

73 16

~~490.1104~~

~~490.1105.~~

73 17 b. Consummation of a

~~plan of~~

~~share exchange to which the~~

73 18 corporation is a party as the corporation whose shares will be

73 19 acquired, if the shareholder is entitled to vote on the

~~plan~~

73 20 exchange, except that appraisal rights shall not be available

73 21 to any shareholder of the corporation with respect to any

73 22 class or series of shares of the corporation that is not

73 23 exchanged.

73 24 c. Consummation of a

~~sale or exchange of all, or~~

73 25

~~substantially all, of the property of the corporation other~~

73 26

~~than in the usual and regular course of business, if the~~

73 27

~~shareholder is entitled to vote on the sale or exchange,~~

73 28

~~including a sale in dissolution, but not including a sale~~

73 29

~~pursuant to court order or a sale for cash pursuant to a plan~~

73 30

~~by which all or substantially all of the net proceeds of the~~

73 31

~~sale will be distributed to the shareholders within one year~~

73 32

~~after the date of sale~~

~~disposition of assets pursuant to~~

73 33 section 490.1202 if the shareholder is entitled to vote on the

73 34 disposition.

73 35 d. An amendment of the articles of incorporation with

74 1 respect to a class or series of shares that

~~materially and~~

74 2

~~adversely affects rights in respect of a dissenter's shares~~

74 3

~~because it does any or all of the following:~~

74 4

~~(1) Alters or abolishes a preferential right of the~~

74 5

~~shares.~~

74 6

~~(2) Creates, alters, or abolishes a right in respect of~~

74 7

~~redemption, including a provision respecting a sinking fund~~

74 8

~~for the redemption or repurchase, of the shares.~~

74 9

~~(3) Alters or abolishes a preemptive right of the holder~~

74 10

~~of the shares to acquire shares or other securities.~~

74 11

~~(4) Excludes or limits the right of the shares to vote on~~

74 12

~~any matter, or to cumulate votes, other than a limitation by~~

74 13

~~dilution through issuance of shares or other securities with~~

74 14

~~similar voting rights.~~

74 15

~~(5) Reduces~~

~~reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created~~

~~is to be acquired for cash under~~

74 19

~~section 490.604~~

74 20

~~(6) Extends, for the first time after being governed by~~

74 21

~~this chapter, the period of duration of a corporation~~

74 22

~~organized under chapter 491 or former chapter 496A and~~

74 23

~~existing for a period of years on the day preceding the date~~

74 24

~~the corporation is first governed by this chapter.~~

74 25 e. Any corporate action taken pursuant to a shareholder
74 26 vote, other amendment to the articles of incorporation,
74 27 merger, share exchange, or disposition of assets to the extent
74 28 provided by the articles of incorporation, bylaws, or a
74 29 resolution of the board of directors that provides that voting
74 30 or nonvoting shareholders are entitled to dissent and obtain
74 31 payment for their shares.

74 32 2. Notwithstanding subsection 1, the availability of the
74 33 appraisal rights under subsection 1, paragraphs "a" through
74 34 "d", shall be limited in accordance with the following
74 35 provisions:

75 1 a. Appraisal rights shall not be available for the holders
75 2 of shares of any class or series of shares:

75 3 (1) Listed on the New York stock exchange or the American
75 4 stock exchange or designated as a national market system
75 5 security on an interdealer quotation system by the national
75 6 association of securities dealers, inc.

75 7 (2) Not so listed or designated, but has at least two
75 8 thousand shareholders and the outstanding shares of such class
75 9 or series has a market value of at least twenty million
75 10 dollars, exclusive of the value of such shares held by its
75 11 subsidiaries, senior executives, directors, and beneficial
75 12 shareholders owning more than ten percent of such shares.

75 13 b. The applicability of paragraph "a" shall be determined
75 14 according to the following:

75 15 (1) The record date fixed to determine the shareholders
75 16 entitled to receive notice of, and to vote at, the meeting of
75 17 shareholders to act upon the corporate action requiring
75 18 appraisal rights.

75 19 (2) The day before the effective date of such corporate
75 20 action if there is no meeting of shareholders.

75 21 c. Paragraph "a" shall not be applicable and appraisal
75 22 rights shall be available pursuant to subsection 1 for the
75 23 holders of any class or series of shares who are required by

75 24 the terms of the corporate action requiring appraisal rights
75 25 to accept for such shares anything other than cash or shares
75 26 of any class or any series of shares of any corporation, or
75 27 any other proprietary interest of any other entity, that
75 28 satisfies the standards set forth in paragraph "a", at the
75 29 time the corporate action becomes effective.

75 30 d. Paragraph "a" shall not be applicable and appraisal
75 31 rights shall be available pursuant to subsection 1 for the
75 32 holders of any class or series of shares where any of the
75 33 following applies:

75 34 (1) Any of the shares or assets of the corporation are
75 35 being acquired or converted, whether by merger, share
76 1 exchange, or otherwise, pursuant to the corporate action by a
76 2 person, or by an affiliate of a person, who:

76 3 (a) Is, or at any time in the one-year period immediately
76 4 preceding approval by the board of directors of the corporate
76 5 action requiring appraisal rights was, the beneficial owner of
76 6 twenty percent or more of the voting power of the corporation,
76 7 excluding any shares acquired pursuant to an offer for all
76 8 shares having voting power if such offer was made within one
76 9 year prior to the corporate action requiring appraisal rights
76 10 for consideration of the same kind and of a value equal to or
76 11 less than that paid in connection with the corporate action.

76 12 (b) Directly or indirectly has, or at any time in the one-
76 13 year period immediately preceding approval by the board of
76 14 directors of the corporation of the corporate action requiring
76 15 appraisal rights had, the power, contractually or otherwise,
76 16 to cause the appointment or election of twenty-five percent or
76 17 more of the directors to the board of directors of the
76 18 corporation.

76 19 (2) Any of the shares or assets of the corporation are
76 20 being acquired or converted, whether by merger, share
76 21 exchange, or otherwise, pursuant to such corporate action by a
76 22 person, or by an affiliate of a person, who is, or at any time
76 23 in the one-year period immediately preceding approval by the
76 24 board of directors of the corporate action requiring appraisal
76 25 rights was, a senior executive or director of the corporation
76 26 or a senior executive of any affiliate thereof, and that
76 27 senior executive or director will receive, as a result of the
76 28 corporate action, a financial benefit not generally available
76 29 to other shareholders as such, other than any of the
76 30 following:

76 31 (a) Employment, consulting, retirement, or similar
76 32 benefits established separately and not as part of or in
76 33 contemplation of the corporate action.

76 34 (b) Employment, consulting, retirement, or similar
76 35 benefits established in contemplation of, or as part of, the
77 1 corporate action that are not more favorable than those
77 2 existing before the corporate action or, if more favorable,
77 3 that have been approved on behalf of the corporation in the
77 4 same manner as is provided in section 490.862.

77 5 (c) In the case of a director of the corporation who will,
77 6 in the corporate action, become a director of the acquiring
77 7 entity in the corporate action or one of its affiliates,
77 8 rights and benefits as a director that are provided on the
77 9 same basis as those afforded by the acquiring entity generally
77 10 to other directors of such entity or such affiliate.

77 11 e. For the purposes of paragraph "d" only, the term
77 12 "beneficial owner" means any person who, directly or
77 13 indirectly, through any contract, arrangement, or
77 14 understanding, other than a revocable proxy, has or shares the
77 15 power to vote, or to direct the voting of, shares, provided
77 16 that a member of a national securities exchange shall not be
77 17 deemed to be a beneficial owner of securities held directly or
77 18 indirectly by such member on behalf of another person solely
77 19 because the member is the record holder of such securities if
77 20 the member is precluded by the rules of such exchange from

77 21 voting without instruction on contested matters or matters
77 22 that may affect substantially the rights or privileges of the
77 23 holders of the securities to be voted. When two or more
77 24 persons agree to act together for the purpose of voting their
77 25 shares of the corporation, each member of the group formed
77 26 thereby shall be deemed to have acquired beneficial ownership,
77 27 as of the date of such agreement, of all voting shares of the
77 28 corporation beneficially owned by any member of the group.
77 29 3. Notwithstanding any other provision of section
77 30 490.1302, the articles of incorporation as originally filed or
77 31 any amendment thereto may limit or eliminate appraisal rights
77 32 for any class or series of preferred shares, but any such
77 33 limitation or elimination contained in an amendment to the
77 34 articles of incorporation that limits or eliminates appraisal
77 35 rights for any of such shares that are outstanding immediately
78 1 prior to the effective date of such amendment or that the
78 2 corporation is or may be required to issue or sell thereafter
78 3 pursuant to any conversion, exchange, or other right existing
78 4 immediately before the effective date of such amendment, shall
78 5 not apply to any corporate action that becomes effective
78 6 within one year of that date if such action would otherwise
78 7 afford appraisal rights.
78 8

~~2.~~

~~4. A shareholder entitled to~~

~~dissent and obtain payment~~

78 9

~~for the shareholder's shares~~

~~appraisal rights under this~~

78 10 chapter is not entitled to challenge

~~the~~

~~a completed corporate~~

78 11 action

~~creating the shareholder's entitlement unless the~~

78 12

~~action is unlawful or fraudulent with respect to the~~

78 13

~~shareholder or the corporation.~~

~~for which appraisal rights are~~

78 14 available unless such corporate action meets one of the

78 15 following standards:

78 16 a. It was not effectuated in accordance with the

78 17 applicable provisions of division X, XI, or XII or the

78 18 corporation's articles of incorporation, bylaws, or board of

78 19 directors' resolution authorizing the corporate action.

78 20 b. It was procured as a result of fraud or material

78 21 misrepresentation.

78 22 Sec. 80. Section [490.1303](#), Code 2001, is amended to read

78 23 as follows:

78 24 490.1303

~~DISSENT~~

~~ASSERTION OF RIGHTS BY NOMINEES AND~~

78 25 BENEFICIAL OWNERS.

78 26 1. A record shareholder may assert

~~dissenters'~~

- appraisal
78 27 rights as to fewer than all the shares registered in
.
~~that~~
- the
78 28 record shareholder's name but owned by a beneficial
78 29 shareholder only if the record shareholder
.
~~dissents~~
- objects
78 30 with respect to all shares
.
~~beneficially~~
- of the class or series
78 31 owned by
.
~~any one person~~
- the beneficial shareholder and
78 32 notifies the corporation in writing of the name and address of
78 33 each
.
~~person~~
- beneficial shareholder on whose behalf
.
~~the~~
-
78 34
.
~~shareholder asserts dissenters'~~
- appraisal rights are being
78 35 asserted. The rights of a
.
~~partial dissenter~~
- record
79 1 shareholder who asserts appraisal rights for only part of the
79 2 shares held of record in the record shareholder's name under
79 3 this subsection
.
~~are~~
- shall be determined as if the shares as to
79 4 which the record shareholder
.
~~dissents~~
- objects and the record
79 5 shareholder's other shares were registered in the names of
79 6 different record shareholders.
79 7 2. A beneficial shareholder may assert
.
~~dissenters'~~
-
79 8 appraisal rights as to shares of any class or series held on
79 9
.
~~the shareholder's~~
- behalf of the shareholder only if the
79 10 shareholder does both of the following:
79 11 a. Submits to the corporation the record shareholder's
79 12 written consent to the
.
~~dissent not later than the time the~~
-
79 13
.
~~beneficial shareholder asserts dissenters' rights~~
- assertion of
79 14 such rights no later than the date referred to in section
79 15 490.1322, subsection 2, paragraph "b", subparagraph (2).

79 16 b. Does so with respect to all shares of

~~which the~~

79 17

~~shareholder is~~

~~the class of series that are beneficially owned~~

79 18 by the beneficial shareholder

~~or over which that beneficial~~

79 19

~~shareholder has power to direct the vote~~

79 20 Sec. 81. Section [490.1320](#), Code 2001, is amended to read

79 21 as follows:

79 22 490.1320 NOTICE OF

~~DISSENTERS'~~

~~APPRAISAL RIGHTS.~~

79 23 1. If proposed corporate action

~~creating dissenters'~~

79 24

~~rights under~~

~~described in~~ section 490.1302, subsection 1, is

79 25 to be submitted to a vote at a shareholders' meeting, the

79 26 meeting notice must state that the corporation has concluded

79 27 that the shareholders are, are not, or may be entitled to

79 28 assert

~~dissenters'~~

~~appraisal~~ rights under this part

~~and be~~

79 29

~~accompanied by~~

~~If the corporation concludes that appraisal~~

79 30 rights are or may be available, a copy of this part must

79 31 accompany the meeting notice sent to those record shareholders

79 32 entitled to exercise appraisal rights.

79 33 2.

~~If corporate action creating dissenters' rights under~~

79 34 In a merger pursuant to section

~~490.1302 is taken without a~~

79 35

~~vote of shareholders~~

~~490.1105~~, the parent corporation

~~shall~~

80 1 must notify in writing all record shareholders of the

80 2 subsidiary who are entitled to assert

~~dissenters'~~

~~appraisal~~

80 3 rights that the corporate action

~~was taken and send them the~~

80 4

~~dissenters' notice described~~
~~became effective. Such notice~~

80 5 must be sent within ten days after the corporate action became
80 6 effective and include the materials described in section
80 7 490.1322.

80 8 Sec. 82. Section [490.1321](#), Code 2001, is amended to read
80 9 as follows:

80 10 490.1321 NOTICE OF INTENT TO DEMAND PAYMENT.

80 11 1. If proposed corporate action

~~creating dissenters'~~

80 12 requiring appraisal rights under section 490.1302 is submitted
80 13 to a vote at a shareholders' meeting, a shareholder who wishes
80 14 to assert

~~dissenters'~~

~~appraisal~~ rights with respect to any

80 15 class or series of shares must do all of the following:

80 16 a. Deliver to the corporation before the vote is taken
80 17 written notice of the shareholder's intent to demand payment
80 18

~~for the shareholder's shares~~

~~if the proposed action is~~

80 19 effectuated.

80 20 b. Not vote

~~the dissenting shareholder's shares~~

~~, or cause~~

80 21 or permit to be voted, any shares of such class or series in
80 22 favor of the proposed action.

80 23 2. A shareholder who does not satisfy the requirements of
80 24 subsection 1

~~is not entitled to payment~~

~~for the shareholder's~~

80 25

~~shares~~

~~under this part.~~

80 26 Sec. 83. Section [490.1322](#), Code 2001, is amended to read
80 27 as follows:

80 28 490.1322

~~DISSENTERS'~~

~~APPRAISAL NOTICE AND FORM.~~

80 29 1. If proposed corporate action

~~creating dissenters'~~

80 30 requiring appraisal rights under section 490.1302

~~is~~

80 31

~~authorized at a shareholders' meeting~~

~~-, subsection 1, becomes~~
80 32 ~~effective,~~ the corporation

~~shall~~

~~- must~~ deliver a written
80 33

~~disenters'~~

~~- appraisal notice and form required by subsection~~
80 34 ~~2, paragraph "a",~~ to all shareholders who satisfied the
80 35 requirements of section 490.1321. ~~In the case of a merger~~
81 1 ~~under section 490.1105, the parent must deliver a written~~
81 2 ~~appraisal notice and form to all record shareholders who may~~
81 3 ~~be entitled to assert appraisal rights.~~
81 4 2. The

~~disenters'~~

~~- appraisal~~ notice must be sent no
81 5 ~~earlier than the date the corporate action became effective~~
81 6 ~~and no~~ later than ten days after

~~the proposed corporate action~~

~~-~~
81 7

~~is authorized at a shareholders' meeting, or, if the corporate~~

~~-~~
81 8

~~action is taken without a vote of the shareholders, no later~~

~~-~~
81 9

~~than ten days after the corporate action is taken,~~

~~- such date~~

81 10 and must do all of the following:
81 11 a.

~~State where the payment demand must be sent and where~~

~~-~~
81 12

~~and when~~

~~- Be accompanied by a form that specifies the date of~~
81 13 ~~the first announcement to shareholders of the principal terms~~
81 14 ~~of the proposed corporate action and requires the shareholder~~
81 15 ~~asserting appraisal rights to certify whether or not~~
81 16 ~~beneficial ownership of those shares for which appraisal~~
81 17 ~~rights are asserted was acquired before that date, and that~~
81 18 ~~the shareholder did not vote for the transaction.~~
81 19 b. ~~State all of the following:~~
81 20 ~~(1) Where the form must be sent and where certificates for~~
81 21 ~~certificated shares must be deposited and the date by which~~
81 22 ~~those certificates must be deposited, which date shall not be~~
81 23 ~~earlier than the date for receiving the required form under~~
81 24 ~~subparagraph (2).~~
81 25

~~b. Inform holders of uncertificated shares to what extent~~

~~-~~
81 26

~~transfer of the shares will be restricted after the payment~~

~~-~~
81 27

~~demand is received.~~

~~-~~
81 28

~~e. Supply a form for demanding payment that includes the~~

~~-~~
81 29

~~date of the first announcement to news media or to~~

~~-~~
81 30

~~shareholders of the terms of the proposed corporate action and~~

~~-~~
81 31

~~requires that the person asserting dissenters' rights certify~~

~~-~~
81 32

~~whether or not the person acquired beneficial ownership of the~~

~~-~~
81 33

~~shares before that date.~~

~~-~~
81 34

~~d.~~

~~(2)~~

~~Set a~~

~~A date by which the corporation must receive~~

81 35 the

~~payment demand~~

~~form, which date shall not be fewer than~~

82 1

~~thirty~~

~~forty nor more than sixty days after the date the~~

82 2

~~dissenters' notice is delivered~~

~~appraisal notice and form are~~

82 3 sent under subsection 1, and state that the shareholder shall

82 4 have waived the right to demand appraisal with respect to the

82 5 shares unless the form is received by the corporation by such

82 6 specified date.

82 7 (3) The corporation's estimate of the fair value of the

82 8 shares.

82 9 (4) That, if requested in writing, the corporation will

82 10 provide, to the shareholder so requesting, within ten days

82 11 after the date specified in subparagraph (2) the number of

82 12 shareholders who return the forms by the specified date and

82 13 the total number of shares owned by them.

82 14 (5) The date by which the notice to withdraw under section

82 15 490.1323 must be received, which date must be within twenty

82 16 days after the date specified in subparagraph (2).

82 17

~~e.~~

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

82 18 Sec. 84. Section [490.1323](#), Code 2001, is amended to read

82 19 as follows:

82 20 490.1323

~~DUTY TO DEMAND PAYMENT~~

- PERFECTION OF RIGHTS

82 21 RIGHT TO WITHDRAW.

82 22 1. A shareholder

~~sent a dissenters'~~

- who receives notice

82 23

~~described in~~

- pursuant to section 490.1322 and who wishes to

82 24 exercise appraisal rights must

~~demand payment,~~

- certify on the

82 25 form sent by the corporation whether the

~~shareholder~~

- beneficial owner of such shares acquired beneficial ownership

82 27 of the shares before the date required to be set forth in the

82 28

~~dissenters'~~

- notice pursuant to section 490.1322, subsection 2,

82 29 paragraph

~~"e"~~

- "a". If a shareholder fails to make this

82 30 certification, the corporation may elect to treat the

82 31 shareholder's shares as after-acquired shares under section

82 32 490.1325, and deposit the shareholder's certificates in

82 33 accordance with the terms of the notice by the date referred

82 34 to in the notice pursuant to section 490.1322, subsection 2,

82 35 paragraph "b", subparagraph (2). Once a shareholder deposits

83 1 that shareholder's certificates or, in the case of

83 2 uncertificated shares, returns the executed forms, that

83 3 shareholder loses all rights as a shareholder, unless the

83 4 shareholder withdraws pursuant to subsection 2.

83 5 2. The shareholder who demands payment and deposits the

83 6 shareholder's shares under subsection 1 retains all other

83 7 rights of a shareholder until these rights are canceled or

83 8 modified by the taking of the proposed corporate action. A

83 9 shareholder who has complied with subsection 1 may

83 10 nevertheless decline to exercise appraisal rights and withdraw

83 11 from the appraisal process by so notifying the corporation in

83 12 writing by the date set forth in the appraisal notice pursuant

83 13 to section 490.1322, subsection 2, paragraph "b", subparagraph

83 14 (5). A shareholder who fails to so withdraw from the

83 15 appraisal process shall not thereafter withdraw without the

83 16 corporation's written consent.

83 17 3. A shareholder who does not demand payment or execute

83 18 and return the form and, in the case of certificated shares,

83 19 deposit the shareholder's share certificates where required,

83 20 each by the date set forth in the dissenters' notice described

83 21 in section 490.1322, subsection 2,

~~is~~

- shall not be entitled to

83 22 payment for the shareholder's shares under this division.

83 23 Sec. 85. Section 490.1324, Code 2001, is amended by

83 24 striking the section and inserting in lieu thereof the

83 25 following:

83 26 490.1324 PAYMENT.

83 27 1. Except as provided in section 490.1325, within thirty

83 28 days after the form required by section 490.1322, subsection

83 29 2, paragraph "b", subparagraph (2), the corporation shall pay

83 30 in cash to those shareholders who complied with section

83 31 490.1323, subsection 1, the amount the corporation estimates
83 32 to be the fair value of their shares, plus interest.

83 33 2. The payment to each shareholder pursuant to subsection
83 34 1 must be accompanied by all of the following:

83 35 a. Financial statements of the corporation that issued the
84 1 shares to be appraised, consisting of a balance sheet as of
84 2 the end of a fiscal year ending not more than sixteen months
84 3 before the date of payment, an income statement for that year,
84 4 a statement of changes in shareholders' equity for that year,
84 5 and the latest available interim financial statements, if any.

84 6 b. A statement of the corporation's estimate of the fair
84 7 value of the shares, which estimate must equal or exceed the
84 8 corporation's estimate given pursuant to section 490.1322,
84 9 subsection 2, paragraph "b", subparagraph (3).

84 10 c. A statement that shareholders described in subsection 1
84 11 have the right to demand further payment under section
84 12 490.1326 and that if any such shareholder does not do so
84 13 within the time period specified therein, such shareholder
84 14 shall be deemed to have accepted such payment in full
84 15 satisfaction of the corporation's obligations under this
84 16 chapter.

84 17 Sec. 86. Section [490.1325](#), Code 2001, is amended by
84 18 striking the section and inserting in lieu thereof the
84 19 following:

84 20 490.1325 AFTER-ACQUIRED SHARES.

84 21 1. A corporation may elect to withhold payment required by
84 22 section 490.1324 from any shareholder who did not certify that
84 23 beneficial ownership of all of the shareholder's shares for
84 24 which appraisal rights are asserted was acquired before the
84 25 date set forth in the appraisal notice sent pursuant to
84 26 section 490.1322, subsection 2, paragraph "a".

84 27 2. If the corporation elects to withhold payment under
84 28 subsection 1, it must within thirty days after the form
84 29 required by section 490.1322, subsection 2, paragraph "b",
84 30 subparagraph (2), is due, notify all shareholders who are
84 31 described in subsection 1 regarding all of the following:

84 32 a. Of the information required by section 490.1324,
84 33 subsection 2, paragraph "a".

84 34 b. Of the corporation's estimate of fair value pursuant to
84 35 section 490.1324, subsection 2, paragraph "b".

85 1 c. That they may accept the corporation's estimate of fair
85 2 value, plus interest, in full satisfaction of their demands or
85 3 demand appraisal under section 490.1326.

85 4 d. That those shareholders who wish to accept such offer
85 5 must notify the corporation of their acceptance of the
85 6 corporation's offer within thirty days after receiving the
85 7 offer.

85 8 e. That those shareholders who do not satisfy the
85 9 requirements for demanding appraisal under section 490.1326
85 10 shall be deemed to have accepted the corporation's offer.

85 11 3. Within ten days after receiving the shareholder's
85 12 acceptance pursuant to subsection 2, the corporation must pay
85 13 in cash the amount it offered under subsection 2, paragraph
85 14 "b", to each shareholder who agreed to accept the
85 15 corporation's offer in full satisfaction of the shareholder's
85 16 demand.

85 17 4. Within forty days after sending the notice described in
85 18 subsection 2, the corporation must pay in cash the amount it
85 19 offered to pay under subsection 2, paragraph "b", to each
85 20 shareholder described in subsection 2, paragraph "e".

85 21 Sec. 87. Section [490.1326](#), Code 2001, is amended by
85 22 striking the section and inserting in lieu thereof the
85 23 following:

85 24 490.1326 PROCEDURE IF SHAREHOLDER DISSATISFIED WITH
85 25 PAYMENT OR OFFER.

85 26 1. A shareholder paid pursuant to section 490.1324 who is
85 27 dissatisfied with the amount of the payment must notify the

85 28 corporation in writing of that shareholder's estimate of the
85 29 fair value of the shares and demand payment of that estimate
85 30 plus interest, less any payment under section 490.1324. A
85 31 shareholder offered payment under section 490.1325 who is
85 32 dissatisfied with that offer must reject the offer and demand
85 33 payment of the shareholder's stated estimate of the fair value
85 34 of the shares plus interest.

85 35 2. A shareholder who fails to notify the corporation in
86 1 writing of that shareholder's demand to be paid the
86 2 shareholder's stated estimate of the fair value plus interest
86 3 under subsection 1 within thirty days after receiving the
86 4 corporation's payment or offer of payment under section
86 5 490.1324 or 490.1325, respectively, waives the right to demand
86 6 payment under this section and shall be entitled only to the
86 7 payment made or offered pursuant to those respective sections.

86 8 Sec. 88. Section [490.1330](#), Code 2001, is amended to read
86 9 as follows:

86 10 490.1330 COURT ACTION.

86 11 1. If a

~~demand~~

- shareholder makes demands for payment under
86 12 section

~~490.1328~~

- 490.1326 that remains unsettled, the
86 13 corporation shall commence a proceeding within sixty days
86 14 after receiving the payment demand and petition the court to
86 15 determine the fair value of the shares and accrued interest.
86 16 If the corporation does not commence the proceeding within the
86 17 sixty-day period, it shall pay in cash to each

~~dissenter whose~~

-
86 18

~~demand remains unsettled the amount demanded~~

- shareholder the
86 19 amount the shareholder demanded pursuant to section 490.1326
86 20 plus interest.

86 21 2. The corporation shall commence the proceeding in the
86 22 district court of the county where

~~a~~

- the corporation's
86 23 principal office or, if none

~~in this state~~

-, its registered
86 24 office, in this state is located. If the corporation is a
86 25 foreign corporation without a registered office in this state,
86 26 it shall commence the proceeding in the county in this state
86 27 where the principal office or registered office of the
86 28 domestic corporation merged with

~~or whose shares were acquired~~

-
86 29

~~by~~

- the foreign corporation was located at the time of the
86 30 transaction.

86 31 3. The corporation shall make all

~~dissenters~~

- shareholders,
86 32 whether or not residents of this state, whose demands remain

86 33 unsettled parties to the proceeding as in an action against
86 34 their shares and all parties must be served with a copy of the
86 35 petition. Nonresidents may be served by registered or
87 1 certified mail or by publication as provided by law.
87 2 4. The jurisdiction of the court in which the proceeding
87 3 is commenced under subsection 2 is plenary and exclusive. The
87 4 court may appoint one or more persons as appraisers to receive
87 5 evidence and recommend a decision on the question of fair
87 6 value. The appraisers shall have the powers described in the
87 7 order appointing them, or in any amendment to it. The
87 8

~~—dissenters~~

- shareholders demanding appraisal rights are
87 9 entitled to the same discovery rights as parties in other
87 10 civil proceedings. There shall be no right to a jury trial.
87 11 5. Each

~~—dissenter~~

- shareholder made a party to the
87 12 proceeding is entitled to judgment for either of the
87 13 following:
87 14 a. The amount, if any, by which the court finds the fair
87 15 value of the

~~—dissenter's~~

- shareholder's shares, plus interest,
87 16 exceeds the amount paid by the corporation to the shareholder
87 17 for such shares.
87 18 b. The fair value, plus

~~—accrued~~

- interest, of the
87 19

~~—dissenter's after acquired~~

- shareholder's shares for which the
87 20 corporation elected to withhold payment under section

~~—490.1327~~

-
87 21 490.1325.
87 22 6. Notwithstanding the provisions of this division, if the
87 23 corporation is a bank holding company as defined in section
87 24 524.1801, fair value, at the election of the bank holding
87 25 company, may be determined as provided in section 524.1406,
87 26 subsection 3, prior to giving notice under section 490.1320 or
87 27 490.1322. The fair value as determined shall be included in
87 28 any notice under section 490.1320 or 490.1322, and section
87 29

~~—490.1328~~

- 490.1326 shall not apply.
87 30 Sec. 89. Section 490.1331, Code 2001, is amended to read s
87 31 follows:
87 32 490.1331 COURT COSTS AND COUNSEL FEES.
87 33 1. The court in an appraisal proceeding commenced under
87 34 section 490.1330 shall determine all costs of the proceeding,
87 35 including the reasonable compensation and expenses of
88 1 appraisers appointed by the court. The court shall assess the
88 2 costs against the corporation, except that the court may
88 3 assess costs against all or some of the

~~—dissenters~~

-
88 4 shareholders demanding appraisal, in amounts the court finds
88 5 equitable, to the extent the court finds

~~the dissenters~~

- such

88 6 shareholders acted arbitrarily, vexatiously, or not in good
88 7 faith

~~in demanding payment under section 490.1328~~

- with respect

88 8 to the rights provided by this division.

88 9 2. The court in an appraisal proceeding may also assess
88 10 the fees and expenses of counsel and experts for the
88 11 respective parties, in amounts the court finds equitable, for
88 12 either of the following:

88 13 a. Against the corporation and in favor of any or all
88 14

~~dissenters~~

- shareholders demanding appraisal if the court finds

88 15 the corporation did not substantially comply with the
88 16 requirements of

~~sections~~

- section 490.1320

~~through 490.1328~~

-

88 17 490.1322, 490.1324, or 490.1325.

88 18 b. Against either the corporation or a

~~dissenter~~

-

88 19 shareholder demanding appraisal, in favor of any other party,
88 20 if the court finds that the party against whom the fees and
88 21 expenses are assessed acted arbitrarily, vexatiously, or not
88 22 in good faith with respect to the rights provided by this
88 23 chapter.

88 24 3. If the court in an appraisal proceeding finds that the
88 25 services of counsel for any

~~dissenter~~

- shareholder were of

88 26 substantial benefit to other

~~dissenters~~

- shareholders similarly

88 27 situated, and that the fees for those services should not be
88 28 assessed against the corporation, the court may award to

~~these~~

-

88 29 such counsel reasonable fees to be paid out of the amounts
88 30 awarded the

~~dissenters~~

- shareholders who were benefited.

88 31 4. To the extent the corporation fails to make a required
88 32 payment pursuant to section 490.1324, 490.1325, or 490.1326,
88 33 the shareholder may sue directly for the amount owed and, to
88 34 the extent successful, shall be entitled to recover from the
88 35 corporation all costs and expenses of the suit, including
89 1 counsel fees.

89 2 Sec. 90. Section 490.1402, subsections 4 and 5, Code 2001,
89 3 are amended to read as follows:

89 4 4. The corporation shall notify each shareholder, whether
89 5 or not entitled to vote, of the proposed shareholders' meeting
89 6

~~in accordance with section 490.705~~

~~The notice must also~~

89 7 state that the purpose, or one of the purposes, of the meeting
89 8 is to consider dissolving the corporation.

89 9 5. Unless the articles of incorporation, bylaws, or the
89 10 board of directors acting pursuant to subsection 3 requires a
89 11 greater vote, a greater number of shares to be present, or a
89 12 vote by voting groups, adoption of the proposal to dissolve

~~to~~

89 13

~~be adopted must be approved by a majority of all~~

~~shall require~~

89 14 the approval of the shareholders at a meeting at which the
89 15 quorum consisting of at least a majority of the votes entitled
89 16 to be cast

~~on that proposal~~

~~exists.~~

89 17 Sec. 91. Section [490.1403](#), Code 2001, is amended to read
89 18 as follows:

89 19 490.1403 ARTICLES OF DISSOLUTION.

89 20 1. At any time after dissolution is authorized, the
89 21 corporation may dissolve by delivering to the secretary of
89 22 state for filing articles of dissolution setting forth all of
89 23 the following:

89 24 a. The name of the corporation.

89 25 b. The date dissolution was authorized.

89 26 c. If dissolution was approved by the shareholders

~~, both~~

89 27

~~of the following:~~

89 28

~~(1) The number of votes entitled to be cast on~~

~~a statement~~

89 29 that the proposal to dissolve was duly approved by the
89 30 shareholders in the manner required by this chapter and by the
89 31 articles of incorporation.

89 32

~~(2) Either the total number of votes cast for and against~~

89 33

~~dissolution or the total number of undisputed votes cast for~~

89 34

~~dissolution and a statement that the number cast for~~

89 35

~~dissolution was sufficient for approval.~~

90 1

~~d. If voting by voting groups was required, the~~

90 2

~~information required by paragraph "c" must be separately~~

90 3

~~provided for each voting group entitled to vote separately on~~

90 4

~~the plan to dissolve.~~

90 5 2. A corporation is dissolved upon the effective date of
90 6 its articles of dissolution.

90 7 3. For purposes of this division, "dissolved corporation"
90 8 means a corporation whose articles of dissolution have become
90 9 effective and includes a successor entity to which the
90 10 remaining assets of the corporation are transferred subject to
90 11 its liabilities for purposes of liquidation.

90 12 Sec. 92. Section [490.1404](#), subsection 3, paragraph f, Code
90 13 2001, is amended to read as follows:

90 14 f. If shareholder action was required to revoke the
90 15 dissolution, the information required by section 490.1403,
90 16 subsection 1, paragraph "c"

~~or "d"~~

90 17 Sec. 93. Section [490.1406](#), subsections 1 and 2, Code 2001,
90 18 are amended to read as follows:

90 19 1. A dissolved corporation may dispose of the known claims
90 20 against it by

~~following the procedure described in this~~

90 21

~~section~~

~~notifying its known claimants in writing of the~~
90 22 ~~dissolution at any time after its effective date.~~

90 23 2.

~~The dissolved corporation shall notify its known~~

90 24

~~claimants in writing of the dissolution at any time after its~~

90 25

~~effective date.~~

~~The written notice must do all of the~~

90 26 following:

90 27 a. Describe information that must be included in a claim.

90 28 b. Provide a mailing address where a claim may be sent.

90 29 c. State the deadline, which may not be fewer than one

90 30 hundred twenty days from the effective date of the written

90 31 notice, by which the dissolved corporation must receive the

90 32 claim.

90 33 d. State that the claim will be barred if not received by

90 34 the deadline.

90 35 Sec. 94. Section [490.1407](#), Code 2001, is amended to read

91 1 as follows:

91 2 [490.1407](#)

~~UNKNOWN~~

~~OTHER CLAIMS AGAINST DISSOLVED~~

91 3 CORPORATION.

91 4 1. A dissolved corporation may also publish notice of its

91 5 dissolution and request that persons with claims against the

91 6 dissolved corporation present them in accordance with the
91 7 notice.
91 8 2. The notice must meet all of the following requirements:
91 9 a. Be published one time in a newspaper of general
91 10 circulation in the county where the dissolved corporation's
91 11 principal office or, if none in this state, its registered
91 12 office is or was last located.
91 13 b. Describe the information that must be included in a
91 14 claim and provide a mailing address where the claim may be
91 15 sent.
91 16 c. State that a claim against the dissolved corporation
91 17 will be barred unless a proceeding to enforce the claim is
91 18 commenced within

~~—five~~

- three years after the publication of the
91 19 notice.

91 20 3. If the dissolved corporation publishes a newspaper
91 21 notice in accordance with subsection 2, the claim of each of
91 22 the following claimants is barred unless the claimant
91 23 commences a proceeding to enforce the claim against the
91 24 dissolved corporation within

~~—five~~

- three years after the
91 25 publication date of the newspaper notice:
91 26 a. A claimant who

~~—did not receive~~

- was not given written

91 27 notice under section 490.1406.

91 28 b. A claimant whose claim was timely sent to the dissolved
91 29 corporation but not acted on.

91 30 c. A claimant whose claim is contingent or based on an
91 31 event occurring after the effective date of dissolution.

91 32 4. A claim that is not barred by section 490.1406,
91 33 subsection 2, or subsection 3 of this section, may be enforced
91 34

~~—under this section~~

- in either of the following ways:

91 35 a. Against the dissolved corporation, to the extent of its
92 1 undistributed assets.

92 2 b.

~~—If~~

- Except as provided in section 490.1408, subsection

92 3 4, the assets have been distributed in liquidation, against a
92 4 shareholder of the dissolved corporation to the extent of the
92 5 shareholder's pro rata share of the claim or the corporate
92 6 assets distributed to the shareholder in liquidation,
92 7 whichever is less, but a shareholder's total liability for all
92 8 claims under this section shall not exceed the total amount of
92 9 assets distributed to the shareholder in liquidation.

92 10 Sec. 95. NEW SECTION. 490.1408 COURT PROCEEDINGS.

92 11 1. A dissolved corporation that has published a notice
92 12 under section 490.1407 may file an application with the
92 13 district court of the county where the dissolved corporation's
92 14 principal office or, if none in this state, its registered
92 15 office is located for a determination of the amount and form
92 16 of security to be provided for payment of claims that are
92 17 contingent or have not been made known to the dissolved
92 18 corporation or that are based on an event occurring after the
92 19 effective date of dissolution but that, based on the facts
92 20 known to the dissolved corporation, are reasonably estimated
92 21 to arise after the effective date of dissolution. Provision
92 22 need not be made for any claim that is or is reasonably

92 23 anticipated to be barred under section 490.1407, subsection 3.
92 24 2. Within ten days after the filing of the application,
92 25 notice of the proceeding shall be given by the dissolved
92 26 corporation to each claimant holding a contingent claim whose
92 27 contingent claim is shown on the records of the dissolved
92 28 corporation.

92 29 3. The court may appoint a guardian ad litem to represent
92 30 all claimants whose identities are unknown in any proceeding
92 31 brought under this section. The reasonable fees and expenses
92 32 of such guardian, including all reasonable expert witness
92 33 fees, shall be paid by the dissolved corporation.

92 34 4. Provision by the dissolved corporation for security in
92 35 the amount and the form ordered by the court under subsection
93 1 1, shall satisfy the dissolved corporation's obligations with
93 2 respect to claims that are contingent, have not been made
93 3 known to the dissolved corporation or are based on an event
93 4 occurring after the effective date of dissolution, and such
93 5 claims shall not be enforced against a shareholder who
93 6 received assets in liquidation.

93 7 Sec. 96. NEW SECTION. 490.1409 DIRECTOR DUTIES.

93 8 1. Directors shall cause the dissolved corporation to
93 9 discharge or make reasonable provision for the payment of
93 10 claims and make distributions of assets to shareholders after
93 11 payment or provision for claims.

93 12 2. Directors of a dissolved corporation which has disposed
93 13 of claims under section 490.1406, 490.1407, or 490.1408 shall
93 14 not be liable for breach of subsection 1, with respect to
93 15 claims against the dissolved corporation that are barred or
93 16 satisfied under section 490.1406, 490.1407, or 490.1408.

93 17 Sec. 97. Section [490.1431](#), Code 2001, is amended by adding
93 18 the following new subsection:

93 19 NEW SUBSECTION. 4. Within ten days of the commencement of
93 20 a proceeding under section 490.1430, subsection 2, to dissolve
93 21 a corporation that has no shares listed on a national
93 22 securities exchange or regularly traded in a market maintained
93 23 by one or more members of a national securities exchange, the
93 24 corporation must send to all shareholders, other than the
93 25 petitioner, a notice stating that the shareholders are
93 26 entitled to avoid the dissolution of the corporation by
93 27 electing to purchase the petitioner's shares under section
93 28 490.1434, and a copy of section 490.1434.

93 29 Sec. 98. NEW SECTION. 490.1434 ELECTION TO PURCHASE IN
93 30 LIEU OF DISSOLUTION.

93 31 1. In a proceeding under section 490.1430, subsection 2,
93 32 to dissolve a corporation that has no shares listed on a
93 33 national securities exchange or regularly traded in a market
93 34 maintained by one or more members of a national or affiliated
93 35 securities association, the corporation may elect or, if it
94 1 fails to elect, one or more shareholders may elect to purchase
94 2 all shares owned by the petitioning shareholder at the fair
94 3 value of the shares. An election pursuant to this section
94 4 shall be irrevocable unless the court determines that it is
94 5 equitable to set aside or modify the election.

94 6 2. An election to purchase pursuant to this section may be
94 7 filed with the court at any time within ninety days after the
94 8 filing of the petition under section 490.1430, subsection 2,
94 9 or at such later time as the court in its discretion may
94 10 allow. If the election to purchase is filed by one or more
94 11 shareholders, the corporation shall, within ten days
94 12 thereafter, give written notice to all shareholders, other
94 13 than the petitioner. The notice must state the name and
94 14 number of shares owned by the petitioner and the name and
94 15 number of shares owned by each electing shareholder and must
94 16 advise the recipients of their right to join the election to
94 17 purchase shares in accordance with this section. Shareholders
94 18 who wish to participate must file notice of their intention to
94 19 join in the purchase no later than thirty days after the

94 20 effective date of the notice to them. All shareholders who
94 21 have filed an election or notice of their intention to
94 22 participate in the election to purchase thereby become parties
94 23 to the proceeding and shall participate in the purchase in
94 24 proportion to their ownership of shares as of the date the
94 25 first election was filed, unless they otherwise agree or the
94 26 court otherwise directs. After an election has been filed by
94 27 the corporation or one or more shareholders, the proceeding
94 28 under section 490.1430, subsection 2, shall not be
94 29 discontinued or settled, nor may the petitioning shareholder
94 30 sell or otherwise dispose of the shareholder's shares, unless
94 31 the court determines that it would be equitable to the
94 32 corporation and the shareholders, other than the petitioner,
94 33 to permit such discontinuance, settlement, sale, or other
94 34 disposition.

94 35 3. If, within sixty days of the filing of the first
95 1 election, the parties reach agreement as to the fair value and
95 2 terms of purchase of the petitioner's shares, the court shall
95 3 enter an order directing the purchase of the petitioner's
95 4 shares upon the terms and conditions agreed to by the parties.

95 5 4. If the parties are unable to reach an agreement as
95 6 provided for in subsection 3, the court, upon application of
95 7 any party, shall stay the section 490.1430, subsection 2,
95 8 proceedings and determine the fair value of the petitioner's
95 9 shares as of the day before the date on which the petition
95 10 under section 490.1430, subsection 2, was filed or as of such
95 11 other date as the court deems appropriate under the
95 12 circumstances.

95 13 5. Upon determining the fair value of the shares, the
95 14 court shall enter an order directing the purchase upon such
95 15 terms and conditions as the court deems appropriate, which may
95 16 include payment of the purchase price in installments, where
95 17 necessary in the interests of equity, provision for security
95 18 to assure payment of the purchase price and any additional
95 19 costs, fees, and expenses as may have been awarded, and, if
95 20 the shares are to be purchased by shareholders, the allocation
95 21 of shares among them. In allocating petitioner's shares among
95 22 holders of different classes of shares, the court shall
95 23 attempt to preserve the existing distribution of voting rights
95 24 among holders of different classes insofar as practicable and
95 25 may direct that holders of a specific class or classes shall
95 26 not participate in the purchase. Interest may be allowed at
95 27 the rate and from the date determined by the court to be
95 28 equitable, but if the court finds that the refusal of the
95 29 petitioning shareholder to accept an offer of payment was
95 30 arbitrary or otherwise not in good faith, no interest shall be
95 31 allowed. If the court finds that the petitioning shareholder
95 32 has probable grounds for relief under section 490.1430,
95 33 subsection 2, paragraph "b" or "d", it may award to the
95 34 petitioning shareholder reasonable fees and expenses of
95 35 counsel and of any experts employed by the shareholder.

96 1 6. Upon entry of an order under subsection 3 or 5, the
96 2 court shall dismiss the petition to dissolve the corporation
96 3 under section 490.1430, and the petitioning shareholder shall
96 4 no longer have any rights or status as a shareholder of the
96 5 corporation, except the right to receive the amounts awarded
96 6 to the shareholder by the order of the court which shall be
96 7 enforceable in the same manner as any other judgment.

96 8 7. The purchase ordered pursuant to subsection 5 shall be
96 9 made within ten days after the date the order becomes final
96 10 unless before that time the corporation files with the court a
96 11 notice of its intention to adopt articles of dissolution
96 12 pursuant to sections 490.1402 and 490.1403, which articles
96 13 must then be adopted and filed within fifty days thereafter.
96 14 Upon filing of such articles of dissolution, the corporation
96 15 shall be dissolved in accordance with the provisions of
96 16 sections 490.1405 through 490.1407, and the order entered

96 17 pursuant to subsection 5 shall no longer be of any force or
96 18 effect, except that the court may award the petitioning
96 19 shareholder reasonable fees and expenses in accordance with
96 20 the provisions of the last sentence of subsection 5 and the
96 21 petitioner may continue to pursue any claims previously
96 22 asserted on behalf of the corporation.

96 23 8. Any payment by the corporation pursuant to an order
96 24 under subsection 3 or 5, other than an award of fees and
96 25 expenses pursuant to subsection 5, is subject to the
96 26 provisions of section 490.640.

96 27 Sec. 99. Section [490.1603](#), Code 2001, is amended to read
96 28 as follows:

96 29 490.1603 SCOPE OF INSPECTION RIGHT.

96 30 1. A shareholder's agent or attorney has the same
96 31 inspection and copying rights as the shareholder

~~the agent or~~

96 32

~~attorney represents~~
~~represented.~~

96 33 2. The right to copy records under section 490.1602
96 34 includes, if reasonable, the right to receive copies

~~made by~~

96 35

~~photographic, xerographic, or other technological means~~
~~by~~

97 1 xerographic or other means, including copies through an
97 2 electronic transmission if available and so requested by the
97 3 shareholder.

97 4 3. The corporation may comply at its expense with a
97 5 shareholder's demand to inspect the record of shareholders
97 6 under section 490.1602, subsection 2, paragraph "c", by
97 7 providing the shareholder with a list of shareholders that was
97 8 compiled no earlier than the date of the shareholder's demand.
97 9

~~3.~~

~~4.~~ The corporation may impose a reasonable charge,
97 10 covering the costs of labor and material, for copies of any
97 11 documents provided to the shareholder. The charge shall not
97 12 exceed the estimated cost of production.

~~or~~

~~reproduction, or~~
97 13 transmission of the records.
97 14

~~4. The corporation may comply with a shareholder's demand~~

97 15

~~to inspect the record of shareholders under section 490.1602,~~

97 16

~~subsection 2, paragraph "c" by providing the shareholder with~~

97 17

~~a list of its shareholders that was compiled no earlier than~~

97 18

~~the date of the shareholder's demand.~~

97 19 Sec. 100. NEW SECTION. 490.1605 INSPECTION OF RECORDS BY
97 20 DIRECTORS.

97 21 1. A director of a corporation is entitled to inspect and
97 22 copy the books, records, and documents of the corporation at
97 23 any reasonable time to the extent reasonably related to the
97 24 performance of the director's duties as a director, including
97 25 duties as a member of a committee, but not for any other
97 26 purpose or in any manner that would violate any duty to the
97 27 corporation.

97 28 2. The district court of the county where the
97 29 corporation's principal office, or if none in this state, its
97 30 registered office, is located may order inspection and copying
97 31 of the books, records, and documents at the corporation's
97 32 expense, upon application of a director who has been refused
97 33 such inspection rights, unless the corporation establishes
97 34 that the director is not entitled to such inspection rights.
97 35 The court shall dispose of an application under this
98 1 subsection on an expedited basis.

98 2 3. If an order is issued, the court may include provisions
98 3 protecting the corporation from undue burden or expense, and
98 4 prohibiting the director from using information obtained upon
98 5 exercise of the inspection rights in a manner that would
98 6 violate a duty to the corporation, and may also order the
98 7 corporation to reimburse the director for the director's
98 8 costs, including reasonable counsel fees, incurred in
98 9 connection with the application.

98 10 Sec. 101. NEW SECTION. 490.1606 EXCEPTION TO NOTICE
98 11 REQUIREMENT.

98 12 1. Whenever notice is required to be given under any
98 13 provision of this chapter to any shareholder, such notice
98 14 shall not be required to be given if either of the following
98 15 applies:

98 16 a. Notice of two consecutive annual meetings, and all
98 17 notices of meetings during the period between such two
98 18 consecutive annual meetings, have been sent to such
98 19 shareholder at such shareholder's address as shown on the
98 20 records of the corporation and have been returned
98 21 undeliverable.

98 22 b. All, but not less than two, payments of dividends on
98 23 securities during a twelve-month period, or two consecutive
98 24 payments of dividends on securities during a period of more
98 25 than twelve months, have been sent to such shareholder at such
98 26 shareholder's address as shown on the records of the
98 27 corporation and have been returned undeliverable.

98 28 2. If any such shareholder shall deliver to the
98 29 corporation a written notice setting forth such shareholder's
98 30 then-current address, the requirement that notice be given to
98 31 such shareholder shall be reinstated.

98 32 Sec. 102. Sections 490.832, 490.1022, 490.1327, 490.1328,
98 33 and 490.1621, Code 2001, are repealed.

98 34 Sec. 103. CODE EDITOR DIRECTIVE. The following division
98 35 and part titles shall be changed by the Code editor:

99 1 1. Division XII shall be retitled DISPOSITION OF ASSETS.

99 2 2. Division XIII shall be retitled APPRAISAL RIGHTS.

99 3 3. Division XIII, Part A, shall be retitled RIGHT TO
99 4 APPRAISAL AND PAYMENT FOR SHARES.

99 5 4. Division XIII, Part B, shall be retitled PROCEDURE FOR
99 6 EXERCISE OF APPRAISAL RIGHTS.

99 7 Sec. 104. EFFECTIVE DATE. This Act, takes effect January
99 8 1, 2003.

99 9 EXPLANATION

99 10 The following overview highlights the areas of change to
99 11 the Iowa Business Corporations Act:

99 12 AMENDMENT PERTAINING TO LIABILITY OF DIRECTORS. Code

99 13 section 490.202 allows shareholders the option to include in
99 14 the articles of incorporation a provision eliminating or
99 15 limiting the liability of a director to the corporation or its
99 16 shareholders, with certain exceptions. The provision on this
99 17 issue is currently in Code section 490.832, but it contains
99 18 more general language on exceptions than the new provision.

99 19 AMENDMENTS PERTAINING TO DIRECTOR CONFLICT OF INTERESTS.
99 20 Current Code section 490.831 on director conflicts of interest
99 21 is deleted and several new sections on the issue are added
99 22 from Code sections 490.860 through 490.863. Director
99 23 conflicting interest transactions require independent
99 24 examination and approval, either by independent directors, or
99 25 shareholders, or the court. Definitions are added for
99 26 "conflicting interest", "director's conflicting interest
99 27 transaction", "related person", "required disclosure", and
99 28 "time of commitment" in Code section 490.860.

99 29 AMENDMENTS PERTAINING TO DERIVATIVE PROCEEDINGS. Current
99 30 Code section 490.740 on derivative proceedings is replaced
99 31 with a new part that includes definitions and addresses
99 32 shareholder demand on the corporation, stay of proceedings,
99 33 dismissal of the action, settlement, and payment of expenses.

99 34 Code section 490.742 would allow a shareholder to commence
99 35 a derivative proceeding after 90 days after the demand was
100 1 made unless the shareholder has earlier been notified that the
100 2 demand has been rejected by the corporation or unless
100 3 irreparable injury to the corporation would result by waiting
100 4 for the expiration of the 90-day period.

100 5 An independent litigation committee may be appointed to
100 6 investigate and make recommendations concerning derivative
100 7 proceedings under Code section 490.744.

100 8 In addition, the bill allows such investigation and
100 9 recommendation to be made by a panel appointed either by the
100 10 independent directors present at a meeting of the board of
100 11 directors if the independent directors constitute a quorum or,
100 12 if the independent directors do not constitute a quorum, a
100 13 committee of two or more independent directors appointed by a
100 14 majority vote of independent directors present at a meeting of
100 15 the board of directors. Code section 490.744 addresses the
100 16 issue of independence and provides that by itself, the
100 17 nomination or election of the director by persons who are
100 18 defendants in the derivative proceeding or against whom the
100 19 action is demanded shall not cause a director to be considered
100 20 as not independent.

100 21 AMENDMENTS PERTAINING TO CLOSELY HELD CORPORATIONS. Code
100 22 section 490.732 validates shareholder agreements appearing in
100 23 the articles or signed by all shareholders, and it authorizes
100 24 wide latitude in their content for corporations whose shares
100 25 are not listed on a national securities exchange or regularly
100 26 traded in a market maintained by one or more members of a
100 27 national or affiliated securities association.

100 28 New Code section 490.1434 provides an alternative to the
100 29 corporation and its shareholders where one or more but fewer
100 30 than all shareholders petition for judicial dissolution on
100 31 grounds, for example, of deadlock or oppression. The
100 32 alternative essentially is a buyout of the petitioning
100 33 shareholders, either for an amount the parties can negotiate
100 34 or for "fair value", with the corporation having the right to
100 35 do so in the first instance, and, if the corporation does not
101 1 so elect, due regard for shareholders' relative positions.

101 2 AMENDMENTS PERTAINING TO INDEMNIFICATION AND ADVANCE FOR
101 3 EXPENSES. The bill expands the authority of a corporation to
101 4 indemnify a director through a charter provision adopted
101 5 pursuant to new Code section 490.202, which generally permits
101 6 indemnification with respect to a director's conduct to the
101 7 same extent that the director's liability for that conduct can
101 8 be limited under the section. Code sections 490.851 through
101 9 490.859 address the procedures for making decisions on

101 10 granting indemnification and authorizing an advance for
101 11 expenses, and make a court order available as a remedy to
101 12 enforce a legal right to indemnification or expense
101 13 advancement. Code section 490.854 permits a court to order an
101 14 advance for expenses.

101 15 AMENDMENTS PERTAINING TO SHAREHOLDER MEETINGS AND VOTING.
101 16 The bill amends Code section 490.702 regarding the percentage
101 17 of shares required before a special meeting of shareholders
101 18 must be granted, and new Code section 490.704 establishes a
101 19 procedure for revoking such a demand. New Code section
101 20 490.708 addresses conduct of a meeting of shareholders,
101 21 providing that a chair shall preside who, unless the articles
101 22 or bylaws provide otherwise, has the authority to determine
101 23 the order of business and establish rules for the conduct of
101 24 the meeting. The rules adopted and the conduct of the meeting
101 25 must be fair to shareholders. Code section 490.722, dealing
101 26 with proxies, has been amended to encompass electronic
101 27 transmission of proxies. New Code section 490.729 requires
101 28 the appointment of one or more inspectors of election for
101 29 publicly traded corporations and also delineates the
101 30 inspector's duties. Any other corporation may appoint
101 31 inspectors pursuant to section 490.729.

101 32 AMENDMENTS PERTAINING TO ELECTRONIC FILINGS. Code section
101 33 490.140 adds definitions for "deliver", "electronic
101 34 transmission", "sign" or "signature", and "voting power".
101 35 Code section 490.141 provides that notice by electronic
102 1 transmission is written notice, and that notice from a
102 2 corporation to a shareholder may be effective when
102 3 electronically transmitted in a manner authorized by the
102 4 shareholder. Code sections 490.120, 490.123, 490.124,
102 5 490.125, and 490.127 all address electronic filings with the
102 6 secretary of state.

102 7 AMENDMENTS PERTAINING TO STANDARDS OF CONDUCT AND STANDARDS
102 8 OF LIABILITY FOR DIRECTORS. New Code section 490.831,
102 9 standards of liability for directors, has been added to
102 10 clarify and distinguish the standard a plaintiff must meet in
102 11 order for a director to be held liable.

102 12 AMENDMENTS PERTAINING TO STANDARDS OF CONDUCT FOR OFFICERS
102 13 AND ALSO TO INSPECTION RIGHTS AND NOTICES. Code section
102 14 490.842 on standards of conduct for officers is amended in
102 15 light of the changes made pertaining to directors. In
102 16 addition, Code section 490.1603 on the scope of a
102 17 shareholder's inspection right is revised to reflect
102 18 availability of electronic transmissions. New Code section
102 19 490.1605 provides for inspection of records by directors. A
102 20 court action is authorized in which the corporation has the
102 21 burden of proof, and the court is directed to dispose of an
102 22 application of a director for inspection on an expedited
102 23 basis.

102 24 AMENDMENTS PERTAINING TO FUNDAMENTAL CHANGES. The quorum
102 25 required is that stated in current 490.725, namely, "a
102 26 majority of votes entitled to be cast on the matter by the
102 27 voting group", unless the articles or bylaws require a greater
102 28 number. Current Code language requires that the votes cast in
102 29 favor of a proposed change exceed those cast opposing it.

102 30 Current Code section 490.1202 addresses sales of assets
102 31 other than in the regular course of business and requires
102 32 shareholder approval of a sale or other disposition of all or
102 33 substantially all corporate assets where it does not occur in
102 34 the regular course of business. As amended, Code section
102 35 490.1202 does not utilize the standard "all or substantially
103 1 all" and the requirement of a shareholder vote instead turns
103 2 upon whether the disposition will leave the corporation
103 3 without a significant continuing business activity.

103 4 AMENDMENTS PERTAINING TO APPRAISAL RIGHTS. A number of
103 5 changes have been made in a continuing effort to allow
103 6 corporations, acting through their boards of directors and

103 7 shareholders, to change the nature and shape of the enterprise
103 8 and the rights of security holders, on the one hand, and, on
103 9 the other hand, to allow shareholders who object to the change
103 10 to withdraw from the corporation and obtain the fair value of
103 11 their investment. This accommodation has been known as
103 12 "dissenters' rights" or "appraisal rights". Division XIII is
103 13 amended to change the name from the former to the latter.
103 14 Shareholders will not be entitled to appraisal if the terms of
103 15 the class or series of shares that they hold will not be
103 16 changed.

103 17 The amendments to division XIII provide that a shareholder
103 18 who objects to corporate action effecting fundamental change
103 19 will receive fair value where the shares are publicly traded
103 20 and there is a sufficient market for the shares. However, the
103 21 division also includes provisions identifying conflict-of-
103 22 interest transactions in which the market exception will not
103 23 apply and appraisal rights will be available to shareholders.

103 24 AMENDMENTS PERTAINING TO DIRECTORS AND OFFICERS. Code
103 25 section 490.803 provides that a variable range for the size of
103 26 the board of directors may be established by the articles or
103 27 bylaws. Code section 490.825, committees of the board, has
103 28 been amended to allow committees to be given more authority to
103 29 act, primarily within limits stated by the board; and a new
103 30 provision in Code section 490.825 would allow the board to
103 31 appoint one or more directors as alternates to serve on a
103 32 committee where one or more is absent or disqualified, and
103 33 unless the articles, bylaws, or resolution of the board
103 34 creating the committee provided otherwise, would allow the
103 35 committee, upon unanimous vote of those present and not
104 1 disqualified, to appoint another director to serve in place of
104 2 the absent or disqualified member.

104 3 DISSOLUTION. Code section 490.640, governing
104 4 distributions, provides that the corporation must satisfy
104 5 equity and bankruptcy insolvency tests before the board can
104 6 authorize a distribution, but does not apply to distributions
104 7 made in liquidation.

104 8 The bill provides for a three-year period to assert claims
104 9 against the dissolved corporation, rather than the five years
104 10 provided under the current Code, and adds two new Code
104 11 sections, 490.1408 and 490.1409, that encourage directors to
104 12 anticipate and provide for such claims. Critical steps
104 13 include giving notice to known creditors and claimants,
104 14 publication, and in the claims that are unknown or contingent,
104 15 a court proceeding pursuant to Code section 490.1408, which
104 16 authorizes the corporation's board to file an application in
104 17 court for a determination of the amount and form of security
104 18 to be provided for payment of claims that are contingent or
104 19 have not been made known to the dissolved corporation or that
104 20 are based on an event occurring after the effective date of
104 21 dissolution, excluding claims that are or are reasonably
104 22 anticipated to be barred. The court is authorized to appoint
104 23 a guardian ad litem to represent such claimants. The court
104 24 hearing the matter may then determine the amount and form to
104 25 be provided for payment, and compliance with the court order
104 26 shall satisfy the dissolved corporation's obligations with
104 27 respect to claims that are contingent, have not been made
104 28 known to the dissolved corporation, or are based on an event
104 29 occurring after the effective date of dissolution, and such
104 30 claims may not be enforced against a shareholder who received
104 31 assets in liquidation.

104 32 ADDITIONAL AMENDMENTS PERTAINING TO DIRECTORS. Code
104 33 section 490.809, dealing with the judicial removal of
104 34 directors, requires the action be brought by or in the right
104 35 of the corporation, rather than by an authorized percentage of
105 1 a class of shareholders. In addition, grounds for removal of
105 2 directors have been amended. Fraudulent conduct remains a
105 3 basis for removal, but dishonest conduct has been eliminated.

105 4 Other grounds added are that the director "intentionally
105 5 inflicted harm on the corporation", or "grossly abused the
105 6 position of director". Code section 490.821, allowing the
105 7 board of directors to take action without a meeting, requires
105 8 that action taken without a meeting by consent must be
105 9 unanimous, and that action taken by consent is the act of the
105 10 board of directors when one or more consents signed by all the
105 11 directors are delivered to the corporation. Consent may be
105 12 withdrawn by signed revocation delivered to the corporation
105 13 prior to delivery to the corporation of unrevoked consents
105 14 signed by all directors.

105 15 The bill takes effect January 1, 2003.

105 16 LSB 5155XC 79

105 17 jj/cf/24