

House Study Bill 653 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ANDERSON)

A BILL FOR

1 An Act relating to business corporations, including by
2 providing for their organization and operation; providing
3 for the relationship between shareholders, directors, and
4 officers; and including effective date provisions.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

PRINCIPAL PROVISIONS

1
2
3 Section 1. Section 490.140, subsections 3, 6, 9, and 26,
4 Code Supplement 2011, are amended to read as follows:

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

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

14 9. "*Electronic transmission*" or "*electronically transmitted*"
15 means any form or process of communication not directly
16 involving the physical transfer of paper ~~that~~ or another
17 tangible medium, which is suitable all of the following:

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

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

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

26 a. Executing or adopting a tangible symbol to a document,
27 and includes any manual, facsimile, or conformed, ~~or electronic~~
28 signature.

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

32 Sec. 2. Section 490.140, Code Supplement 2011, is amended by
33 adding the following new subsections:

34 NEW SUBSECTION. 7A. "*Document*" means any of the following:

35 a. A tangible medium on which information is inscribed, and

1 includes any writing or written instrument.

2 *b.* An electronic record.

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

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

9 NEW SUBSECTION. 8B. "*Electronic record*" means information
10 that is stored in an electronic or other medium and is
11 retrievable in paper form through an automated process used in
12 conventional commercial practice, unless otherwise authorized
13 in accordance with section 490.141, subsection 10.

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

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

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

20 Sec. 3. Section 490.141, Code 2011, is amended to read as
21 follows:

22 **490.141 Notice or other communication.**

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

28 2. ~~Notice~~ A notice or other communication may be
29 ~~communicated in person; by mail or other~~ given or sent by
30 any method of delivery; or by telephone, voice mail, or
31 ~~other,~~ except that electronic means transmissions must be in
32 accordance with this section. If these ~~forms of personal~~
33 ~~notice~~ methods of delivery are impracticable, a notice or
34 other communication may be communicated by a newspaper of
35 general circulation in the area where published; or by radio,

1 television, or other form of public broadcast communication.

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

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

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

10 ~~4. Written notice~~ Notice or other communication to a
11 domestic or foreign corporation authorized to transact business
12 in this state may be ~~addressed~~ delivered to its registered
13 agent at its registered office or to the secretary of the
14 corporation ~~or its secretary~~ at its principal office shown in
15 its most recent biennial report or, in the case of a foreign
16 corporation that has not yet delivered a biennial report, in
17 its application for a certificate of authority.

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

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

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

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

34 6. Unless otherwise agreed between the sender and the
35 recipient, an electronic transmission is received when all of

1 the following apply:

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

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

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

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

16 ~~5. 9. Except as provided in subsection 3, written notice,~~
17 Notice or other communication if in a comprehensible form or
18 manner, is effective at the earliest of any of the following:

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

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

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

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

27 ~~b. Five days after its deposit in the United States mail,~~
28 ~~if~~ If mailed postpaid by United States mail postage prepaid
29 and correctly addressed to a shareholder, upon deposit in the
30 United States mail.

31 ~~c. On the date shown on the~~ If mailed by United States
32 mail postage prepaid and correctly addressed to a recipient
33 other than a shareholder, the earliest of when it is actually
34 received or as follows:

35 (1) If sent by registered or certified mail, return receipt

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

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

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

8 e. If oral, when communicated.

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

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

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

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

20 ~~7.~~ 11. If this chapter prescribes notice requirements for
21 notices or other communications in particular circumstances,
22 those requirements govern. If articles of incorporation or
23 bylaws prescribe notice requirements for notices or other
24 communications, not inconsistent with this section or other
25 provisions of this chapter, those requirements govern. The
26 articles of incorporation or bylaws may authorize or require
27 delivery of notices of meetings of directors by electronic
28 transmission.

29 **Sec. 4. NEW SECTION. 490.143 **Qualified director.****

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Sec. 5. NEW SECTION. 490.144 **Householding.**

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

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

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

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

1 delivery of the written notice of revocation.

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

8 Sec. 6. Section 490.502, subsection 2, Code 2011, is amended
9 to read as follows:

10 2. If ~~a registered agent changes~~ the street address of the
11 a registered agent's business office changes, the ~~registered~~
12 agent may change the street address of the registered office of
13 any corporation for which the person is the registered agent by
14 notifying delivering a signed written notice of the change to
15 ~~the corporation in writing of the change and signing~~, either
16 ~~manually or in facsimile~~, and delivering to the secretary of
17 state for filing a signed statement that complies with the
18 requirements of subsection 1 and recites that the corporation
19 has been notified of the change.

20 Sec. 7. Section 490.620, subsection 4, Code 2011, is amended
21 to read as follows:

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

30 Sec. 8. Section 490.624, Code 2011, is amended by adding the
31 following new subsection:

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

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

1 of shares.

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

11 Sec. 9. Section 490.701, subsection 1, Code 2011, is amended
12 to read as follows:

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

21 Sec. 10. Section 490.703, Code 2011, is amended to read as
22 follows:

23 **490.703 Court-ordered meeting.**

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

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

34 *b.* On application of a shareholder who signed a demand for
35 a special meeting valid under section 490.702 if ~~either~~ any of

1 the following applies:

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

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

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

16 Sec. 11. Section 490.704, Code 2011, is amended to read as
17 follows:

18 **490.704 Action without meeting.**

19 1. Unless otherwise provided in the articles of
20 incorporation, any action required or permitted by this chapter
21 to be taken at a shareholders' meeting may be taken without
22 a meeting or vote, and, except as provided in subsection
23 5, without prior notice, if one or more written consents
24 describing the action taken are signed by the holders of
25 outstanding shares having not less than ninety percent of the
26 votes entitled to be cast at a meeting at which all shares
27 entitled to vote on the action were present and voted, and are
28 delivered to the corporation for inclusion in the minutes or
29 filing with the corporate records.

30 ~~2. A written consent shall bear the date of signature of~~
31 ~~each shareholder who signs the consent and no written consent~~
32 ~~is effective to take the corporate action referred to in~~
33 ~~the consent unless, within sixty days of the earliest dated~~
34 ~~consent delivered in the manner required by this section to the~~
35 ~~corporation, written consents signed by a sufficient number~~

1 ~~of holders to take action are delivered to the corporation.~~
2 ~~A written consent may be revoked by a writing to that effect~~
3 ~~received by the corporation prior to the receipt by the~~
4 ~~corporation of unrevoked written consents sufficient in number~~
5 ~~to take corporate action. The articles of incorporation may~~
6 ~~provide that any action required or permitted by this chapter~~
7 ~~to be taken at a shareholders' meeting may be taken without~~
8 ~~a meeting, and without prior notice, if consents in writing~~
9 ~~setting forth the action so taken are signed by the holders of~~
10 ~~outstanding shares having not less than the minimum number of~~
11 ~~votes that would be required to authorize or take the action~~
12 ~~at a meeting at which all shares entitled to vote on the action~~
13 ~~were present and voted. The written consent shall bear the~~
14 ~~date of signature of the shareholder who signs the consent and~~
15 ~~be delivered to the corporation for inclusion in the minutes or~~
16 ~~filing with the corporate records.~~

17 3. ~~If not otherwise fixed under section 490.703 or 490.707,~~
18 ~~the record date for determining shareholders entitled to take~~
19 ~~action without a meeting is the date the first shareholder~~
20 ~~signs the consent under subsection 1. If not otherwise fixed~~
21 ~~under section 490.707 and if prior board action is not required~~
22 ~~respecting the action to be taken without a meeting, the~~
23 ~~record date for determining the shareholders entitled to take~~
24 ~~action without a meeting shall be the first date on which a~~
25 ~~signed written consent is delivered to the corporation. If~~
26 ~~not otherwise fixed under section 490.707 and if prior board~~
27 ~~action is required respecting the action to be taken without~~
28 ~~a meeting, the record date shall be the close of business on~~
29 ~~the day the resolution of the board taking such prior action~~
30 ~~is adopted. No written consent shall be effective to take~~
31 ~~the corporate action referred to therein unless, within sixty~~
32 ~~days of the earliest date on which a consent delivered to the~~
33 ~~corporation as required by this section was signed, written~~
34 ~~consents signed by sufficient shareholders to take the action~~
35 ~~have been delivered to the corporation. A written consent~~

1 may be revoked by a writing to that effect delivered to the
2 corporation before unrevoked written consents sufficient in
3 number to take the corporate action are delivered to the
4 corporation.

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

13 ~~5. If this chapter requires that notice of proposed action~~
14 ~~be given to shareholders not entitled to vote and the action~~
15 ~~is to be taken by consent of the voting shareholders, the~~
16 ~~corporation must give all shareholders written notice of the~~
17 ~~proposed action at least ten days before the action is taken.~~
18 ~~The notice must contain or be accompanied by the same material~~
19 ~~that, under this chapter, would have been required to be sent~~
20 ~~to shareholders not entitled to vote in a notice of meeting~~
21 ~~at which the proposed action would have been submitted to the~~
22 ~~shareholders for action.~~

23 ~~6. Prompt notice of the taking of corporate action without~~
24 ~~a meeting by less than unanimous written consent shall be given~~
25 ~~to those shareholders who have not consented in writing. If~~
26 ~~the taking of that corporate action requires the giving of~~
27 ~~notice under section 490.1320, subsection 2, the notice of~~
28 ~~the action shall set forth the matters described in section~~
29 ~~490.1322.~~

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

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

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

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

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

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

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

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

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

33 Sec. 12. Section 490.705, subsections 1 and 5, Code 2011,
34 are amended to read as follows:

35 1. A corporation shall notify shareholders of the date,

1 time, and place of each annual and special shareholders'
2 meeting no fewer than ten nor more than sixty days before
3 the meeting date. The notice shall include the record date
4 for determining the shareholders entitled to vote at the
5 meeting, if such date is different than the record date for
6 determining shareholders entitled to notice of the meeting. If
7 the board of directors has authorized participation by means
8 of remote communication pursuant to section 490.709 for any
9 class or series of shareholders, the notice to such class or
10 series of shareholders shall describe the means of remote
11 communication to be used. Unless this chapter or the articles
12 of incorporation require otherwise, the corporation is required
13 to give notice only to shareholders entitled to vote at the
14 meeting as of the record date for determining the shareholders
15 entitled to notice of the meeting.

16 5. Unless the bylaws require otherwise, if an annual or
17 special shareholders' meeting is adjourned to a different date,
18 time, or place, notice need not be given of the new date,
19 time, or place if the new date, time, or place is announced at
20 the meeting before adjournment. If a new record date for the
21 adjourned meeting is or must be fixed under section 490.707,
22 however, notice of the adjourned meeting must be given under
23 this section to ~~persons who are shareholders as of the new~~
24 record date entitled to vote at such adjourned meeting as of
25 the record date fixed for notice of such adjourned meeting.

26 Sec. 13. Section 490.707, Code 2011, is amended to read as
27 follows:

28 **490.707 Record date.**

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

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

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

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

14 5. The record date for a shareholders' meeting fixed by
15 or in the manner provided in the bylaws or by the board of
16 directors shall be the record date for determining shareholders
17 entitled both to notice of and to vote at the shareholders'
18 meeting unless, in the case of a record date fixed by the
19 board of directors and to the extent not prohibited by the
20 bylaws, the board, at the time it fixes the record date for
21 shareholders entitled to notice of the meeting, fixes a later
22 record date on or before the date of the meeting to determine
23 the shareholders entitled to vote at the meeting.

24 Sec. 14. NEW SECTION. 490.709 Remote participation in
25 annual and special meetings.

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

33 2. Shareholders participating in a shareholders' meeting
34 by means of remote communication shall be deemed present and
35 may vote at such a meeting if the corporation has implemented

1 reasonable measures to do all of the following:

2 *a.* Verify that each person participating remotely is a
3 shareholder.

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

9 Sec. 15. Section 490.720, Code 2011, is amended to read as
10 follows:

11 **490.720 Shareholders' list for meeting.**

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

23 2. The shareholders' list for notice must be available for
24 inspection by any shareholder beginning two business days after
25 notice of the meeting is given for which the list was prepared
26 and continuing through the meeting, at the corporation's
27 principal office or at a place identified in the meeting notice
28 in the city where the meeting will be held. A shareholders'
29 list for voting must be similarly available for inspection
30 promptly after the record date for voting. A shareholder,
31 or a shareholder's agent or attorney, is entitled on written
32 demand to inspect and, subject to the requirements of section
33 490.1602, subsection 3 ~~4~~, to copy ~~the~~ a list, during regular
34 business hours and at the person's expense, during the period
35 it is available for inspection.

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

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

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

19 Sec. 16. Section 490.722, subsection 2, Code 2011, is
20 amended by striking the subsection.

21 Sec. 17. Section 490.724, subsection 4, Code 2011, is
22 amended to read as follows:

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

29 Sec. 18. Section 490.728, Code 2011, is amended by adding
30 the following new subsection:

31 NEW SUBSECTION. 4. Shares otherwise entitled to vote
32 cumulatively shall not be voted cumulatively at a particular
33 meeting unless any of the following applies:

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

1 authorized.

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

9 Sec. 19. Section 490.742, subsection 2, Code 2011, is
10 amended to read as follows:

11 2. Ninety days have expired from the date delivery of
12 the demand was made, unless the shareholder has earlier been
13 notified that the demand has been rejected by the corporation
14 or unless irreparable injury to the corporation would result by
15 waiting for the expiration of the ninety-day period.

16 Sec. 20. Section 490.744, Code 2011, is amended to read as
17 follows:

18 **490.744 Dismissal.**

19 1. A derivative proceeding shall be dismissed by the court
20 on motion by the corporation if one of the groups specified
21 in subsection 2 or ~~6~~ 5 has determined in good faith after
22 conducting a reasonable inquiry upon which its conclusions are
23 based that the maintenance of the derivative proceeding is
24 not in the best interests of the corporation. A corporation
25 moving to dismiss on this basis shall submit in support of the
26 motion a short and concise statement of the reasons for its
27 determination.

28 2. Unless a panel is appointed pursuant to subsection ~~6~~ 5,
29 the determination in subsection 1 shall be made by ~~one~~ any of
30 the following:

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

34 *b.* A majority vote of a committee consisting of two or
35 more ~~independent~~ qualified directors appointed by majority

1 vote of ~~independent~~ qualified directors present at a meeting
2 of the board of directors, regardless of whether ~~or not~~ such
3 ~~independent~~ qualified directors constitute a quorum.

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

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

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

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

16 4. If a derivative proceeding is commenced after
17 a determination has been made rejecting a demand by a
18 shareholder, the complaint shall allege with particularity
19 facts establishing one any of the following:

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

23 b. (2) That the requirements of subsection 1 have not been
24 met.

25 b. All discovery and other proceedings shall be stayed
26 during the pendency of any motion to dismiss unless the
27 court finds upon the motion of any party that particularized
28 discovery is necessary to preserve evidence or prevent undue
29 prejudice to that party.

30 5. 4. ~~If a majority of the board of directors does not~~
31 ~~consist of independent directors at the time the determination~~
32 ~~is made, the corporation~~ If a majority of the board of
33 directors consisted of qualified directors at the time the
34 determination was made, the plaintiff shall have the burden of
35 proving that the requirements of subsection 1 have not been

1 met; if not, the corporation shall have the burden of proving
2 that the requirements of subsection 1 have been met. ~~If a~~
3 ~~majority of the board of directors consists of independent~~
4 ~~directors at the time the determination is made, the plaintiff~~
5 ~~shall have the burden of proving that the requirements of~~
6 ~~subsection 1 have not been met.~~

7 ~~6.~~ 5. The Upon motion by the corporation, the court may
8 appoint a panel of one or more ~~independent persons upon motion~~
9 ~~by the corporation~~ individuals to make a determination whether
10 the maintenance of the derivative proceeding is in the best
11 interests of the corporation. In such case, the plaintiff
12 shall have the burden of proving that the requirements of
13 subsection 1 have not been met.

14 Sec. 21. Section 490.746, Code 2011, is amended to read as
15 follows:

16 **490.746 Payment of expenses.**

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

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

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

27 Sec. 22. NEW SECTION. **490.748 Shareholder action to appoint**
28 **custodian or receiver.**

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

34 a. The directors are deadlocked in the management of
35 the corporate affairs, the shareholders are unable to break

1 the deadlock, and irreparable injury to the corporation is
2 threatened or being suffered.

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

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

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

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

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

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

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

30 *b.* A receiver may do any of the following:

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

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

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

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

10 Sec. 23. Section 490.801, Code 2011, is amended to read as
11 follows:

12 **490.801 Requirement for and duties functions of board of**
13 **directors.**

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

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

23 Sec. 24. Section 490.805, subsection 2, Code Supplement
24 2011, is amended by striking the subsection and inserting in
25 lieu thereof the following:

26 2. The terms of all other directors expire at the next,
27 or if their terms are staggered in accordance with section
28 490.806 or 490.806A, at the applicable second or third, annual
29 shareholders' meeting following their election, except to
30 the extent a shorter term is specified in the articles of
31 incorporation in the event of a director nominee failing to
32 receive a specified vote for the election.

33 Sec. 25. Section 490.805, subsection 2, Code Supplement
34 2011, as amended by this Act, is amended to read as follows:

35 2. The terms of all other directors expire at the next,

1 or if their terms are staggered in accordance with section
2 490.806 ~~or 490.806A~~, at the applicable second or third, annual
3 shareholders' meeting following their election, except to
4 the extent a shorter term is specified in the articles of
5 incorporation in the event of a director nominee failing to
6 receive a specified vote for the election.

7 Sec. 26. Section 490.805, subsection 5, Code Supplement
8 2011, is amended to read as follows:

9 5. ~~Despite~~ Except to the extent otherwise provided in
10 the articles of incorporation, despite the expiration of a
11 director's term, the director continues to serve until a the
12 director's successor ~~for that director~~ is elected and qualifies
13 or ~~until~~ there is a decrease in the number of directors.

14 Sec. 27. Section 490.807, Code 2011, is amended to read as
15 follows:

16 **490.807 Resignation of directors.**

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

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

26 Sec. 28. Section 490.810, subsection 2, Code Supplement
27 2011, is amended to read as follows:

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

34 Sec. 29. NEW SECTION. **490.826 Submission of matters for**
35 **shareholder vote.**

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

4 Sec. 30. Section 490.830, Code 2011, is amended by adding
5 the following new subsection:

6 NEW SUBSECTION. 2A. In discharging board or committee
7 duties a director shall disclose, or cause to be disclosed, to
8 the other board or committee members information not already
9 known by them but known by the director to be material to the
10 discharge of their decision-making or oversight functions,
11 except that disclosure is not required to the extent that the
12 director reasonably believes that doing so would violate a
13 duty imposed under law, a legally enforceable obligation of
14 confidentiality, or a professional ethics rule.

15 Sec. 31. Section 490.831, subsection 1, paragraph a,
16 subparagraph (1), Code 2011, is amended to read as follows:

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

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

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

25 (c) The protection afforded by section 490.870.

26 Sec. 32. Section 490.831, subsection 3, paragraphs a and b,
27 Code 2011, are amended to read as follows:

28 a. In any instance where fairness is at issue, such
29 as consideration of the fairness of a transaction to the
30 corporation under section ~~490.832~~ 490.861, subsection 2,
31 paragraph "c", alter the burden of proving the fact or lack of
32 fairness otherwise applicable.

33 b. Alter the fact or lack of liability of a director
34 under another section of this chapter, such as the provisions
35 governing the consequences of an unlawful distribution under

1 section 490.833 or a transactional interest under section
2 ~~490.832~~ 490.861.

3 Sec. 33. Section 490.841, Code 2011, is amended to read as
4 follows:

5 **490.841 Duties Functions of officers.**

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

12 Sec. 34. Section 490.842, subsection 1, unnumbered
13 paragraph 1, Code 2011, is amended to read as follows:

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

16 Sec. 35. Section 490.842, Code 2011, is amended by adding
17 the following new subsection:

18 NEW SUBSECTION. 1A. The duty of an officer includes the
19 obligation to do all of the following:

20 a. Inform the superior officer to whom, or the board of
21 directors or the committee thereof to which, the officer
22 reports of information about the affairs of the corporation
23 known to the officer, within the scope of the officer's
24 functions, and known to the officer to be material to such
25 superior officer, board, or committee.

26 b. Inform a superior officer, or another appropriate
27 person within the corporation, or the board of directors, or a
28 committee thereof, of any actual or probable material violation
29 of law involving the corporation or material breach of duty
30 to the corporation by an officer, employee, or agent of the
31 corporation, that the officer believes has occurred or is
32 likely to occur.

33 Sec. 36. Section 490.850, subsection 2, Code 2011, is
34 amended to read as follows:

35 2. "Director" or "officer" means an individual who is or

1 was a director or officer, respectively, of a corporation or
2 who, while a director or officer of the corporation, is or was
3 serving at the corporation's request as a director, officer,
4 partner, trustee, employee, or agent of another domestic
5 or foreign corporation, partnership, joint venture, trust,
6 employee benefit plan, or other entity. A director or officer
7 is considered to be serving an employee benefit plan at the
8 corporation's request if the ~~director's~~ individual's duties to
9 the corporation also impose duties on, or otherwise involve
10 services by, ~~that director~~ the individual to the plan or to
11 participants in or beneficiaries of the plan. "Director" or
12 "officer" includes, unless the context requires otherwise, the
13 estate or personal representative of a director or officer.

14 Sec. 37. Section 490.850, subsections 3 and 4, Code 2011,
15 are amended by striking the subsections.

16 Sec. 38. Section 490.850, subsection 5, Code 2011, is
17 amended to read as follows:

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

22 Sec. 39. Section 490.853, Code 2011, is amended to read as
23 follows:

24 **490.853 Advance for expenses.**

25 1. A corporation may, before final disposition of
26 a proceeding, advance funds to pay for or reimburse the
27 reasonable expenses incurred in connection with the proceeding
28 by a director an individual who is a party to a the proceeding
29 because the person is a director if the person that individual
30 is a member of the board of directors if the director delivers
31 all of the following to the corporation:

32 a. A signed written affirmation of the director's good
33 faith belief that the ~~director has met the~~ relevant standard
34 of conduct described in section 490.851 has been met by the
35 director or that the proceeding involved conduct for which

1 liability has been eliminated under a provision of the articles
2 of incorporation as authorized by section 490.202, subsection
3 2, paragraph "d".

4 ~~The director's~~ A signed written undertaking of the
5 director to repay any funds advanced if the director is not
6 entitled to mandatory indemnification under section 490.852 and
7 it is ultimately determined under section 490.854 or ~~section~~
8 490.855 that the director has not met the relevant standard of
9 conduct described in section 490.851.

10 2. The undertaking required by subsection 1, paragraph "b",
11 must be an unlimited general obligation of the director but
12 need not be secured and may be accepted without reference to
13 the financial ability of the director to make repayment.

14 3. Authorizations under this section shall be made
15 according to ~~one~~ any of the following:

16 *a.* By the board of directors as follows:

17 (1) If there are two or more ~~disinterested~~ qualified
18 directors, by a majority vote of all the ~~disinterested~~
19 qualified directors, a majority of whom shall for such purpose
20 constitute a quorum, or by a majority of the members of a
21 committee of two or more ~~disinterested~~ qualified directors
22 appointed by such a vote.

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

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

32 Sec. 40. Section 490.855, Code 2011, is amended to read as
33 follows:

34 **490.855 Determination and authorization of indemnification.**

35 1. A corporation shall not indemnify a director under

1 section 490.851 unless authorized for a specific proceeding
2 after a determination has been made that indemnification of
3 ~~the director~~ is permissible because the director has met the
4 relevant standard of conduct set forth in section 490.851.

5 2. The determination shall be made by any of the following:

6 a. If there are two or more ~~disinterested~~ qualified
7 directors, by the board of directors by a majority vote of all
8 the ~~disinterested~~ qualified directors, a majority of whom shall
9 for such purpose constitute a quorum, or by a majority of the
10 members of a committee of two or more ~~disinterested~~ qualified
11 directors appointed by such a vote.

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

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

15 (2) If there are fewer than two ~~disinterested~~ qualified
16 directors, selected by the board of directors, in which
17 selection directors who ~~do not qualify as disinterested~~ are not
18 qualified directors may participate.

19 c. By the shareholders, but shares owned by or voted under
20 the control of a director who at the time ~~does not qualify as a~~
21 ~~disinterested~~ is not a qualified director shall not be voted on
22 the determination.

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

31 Sec. 41. Section 490.858, Code 2011, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 1A. A right of indemnification or to
34 advances for expenses created by this division or under
35 subsection 1 and in effect at the time of an act or omission

1 shall not be eliminated or impaired with respect to such act
2 or omission by an amendment of the articles of incorporation
3 or bylaws or a resolution of the directors or shareholders,
4 adopted after the occurrence of such act or omission, unless,
5 in the case of a right created under subsection 1, the
6 provision creating such right and in effect at the time of
7 such act or omission explicitly authorizes such elimination or
8 impairment after such act or omission has occurred.

9 Sec. 42. Section 490.858, subsection 3, Code 2011, is
10 amended to read as follows:

11 3. A Subject to subsection 1A, a corporation may, by a
12 provision in its articles of incorporation, limit any of the
13 rights to indemnification or advance for expenses created by or
14 pursuant to this part.

15 Sec. 43. NEW SECTION. 490.860 Part definitions.

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

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

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

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

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

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

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

35 c. Respecting which, at the relevant time, the director knew

1 that a related person was a party or had a material financial
2 interest.

3 3. "*Fair to the corporation*" means, for purposes of section
4 490.861, subsection 2, paragraph "c", that the transaction
5 as a whole was beneficial to the corporation, taking into
6 appropriate account whether it was all of the following:

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

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

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

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

17 a. The director's spouse.

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

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

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

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

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

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

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

35 f. A person that is, or an entity that is controlled by, an

1 employer of the director.

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

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

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

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

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

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

18 Sec. 44. NEW SECTION. 490.861 Judicial action.

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

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

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

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

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

6 Sec. 45. NEW SECTION. **490.862 Directors' action.**

7 1. Directors' action respecting a director's conflicting
8 interest transaction is effective for purposes of section
9 490.861, subsection 2, paragraph "a", if the transaction has
10 been authorized by the affirmative vote of a majority, but
11 no fewer than two, of the qualified directors who voted on
12 the transaction, after required disclosure by the conflicted
13 director of information not already known by such qualified
14 directors, or after modified disclosure in compliance with
15 subsection 2, provided that all of the following apply:

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

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

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

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

27 2. Notwithstanding subsection 1, when a transaction is
28 a director's conflicting interest transaction only because a
29 related person described in section 490.860, subsection 5,
30 paragraph "e" or "f", is a party to or has a material financial
31 interest in the transaction, the conflicted director is not
32 obligated to make required disclosure to the extent that the
33 director reasonably believes that doing so would violate a
34 duty imposed under law, a legally enforceable obligation of
35 confidentiality, or a professional ethics rule, provided that

1 the conflicted director discloses to the qualified directors
2 voting on the transaction all of the following:

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

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

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

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

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

20 Sec. 46. NEW SECTION. 490.863 Shareholders' action.

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

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

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

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

34 *b.* In the case of shareholders' action at a meeting, the
35 shareholders entitled to vote shall be determined as of the

1 record date for notice of the meeting.

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

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

9 a. "Holder" means and "held by" refers to shares held by
10 both a record shareholder, as defined in section 490.1301,
11 subsection 7, and a beneficial shareholder, as defined in
12 490.1301, subsection 2.

13 b. "Qualified shares" means all shares entitled to be
14 voted with respect to the transaction except for shares that
15 the secretary or other officer or agent of the corporation
16 authorized to tabulate votes either knows, or under subsection
17 2 is notified, are held by any of the following:

18 (1) A director who has a conflicting interest respecting the
19 transaction.

20 (2) A related person of the director, excluding a person
21 described in section 490.860, subsection 5, paragraph "f".

22 4. A majority of the votes entitled to be cast by the
23 holders of all qualified shares constitutes a quorum for
24 purposes of compliance with this section. Subject to the
25 provisions of subsection 5, shareholders' action that otherwise
26 complies with this section is not affected by the presence of
27 holders, or by the voting, of shares that are not qualified
28 shares.

29 5. If a shareholders' vote does not comply with subsection
30 1 solely because of a director's failure to comply with
31 subsection 2, and if the director establishes that the failure
32 was not intended to influence and did not in fact determine the
33 outcome of the vote, the court may take such action respecting
34 the transaction and the director, and may give such effect,
35 if any, to the shareholders' vote, as the court considers

1 appropriate in the circumstances.

2 6. Where shareholders' action under this section does
3 not satisfy a quorum or voting requirement applicable to the
4 authorization of the transaction by reason of the articles of
5 incorporation, the bylaws, or a provision of law, independent
6 action to satisfy those authorization requirements must be
7 taken by the shareholders, in which action shares that are not
8 qualified shares may participate.

9 Sec. 47. Section 490.870, subsection 1, paragraphs a and b,
10 Code 2011, are amended to read as follows:

11 a. Action by qualified directors disclaiming the
12 corporation's interest in the opportunity is taken in
13 compliance with the procedures set forth in section ~~490.832~~
14 490.862, as if the decision being made concerned a director's
15 conflicting interest transaction.

16 b. Shareholders' action disclaiming the corporation's
17 interest in the opportunity is taken in compliance with the
18 procedure set forth in section ~~490.832~~ 490.863, as if the
19 decision being made concerned a director's conflicting interest
20 transaction; except that, rather than making the disclosure
21 "required disclosure" as ~~required~~ defined in section ~~490.832~~
22 490.860, in each case the director shall have made prior
23 disclosure to those acting on behalf of the corporation of all
24 material facts concerning the business opportunity that are
25 then known to the director.

26 Sec. 48. Section 490.1003, subsection 2, Code 2011, is
27 amended to read as follows:

28 2. a. Except as provided in sections 490.1005, 490.1007,
29 and 490.1008, after adopting the proposed amendment, the board
30 of directors must submit the amendment to the shareholders for
31 their approval. The board of directors must also transmit to
32 the shareholders a recommendation that the shareholders approve
33 the amendment, unless any of the following apply:

34 (1) The board of directors makes a determination that
35 because of conflicts of interest or other special circumstances

1 it should not make such a recommendation, ~~in which case the~~.

2 (2) Section 490.826 applies.

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

6 Sec. 49. Section 490.1104, subsection 2, Code 2011, is
7 amended to read as follows:

8 2. a. Except as provided in subsection 7 and in section
9 490.1105, after adopting the plan of merger or share exchange
10 the board of directors must submit the plan to the shareholders
11 for their approval. The board of directors must also transmit
12 to the shareholders a recommendation that the shareholders
13 approve the plan, unless ~~the~~ any of the following apply:

14 (1) The board of directors makes a determination that
15 because of conflicts of interest or other special circumstances
16 it should not make such a recommendation, ~~in which case.~~

17 (2) Section 490.826 applies.

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

21 Sec. 50. Section 490.1106, subsection 1, unnumbered
22 paragraph 1, Code 2011, is amended to read as follows:

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

29 Sec. 51. Section 490.1108, subsection 2, Code 2011, is
30 amended to read as follows:

31 2. If a merger or share exchange is abandoned under
32 subsection 1 after articles of merger or share exchange have
33 been filed with the secretary of state but before the merger
34 or share exchange has become effective, a statement that the
35 merger or share exchange has been abandoned in accordance with

1 this section, ~~executed~~ signed on behalf of a party to the
2 merger or share exchange by an officer or other duly authorized
3 representative, shall be delivered to the secretary of state
4 for filing prior to the effective date of the merger or share
5 exchange. Upon filing, the statement shall take effect and the
6 merger or share exchange shall be deemed abandoned and shall
7 not become effective.

8 Sec. 52. Section 490.1202, subsection 2, Code 2011, is
9 amended to read as follows:

10 2. a. A disposition that requires approval of the
11 shareholders under subsection 1 shall be initiated by
12 a resolution by the board of directors authorizing the
13 disposition. After adoption of such a resolution, the board
14 of directors shall submit the proposed disposition to the
15 shareholders for their approval. The board of directors shall
16 also transmit to the shareholders a recommendation that the
17 shareholders approve the proposed disposition, unless ~~the~~ any
18 of the following apply:

19 (1) The board of directors makes a determination that
20 because of conflicts of interest or other special circumstances
21 it should not make such a recommendation, ~~in which case.~~

22 (2) Section 490.826 applies.

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

26 Sec. 53. Section 490.1301, Code 2011, is amended by adding
27 the following new subsection:

28 NEW SUBSECTION. 5A. "*Interested transaction*" means a
29 corporate action described in section 490.1302, subsection 1,
30 other than a merger pursuant to section 490.1105, involving an
31 interested person in which any of the shares or assets of the
32 corporation are being acquired or converted. As used in this
33 definition, all of the following apply:

34 a. "Beneficial owner" means any person who, directly
35 or indirectly, through any contract, arrangement, or

1 understanding, other than a revocable proxy, has or shares the
2 power to vote, or to direct the voting of, shares; except that
3 a member of a national securities exchange is not deemed to be
4 a beneficial owner of securities held directly or indirectly
5 by it on behalf of another person solely because the member is
6 the record holder of the securities if the member is precluded
7 by the rules of the exchange from voting without instruction
8 on contested matters or matters that may affect substantially
9 the rights or privileges of the holders of the securities to
10 be voted. When two or more persons agree to act together for
11 the purpose of voting their shares of the corporation, each
12 member of the group formed thereby is deemed to have acquired
13 beneficial ownership, as of the date of the agreement, of all
14 voting shares of the corporation beneficially owned by any
15 member of the group.

16 *b. "Excluded shares"* means shares acquired pursuant to an
17 offer for all shares having voting power if the offer was made
18 within one year prior to the corporate action for consideration
19 of the same kind and of a value equal to or less than that paid
20 in connection with the corporate action.

21 *c. "Interested person"* means a person, or an affiliate of a
22 person, who at any time during the one-year period immediately
23 preceding approval by the board of directors of the corporate
24 action was or had any of the following:

25 (1) Was the beneficial owner of twenty percent or more of
26 the voting power of the corporation, other than as owner of
27 excluded shares.

28 (2) Had the power, contractually or otherwise, other than as
29 owner of excluded shares, to cause the appointment or election
30 of twenty-five percent or more of the directors to the board of
31 directors of the corporation.

32 (3) Was a senior executive or director of the corporation
33 or a senior executive of any affiliate thereof, and that
34 senior executive or director will receive, as a result of the
35 corporate action, a financial benefit not generally available

1 to other shareholders as such, other than any of the following:

2 (a) Employment, consulting, retirement, or similar benefits
3 established separately and not as part of or in contemplation
4 of the corporate action.

5 (b) Employment, consulting, retirement, or similar benefits
6 established in contemplation of, or as part of, the corporate
7 action that are not more favorable than those existing before
8 the corporate action or, if more favorable, that have been
9 approved on behalf of the corporation in the same manner as is
10 provided in section 490.862.

11 (c) In the case of a director of the corporation who will,
12 in the corporate action, become a director of the acquiring
13 entity in the corporate action or one of its affiliates, rights
14 and benefits as a director that are provided on the same basis
15 as those afforded by the acquiring entity generally to other
16 directors of such entity or such affiliate.

17 Sec. 54. Section 490.1302, subsection 2, paragraph a, Code
18 2011, is amended by striking the paragraph and inserting in
19 lieu thereof the following:

20 a. Appraisal rights shall not be available for the holders
21 of shares of any class or series of shares which is any of the
22 following:

23 (1) A covered security under section 18(b)(1)(A) or (B) of
24 the federal Securities Act of 1933, as amended.

25 (2) Traded in an organized market and has at least two
26 thousand shareholders and a market value of at least twenty
27 million dollars, exclusive of the value of such shares held by
28 the corporation's subsidiaries, senior executives, directors,
29 and beneficial shareholders owning more than ten percent of
30 such shares.

31 (3) Issued by an open-end management investment company
32 registered with the United States securities and exchange
33 commission under the federal Investment Company Act of 1940 and
34 may be redeemed at the option of the holder at net asset value.

35 Sec. 55. Section 490.1302, subsection 2, paragraph b,

1 subparagraph (1), Code 2011, is amended to read as follows:

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

6 Sec. 56. Section 490.1302, subsection 2, paragraph d, Code
7 2011, is amended by striking the paragraph and inserting in
8 lieu thereof the following:

9 d. Paragraph "a", shall not be applicable and appraisal
10 rights shall be available pursuant to subsection 1 for the
11 holders of any class or series of shares where the corporate
12 action is an interested transaction.

13 Sec. 57. Section 490.1302, subsection 2, paragraph e, Code
14 2011, is amended by striking the paragraph.

15 Sec. 58. Section 490.1302, subsection 4, Code 2011, is
16 amended by striking the subsection.

17 Sec. 59. Section 490.1320, Code 2011, is amended to read as
18 follows:

19 **490.1320 Notice of appraisal rights.**

20 1. ~~If~~ Where any proposed corporate action ~~described~~
21 specified in section 490.1302, subsection 1, is to be submitted
22 to a vote at a shareholders' meeting, the meeting notice must
23 state that the corporation has concluded that the shareholders
24 are, are not, or may be entitled to assert appraisal rights
25 under this part. If the corporation concludes that appraisal
26 rights are or may be available, a copy of this part must
27 accompany the meeting notice sent to those record shareholders
28 entitled to exercise appraisal rights.

29 2. In a merger pursuant to section 490.1105, the parent
30 corporation must notify in writing all record shareholders of
31 the subsidiary who are entitled to assert appraisal rights
32 that the corporate action became effective. Such notice must
33 be sent within ten days after the corporate action became
34 effective and include the materials described in section
35 490.1322.

1 3. Where any corporate action specified in section
2 490.1302, subsection 1, is to be approved by written consent
3 of the shareholders pursuant to section 490.704, all of the
4 following apply:

5 a. Written notice that appraisal rights are, are not, or may
6 be available must be sent to each record shareholder from whom
7 a consent is solicited at the time consent of such shareholder
8 is first solicited and, if the corporation has concluded that
9 appraisal rights are or may be available, must be accompanied
10 by a copy of this chapter.

11 b. Written notice that appraisal rights are, are not, or
12 may be available must be delivered together with the notice to
13 nonconsenting and nonvoting shareholders required by section
14 490.704, subsections 5 and 6, may include the materials
15 described in section 490.1322 and, if the corporation has
16 concluded that appraisal rights are or may be available, must
17 be accompanied by a copy of this chapter.

18 4. Where corporate action described in section 490.1302,
19 subsection 1, is proposed, or a merger pursuant to section
20 490.1105 is effected, the notice referred to in subsection 1
21 or 3, if the corporation concludes that appraisal rights are
22 or may be available, and in subsection 2 shall be accompanied
23 by all of the following:

24 a. The annual financial statements specified in section
25 490.1620, subsection 1, of the corporation that issued the
26 shares that may be subject to appraisal, which shall be as of
27 a date ending not more than sixteen months before the date of
28 the notice and shall comply with section 490.1620, subsection
29 2; provided that, if such annual financial statements are not
30 reasonably available, the corporation shall provide reasonably
31 equivalent financial information.

32 b. The latest available quarterly financial statements of
33 such corporation, if any.

34 5. The right to receive the information described in
35 subsection 4 may be waived in writing by a shareholder before

1 or after the corporate action.

2 Sec. 60. Section 490.1321, Code 2011, is amended to read as
3 follows:

4 **490.1321 Notice of intent to demand payment.**

5 1. If ~~proposed a~~ corporate action ~~requiring appraisal~~
6 ~~rights under~~ specified in section 490.1302, subsection 1, is
7 submitted to a vote at a shareholders' meeting, a shareholder
8 who wishes to assert appraisal rights with respect to any class
9 or series of shares must do all of the following:

10 a. Deliver to the corporation before the vote is taken
11 written notice of the shareholder's intent to demand payment if
12 the proposed action is effectuated.

13 b. Not vote, or cause or permit to be voted, any shares of
14 such class or series in favor of the proposed action.

15 2. If a corporate action specified in section 490.1302,
16 subsection 1, is to be approved by less than unanimous written
17 consent, a shareholder who wishes to assert appraisal rights
18 with respect to any class or series of shares must not sign a
19 consent in favor of the proposed action with respect to that
20 class or series of shares.

21 3. A shareholder who ~~does not~~ fails to satisfy the
22 requirements of subsection 1 or 2, is not entitled to payment
23 under this part.

24 Sec. 61. Section 490.1322, subsection 1, Code 2011, is
25 amended to read as follows:

26 1. If proposed corporate action requiring appraisal rights
27 under section 490.1302, subsection 1, becomes effective, the
28 corporation must ~~deliver~~ send a written appraisal notice
29 and the form required by subsection 2, paragraph "a", to
30 all shareholders who satisfied the requirements of section
31 490.1321, subsection 1, or section 490.1321, subsection 2. In
32 the case of a merger under section 490.1105, the parent must
33 deliver ~~a written~~ an appraisal notice and form to all record
34 shareholders who may be entitled to assert appraisal rights.

35 Sec. 62. Section 490.1322, subsection 2, unnumbered

1 paragraph 1, Code 2011, is amended to read as follows:

2 The appraisal notice must be ~~sent~~ delivered no earlier than
3 the date the corporate action specified in section 490.1302,
4 subsection 1, became effective and no later than ten days after
5 such date and must do all of the following:

6 Sec. 63. Section 490.1322, subsection 2, paragraph a, Code
7 2011, is amended to read as follows:

8 a. ~~Be accompanied by~~ Supply a form that ~~specifies~~ does all
9 of the following:

10 (1) Specifies the first date of any announcement to
11 shareholders made prior to the date the corporate action became
12 effective of the first announcement to shareholders of the
13 principal terms of the proposed corporate action and requires,
14 if any.

15 (2) If such announcement was made, requires the shareholder
16 asserting appraisal rights to certify whether beneficial
17 ownership of those shares for which appraisal rights are
18 asserted was acquired before that date.

19 (3) Requires the shareholder asserting appraisal rights to
20 certify whether or not beneficial ownership of those shares for
21 which appraisal rights are asserted was acquired before that
22 date, and that the such shareholder did not vote for or consent
23 to the transaction.

24 Sec. 64. Section 490.1322, subsection 2, paragraph b,
25 subparagraph (2), Code 2011, is amended to read as follows:

26 (2) A date by which the corporation must receive the form,
27 which date shall not be fewer than forty nor more than sixty
28 days after the date the appraisal notice ~~and form are~~ is sent
29 under subsection 1, and state that the shareholder shall have
30 waived the right to demand appraisal with respect to the
31 shares unless the form is received by the corporation by such
32 specified date.

33 Sec. 65. Section 490.1323, subsections 1 and 3, Code 2011,
34 are amended to read as follows:

35 1. A shareholder who receives notice pursuant to section

1 490.1322 and who wishes to exercise appraisal rights must
2 ~~certify on~~ sign and return the form sent by the corporation
3 and, in the case of certificated shares, deposit the
4 shareholder's certificates in accordance with the terms of
5 the notice by the date referred to in the notice pursuant to
6 section 490.1322, subsection 2, paragraph "b", subparagraph
7 (2). In addition, if applicable, the shareholder must certify
8 on the form whether the beneficial owner of such shares
9 acquired beneficial ownership of the shares before the date
10 required to be set forth in the notice pursuant to section
11 490.1322, subsection 2, paragraph "a". If a shareholder fails
12 to make this certification, the corporation may elect to
13 treat the shareholder's shares as after-acquired shares under
14 section 490.1325. In addition, a shareholder who wishes to
15 exercise appraisal rights must execute and return the form and,
16 in a case of certificated shares, deposit the shareholder's
17 certificates in accordance with the terms of the notice
18 by the date referred to in the notice pursuant to section
19 490.1322, subsection 2, paragraph "b", subparagraph (2). Once
20 a shareholder deposits that shareholder's certificates or, in
21 the case of uncertificated shares, returns the ~~executed~~ signed
22 forms, that shareholder loses all rights as a shareholder,
23 unless the shareholder withdraws pursuant to subsection 2.

24 3. A shareholder who does not ~~execute~~ sign and return the
25 form and, in the case of certificated shares, deposit the
26 shareholder's share certificates where required, each by the
27 date set forth in the notice described in section 490.1322,
28 subsection 2, shall not be entitled to payment under this
29 division.

30 Sec. 66. Section 490.1324, subsection 2, paragraph a, Code
31 2011, is amended to read as follows:

32 a. (i) ~~Financial~~ The annual financial statements specified
33 in section 490.1620, subsection 1, of the corporation that
34 issued the shares to be appraised, consisting of a balance
35 sheet as of the end of a fiscal year which shall be of a date

1 ending not more than sixteen months before the date of payment,
2 ~~an income statement for that year, a statement of changes~~
3 ~~in shareholders' equity for that year, and the shall comply~~
4 with section 490.1620, subsection 2; provided that, if such
5 annual financial statements are not reasonably available, the
6 corporation shall provide reasonably equivalent financial
7 information.

8 (ii) The latest available interim quarterly financial
9 statements of such corporation, if any.

10 Sec. 67. Section 490.1325, subsection 1, Code 2011, is
11 amended to read as follows:

12 1. A corporation may elect to withhold payment required
13 by section 490.1324 from any shareholder who was required to,
14 but did not certify that beneficial ownership of all of the
15 shareholder's shares for which appraisal rights are asserted
16 was acquired before the date set forth in the appraisal notice
17 sent pursuant to section 490.1322, subsection 2, paragraph "a".

18 Sec. 68. Section 490.1331, Code 2011, is amended to read as
19 follows:

20 **490.1331 Court costs and ~~counsel fees~~ expenses.**

21 1. The court in an appraisal proceeding commenced under
22 section 490.1330 shall determine all court costs of the
23 proceeding, including the reasonable compensation and expenses
24 of appraisers appointed by the court. The court shall assess
25 the court costs against the corporation, except that the court
26 may assess court costs against all or some of the shareholders
27 demanding appraisal, in amounts the court finds equitable, to
28 the extent the court finds such shareholders acted arbitrarily,
29 vexatiously, or not in good faith with respect to the rights
30 provided by this division.

31 2. The court in an appraisal proceeding may also assess the
32 ~~fees and expenses of counsel and experts~~ for the respective
33 parties, in amounts the court finds equitable, for either any
34 of the following:

35 a. Against the corporation and in favor of any or all

1 shareholders demanding appraisal if the court finds the
2 corporation did not substantially comply with the requirements
3 of section 490.1320, 490.1322, 490.1324, or 490.1325.

4 *b.* Against either the corporation or a shareholder demanding
5 appraisal, in favor of any other party, if the court finds that
6 the party against whom the fees and expenses are assessed acted
7 arbitrarily, vexatiously, or not in good faith with respect to
8 the rights provided by this chapter.

9 3. If the court in an appraisal proceeding finds that the
10 ~~services of counsel for~~ expenses incurred by any shareholder
11 were of substantial benefit to other shareholders similarly
12 situated, and that ~~the fees for those services~~ such expenses
13 should not be assessed against the corporation, the court may
14 ~~award to such counsel reasonable fees to~~ direct that such
15 expenses be paid out of the amounts awarded the shareholders
16 who were benefited.

17 4. To the extent the corporation fails to make a required
18 payment pursuant to section 490.1324, 490.1325, or 490.1326,
19 the shareholder may sue directly for the amount owed and, to
20 the extent successful, shall be entitled to recover from the
21 corporation ~~all costs and~~ expenses of the suit, ~~including~~
22 ~~counsel fees.~~

23 Sec. 69. NEW SECTION. 490.1340 **Other remedies limited.**

24 1. The legality of a proposed or completed corporate
25 action described in section 490.1302, subsection 1, shall not
26 be contested, nor may the corporate action be enjoined, set
27 aside, or rescinded, in a legal or equitable proceeding by a
28 shareholder after the shareholders have approved the corporate
29 action.

30 2. Subsection 1 does not apply to a corporate action that
31 meets any of the following conditions:

32 *a.* Was not authorized and approved in accordance with the
33 applicable provisions of any of the following:

34 (1) Division X, XI, or XII of this chapter.

35 (2) The articles of incorporation or bylaws.

1 (3) The resolution of the board of directors authorizing the
2 corporate action.

3 b. Was procured as a result of fraud, a material
4 misrepresentation, or an omission of a material fact necessary
5 to make statements made, in light of the circumstances in which
6 they were made, not misleading.

7 c. Is an interested transaction, unless it has been
8 recommended by the board of directors in the same manner as
9 is provided in section 490.862 and has been approved by the
10 shareholders in the same manner as is provided in section
11 490.863 as if the interested transaction were a director's
12 conflicting interest transaction.

13 d. Is approved by less than unanimous consent of the
14 voting shareholders pursuant to section 490.704, if all of the
15 following apply:

16 (1) The challenge to the corporate action is brought by a
17 shareholder who did not consent and as to whom notice of the
18 approval of the corporate action was not effective at least ten
19 days before the corporate action was effected.

20 (2) The proceeding challenging the corporate action is
21 commenced within ten days after notice of the approval of the
22 corporate action is effective as to the shareholder bringing
23 the proceeding.

24 Sec. 70. Section 490.1402, subsection 2, paragraph a, Code
25 2011, is amended to read as follows:

26 a. (1) The board of directors must recommend dissolution to
27 the shareholders unless the any of the following apply:

28 (a) The board of directors determines that because of
29 conflict of interest or other special circumstances it should
30 make no recommendation and communicates.

31 (b) Section 490.826 applies.

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

35 Sec. 71. Section 490.1430, Code 2011, is amended to read as

1 follows:

2 **490.1430 Grounds for judicial dissolution.**

3 1. The district court may dissolve a corporation in any of
4 the following ways:

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

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

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

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

13 ~~a.~~ (1) The directors are deadlocked in the management of
14 the corporate affairs, the shareholders are unable to break the
15 deadlock, and either irreparable injury to the corporation is
16 threatened or being suffered, or the business and affairs of
17 the corporation can no longer be conducted to the advantage of
18 the shareholders generally, because of the deadlock.

19 ~~b.~~ (2) The directors or those in control of the corporation
20 have acted, are acting, or will act in a manner that is
21 illegal, oppressive, or fraudulent.

22 ~~c.~~ (3) The shareholders are deadlocked in voting power
23 and have failed, for a period that includes at least two
24 consecutive annual meeting dates, to elect successors to
25 directors whose terms have expired.

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

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

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

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

35 ~~4.~~ d. A proceeding by the corporation to have its voluntary

1 dissolution continued under court supervision.

2 e. A proceeding by a shareholder if the corporation has
3 abandoned its business and has failed within a reasonable time
4 to liquidate and distribute its assets and dissolve.

5 2. Subsection 1, paragraph "b", shall not apply in the
6 case of a corporation that, on the date of the filing of the
7 proceeding, has shares which are any of the following:

8 a. Listed on the New York stock exchange, the American stock
9 exchange, or on any exchange owned or operated by the NASDAQ
10 stock market, l.l.c., or listed or quoted on a system owned or
11 operated by the national association of securities dealers,
12 inc.

13 b. Not so listed or quoted, but are held by at least three
14 hundred shareholders and the shares outstanding have a market
15 value of at least twenty million dollars, exclusive of the
16 value of such shares held by the corporation's subsidiaries,
17 senior executives, directors, and beneficial shareholders
18 owning more than ten percent of such shares.

19 3. As used in this section, "beneficial shareholder" has the
20 meaning specified in section 490.1301, subsection 2.

21 Sec. 72. Section 490.1431, subsection 4, Code 2011, is
22 amended to read as follows:

23 4. Within ten days of the commencement of a proceeding
24 ~~under section 490.1430, subsection 2,~~ to dissolve a corporation
25 ~~that has no shares listed on a national securities exchange or~~
26 ~~regularly traded in a market maintained by one or more members~~
27 ~~of a national securities exchange~~ under section 490.1430,
28 subsection 1, paragraph "b", the corporation must send to all
29 shareholders, other than the petitioner, a notice stating that
30 the shareholders are entitled to avoid the dissolution of the
31 corporation by electing to purchase the petitioner's shares
32 under section 490.1434, and a copy of section 490.1434.

33 Sec. 73. Section 490.1432, subsections 1 and 5, Code 2011,
34 are amended to read as follows:

35 1. A Unless an election to purchase has been filed under

1 section 490.1434, a court in a judicial proceeding brought to
2 dissolve a corporation may appoint one or more receivers to
3 wind up and liquidate, or one or more custodians to manage,
4 the business and affairs of the corporation. The court shall
5 hold a hearing, after notifying all parties to the proceeding
6 and any interested persons designated by the court, before
7 appointing a receiver or custodian. The court appointing a
8 receiver or custodian has ~~exclusive~~ jurisdiction over the
9 corporation and all its property wherever located.

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

16 Sec. 74. Section 490.1434, subsections 1, 2, 4, and 5, Code
17 2011, are amended to read as follows:

18 1. In a proceeding under section 490.1430, subsection ~~2~~ 1,
19 paragraph "b", to dissolve a corporation ~~that has no shares~~
20 ~~listed on a national securities exchange or regularly traded~~
21 ~~in a market maintained by one or more members of a national or~~
22 ~~affiliated securities association~~, the corporation may elect
23 or, if it fails to elect, one or more shareholders may elect to
24 purchase all shares owned by the petitioning shareholder at the
25 fair value of the shares. An election pursuant to this section
26 shall be irrevocable unless the court determines that it is
27 equitable to set aside or modify the election.

28 2. An election to purchase pursuant to this section may
29 be filed with the court at any time within ninety days after
30 the filing of the petition under section 490.1430, subsection
31 ~~2~~ 1, paragraph "b", or at such later time as the court in its
32 discretion may allow. If the election to purchase is filed
33 by one or more shareholders, the corporation shall, within
34 ten days thereafter, give written notice to all shareholders,
35 other than the petitioner. The notice must state the name

1 and number of shares owned by the petitioner and the name and
2 number of shares owned by each electing shareholder and must
3 advise the recipients of their right to join the election to
4 purchase shares in accordance with this section. Shareholders
5 who wish to participate must file notice of their intention
6 to join in the purchase no later than thirty days after
7 the effective date of the notice to them. All shareholders
8 who have filed an election or notice of their intention to
9 participate in the election to purchase thereby become parties
10 to the proceeding and shall participate in the purchase in
11 proportion to their ownership of shares as of the date the
12 first election was filed, unless they otherwise agree or the
13 court otherwise directs. After an election has been filed by
14 the corporation or one or more shareholders, the proceeding
15 under section 490.1430, subsection 2 1, paragraph "b", shall
16 not be discontinued or settled, nor shall the petitioning
17 shareholder sell or otherwise dispose of the shareholder's
18 shares, unless the court determines that it would be equitable
19 to the corporation and the shareholders, other than the
20 petitioner, to permit such discontinuance, settlement, sale, or
21 other disposition.

22 4. If the parties are unable to reach an agreement as
23 provided for in subsection 3, the court, upon application of
24 any party, shall stay the section 490.1430, subsection 2 1,
25 paragraph "b", proceedings and determine the fair value of the
26 petitioner's shares as of the day before the date on which the
27 petition under section 490.1430, subsection 2 1, paragraph
28 "b", was filed or as of such other date as the court deems
29 appropriate under the circumstances.

30 5. Upon determining the fair value of the shares, the
31 court shall enter an order directing the purchase upon such
32 terms and conditions as the court deems appropriate, which may
33 include payment of the purchase price in installments, where
34 necessary in the interests of equity, provision for security
35 to assure payment of the purchase price and any additional

1 costs, fees, and expenses as may have been awarded, and, if
2 the shares are to be purchased by shareholders, the allocation
3 of shares among them. In allocating petitioner's shares among
4 holders of different classes of shares, the court shall attempt
5 to preserve the existing distribution of voting rights among
6 holders of different classes insofar as practicable and may
7 direct that holders of a specific class or classes shall not
8 participate in the purchase. Interest may be allowed at the
9 rate and from the date determined by the court to be equitable,
10 but if the court finds that the refusal of the petitioning
11 shareholder to accept an offer of payment was arbitrary or
12 otherwise not in good faith, no interest shall be allowed. If
13 the court finds that the petitioning shareholder has probable
14 grounds for relief under section 490.1430, subsection 2 1,
15 paragraph ~~"b"~~ or ~~"d"~~ "b", subparagraph (2) or (4), it may award
16 to the petitioning shareholder reasonable fees and expenses of
17 counsel and of any experts employed by the shareholder.

18 Sec. 75. Section 490.1508, subsection 2, Code 2011, is
19 amended to read as follows:

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

29 Sec. 76. NEW SECTION. 490.1523 Transfer of authority.

30 1. A foreign business corporation authorized to transact
31 business in this state that converts to a foreign nonprofit
32 corporation or to any form of foreign unincorporated entity
33 that is required to obtain a certificate of authority or make
34 a similar type of filing with the secretary of state if it
35 transacts business in this state shall file with the secretary

1 of state an application for transfer of authority signed by
2 any officer or other duly authorized representative. The
3 application shall set forth all of the following:

4 a. The name of the corporation.

5 b. The type of unincorporated entity to which it has been
6 converted and the jurisdiction whose laws govern its internal
7 affairs.

8 c. Any other information that would be required in a filing
9 under the laws of this state by an unincorporated entity of the
10 type the corporation has become seeking authority to transact
11 business in this state.

12 2. The application for transfer of authority shall be
13 delivered to the secretary of state for filing and shall take
14 effect at the effective time provided in section 490.123.

15 3. Upon the effectiveness of the application for transfer of
16 authority, the authority of the corporation under this chapter
17 to transact business in this state shall be transferred without
18 interruption to the converted entity which shall thereafter
19 hold such authority subject to the provisions of the laws of
20 this state applicable to that type of unincorporated entity.

21 Sec. 77. Section 490.1601, subsection 4, Code 2011, is
22 amended to read as follows:

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

27 Sec. 78. Section 490.1602, Code 2011, is amended to read as
28 follows:

29 **490.1602 Inspection of records by shareholders.**

30 1. A shareholder of a corporation is entitled to
31 inspect and copy, during regular business hours at the
32 corporation's principal office, any of the records of the
33 corporation described in section 490.1601, subsection 5, if the
34 shareholder gives the corporation signed written notice of the
35 shareholder's demand at least five business days before the

1 date on which the shareholder wishes to inspect and copy.

2 2. For any meeting of shareholders for which the record date
3 for determining shareholders entitled to vote at the meeting
4 is different than the record date for notice of the meeting,
5 any person who becomes a shareholder subsequent to the record
6 date for notice of the meeting and is entitled to vote at
7 the meeting is entitled to obtain from the corporation upon
8 request the notice and any other information provided by the
9 corporation to shareholders in connection with the meeting,
10 unless the corporation has made such information generally
11 available to shareholders by posting it on its website or by
12 other generally recognized means. Failure of a corporation to
13 provide such information does not affect the validity of action
14 taken at the meeting.

15 3. A shareholder of a corporation is entitled to inspect and
16 copy, during regular business hours at a reasonable location
17 specified by the corporation, any of the following records
18 of the corporation if the shareholder meets the requirements
19 of subsection 3 4 and gives the corporation a signed written
20 notice of the shareholder's demand at least five business days
21 before the date on which the shareholder wishes to inspect and
22 copy any of the following:

23 a. Excerpts from minutes of any meeting of the board of
24 ~~directors, records of any action of~~ or a committee of the board
25 of directors while acting in place of the board of directors
26 on behalf of the corporation, minutes of any meeting of the
27 shareholders, and records of action taken by the shareholders,
28 ~~or~~ board of directors, or a committee of the board without
29 a meeting, to the extent not subject to inspection under
30 subsection 1 ~~of this section.~~

31 b. Accounting records of the corporation.

32 c. The record of shareholders.

33 ~~3-~~ 4. A shareholder may inspect and copy the records
34 described in subsection 2 3 only if all of the following apply:

35 a. The shareholder's demand is made in good faith and for

1 a proper purpose.

2 b. The shareholder describes with reasonable particularity
3 the shareholder's purpose and the records the shareholder
4 desires to inspect.

5 c. The records are directly connected with the shareholder's
6 purpose.

7 ~~4.~~ 5. The right of inspection granted by this section shall
8 not be abolished or limited by a corporation's articles of
9 incorporation or bylaws.

10 ~~5.~~ 6. This section does not affect ~~either~~ any of the
11 following:

12 a. The right of a shareholder to inspect records under
13 section 490.720 or, if the shareholder is in litigation with
14 the corporation, to the same extent as any other litigant.

15 b. The power of a court, independently of this chapter, to
16 compel the production of corporate records for examination.

17 7. For purposes of this section, "shareholder" includes a
18 beneficial owner whose shares are held in a voting trust or by
19 a nominee on the shareholder's behalf.

20 Sec. 79. Section 490.1603, subsection 3, Code 2011, is
21 amended to read as follows:

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

27 Sec. 80. Section 490.1604, subsection 2, Code 2011, is
28 amended to read as follows:

29 2. If a corporation does not within a reasonable time
30 allow a shareholder to inspect and copy any other records, the
31 shareholder who complies with section 490.1602, ~~subsections 2~~
32 ~~and 3~~ may apply to the district court in the county where the
33 corporation's principal office or, if none in this state, its
34 registered office is located for an order to permit inspection
35 and copying of the records demanded. The court shall dispose

1 of an application under this subsection on an expedited basis.

2 Sec. 81. Section 490.1606, subsection 1, Code 2011, is
3 amended to read as follows:

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

8 a. ~~Notice~~ Notices to the shareholders of two consecutive
9 annual meetings, and all notices of meetings during the period
10 between such two consecutive annual meetings, have been sent to
11 such shareholder at such shareholder's address as shown on the
12 records of the corporation and have been returned undeliverable
13 or could not be delivered.

14 b. All, but not less than two, payments of dividends on
15 securities during a twelve-month period, or two consecutive
16 payments of dividends on securities during a period of more
17 than twelve months, have been sent to such shareholder at
18 such shareholder's address as shown on the records of the
19 corporation and have been returned undeliverable or could not
20 be delivered.

21 Sec. 82. Section 490.1620, Code 2011, is amended by striking
22 the section and inserting in lieu thereof the following:

23 **490.1620 Financial statements for shareholders.**

24 1. A corporation shall deliver to its shareholders
25 annual financial statements, which may be consolidated or
26 combined statements of the corporation and one or more of its
27 subsidiaries, as appropriate, that include a balance sheet as
28 of the end of the fiscal year, an income statement for that
29 year, and a statement of changes in shareholders' equity for
30 the year unless that information appears elsewhere in the
31 financial statements. If financial statements are prepared for
32 the corporation on the basis of generally accepted accounting
33 principles, the annual financial statements must also be
34 prepared on that basis.

35 2. If the annual financial statements are reported upon by a

1 public accountant, the report must accompany them. If not, the
2 statements must be accompanied by a statement of the president
3 or the person responsible for the corporation's accounting
4 records which does all of the following:

5 *a.* States such person's reasonable belief whether the
6 statements were prepared on the basis of generally accepted
7 accounting principles and, if not, describing the basis of
8 preparation.

9 *b.* Describes any respects in which the statements were
10 not prepared on a basis of accounting consistent with the
11 statements prepared for the preceding year.

12 3. Within one hundred twenty days after the close of each
13 fiscal year, the corporation shall send the annual financial
14 statements to each shareholder. Thereafter, on written
15 request from a shareholder to whom the statements were not
16 sent, the corporation shall send the shareholder the latest
17 financial statements. A public corporation may fulfill its
18 responsibilities under this section by delivering the specified
19 financial statements, or otherwise making them available, in
20 any manner permitted by the applicable rules and regulations of
21 the United States securities and exchange commission.

22 Sec. 83. Section 490.1703, Code 2011, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 3. In the event that any provision of this
25 chapter is deemed to modify, limit, or supersede the federal
26 Electronic Signatures in Global and National Commerce Act, 15
27 U.S.C. § 7001 et seq., the provisions of this chapter shall
28 control to the maximum extent permitted by section 102(a)(2) of
29 that federal Act.

30 Sec. 84. REPEAL. Section 490.832, Code 2011, is repealed.

31 Sec. 85. AMENDMENTS PREVAIL OVER REPEAL. The sections of
32 this division of this Act amending section 490.805, subsection
33 2, Code Supplement 2011, and section 490.805, subsection 2,
34 as amended by this Act, shall prevail over the repeal of the
35 enactment of and amendment to that provision by 2011 Iowa Acts,

1 chapter 2, section 4, pursuant to 2011 Iowa Acts, chapter 2,
2 section 9, subsection 1.

3 Sec. 86. EFFECTIVE DATES.

4 1. Except as provided in subsection 2, this division of this
5 Act takes effect July 1, 2012.

6 2. The section of this division of this Act amending section
7 490.805, subsection 2, Code Supplement 2011, as amended by this
8 Act, takes effect December 31, 2014.

9

DIVISION II

10

FUTURE PROVISIONS

11 Sec. 87. Section 490.140, subsection 21A, Code Supplement
12 2011, is amended by striking the subsection and inserting in
13 lieu thereof the following:

14 21A. "*Public corporation*" means a corporation that has
15 shares listed on a national securities exchange or regularly
16 traded in a market maintained by one or more members of a
17 national securities association.

18 Sec. 88. Section 490.732, subsection 4, Code 2011, is
19 amended by striking the subsection and inserting in lieu
20 thereof the following:

21 4. An agreement authorized by this section shall cease to be
22 effective when the corporation becomes a public corporation.
23 If the agreement ceases to be effective for any reason, the
24 board of directors may, if the agreement is contained or
25 referred to in the corporation's articles of incorporation or
26 bylaws, adopt an amendment to the articles of incorporation or
27 bylaws, without shareholder action, to delete the agreement and
28 any references to it.

29 Sec. 89. EFFECTIVE DATE. This division of this Act takes
30 effect upon the repeal of 2011 Iowa Acts, chapter 2, as
31 provided in section 9, subsection 1, of that Act.

32

EXPLANATION

33 BACKGROUND. The "Iowa Business Corporation Act" (Code
34 chapter 490), a model Act adopted by the American Bar
35 Association, governs the requirements for the creation,

1 organization, and operation of corporations and the
2 relationship between shareholders, directors, and officers of
3 the corporation. Generally, the Act's provisions establish
4 default requirements and procedures which may be modified by a
5 corporation's articles of incorporation or bylaws.

6 PUBLIC CORPORATIONS. A public corporation is a corporation
7 that has a class of voting stock that is listed on a national
8 securities exchange or held of record by more than 2,000
9 shareholders (Code section 490.140). The bill amends the
10 definition to eliminate the reference to a class of shares
11 or number of shareholders. It provides that a corporation
12 is public if traded in a market maintained by a member of
13 the national securities association. The bill also amends
14 a provision regulating shareholder agreements that govern a
15 corporation's corporate affairs including by eliminating or
16 restricting the powers of its board of directors (Code section
17 490.732). Specifically, the bill provides that a shareholder
18 agreement is automatically terminated when the corporation
19 becomes public. These provisions take effect January 1, 2015.

20 NOTICES, DOCUMENTS, AND COMMUNICATION. A notice must be
21 in writing unless oral notice is reasonable (Code section
22 490.141). The bill requires that notices be in English.
23 It provides for the electronic transmission and receipt
24 and acknowledgment of information. The bill replaces the
25 requirement that documents be executed with a requirement
26 that they be signed, including documents associated with
27 the adoption or abandonment of articles of merger or share
28 exchange (Code sections 490.1106 and 490.1108). The bill also
29 authorizes a corporation to keep its records in an electronic
30 form so long as it can be converted into a paper form (Code
31 section 490.1601). The corporation is required to deliver a
32 written notice, report, or statement to shareholders who share
33 a common address, complies with delivery requirements, by
34 delivering to that address, unless a shareholder makes a timely
35 objection (Code section 490.144).

1 **QUALIFIED DIRECTORS.** In a number of circumstances a
2 director must be considered "disinterested" when taking an
3 action affecting the welfare of the corporation. The bill
4 eliminates the term "disinterested" and replaces it with
5 "qualified" (Code section 490.143; see Code sections 490.853
6 and 490.855). The bill requires a director to be qualified
7 under different circumstances which may involve board action
8 or court proceedings. For purposes of dismissing a derivative
9 proceeding by a court based on a good-faith determination of
10 directors (Code section 490.744), directors are qualified if
11 they do not have a material interest in the outcome of the
12 proceeding or a material relationship with a person who has
13 such an interest. For purposes of advancing expenses to a
14 board member before the disposition of a case (Code section
15 490.853) or later indemnifying a director (Code section
16 490.855), the authorization must be made by directors who are
17 qualified because they are not parties to the proceeding, do
18 not have a conflicting interest in the related transaction,
19 and do not have a material relationship with a director
20 who is a party or has a conflicting interest. For purposes
21 of voting to excuse a director from a conflicting interest
22 transaction (Code section 490.862), the vote must be taken
23 by directors who are qualified because they do not have a
24 conflict or have a material relationship with the director who
25 does have a conflict. For purposes of determining whether a
26 director may take advantage of a business opportunity because
27 other directors disclaimed the corporation's interest in the
28 opportunity (Code section 490.870), the directors are qualified
29 if the business opportunity was a conflicting interest
30 transaction for those directors.

31 **DIRECTORS AND OFFICERS — FUNCTIONS AND DUTIES.** Generally,
32 a corporation must have a board of directors, unless dispensed
33 with pursuant to a shareholder agreement (Code sections 490.801
34 and 490.732). The bill provides that the business affairs of a
35 corporation may be subject to the directors' oversight rather

1 than direct management. It authorizes a corporate officer to
2 designate recipients of compensation awards (e.g., rights,
3 options, or warrants associated with shares) (Code section
4 490.624). The bill substitutes the term "functions" in lieu
5 of "duties" in some places when referring to an officer's
6 obligations (Code section 490.841).

7 SHAREHOLDER MEETINGS — WRITTEN CONSENT IN LIEU OF HOLDING
8 MEETINGS. Shareholders are allowed to act by written consent
9 without holding a meeting if the action is taken by unanimous
10 written consent (Code section 490.704). The bill provides
11 that a corporation's articles of incorporation may provide for
12 shareholder action by less than unanimous written consent,
13 if a written consent is signed by shareholders having the
14 minimum number of votes that would be required to authorize the
15 action at a shareholder meeting assuming that all shareholders
16 entitled to vote were present. It creates a corresponding
17 exception to the requirement that a corporation must hold at
18 least one annual shareholder meeting, presumably to elect
19 directors (Code sections 490.701 and 490.803), by providing
20 that the annual meeting is not necessary when directors are
21 elected by the written consent of shareholders. The bill
22 also provides a number of procedures for providing notice to
23 shareholders and tabulating written consents delivered to the
24 corporation.

25 SHAREHOLDER MEETING — RECORD DATE. A corporation
26 establishes procedures for providing notice to and voting by
27 shareholders at a meeting (or by written consent) according to
28 a record date. The record date determines both shareholders
29 who are entitled to notice of the meeting and to vote at
30 the meeting. The catch-all provision states that the record
31 date is the date before notice is mailed to a voting group or
32 shareholders (Code section 490.705), although a record date
33 may be established by court order (Code section 490.703) or
34 according to the corporation's bylaws or board of directors
35 (Code section 490.707). The bill provides that there may be

1 more than one record date. According to the bill, the record
2 date for a shareholder meeting may be established by the
3 corporation's bylaws or by the board unless the board provides
4 a different date to determine shareholders entitled to vote at
5 the meeting (Code section 490.707). The bill provides that
6 the corporation may be required to provide a list of names of
7 shareholders entitled to vote at the meeting, to be available
8 for inspection (Code section 490.720). The record date is
9 also used to determine when appraisal rights of shareholders
10 apply (Code section 490.1302). The bill requires shareholders'
11 appraisal rights to be triggered on the record date by tying
12 it only to when a shareholder is entitled to receive notice
13 and not when entitled to vote on the matter. The bill also
14 provides that the board may fix a record date for determining
15 when a shareholder is entitled to vote that is different than
16 the record date for determining when a shareholder is entitled
17 to notice of the meeting. A person who becomes a shareholder
18 after the record date for the notice, and is otherwise entitled
19 to vote at the meeting, may obtain the notice and other
20 information provided to the shareholders in preparation for the
21 meeting (Code sections 490.1602 and 490.1606).

22 SHAREHOLDER MEETINGS — REMOTE PARTICIPATION. The bill
23 authorizes shareholders to participate in a meeting of
24 shareholders by means of remote communication to the extent
25 approved by the board (Code section 490.709).

26 ELECTIONS AND VOTING — CUMULATIVE VOTING. Generally,
27 directors are elected by a plurality of votes cast unless the
28 corporation's articles of incorporation provide for cumulative
29 voting allowing shareholders to cast all their votes for a
30 single candidate (Code section 490.728). The bill provides
31 that shareholders otherwise entitled to vote cumulatively
32 cannot so vote unless the meeting notice authorizes it, or a
33 shareholder who has that right gives notice to the corporation
34 before the meeting.

35 LEGAL PROCEEDING — DERIVATIVE ACTIONS. As a result of a

1 derivative action, the court may order a corporation to pay
2 the plaintiff's expenses (defined in Code section 490.140)
3 if the court determines that the proceeding has resulted in
4 substantial benefit to the corporation and alternatively may
5 order the plaintiff to pay the defendant's expenses if it
6 finds the proceeding was commenced without reasonable cause
7 or for an improper purpose (Code section 490.746). The bill
8 eliminates the court's statutory authority to order the payment
9 of attorney fees.

10 PROCEEDINGS — COURT APPOINTMENT OF A CUSTODIAN OR RECEIVER.

11 The bill provides that a shareholder may obtain relief from a
12 court, due to an injury suffered by the corporation due to the
13 action or inaction of the board (through deadlock or fraud) or
14 because the corporation is insolvent (Code section 490.748).

15 The custodian or receiver appointed by the court has all
16 authority to manage the corporation as provided by court order.

17 ELECTIONS AND VOTING. The bill provides for the directors'
18 terms of office including when the board's terms are staggered
19 (Code sections 490.806 and 490.806A). The bill provides that a
20 corporation's articles of incorporation may govern situations
21 in which a nominated director fails to receive the requisite
22 votes for election (Code sections 490.805, 490.806, 490.806A,
23 and 490.807). The bill also provides that in the case of a
24 director's vacancy, where a director was elected by a voting
25 group of shareholders, and the vacancy is to be filled by the
26 remaining directors, only directors elected by that voting
27 group may vote to fill the vacancy (Code section 490.810).

28 RIGHT OF SHAREHOLDERS TO VOTE. The bill provides that a
29 corporation may agree to submit a matter to a vote of its
30 shareholders even if the board determines not to recommend
31 the matter (Code section 490.826). It expressly authorizes
32 such vote on an amendment to the corporation's articles of
33 incorporation (Code section 490.1003), an action on a plan of
34 merger or share exchange (Code section 490.1104), the approval
35 of a plan of merger or share exchange (Code section 490.1106),

1 and the dissolution of the corporation (Code section 490.1402).

2 DIRECTORS AND OFFICERS — STANDARDS OF CONDUCT. A director
3 must perform all required duties in good faith and in a
4 manner that the director reasonably believes to be in the
5 corporation's best interest (Code section 490.830) and an
6 officer has the same duty to act in good faith (Code section
7 490.842). The bill expressly obligates a director to disclose
8 relevant material regarding the corporation to the board. It
9 also provides that an officer has an obligation to inform a
10 superior officer or the board (or a committee of the board)
11 about the affairs of the corporation or a probable material
12 violation of law or a material breach of duty involving an
13 officer or other person connected to the corporation.

14 PROCEEDINGS — ADVANCING FUNDS TO A DIRECTOR OR INDEMNIFYING
15 A DIRECTOR FOR EXPENSES. A corporation may advance funds to a
16 director or indemnify the director for legal expenses incurred
17 in the course of a director's defense of an act or omission
18 (Code sections 490.850, 490.853, 490.855, and 490.858). The
19 bill provides that in the case of advances, writings required
20 to be submitted to the board (e.g., an affirmation that the
21 director acted in compliance with applicable standards of
22 conduct or a promise to repay advanced funds) must be in
23 writing (Code section 490.853). It also provides that when
24 the board authorizes an advance or indemnification, the voting
25 directors must be qualified rather than disinterested (Code
26 sections 490.853 and 490.854). Finally, the bill provides that
27 the defending director's right to an advance or indemnification
28 in effect prior to the director's act or omission cannot be
29 eliminated or impaired after the conduct occurred, unless that
30 right was expressly qualified in the authorization (i.e., in
31 the articles of incorporation, bylaws, or board's resolution)
32 (Code section 490.858).

33 DIRECTOR'S CONFLICT OF INTEREST — GENERAL. Generally, a
34 director is prohibited from taking action on a matter which
35 would be detrimental to the interests of the corporation. The

1 bill replaces the current provision addressing a director's
2 conflict of interest (Code section 490.832) with four
3 provisions (Code sections 490.860 through 490.863) that
4 govern conflicting interest transactions. In order to be so
5 classified, a transaction must be effectuated or proposed to
6 be effectuated by the corporation or an entity controlled
7 by the corporation. In addition, the director must be in a
8 special position to take personal advantage of the transaction,
9 as a party to the transaction or by virtue of the fact that
10 the director, or a related person, has a material financial
11 interest in the transaction. The bill provides that a director
12 is related to a person if the person is a close family member,
13 an individual who lives in the same home, or another entity
14 controlled by the director. The bill provides that in order
15 for a court to invalidate a transaction or otherwise provide a
16 legal or equitable remedy, such conduct must fall within the
17 statutory parameters (Code section 490.861). The definition
18 of "director's conflicting interest transaction" requires
19 knowledge of the transaction, except where the director is a
20 party. In addition, the transaction must occur at a relevant
21 time, meaning the time at the which the director's action is
22 required (e.g., a board vote) or when the director's action
23 somehow consummates the transaction (Code section 490.862).

24 DIRECTOR'S CONFLICT OF INTEREST — EXCUSED TRANSACTIONS
25 (SAFE HARBOR EXCEPTION). The bill excuses a director's
26 conduct, and consequently validates the transaction, even if
27 there exists a conflicting interest transaction (Code section
28 490.861), sometimes referred to as "safe harbor", in certain
29 circumstances. First, it may be excused if a majority of
30 qualified directors (but not less than two) vote to approve
31 the transaction or the action is approved by an authorized
32 committee in which all members are qualified directors (Code
33 section 490.862). The director who has the conflict must
34 disclose information regarding the conflict to the extent that
35 the information is not required to be protected under law or

1 some ethical rule of confidentiality (Code section 490.862).
2 The transaction is excused if the shareholders later ratify
3 the transaction according to specific procedural requirements
4 (Code section 490.863) after disclosure (but no provision for
5 limited disclosure). Finally, the transaction is excused if
6 the transaction is fair to the corporation, although neither
7 directors' nor shareholders' action was taken. The bill
8 provides that in any legal action attacking a director, the
9 plaintiff has the burden of proof (Code section 490.831).

10 DIRECTOR'S BUSINESS OPPORTUNITY (SAFE HARBOR EXCEPTION).

11 An analogous situation to a conflicting interest transaction
12 is when a director seeks a corporation's permission prior to
13 the director's action. The bill allows qualified directors
14 or shareholders to disclaim the corporation's interest before
15 the director proceeds in taking advantage of the business
16 opportunity (see Code section 490.870). Instead of making a
17 "required disclosure" as provided for conflicts (Code sections
18 490.860 and 490.862), the director must provide the corporation
19 material facts concerning the business opportunity then
20 known. The qualified directors or shareholders disclaiming
21 the corporation's interest must be done in the same manner
22 as if the matter concerned a director's conflicting interest
23 transaction (Code sections 490.862 and 490.863). However, a
24 director's decision not to use the procedures for disclaimer
25 does not create a negative inference or alter a burden of
26 proof in a subsequent action alleging an improper taking of a
27 corporate opportunity.

28 SHAREHOLDER APPRAISAL RIGHTS — GENERAL RULE. A number of
29 corporate actions may trigger the right of a shareholder to
30 obtain an appraisal of the corporation and obtain fair payment
31 of shares, including mergers, share exchanges, disposition
32 of assets, amendments to the articles of incorporation, and
33 conversion of the corporation to another entity (Code section
34 490.1302). A corporation must pay shareholders the amount the
35 corporation estimates to be the fair value of the shares plus

1 interest (Code section 490.1324).

2 SHAREHOLDER APPRAISAL RIGHTS — LIMITATION ON THE GENERAL
3 RULE (MARKET-OUT EXCEPTION). The general rule is limited in
4 the case where there are at least 2,000 shareholders and the
5 market value of the shares equals at least \$20 million (the
6 so-called "market-out" exception), presumably because the true
7 value for the shares can be obtained on the market. However,
8 the amount does not include shares held by the corporation's
9 subsidiaries, senior executives, directors, and beneficial
10 shareholders owning more than 10 percent of the shares.
11 "Beneficial ownership" refers to the control of shares by a
12 person who does not own them including the power to vote, or to
13 direct the voting of the shares (Code section 490.1302).

14 SHAREHOLDER APPRAISAL RIGHTS — NEW MARKET-OUT EXCEPTIONS.
15 The bill provides two new categories under the market-out
16 exception: (1) when the shares are classified as a covered
17 security regulated by the United States securities exchange
18 commission under the federal Securities Act of 1933, and (2)
19 when the shares are issued by an open-end management investment
20 company registered by the securities and exchange commission
21 under the federal Investment Company Act of 1940 (Code section
22 490.1302).

23 SHAREHOLDER APPRAISAL RIGHTS — LIMITATIONS ON THE
24 MARKET-OUT EXCEPTIONS. The bill eliminates a provision
25 which allows shareholder appraisal rights notwithstanding
26 the market-out exception in cases where the corporation's
27 shares or assets are being acquired or converted, whether by
28 merger, share exchange, or otherwise (Code section 490.1302).
29 Instead, the bill allows such rights in cases where the
30 corporate action involves an interested transaction, which is a
31 corporate action, other than a merger, involving an interested
32 person in which the shares or assets of the corporation are
33 being acquired or converted. A person is "interested" if
34 the person is a beneficial owner of 20 percent or more of
35 the corporation's voting shares, controlled the appointment

1 or election of 25 percent or more of the directors, or was a
2 senior executive or director of the corporation entitled to
3 receive certain financial benefits (Code section 490.1301).

4 SHAREHOLDER APPRAISAL RIGHTS — NOTICE. A corporation must
5 notify shareholders of their appraisal rights when a corporate
6 action is submitted to a vote at a shareholder meeting (Code
7 section 490.1320). The bill provides for notice when approval
8 is performed by written consent in lieu of a meeting (Code
9 section 490.704). A shareholder must provide notice of an
10 intent to exercise appraisal rights before the corporate action
11 (vote) is taken (Code section 490.1321). In order to remain
12 eligible to exercise those rights, the shareholder must not
13 vote on the matter. A shareholder who plans on asserting
14 appraisal rights cannot likewise exercise rights after signing
15 a consent in favor of the proposal (Code section 490.1321).
16 If a corporate action requiring appraisal rights becomes
17 effective, the corporation must deliver a written appraisal
18 notice and form (Code section 490.1322). The bill provides for
19 the contents of the notice, including information regarding
20 an announcement to shareholders made prior to the date the
21 corporate action became effective and requires a shareholder
22 asserting appraisal rights to certify beneficial ownership.
23 The bill provides for perfecting shareholder appraisal rights
24 by signing and returning the form (Code section 490.1323). The
25 bill provides an estimated (prepaid) payment to shareholders
26 exercising their appraisal rights after the form's due date
27 (Code section 490.1324). The bill provides for a financial
28 statement required to accompany the payment (Code section
29 490.1620), and allows the corporation to substitute another
30 document in lieu of a financial statement if it is unavailable.

31 SHAREHOLDER APPRAISAL RIGHTS — COURT COSTS. As part of
32 a shareholder appraisal rights proceeding, the court must
33 determine the court costs of the proceeding, and may assess
34 such costs against the corporation or shareholders demanding
35 appraisal (Code section 490.1331). The bill amends the

1 provision to eliminate a court's discretion to assess fees
2 associated with attorneys and experts.

3 SHAREHOLDER RIGHTS — LIMITATION ON OTHER REMEDIES. The
4 bill provides that a corporate action triggering a right to
5 appraisal (Code section 490.1302) cannot be enjoined, set
6 aside, or rescinded by a shareholder after the shareholder
7 has approved the corporate action (Code section 490.1340).
8 However, this limitation does not apply to four situations:
9 (1) where the process of approving the corporate action was
10 flawed (e.g., unauthorized in the corporation's articles of
11 incorporation), (2) the corporate action was procured by fraud,
12 (3) the corporate action was an interested transaction in the
13 same manner as a director's conflicting interest transaction
14 (Code section 490.860), or (4) the transaction was approved,
15 but without a meeting (Code section 490.704) and by less
16 than unanimous consent and the challenge is brought by a
17 nonconsenting director.

18 JUDICIAL DISSOLUTION — LIMITATION ON ACTIONS. A court may
19 dissolve a corporation in a proceeding brought by shareholders
20 on a number of grounds, including the directors are deadlocked,
21 the directors are acting fraudulently, the shareholders
22 are deadlocked, or there is waste of corporate assets (Code
23 section 490.1430). The bill adds a new ground, that the
24 corporation has abandoned its business and failed to liquidate
25 and distribute its assets and dissolve. The bill also
26 provides that the right of a shareholder to bring the action
27 does not apply to a corporation listed on the New York stock
28 exchange, the American stock exchange, an exchange owned or
29 controlled by NASDAQ, or listed on a system owned or controlled
30 by the national association of security dealers (NASD).
31 Alternatively, it does not apply to a corporation having 300
32 or more shareholders holding shares valued at \$20 million
33 or more, again excluding shares held by the corporation's
34 subsidiaries, senior executives, directors, and beneficial
35 shareholders owning more than 10 percent of the shares (Code

1 section 490.1302).

2 FOREIGN CORPORATIONS — TRANSFER OF AUTHORITY. The bill
3 provides for the conversion of a foreign business corporation
4 authorized to do business in this state into a domestic
5 corporation by applying to the secretary of state (Code section
6 490.1523).

7 REPLACEMENT OF FUTURE REPEALED PROVISIONS. In 2011, the
8 general assembly enacted SF 325 (2011 Iowa Acts, chapter
9 2) carving out a special provision which provided for the
10 staggered terms of directors of public corporations and
11 providing for the repeal of the Act on December 31, 2014. This
12 bill amends one of those provisions, Code section 490.805,
13 subsection 2, and consequently the bill provides that the
14 provision of this Act amending that Code section prevails over
15 the repeal. However, a reference to Code section 490.806A,
16 which is to be repealed by that Act, in the provision amended
17 in this bill, is also stricken by the bill effective December
18 31, 2014.

19 The bill provides that once the provisions in SF 325 are
20 repealed, provisions in the model Act referring to public
21 corporations are enacted.