

Senate File 398 - Introduced

SENATE FILE 398
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1169)

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:

1

DIVISION I

2

PRINCIPAL PROVISIONS

3 Section 1. Section 490.140, subsections 3, 6, 9, and 26,
4 Code 2013, 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 2013, is amended by adding the
33 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 2013, 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
electronic transmission is written notice. Unless otherwise
agreed between the sender and the recipient, words in a notice
or other communication under this chapter must be in English.

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

1 television, or other form of public broadcast communication.

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

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

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

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

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

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

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

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

34 6. Unless otherwise agreed between the sender and the 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 6. Oral notice is effective when communicated if
5 communicated in a comprehensible manner.

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

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

10 e. If oral, when communicated.

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 2013, 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 2013, 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 2013, 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 2013, 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 2013, 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 2013, 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. Except in the case of a public
6 corporation, the articles of incorporation may provide that
7 any action required or permitted by this chapter to be taken
8 at a shareholders' meeting may be taken without a meeting, and
9 without prior notice, if consents in writing setting forth the
10 action so taken are signed by the holders of outstanding shares
11 having not less than the minimum number of votes that would be
12 required to authorize or take the action at a meeting at which
13 all shares entitled to vote on the action were present and
14 voted. The written consent shall bear the date of signature
15 of the shareholder who signs the consent and be delivered to
16 the corporation for inclusion in the minutes or filing with the
17 corporate records.

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

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

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

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

24 6. Prompt notice of the taking of corporate action without
25 a meeting by less than unanimous written consent shall be given
26 to those shareholders who have not consented in writing. If
27 the taking of that corporate action requires the giving of
28 notice under section 490.1320, subsection 2, the notice of
29 the action shall set forth the matters described in section
30 490.1322.

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

1 following:

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

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

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

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

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

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

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

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

34 Sec. 12. Section 490.705, subsections 1 and 5, Code 2013,
35 are amended to read as follows:

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

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

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

29 **490.707 Record date.**

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

1 corporation may fix a future date as the record date.

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

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

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

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

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

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

34 2. Shareholders participating in a shareholders' meeting
35 by means of remote communication shall be deemed present and

1 may vote at such a meeting if the corporation has implemented
2 reasonable measures to do all of the following:

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

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

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

12 **490.720 Shareholders' list for meeting.**

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

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

1 it is available for inspection.

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

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

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

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

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

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

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

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

35 a. The meeting notice or proxy statement accompanying

1 the notice states conspicuously that cumulative voting is
2 authorized.

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

10 Sec. 19. Section 490.742, subsection 2, Code 2013, is
11 amended to read as follows:

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

17 Sec. 20. Section 490.744, Code 2013, is amended to read as
18 follows:

19 **490.744 Dismissal.**

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

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

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

35 b. A majority vote of a committee consisting of two or more

1 independent qualified directors appointed by majority vote of
2 independent qualified directors present at a meeting of the
3 board of directors, whether or not such independent qualified
4 directors constitute a quorum.

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

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. 3. a. If a derivative proceeding is commenced
17 after 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 (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 (2) That the requirements of subsection 1 have not been met.

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

29 5. 4. If a majority of the board of directors does not
30 consist consisted of independent qualified directors at the
31 time the determination is was made, the corporation plaintiff
32 shall have the burden of proving that the requirements of
33 subsection 1 have not been met; if not, the corporation shall
34 have the burden of proving that the requirements of subsection
35 1 have been met. If a majority of the board of directors

1 ~~consists of independent directors at the time the determination~~
2 ~~is made, the plaintiff shall have the burden of proving that~~
3 ~~the requirements of subsection 1 have not been met.~~

4 6. 5. The court may appoint a panel of one or more
5 independent persons upon motion by the corporation to make
6 a determination whether the maintenance of the derivative
7 proceeding is in the best interests of the corporation. In
8 such case, the plaintiff shall have the burden of proving that
9 the requirements of subsection 1 have not been met.

10 Sec. 21. Section 490.746, Code 2013, is amended to read as
11 follows:

12 **490.746 Payment of expenses.**

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

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

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

23 Sec. 22. NEW SECTION. **490.748 Shareholder action to appoint**
24 **custodian or receiver.**

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

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

34 b. The directors or those in control of the corporation are
35 acting fraudulently and irreparable injury to the corporation

1 is threatened or being suffered.

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

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

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

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

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

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

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

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

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

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

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

6 Sec. 23. Section 490.801, Code 2013, is amended to read as
7 follows:

8 **490.801 Requirement for and duties functions of board of
9 directors.**

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

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

19 Sec. 24. Section 490.807, Code 2013, is amended to read as
20 follows:

21 **490.807 Resignation of directors.**

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

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

31 Sec. 25. Section 490.810, subsection 2, Code 2013, is
32 amended to read as follows:

33 2. If the vacant office was held by a director elected by
34 a voting group of shareholders, only the holders of shares of
35 that voting group are entitled to vote to fill the vacancy

1 if it is filled by the shareholders, and only the directors
2 elected by that voting group are entitled to fill the vacancy
3 if it is filled by the directors.

4 Sec. 26. NEW SECTION. 490.826 Submission of matters for
5 shareholder vote.

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

9 Sec. 27. Section 490.830, Code 2013, is amended by adding
10 the following new subsection:

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

21 Sec. 28. Section 490.831, subsection 1, paragraph a,
22 subparagraph (1), Code 2013, is amended to read as follows:

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

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

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

31 (c) The protection afforded by section 490.870.

32 Sec. 29. Section 490.831, subsection 3, paragraphs a and b,
33 Code 2013, are amended to read as follows:

34 a. In any instance where fairness is at issue, such
35 as consideration of the fairness of a transaction to the

1 corporation under section ~~490.832~~ 490.861, subsection 2,
2 paragraph "c", alter the burden of proving the fact or lack of
3 fairness otherwise applicable.

4 b. Alter the fact or lack of liability of a director
5 under another section of this chapter, such as the provisions
6 governing the consequences of an unlawful distribution under
7 section 490.833 or a transactional interest under section
8 ~~490.832~~ 490.861.

9 Sec. 30. Section 490.841, Code 2013, is amended to read as
10 follows:

11 **490.841 Duties Functions of officers.**

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

18 Sec. 31. Section 490.842, subsection 1, unnumbered
19 paragraph 1, Code 2013, is amended to read as follows:

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

22 Sec. 32. Section 490.850, subsection 2, Code 2013, is
23 amended to read as follows:

24 2. "*Director*" or "*officer*" means an individual who is or
25 was a director or officer, respectively, of a corporation or
26 who, while a director or officer of the corporation, is or was
27 serving at the corporation's request as a director, officer,
28 partner, trustee, employee, or agent of another domestic
29 or foreign corporation, partnership, joint venture, trust,
30 employee benefit plan, or other entity. A director or officer
31 is considered to be serving an employee benefit plan at the
32 corporation's request if the director's individual's duties to
33 the corporation also impose duties on, or otherwise involve
34 services by, that director the individual to the plan or to
35 participants in or beneficiaries of the plan. "*Director*" or

1 "officer" includes, unless the context requires otherwise, the
2 estate or personal representative of a director or officer.

3 Sec. 33. Section 490.850, subsections 3 and 4, Code 2013,
4 are amended by striking the subsections.

5 Sec. 34. Section 490.850, subsection 5, Code 2013, is
6 amended to read as follows:

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

11 Sec. 35. Section 490.853, Code 2013, is amended to read as
12 follows:

13 **490.853 Advance for expenses.**

14 1. A corporation may, before final disposition of
15 a proceeding, advance funds to pay for or reimburse the
16 reasonable expenses incurred in connection with the proceeding
17 ~~by a director an individual who is a party to a the proceeding~~
~~because the person is a director if the person that individual~~
18 ~~is a member of the board of directors if the director delivers~~
19 all of the following to the corporation:

21 a. A signed written affirmation of the director's good
22 faith belief that the ~~director has met~~ the relevant standard
23 of conduct described in section 490.851 has been met by the
24 director or that the proceeding involved conduct for which
25 liability has been eliminated under a provision of the articles
26 of incorporation as authorized by section 490.202, subsection
27 2, paragraph "d".

28 b. ~~The director's~~ A signed written undertaking of the
29 director to repay any funds advanced if the director is not
30 entitled to mandatory indemnification under section 490.852 and
31 it is ultimately determined under section 490.854 or ~~section~~
32 490.855 that the director has not met the relevant standard of
33 conduct described in section 490.851.

34 2. The undertaking required by subsection 1, paragraph "b",
35 must be an unlimited general obligation of the director but

1 need not be secured and may be accepted without reference to
2 the financial ability of the director to make repayment.

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

5 a. By the board of directors as follows:

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

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

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

21 Sec. 36. Section 490.855, Code 2013, is amended to read as
22 follows:

23 **490.855 Determination and authorization of indemnification.**

24 1. A corporation shall not indemnify a director under
25 section 490.851 unless authorized for a specific proceeding
26 after a determination has been made that indemnification of
27 the ~~director~~ is permissible because the director has met the
28 relevant standard of conduct set forth in section 490.851.

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

30 a. If there are two or more ~~disinterested~~ qualified
31 directors, by the board of directors by a majority vote of all
32 the ~~disinterested~~ qualified directors, a majority of whom shall
33 for such purpose constitute a quorum, or by a majority of the
34 members of a committee of two or more ~~disinterested~~ qualified
35 directors appointed by such a vote.

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

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

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

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

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

19 Sec. 37. Section 490.858, Code 2013, is amended by adding
20 the following new subsection:

21 ~~NEW SUBSECTION.~~ 1A. A right of indemnification or to
22 advances for expenses created by this division or under
23 subsection 1 and in effect at the time of an act or omission
24 shall not be eliminated or impaired with respect to such act
25 or omission by an amendment of the articles of incorporation
26 or bylaws or a resolution of the directors or shareholders,
27 adopted after the occurrence of such act or omission, unless,
28 in the case of a right created under subsection 1, the
29 provision creating such right and in effect at the time of
30 such act or omission explicitly authorizes such elimination or
31 impairment after such act or omission has occurred.

32 Sec. 38. Section 490.858, subsection 3, Code 2013, is
33 amended to read as follows:

34 3. A Subject to subsection 1A, a corporation may, by a

1 provision in its articles of incorporation, limit any of the
2 rights to indemnification or advance for expenses created by or
3 pursuant to this part.

4 Sec. 39. NEW SECTION. **490.860 Part definitions.**

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

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

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

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

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

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

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

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

27 3. "*Fair to the corporation*" means, for purposes of section
28 490.861, subsection 2, paragraph "c", that the transaction
29 as a whole was beneficial to the corporation, taking into
30 appropriate account whether it was all of the following:

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

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

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

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

6 a. The director's spouse.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Sec. 40. NEW SECTION. 490.861 Judicial action.

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

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

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

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

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

30 Sec. 41. NEW SECTION. 490.862 Directors' action.

31 1. Directors' action respecting a director's conflicting
32 interest transaction is effective for purposes of section
33 490.861, subsection 2, paragraph "a", if the transaction has
34 been authorized by the affirmative vote of a majority, but
35 no fewer than two, of the qualified directors who voted on

1 the transaction, after required disclosure by the conflicted
2 director of information not already known by such qualified
3 directors, or after modified disclosure in compliance with
4 subsection 2, provided that all of the following apply:

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

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

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

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

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

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

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

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

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

1 this section.

2 4. Where directors' action under this section does not
3 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 board of directors or a committee, in which action
8 directors who are not qualified directors may participate.

9 Sec. 42. NEW SECTION. 490.863 Shareholders' action.

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

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

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

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

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

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

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

33 *a.* "Holder" means and "held by" refers to shares held by
34 both a record shareholder, as defined in section 490.1301,
35 subsection 7, and a beneficial shareholder, as defined in

1 490.1301, subsection 2.

2 b. "*Qualified shares*" means all shares entitled to be
3 voted with respect to the transaction except for shares that
4 the secretary or other officer or agent of the corporation
5 authorized to tabulate votes either knows, or under subsection
6 2 is notified, are held by any of the following:

7 (1) A director who has a conflicting interest respecting the
8 transaction.

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

11 4. A majority of the votes entitled to be cast by the
12 holders of all qualified shares constitutes a quorum for
13 purposes of compliance with this section. Subject to the
14 provisions of subsection 5, shareholders' action that otherwise
15 complies with this section is not affected by the presence of
16 holders, or by the voting, of shares that are not qualified
17 shares.

18 5. If a shareholders' vote does not comply with subsection
19 1 solely because of a director's failure to comply with
20 subsection 2, and if the director establishes that the failure
21 was not intended to influence and did not in fact determine the
22 outcome of the vote, the court may take such action respecting
23 the transaction and the director, and may give such effect,
24 if any, to the shareholders' vote, as the court considers
25 appropriate in the circumstances.

26 6. Where shareholders' action under this section does
27 not satisfy a quorum or voting requirement applicable to the
28 authorization of the transaction by reason of the articles of
29 incorporation, the bylaws, or a provision of law, independent
30 action to satisfy those authorization requirements must be
31 taken by the shareholders, in which action shares that are not
32 qualified shares may participate.

33 Sec. 43. Section 490.870, subsection 1, paragraphs a and b,
34 Code 2013, are amended to read as follows:

35 a. Action by qualified directors disclaiming the

1 corporation's interest in the opportunity is taken in
2 compliance with the procedures set forth in section ~~490.832~~
3 490.862, as if the decision being made concerned a director's
4 conflicting interest transaction.

5 b. Shareholders' action disclaiming the corporation's
6 interest in the opportunity is taken in compliance with the
7 procedure set forth in section ~~490.832~~ 490.863, as if the
8 decision being made concerned a director's conflicting interest
9 transaction; except that, rather than making the disclosure
10 "required disclosure" as required defined in section ~~490.832~~
11 490.860, in each case the director shall have made prior
12 disclosure to those acting on behalf of the corporation of all
13 material facts concerning the business opportunity that are
14 then known to the director.

15 Sec. 44. Section 490.1003, subsection 2, Code 2013, is
16 amended to read as follows:

17 2. a. Except as provided in sections 490.1005, 490.1007,
18 and 490.1008, after adopting the proposed amendment, the board
19 of directors must submit the amendment to the shareholders for
20 their approval. The board of directors must also transmit to
21 the shareholders a recommendation that the shareholders approve
22 the amendment, unless any of the following apply:

23 (1) The board of directors makes a determination that
24 because of conflicts of interest or other special circumstances
25 it should not make such a recommendation, in which case the

26 (2) Section 490.826 applies.

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

30 Sec. 45. Section 490.1104, subsection 2, Code 2013, is
31 amended to read as follows:

32 2. a. Except as provided in subsection 7 and in section
33 490.1105, after adopting the plan of merger or share exchange
34 the board of directors must submit the plan to the shareholders
35 for their approval. The board of directors must also transmit

1 to the shareholders a recommendation that the shareholders
2 approve the plan, unless the any of the following apply:

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

6 (2) Section 490.826 applies.

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

10 Sec. 46. Section 490.1106, subsection 1, unnumbered
11 paragraph 1, Code 2013, is amended to read as follows:

12 After a plan of merger or share exchange has been adopted
13 and approved as required by this chapter, articles of merger
14 or share exchange shall be executed signed on behalf of each
15 party to the merger or share exchange by any officer or other
16 duly authorized representative. The articles shall set forth
17 the following:

18 Sec. 47. Section 490.1108, subsection 2, Code 2013, is
19 amended to read as follows:

20 2. If a merger or share exchange is abandoned under
21 subsection 1 after articles of merger or share exchange have
22 been filed with the secretary of state but before the merger
23 or share exchange has become effective, a statement that the
24 merger or share exchange has been abandoned in accordance with
25 this section, executed signed on behalf of a party to the
26 merger or share exchange by an officer or other duly authorized
27 representative, shall be delivered to the secretary of state
28 for filing prior to the effective date of the merger or share
29 exchange. Upon filing, the statement shall take effect and the
30 merger or share exchange shall be deemed abandoned and shall
31 not become effective.

32 Sec. 48. Section 490.1202, subsection 2, Code 2013, is
33 amended to read as follows:

34 2. a. A disposition that requires approval of the
35 shareholders under subsection 1 shall be initiated by

1 a resolution by the board of directors authorizing the
2 disposition. After adoption of such a resolution, the board
3 of directors shall submit the proposed disposition to the
4 shareholders for their approval. The board of directors shall
5 also transmit to the shareholders a recommendation that the
6 shareholders approve the proposed disposition, unless ~~the any~~
7 of the following apply:

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

11 (2) Section 490.826 applies.

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

15 Sec. 49. Section 490.1301, Code 2013, is amended by adding
16 the following new subsection:

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

23 a. "Beneficial owner" means any person who, directly
24 or indirectly, through any contract, arrangement, or
25 understanding, other than a revocable proxy, has or shares the
26 power to vote, or to direct the voting of, shares; except that
27 a member of a national securities exchange is not deemed to be
28 a beneficial owner of securities held directly or indirectly
29 by it on behalf of another person solely because the member is
30 the record holder of the securities if the member is precluded
31 by the rules of the exchange from voting without instruction
32 on contested matters or matters that may affect substantially
33 the rights or privileges of the holders of the securities to
34 be voted. When two or more persons agree to act together for
35 the purpose of voting their shares of the corporation, each

1 member of the group formed thereby is deemed to have acquired
2 beneficial ownership, as of the date of the agreement, of all
3 voting shares of the corporation beneficially owned by any
4 member of the group.

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

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

14 (1) Was the beneficial owner of twenty percent or more of
15 the voting power of the corporation, other than as owner of
16 excluded shares.

17 (2) Had the power, contractually or otherwise, other than as
18 owner of excluded shares, to cause the appointment or election
19 of twenty-five percent or more of the directors to the board of
20 directors of the corporation.

21 (3) Was a senior executive or director of the corporation
22 or a senior executive of any affiliate thereof, and that
23 senior executive or director will receive, as a result of the
24 corporate action, a financial benefit not generally available
25 to other shareholders as such, other than any of the following:

26 (a) Employment, consulting, retirement, or similar benefits
27 established separately and not as part of or in contemplation
28 of the corporate action.

29 (b) Employment, consulting, retirement, or similar benefits
30 established in contemplation of, or as part of, the corporate
31 action that are not more favorable than those existing before
32 the corporate action or, if more favorable, that have been
33 approved on behalf of the corporation in the same manner as is
34 provided in section 490.862.

35 (c) In the case of a director of the corporation who will,

1 in the corporate action, become a director of the acquiring
2 entity in the corporate action or one of its affiliates, rights
3 and benefits as a director that are provided on the same basis
4 as those afforded by the acquiring entity generally to other
5 directors of such entity or such affiliate.

6 Sec. 50. Section 490.1302, subsection 2, paragraph a, Code
7 2013, is amended by striking the paragraph and inserting in
8 lieu thereof the following:

9 a. Appraisal rights shall not be available for the holders
10 of shares of any class or series of shares which is any of the
11 following:

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

14 (2) Traded in an organized market and has at least two
15 thousand shareholders and a market value of at least twenty
16 million dollars, exclusive of the value of such shares held by
17 the corporation's subsidiaries, senior executives, directors,
18 and beneficial shareholders owning more than ten percent of
19 such shares.

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

24 Sec. 51. Section 490.1302, subsection 2, paragraph b,
25 subparagraph (1), Code 2013, is amended to read as follows:

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

30 Sec. 52. Section 490.1302, subsection 2, paragraph d, Code
31 2013, is amended by striking the paragraph and inserting in
32 lieu thereof the following:

33 d. Paragraph "a", shall not be applicable and appraisal
34 rights shall be available pursuant to subsection 1 for the
35 holders of any class or series of shares where the corporate

1 action is an interested transaction.

2 Sec. 53. Section 490.1302, subsection 2, paragraph e, Code
3 2013, is amended by striking the paragraph.

4 Sec. 54. Section 490.1302, subsection 4, Code 2013, is
5 amended by striking the subsection.

6 Sec. 55. Section 490.1320, Code 2013, is amended to read as
7 follows:

8 **490.1320 Notice of appraisal rights.**

9 1. If Where any proposed corporate action described
10 specified in section 490.1302, subsection 1, is to be submitted
11 to a vote at a shareholders' meeting, the meeting notice must
12 state that the corporation has concluded that the shareholders
13 are, are not, or may be entitled to assert appraisal rights
14 under this part. If the corporation concludes that appraisal
15 rights are or may be available, a copy of this part must
16 accompany the meeting notice sent to those record shareholders
17 entitled to exercise appraisal rights.

18 2. In a merger pursuant to section 490.1105, the parent
19 corporation must notify in writing all record shareholders of
20 the subsidiary who are entitled to assert appraisal rights
21 that the corporate action became effective. Such notice must
22 be sent within ten days after the corporate action became
23 effective and include the materials described in section
24 490.1322.

25 3. Where any corporate action specified in section
26 490.1302, subsection 1, is to be approved by written consent
27 of the shareholders pursuant to section 490.704, all of the
28 following apply:

29 a. Written notice that appraisal rights are, are not, or may
30 be available must be sent to each record shareholder from whom
31 a consent is solicited at the time consent of such shareholder
32 is first solicited and, if the corporation has concluded that
33 appraisal rights are or may be available, must be accompanied
34 by a copy of this chapter.

35 b. Written notice that appraisal rights are, are not, or

1 may be available must be delivered together with the notice to
2 nonconsenting and nonvoting shareholders required by section
3 490.704, subsections 5 and 6, may include the materials
4 described in section 490.1322 and, if the corporation has
5 concluded that appraisal rights are or may be available, must
6 be accompanied by a copy of this chapter.

7 4. Where corporate action described in section 490.1302,
8 subsection 1, is proposed, or a merger pursuant to section
9 490.1105 is effected, the notice referred to in subsection 1
10 or 3, if the corporation concludes that appraisal rights are
11 or may be available, and in subsection 2 shall be accompanied
12 by all of the following:

13 a. The annual financial statements specified in section
14 490.1620, subsection 1, of the corporation that issued the
15 shares that may be subject to appraisal, which shall be as of
16 a date ending not more than sixteen months before the date of
17 the notice and shall comply with section 490.1620, subsection
18 2; provided that, if such annual financial statements are not
19 reasonably available, the corporation shall provide reasonably
20 equivalent financial information.

21 b. The latest available quarterly financial statements of
22 such corporation, if any.

23 5. The right to receive the information described in
24 subsection 4 may be waived in writing by a shareholder before
25 or after the corporate action.

26 Sec. 56. Section 490.1321, Code 2013, is amended to read as
27 follows:

28 **490.1321 Notice of intent to demand payment.**

29 1. If proposed a corporate action requiring appraisal
30 rights under specified in section 490.1302, subsection 1, is
31 submitted to a vote at a shareholders' meeting, a shareholder
32 who wishes to assert appraisal rights with respect to any class
33 or series of shares must do all of the following:

34 a. Deliver to the corporation before the vote is taken
35 written notice of the shareholder's intent to demand payment if

1 the proposed action is effectuated.

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

4 2. If a corporate action specified in section 490.1302,
5 subsection 1, is to be approved by less than unanimous written
6 consent, a shareholder who wishes to assert appraisal rights
7 with respect to any class or series of shares must not sign a
8 consent in favor of the proposed action with respect to that
9 class or series of shares.

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

13 Sec. 57. Section 490.1322, subsection 1, Code 2013, is
14 amended to read as follows:

15 1. If proposed corporate action requiring appraisal rights
16 under section 490.1302, subsection 1, becomes effective, the
17 corporation must ~~deliver~~ send a written appraisal notice
18 and the form required by subsection 2, paragraph "a", to
19 all shareholders who satisfied the requirements of section
20 490.1321, subsection 1, or section 490.1321, subsection 2. In
21 the case of a merger under section 490.1105, the parent must
22 deliver ~~a~~ written an appraisal notice and form to all record
23 shareholders who may be entitled to assert appraisal rights.

24 Sec. 58. Section 490.1322, subsection 2, unnumbered
25 paragraph 1, Code 2013, is amended to read as follows:

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

30 Sec. 59. Section 490.1322, subsection 2, paragraph a, Code
31 2013, is amended to read as follows:

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

34 (1) Specifies the first date of any announcement to
35 shareholders made prior to the date the corporate action became

1 effective of the first announcement to shareholders of the
2 principal terms of the proposed corporate action and requires,
3 if any.

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

8 (3) Requires the shareholder asserting appraisal rights to
9 certify whether or not beneficial ownership of those shares for
10 which appraisal rights are asserted was acquired before that
11 date, and that the such shareholder did not vote for or consent
12 to the transaction.

13 Sec. 60. Section 490.1322, subsection 2, paragraph b,
14 subparagraph (2), Code 2013, is amended to read as follows:

15 (2) A date by which the corporation must receive the form,
16 which date shall not be fewer than forty nor more than sixty
17 days after the date the appraisal notice and form are is sent
18 under subsection 1, and state that the shareholder shall have
19 waived the right to demand appraisal with respect to the
20 shares unless the form is received by the corporation by such
21 specified date.

22 Sec. 61. Section 490.1323, subsections 1 and 3, Code 2013,
23 are amended to read as follows:

24 1. A shareholder who receives notice pursuant to section
25 490.1322 and who wishes to exercise appraisal rights must
26 certify on sign and return the form sent by the corporation
27 and, in the case of certificated shares, deposit the
28 shareholder's certificates in accordance with the terms of
29 the notice by the date referred to in the notice pursuant to
30 section 490.1322, subsection 2, paragraph "b", subparagraph
31 (2). In addition, if applicable, the shareholder must certify
32 on the form whether the beneficial owner of such shares
33 acquired beneficial ownership of the shares before the date
34 required to be set forth in the notice pursuant to section
35 490.1322, subsection 2, paragraph "a". If a shareholder fails

1 to make this certification, the corporation may elect to
2 treat the shareholder's shares as after-acquired shares under
3 section 490.1325. In addition, a shareholder who wishes to
4 exercise appraisal rights must execute and return the form and,
5 in a case of certificated shares, deposit the shareholder's
6 certificates in accordance with the terms of the notice
7 by the date referred to in the notice pursuant to section
8 490.1322, subsection 2, paragraph "b", subparagraph (2). Once
9 a shareholder deposits that shareholder's certificates or, in
10 the case of uncertificated shares, returns the executed signed
11 forms, that shareholder loses all rights as a shareholder,
12 unless the shareholder withdraws pursuant to subsection 2.

13 3. A shareholder who does not execute sign and return the
14 form and, in the case of certificated shares, deposit the
15 shareholder's share certificates where required, each by the
16 date set forth in the notice described in section 490.1322,
17 subsection 2, shall not be entitled to payment under this
18 division.

19 Sec. 62. Section 490.1324, subsection 2, paragraph a, Code
20 2013, is amended to read as follows:

21 a. (1) Financial The annual financial statements specified
22 in section 490.1620, subsection 1, of the corporation that
23 issued the shares to be appraised, consisting of a balance
sheet as of the end of a fiscal year which shall be of a date
25 ending not more than sixteen months before the date of payment,
26 an income statement for that year, a statement of changes
27 in shareholders' equity for that year, and the shall comply
28 with section 490.1620, subsection 2; provided that, if such
29 annual financial statements are not reasonably available, the
30 corporation shall provide reasonably equivalent financial
31 information.

32 (2) The latest available interim quarterly financial
33 statements of such corporation, if any.

34 Sec. 63. Section 490.1325, subsection 1, Code 2013, is
35 amended to read as follows:

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

7 Sec. 64. Section 490.1331, Code 2013, is amended to read as
8 follows:

9 **490.1331 Court costs and counsel fees expenses.**

10 1. The court in an appraisal proceeding commenced under
11 section 490.1330 shall determine all court costs of the
12 proceeding, including the reasonable compensation and expenses
13 of appraisers appointed by the court. The court shall assess
14 the court costs against the corporation, except that the court
15 may assess court costs against all or some of the shareholders
16 demanding appraisal, in amounts the court finds equitable, to
17 the extent the court finds such shareholders acted arbitrarily,
18 vexatiously, or not in good faith with respect to the rights
19 provided by this division.

20 2. The court in an appraisal proceeding may also assess the
21 ~~fees and expenses of counsel and experts~~ for the respective
22 parties, in amounts the court finds equitable, for either any
23 of the following:

24 a. Against the corporation and in favor of any or all
25 shareholders demanding appraisal if the court finds the
26 corporation did not substantially comply with the requirements
27 of section 490.1320, 490.1322, 490.1324, or 490.1325.

28 b. Against either the corporation or a shareholder demanding
29 appraisal, in favor of any other party, if the court finds that
30 the party against whom the ~~fees and expenses~~ are assessed acted
31 arbitrarily, vexatiously, or not in good faith with respect to
32 the rights provided by this chapter.

33 3. If the court in an appraisal proceeding finds that the
34 ~~services of counsel for expenses incurred by~~ any shareholder
35 were of substantial benefit to other shareholders similarly

1 situated, and that ~~the fees for those services such expenses~~
2 should not be assessed against the corporation, the court may
3 award to such counsel reasonable fees to ~~direct that such~~
4 expenses be paid out of the amounts awarded the shareholders
5 who were benefited.

6 4. To the extent the corporation fails to make a required
7 payment pursuant to section 490.1324, 490.1325, or 490.1326,
8 the shareholder may sue directly for the amount owed and, to
9 the extent successful, shall be entitled to recover from the
10 corporation ~~all costs and expenses of the suit, including~~
11 ~~counsel fees~~.

12 Sec. 65. NEW SECTION. 490.1340 Other remedies limited.

13 1. The legality of a proposed or completed corporate
14 action described in section 490.1302, subsection 1, shall not
15 be contested, nor may the corporate action be enjoined, set
16 aside, or rescinded, in a legal or equitable proceeding by a
17 shareholder after the shareholders have approved the corporate
18 action.

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

21 a. Was not authorized and approved in accordance with the
22 applicable provisions of any of the following:

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

24 (2) The articles of incorporation or bylaws.

25 (3) The resolution of the board of directors authorizing the
26 corporate action.

27 b. Was procured as a result of fraud, a material
28 misrepresentation, or an omission of a material fact necessary
29 to make statements made, in light of the circumstances in which
30 they were made, not misleading.

31 c. Is an interested transaction, unless it has been
32 recommended by the board of directors in the same manner as
33 is provided in section 490.862 and has been approved by the
34 shareholders in the same manner as is provided in section
35 490.863 as if the interested transaction were a director's

1 conflicting interest transaction.

2 d. Is approved by less than unanimous consent of the
3 voting shareholders pursuant to section 490.704, if all of the
4 following apply:

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

9 (2) The proceeding challenging the corporate action is
10 commenced within ten days after notice of the approval of the
11 corporate action is effective as to the shareholder bringing
12 the proceeding.

13 Sec. 66. Section 490.1402, subsection 2, paragraph a, Code
14 2013, is amended to read as follows:

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

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

20 (b) Section 490.826 applies.

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

24 Sec. 67. Section 490.1430, Code 2013, is amended to read as
25 follows:

26 **490.1430 Grounds for judicial dissolution.**

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

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

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

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

35 2. b. A proceeding by a shareholder if it is established

1 that any of the following conditions exist:

2 *a.* (1) The directors are deadlocked in the management of
3 the corporate affairs, the shareholders are unable to break the
4 deadlock, and either irreparable injury to the corporation is
5 threatened or being suffered, or the business and affairs of
6 the corporation can no longer be conducted to the advantage of
7 the shareholders generally, because of the deadlock.

8 *b.* (2) The directors or those in control of the corporation
9 have acted, are acting, or will act in a manner that is
10 illegal, oppressive, or fraudulent.

11 *c.* (3) The shareholders are deadlocked in voting power
12 and have failed, for a period that includes at least two
13 consecutive annual meeting dates, to elect successors to
14 directors whose terms have expired.

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

16 *e.* c. A proceeding by a creditor if it is established that
17 either any of the following apply:

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

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

24 *d.* A proceeding by the corporation to have its voluntary
25 dissolution continued under court supervision.

26 *e.* A proceeding by a shareholder if the corporation has
27 abandoned its business and has failed within a reasonable time
28 to liquidate and distribute its assets and dissolve.

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

32 a. Listed on the New York stock exchange, the American stock
33 exchange, or on any exchange owned or operated by the NASDAQ
34 stock market, l.l.c., or listed or quoted on a system owned or
35 operated by the national association of securities dealers,

1 inc.

2 b. Not so listed or quoted, but are held by at least three
3 hundred shareholders and the shares outstanding have a market
4 value of at least twenty million dollars, exclusive of the
5 value of such shares held by the corporation's subsidiaries,
6 senior executives, directors, and beneficial shareholders
7 owning more than ten percent of such shares.

8 3. As used in this section, "*beneficial shareholder*" has the
9 meaning specified in section 490.1301, subsection 2.

10 Sec. 68. Section 490.1431, subsection 4, Code 2013, is
11 amended to read as follows:

12 4. Within ten days of the commencement of a proceeding
13 under section 490.1430, subsection 2, to dissolve a corporation
14 that has no shares listed on a national securities exchange or
15 regularly traded in a market maintained by one or more members
16 of a national securities exchange under section 490.1430,
17 subsection 1, paragraph "b", the corporation must send to all
18 shareholders, other than the petitioner, a notice stating that
19 the shareholders are entitled to avoid the dissolution of the
20 corporation by electing to purchase the petitioner's shares
21 under section 490.1434, and a copy of section 490.1434.

22 Sec. 69. Section 490.1432, subsections 1 and 5, Code 2013,
23 are amended to read as follows:

24 1. A Unless an election to purchase has been filed under
25 section 490.1434, a court in a judicial proceeding brought to
26 dissolve a corporation may appoint one or more receivers to
27 wind up and liquidate, or one or more custodians to manage,
28 the business and affairs of the corporation. The court shall
29 hold a hearing, after notifying all parties to the proceeding
30 and any interested persons designated by the court, before
31 appointing a receiver or custodian. The court appointing a
32 receiver or custodian has exclusive jurisdiction over the
33 corporation and all its property wherever located.

34 5. The court from time to time during the receivership
35 or custodianship may order compensation paid and expense

1 ~~disbursements or reimbursements made expenses paid or~~
2 ~~reimbursed to the receiver or custodian and the receiver's~~
3 ~~or custodian's counsel from the assets of the corporation or~~
4 ~~proceeds from the sale of the assets.~~

5 Sec. 70. Section 490.1434, subsections 1, 2, 4, and 5, Code
6 2013, are amended to read as follows:

7 1. In a proceeding under section 490.1430, subsection ~~2 1,~~
8 ~~paragraph "b", to dissolve a corporation that has no shares~~
9 ~~listed on a national securities exchange or regularly traded~~
10 ~~in a market maintained by one or more members of a national or~~
11 ~~affiliated securities association, the corporation may elect~~
12 ~~or, if it fails to elect, one or more shareholders may elect to~~
13 ~~purchase all shares owned by the petitioning shareholder at the~~
14 ~~fair value of the shares. An election pursuant to this section~~
15 ~~shall be irrevocable unless the court determines that it is~~
16 ~~equitable to set aside or modify the election.~~

17 2. An election to purchase pursuant to this section may
18 be filed with the court at any time within ninety days after
19 the filing of the petition under section 490.1430, subsection
20 ~~2 1, paragraph "b", or at such later time as the court in its~~
21 ~~discretion may allow. If the election to purchase is filed~~
22 ~~by one or more shareholders, the corporation shall, within~~
23 ~~ten days thereafter, give written notice to all shareholders,~~
24 ~~other than the petitioner. The notice must state the name~~
25 ~~and number of shares owned by the petitioner and the name and~~
26 ~~number of shares owned by each electing shareholder and must~~
27 ~~advise the recipients of their right to join the election to~~
28 ~~purchase shares in accordance with this section. Shareholders~~
29 ~~who wish to participate must file notice of their intention~~
30 ~~to join in the purchase no later than thirty days after~~
31 ~~the effective date of the notice to them. All shareholders~~
32 ~~who have filed an election or notice of their intention to~~
33 ~~participate in the election to purchase thereby become parties~~
34 ~~to the proceeding and shall participate in the purchase in~~
35 ~~proportion to their ownership of shares as of the date the~~

1 first election was filed, unless they otherwise agree or the
2 court otherwise directs. After an election has been filed by
3 the corporation or one or more shareholders, the proceeding
4 under section 490.1430, subsection 2 1, paragraph "b", shall
5 not be discontinued or settled, nor shall the petitioning
6 shareholder sell or otherwise dispose of the shareholder's
7 shares, unless the court determines that it would be equitable
8 to the corporation and the shareholders, other than the
9 petitioner, to permit such discontinuance, settlement, sale, or
10 other disposition.

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

19 5. Upon determining the fair value of the shares, the
20 court shall enter an order directing the purchase upon such
21 terms and conditions as the court deems appropriate, which may
22 include payment of the purchase price in installments, where
23 necessary in the interests of equity, provision for security
24 to assure payment of the purchase price and any additional
25 costs, fees, and expenses as may have been awarded, and, if
26 the shares are to be purchased by shareholders, the allocation
27 of shares among them. In allocating petitioner's shares among
28 holders of different classes of shares, the court shall attempt
29 to preserve the existing distribution of voting rights among
30 holders of different classes insofar as practicable and may
31 direct that holders of a specific class or classes shall not
32 participate in the purchase. Interest may be allowed at the
33 rate and from the date determined by the court to be equitable,
34 but if the court finds that the refusal of the petitioning
35 shareholder to accept an offer of payment was arbitrary or

1 otherwise not in good faith, no interest shall be allowed. If
2 the court finds that the petitioning shareholder has probable
3 grounds for relief under section 490.1430, subsection 2 1,
4 paragraph "b" or "d", subparagraph (2) or (4), it may award to
5 the petitioning shareholder reasonable fees and expenses of
6 counsel and of any experts employed by the shareholder.

7 Sec. 71. Section 490.1508, subsection 2, Code 2013, is
8 amended to read as follows:

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

18 Sec. 72. NEW SECTION. 490.1523 Transfer of authority.

19 1. A foreign business corporation authorized to transact
20 business in this state that converts to a foreign nonprofit
21 corporation or to any form of foreign unincorporated entity
22 that is required to obtain a certificate of authority or make
23 a similar type of filing with the secretary of state if it
24 transacts business in this state shall file with the secretary
25 of state an application for transfer of authority signed by
26 any officer or other duly authorized representative. The
27 application shall set forth all of the following:

28 a. The name of the corporation.

29 b. The type of unincorporated entity to which it has been
30 converted and the jurisdiction whose laws govern its internal
31 affairs.

32 c. Any other information that would be required in a filing
33 under the laws of this state by an unincorporated entity of the
34 type the corporation has become seeking authority to transact
35 business in this state.

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

4 3. Upon the effectiveness of the application for transfer of
5 authority, the authority of the corporation under this chapter
6 to transact business in this state shall be transferred without
7 interruption to the converted entity which shall thereafter
8 hold such authority subject to the provisions of the laws of
9 this state applicable to that type of unincorporated entity.

10 Sec. 73. Section 490.1601, subsection 4, Code 2013, is
11 amended to read as follows:

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

16 Sec. 74. Section 490.1602, Code 2013, is amended to read as
17 follows:

18 **490.1602 Inspection of records by shareholders.**

19 1. A shareholder of a corporation is entitled to
20 inspect and copy, during regular business hours at the
21 corporation's principal office, any of the records of the
22 corporation described in section 490.1601, subsection 5, if the
23 shareholder gives the corporation signed written notice of the
24 shareholder's demand at least five business days before the
25 date on which the shareholder wishes to inspect and copy.

26 2. For any meeting of shareholders for which the record date
27 for determining shareholders entitled to vote at the meeting
28 is different than the record date for notice of the meeting,
29 any person who becomes a shareholder subsequent to the record
30 date for notice of the meeting and is entitled to vote at
31 the meeting is entitled to obtain from the corporation upon
32 request the notice and any other information provided by the
33 corporation to shareholders in connection with the meeting,
34 unless the corporation has made such information generally
35 available to shareholders by posting it on its internet site or

1 by other generally recognized means. Failure of a corporation
2 to provide such information does not affect the validity of
3 action taken at the meeting.

4 3. A shareholder of a corporation is entitled to inspect and
5 copy, during regular business hours at a reasonable location
6 specified by the corporation, any of the following records
7 of the corporation if the shareholder meets the requirements
8 of subsection 3 4 and gives the corporation a signed written
9 notice of the shareholder's demand at least five business days
10 before the date on which the shareholder wishes to inspect and
11 copy any of the following:

12 a. Excerpts from minutes of any meeting of the board of
13 directors, ~~records of any action of or~~ a committee of the board
14 of directors while acting in place of the board of directors
15 on behalf of the corporation, minutes of any meeting of the
16 shareholders, and records of action taken by the shareholders,
17 ~~or board of directors, or a committee of the board without~~
18 a meeting, to the extent not subject to inspection under
19 subsection 1 ~~of this section~~.

20 b. Accounting records of the corporation.

21 c. The record of shareholders.

22 3. 4. A shareholder may inspect and copy the records
23 described in subsection 2 3 only if all of the following apply:

24 a. The shareholder's demand is made in good faith and for
25 a proper purpose.

26 b. The shareholder describes with reasonable particularity
27 the shareholder's purpose and the records the shareholder
28 desires to inspect.

29 c. The records are directly connected with the shareholder's
30 purpose.

31 4. 5. The right of inspection granted by this section shall
32 not be abolished or limited by a corporation's articles of
33 incorporation or bylaws.

34 5. 6. This section does not affect either any of the
35 following:

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

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

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

9 Sec. 75. Section 490.1603, subsection 3, Code 2013, is
10 amended to read as follows:

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

16 Sec. 76. Section 490.1604, subsection 2, Code 2013, is
17 amended to read as follows:

18 2. If a corporation does not within a reasonable time
19 allow a shareholder to inspect and copy any other records, the
20 shareholder who complies with section 490.1602, ~~subsections 2~~
21 and ~~3~~ may apply to the district court in the county where the
22 corporation's principal office or, if none in this state, its
23 registered office is located for an order to permit inspection
24 and copying of the records demanded. The court shall dispose
25 of an application under this subsection on an expedited basis.

26 Sec. 77. Section 490.1606, subsection 1, Code 2013, is
27 amended to read as follows:

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

32 a. Notice Notices to the shareholders of two consecutive
33 annual meetings, and all notices of meetings during the period
34 between such two consecutive annual meetings, have been sent to
35 such shareholder at such shareholder's address as shown on the

1 records of the corporation and have been returned undeliverable
2 or could not be delivered.

3 b. All, but not less than two, payments of dividends on
4 securities during a twelve-month period, or two consecutive
5 payments of dividends on securities during a period of more
6 than twelve months, have been sent to such shareholder at
7 such shareholder's address as shown on the records of the
8 corporation and have been returned undeliverable or could not
9 be delivered.

10 Sec. 78. Section 490.1620, Code 2013, is amended by striking
11 the section and inserting in lieu thereof the following:

12 **490.1620 Financial statements for shareholders.**

13 1. A corporation shall deliver to its shareholders
14 annual financial statements, which may be consolidated or
15 combined statements of the corporation and one or more of its
16 subsidiaries, as appropriate, that include a balance sheet as
17 of the end of the fiscal year, an income statement for that
18 year, and a statement of changes in shareholders' equity for
19 the year unless that information appears elsewhere in the
20 financial statements. If financial statements are prepared for
21 the corporation on the basis of generally accepted accounting
22 principles, the annual financial statements must also be
23 prepared on that basis.

24 2. If the annual financial statements are reported upon by a
25 public accountant, the report must accompany them. If not, the
26 statements must be accompanied by a statement of the president
27 or the person responsible for the corporation's accounting
28 records which does all of the following:

29 a. States such person's reasonable belief whether the
30 statements were prepared on the basis of generally accepted
31 accounting principles and, if not, describing the basis of
32 preparation.

33 b. Describes any respects in which the statements were
34 not prepared on a basis of accounting consistent with the
35 statements prepared for the preceding year.

1 3. Within one hundred twenty days after the close of each
2 fiscal year, the corporation shall send the annual financial
3 statements to each shareholder. Thereafter, on written
4 request from a shareholder to whom the statements were not
5 sent, the corporation shall send the shareholder the latest
6 financial statements. A public corporation may fulfill its
7 responsibilities under this section by delivering the specified
8 financial statements, or otherwise making them available, in
9 any manner permitted by the applicable rules and regulations of
10 the United States securities and exchange commission.

11 Sec. 79. Section 490.1703, Code 2013, is amended by adding
12 the following new subsection:

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

19 Sec. 80. REPEAL. Section 490.832, Code 2013, is repealed.

20 Sec. 81. EFFECTIVE DATE. This division of this Act takes
21 effect January 1, 2014.

22 DIVISION II
23 FUTURE PROVISIONS

24 Sec. 82. Section 490.140, subsection 21A, Code 2013, is
25 amended by striking the subsection and inserting in lieu
26 thereof the following:

27 21A. "Public corporation" means a corporation that
28 has a class of voting stock that is listed on a national
29 securities exchange or held of record by more than two thousand
30 shareholders.

31 Sec. 83. Section 490.732, subsection 4, Code 2013, is
32 amended by striking the subsection and inserting in lieu
33 thereof the following:

34 4. An agreement authorized by this section shall cease to be
35 effective when the corporation becomes a public corporation.

1 If the agreement ceases to be effective for any reason, the
2 board of directors may, if the agreement is contained or
3 referred to in the corporation's articles of incorporation or
4 bylaws, adopt an amendment to the articles of incorporation or
5 bylaws, without shareholder action, to delete the agreement and
6 any references to it.

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

10 EXPLANATION

11 BACKGROUND. The "Iowa Business Corporation Act" (Code
12 chapter 490), a model Act adopted by the American Bar
13 Association, governs the requirements for the creation,
14 organization, and operation of corporations and the
15 relationship between shareholders, directors, and officers of
16 the corporation. Generally, the Act's provisions establish
17 default requirements and procedures which may be modified by a
18 corporation's articles of incorporation or bylaws.

19 PUBLIC CORPORATIONS. A public corporation is a corporation
20 that has a class of voting stock that is listed on a national
21 securities exchange or held of record by more than 2,000
22 shareholders (Code section 490.140). The bill amends the
23 definition to eliminate the reference to a class of shares
24 or number of shareholders. It provides that a corporation
25 is public if traded in a market maintained by a member of
26 the national securities association. The bill also amends
27 a provision regulating shareholder agreements that govern a
28 corporation's corporate affairs including by eliminating or
29 restricting the powers of its board of directors (Code section
30 490.732). Specifically, the bill provides that a shareholder
31 agreement is automatically terminated when the corporation
32 becomes public. These provisions take effect January 1, 2015.

33 NOTICES, DOCUMENTS, AND COMMUNICATION. A notice must be
34 in writing unless oral notice is reasonable (Code section
35 490.141). The bill requires that notices be in English.

1 It provides for the electronic transmission and receipt
2 and acknowledgment of information. The bill replaces the
3 requirement that documents be executed with a requirement
4 that they be signed, including documents associated with
5 the adoption or abandonment of articles of merger or share
6 exchange (Code sections 490.1106 and 490.1108). The bill also
7 authorizes a corporation to keep its records in an electronic
8 form so long as it can be converted into a paper form (Code
9 section 490.1601). The corporation is required to deliver a
10 written notice, report, or statement to shareholders who share
11 a common address, complies with delivery requirements, by
12 delivering to that address, unless a shareholder makes a timely
13 objection (Code section 490.144).

14 QUALIFIED DIRECTORS. In a number of circumstances a
15 director must be considered "disinterested" when taking an
16 action affecting the welfare of the corporation. The bill
17 eliminates the term "disinterested" and replaces it with
18 "qualified" (Code section 490.143; see Code sections 490.853
19 and 490.855). The bill requires a director to be qualified
20 under different circumstances which may involve board action
21 or court proceedings. For purposes of dismissing a derivative
22 proceeding by a court based on a good-faith determination of
23 directors (Code section 490.744), directors are qualified if
24 they do not have a material interest in the outcome of the
25 proceeding or a material relationship with a person who has
26 such an interest. For purposes of advancing expenses to a
27 board member before the disposition of a case (Code section
28 490.853) or later indemnifying a director (Code section
29 490.855), the authorization must be made by directors who are
30 qualified because they are not parties to the proceeding, do
31 not have a conflicting interest in the related transaction,
32 and do not have a material relationship with a director
33 who is a party or has a conflicting interest. For purposes
34 of voting to excuse a director from a conflicting interest
35 transaction (Code section 490.862), the vote must be taken

1 by directors who are qualified because they do not have a
2 conflict or have a material relationship with the director who
3 does have a conflict. For purposes of determining whether a
4 director may take advantage of a business opportunity because
5 other directors disclaimed the corporation's interest in the
6 opportunity (Code section 490.870), the directors are qualified
7 if the business opportunity was a conflicting interest
8 transaction for those directors.

9 DIRECTORS AND OFFICERS — FUNCTIONS AND DUTIES. Generally,
10 a corporation must have a board of directors, unless dispensed
11 with pursuant to a shareholder agreement (Code sections 490.801
12 and 490.732). The bill provides that the business affairs of a
13 corporation may be subject to the directors' oversight rather
14 than direct management. It authorizes a corporate officer to
15 designate recipients of compensation awards (e.g., rights,
16 options, or warrants associated with shares) (Code section
17 490.624). The bill substitutes the term "functions" in lieu
18 of "duties" in some places when referring to an officer's
19 obligations (Code section 490.841).

20 SHAREHOLDER MEETINGS — WRITTEN CONSENT IN LIEU OF HOLDING
21 MEETINGS. Shareholders are allowed to act by written consent
22 without holding a meeting if the action is taken by unanimous
23 written consent (Code section 490.704). The bill provides that
24 except for a public corporation, a corporation's articles of
25 incorporation may provide for shareholder action by less than
26 unanimous written consent, if a written consent is signed by
27 shareholders having the minimum number of votes that would
28 be required to authorize the action at a shareholder meeting
29 assuming that all shareholders entitled to vote were present.
30 It creates a corresponding exception to the requirement
31 that a corporation must hold at least one annual shareholder
32 meeting, presumably to elect directors (Code sections 490.701
33 and 490.803), by providing that the annual meeting is not
34 necessary when directors are elected by the written consent of
35 shareholders. The bill also provides a number of procedures

1 for providing notice to shareholders and tabulating written
2 consents delivered to the corporation.

3 SHAREHOLDER MEETING — RECORD DATE. A corporation
4 establishes procedures for providing notice to and voting by
5 shareholders at a meeting (or by written consent) according to
6 a record date. The record date determines both shareholders
7 who are entitled to notice of the meeting and to vote at
8 the meeting. The catch-all provision states that the record
9 date is the date before notice is mailed to a voting group or
10 shareholders (Code section 490.705), although a record date
11 may be established by court order (Code section 490.703) or
12 according to the corporation's bylaws or board of directors
13 (Code section 490.707). The bill provides that there may be
14 more than one record date. According to the bill, the record
15 date for a shareholder meeting may be established by the
16 corporation's bylaws or by the board unless the board provides
17 a different date to determine shareholders entitled to vote at
18 the meeting (Code section 490.707). The bill provides that
19 the corporation may be required to provide a list of names of
20 shareholders entitled to vote at the meeting, to be available
21 for inspection (Code section 490.720). The record date is
22 also used to determine when appraisal rights of shareholders
23 apply (Code section 490.1302). The bill requires shareholders'
24 appraisal rights to be triggered on the record date by tying
25 it only to when a shareholder is entitled to receive notice
26 and not when entitled to vote on the matter. The bill also
27 provides that the board may fix a record date for determining
28 when a shareholder is entitled to vote that is different than
29 the record date for determining when a shareholder is entitled
30 to notice of the meeting. A person who becomes a shareholder
31 after the record date for the notice, and is otherwise entitled
32 to vote at the meeting, may obtain the notice and other
33 information provided to the shareholders in preparation for the
34 meeting (Code sections 490.1602 and 490.1606).

35 SHAREHOLDER MEETINGS — REMOTE PARTICIPATION. The bill

1 authorizes shareholders to participate in a meeting of
2 shareholders by means of remote communication to the extent
3 approved by the board (Code section 490.709).

4 ELECTIONS AND VOTING — CUMULATIVE VOTING. Generally,
5 directors are elected by a plurality of votes cast unless the
6 corporation's articles of incorporation provide for cumulative
7 voting allowing shareholders to cast all their votes for a
8 single candidate (Code section 490.728). The bill provides
9 that shareholders otherwise entitled to vote cumulatively
10 cannot so vote unless the meeting notice authorizes it, or a
11 shareholder who has that right gives notice to the corporation
12 before the meeting.

13 LEGAL PROCEEDING — DERIVATIVE ACTIONS. As a result of a
14 derivative action, the court may order a corporation to pay
15 the plaintiff's expenses (defined in Code section 490.140)
16 if the court determines that the proceeding has resulted in
17 substantial benefit to the corporation and alternatively may
18 order the plaintiff to pay the defendant's expenses if it
19 finds the proceeding was commenced without reasonable cause
20 or for an improper purpose (Code section 490.746). The bill
21 eliminates the court's statutory authority to order the payment
22 of attorney fees.

23 PROCEEDINGS — COURT APPOINTMENT OF A CUSTODIAN OR RECEIVER.
24 The bill provides that a shareholder may obtain relief from a
25 court, due to an injury suffered by the corporation due to the
26 action or inaction of the board (through deadlock or fraud) or
27 because the corporation is insolvent (Code section 490.748).

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

30 DIRECTOR RESIGNATION. The bill provides for when a
31 director's resignation takes effect, including upon the
32 happening of a specific event (Code section 490.807). It also
33 provides that a director's resignation may be made irrevocable,
34 if it is conditioned upon the failure to receive a specified
35 vote as a director.

1 ELECTIONS AND VOTING. The bill also provides that in the
2 case of a director's vacancy, where a director was elected
3 by a voting group of shareholders, and the vacancy is to be
4 filled by the remaining directors, only directors elected by
5 that voting group may vote to fill the vacancy (Code section
6 490.810).

7 RIGHT OF SHAREHOLDERS TO VOTE. The bill provides that a
8 corporation may agree to submit a matter to a vote of its
9 shareholders even if the board determines not to recommend
10 the matter (Code section 490.826). It expressly authorizes
11 such vote on an amendment to the corporation's articles of
12 incorporation (Code section 490.1003), an action on a plan of
13 merger or share exchange (Code section 490.1104), the approval
14 of a plan of merger or share exchange (Code section 490.1106),
15 and the dissolution of the corporation (Code section 490.1402).

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

35 DIRECTOR'S CONFLICT OF INTEREST — GENERAL. Generally, a

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

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

1 disclose information regarding the conflict to the extent that
2 the information is not required to be protected under law or
3 some ethical rule of confidentiality (Code section 490.862).
4 The transaction is excused if the shareholders later ratify
5 the transaction according to specific procedural requirements
6 (Code section 490.863) after disclosure (but no provision for
7 limited disclosure). Finally, the transaction is excused if
8 the transaction is fair to the corporation, although neither
9 directors' nor shareholders' action was taken. The bill
10 provides that in any legal action attacking a director, the
11 plaintiff has the burden of proof (Code section 490.831).

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

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

1 490.1302). A corporation must pay shareholders the amount the
2 corporation estimates to be the fair value of the shares plus
3 interest (Code section 490.1324).

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

16 SHAREHOLDER APPRAISAL RIGHTS — NEW MARKET-OUT EXCEPTIONS.
17 The bill provides two new categories under the market-out
18 exception: (1) when the shares are classified as a covered
19 security regulated by the United States securities exchange
20 commission under the federal Securities Act of 1933, and (2)
21 when the shares are issued by an open-end management investment
22 company registered by the securities and exchange commission
23 under the federal Investment Company Act of 1940 (Code section
24 490.1302).

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

1 the person is a beneficial owner of 20 percent or more of
2 the corporation's voting shares, controlled the appointment
3 or election of 25 percent or more of the directors, or was a
4 senior executive or director of the corporation entitled to
5 receive certain financial benefits (Code section 490.1301).

6 SHAREHOLDER APPRAISAL RIGHTS — NOTICE. A corporation must
7 notify shareholders of their appraisal rights when a corporate
8 action is submitted to a vote at a shareholder meeting (Code
9 section 490.1320). The bill provides for notice when approval
10 is performed by written consent in lieu of a meeting (Code
11 section 490.704). A shareholder must provide notice of an
12 intent to exercise appraisal rights before the corporate action
13 (vote) is taken (Code section 490.1321). In order to remain
14 eligible to exercise those rights, the shareholder must not
15 vote on the matter. A shareholder who plans on asserting
16 appraisal rights cannot likewise exercise rights after signing
17 a consent in favor of the proposal (Code section 490.1321).
18 If a corporate action requiring appraisal rights becomes
19 effective, the corporation must deliver a written appraisal
20 notice and form (Code section 490.1322). The bill provides for
21 the contents of the notice, including information regarding
22 an announcement to shareholders made prior to the date the
23 corporate action became effective and requires a shareholder
24 asserting appraisal rights to certify beneficial ownership.
25 The bill provides for perfecting shareholder appraisal rights
26 by signing and returning the form (Code section 490.1323). The
27 bill provides an estimated (prepaid) payment to shareholders
28 exercising their appraisal rights after the form's due date
29 (Code section 490.1324). The bill provides for a financial
30 statement required to accompany the payment (Code section
31 490.1620), and allows the corporation to substitute another
32 document in lieu of a financial statement if it is unavailable.
33 SHAREHOLDER APPRAISAL RIGHTS — COURT COSTS. As part of
34 a shareholder appraisal rights proceeding, the court must
35 determine the court costs of the proceeding, and may assess

1 such costs against the corporation or shareholders demanding
2 appraisal (Code section 490.1331). The bill amends the
3 provision to eliminate a court's discretion to assess fees
4 associated with attorneys and experts.

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

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

1 subsidiaries, senior executives, directors, and beneficial
2 shareholders owning more than 10 percent of the shares (Code
3 section 490.1302).

4 FOREIGN CORPORATIONS — TRANSFER OF AUTHORITY. The bill
5 provides for the conversion of a foreign business corporation
6 authorized to do business in this state into a domestic
7 corporation by applying to the secretary of state (Code section
8 490.1523).

9 REPLACEMENT OF FUTURE REPEALED PROVISIONS. In 2011, the
10 general assembly enacted SF 325 (2011 Iowa Acts, chapter
11 2), carving out a special provision which provided for the
12 staggered terms of directors of public corporations and
13 providing for the repeal of the Act on December 31, 2014.
14 The Act took effect on March 23, 2011. The effect of the
15 repeal is to restore the provisions to their March 22, 2011
16 effective date. This bill amends two provisions affected by SF
17 325. First, it reenacts a definition of "public corporation"
18 which is repealed on December 31, 2014 (Code section 490.140).
19 Second, it rewrites a provision which provides that a
20 shareholder agreement is nullified when a corporation becomes a
21 public corporation (Code section 490.732).