

Senate Study Bill 1056 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act providing for corporations, providing for certain fees,
2 and including effective date provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I
FOR PROFIT CORPORATIONS
PART A
GENERAL PROVISIONS

Section 1. Section 490.101, Code 2021, is amended by striking the section and inserting in lieu thereof the following:

490.101 Short title.

This chapter shall be known and may be cited as the "*Iowa Business Corporation Act*".

Sec. 2. Section 490.120, Code 2021, is amended by striking the section and inserting in lieu thereof the following:

490.120 Requirements for documents — extrinsic facts.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the secretary of state.

2. This chapter must require or permit filing the document in the office of the secretary of state.

3. The document must contain the information required by this chapter and may contain other information.

4. The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

5. The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. Except as provided in section 490.1622, subsection 3, the document must be signed by any of the following:

a. The chair of the board of directors of a domestic or foreign corporation, its president, or another of its officers.

b. If directors have not been selected or the corporation

1 has not been formed, by an incorporator.

2 *c.* If the corporation is in the hands of a receiver,
3 trustee, or other court-appointed fiduciary, by that fiduciary.

4 7. *a.* The person executing the document shall sign it
5 and state beneath or opposite the person's signature the
6 person's name and the capacity in which the document is signed.
7 The document may but need not contain a corporate seal,
8 attestation, acknowledgment, or verification.

9 *b.* The secretary of state may accept for filing a document
10 containing a copy of a signature, however made.

11 8. If the secretary of state has prescribed a mandatory
12 form for the document under section 490.121, subsection 1, the
13 document must be in or on the prescribed form.

14 9. The document must be delivered to the office of the
15 secretary of state for filing. Delivery may be made by
16 electronic transmission if and to the extent permitted by the
17 secretary of state. If it is filed in typewritten or printed
18 form and not transmitted electronically, the secretary of state
19 may require one exact or conformed copy to be delivered with
20 the document.

21 10. When the document is delivered to the office of the
22 secretary of state for filing, the correct filing fee, and any
23 franchise tax, license fee, or penalty required by this chapter
24 or other law to be paid at the time of delivery for filing must
25 be paid or provision for payment made in a manner permitted by
26 the secretary of state.

27 11. Whenever a provision of this chapter permits any of the
28 terms of a plan or a filed document to be dependent on facts
29 objectively ascertainable outside the plan or filed document,
30 all of the following provisions apply:

31 *a.* The manner in which the facts will operate upon the terms
32 of the plan or filed document must be set forth in the plan or
33 filed document.

34 *b.* The facts may include any of the following:

35 (1) Any of the following that is available in a nationally

1 recognized news or information medium either in print or
2 electronically: statistical or market indices, market prices
3 of any security or group of securities, interest rates,
4 currency exchange rates, or similar economic or financial data.

5 (2) A determination or action by any person or body,
6 including the corporation or any other party to a plan or filed
7 document.

8 (3) The terms of, or actions taken under, an agreement to
9 which the corporation is a party, or any other agreement or
10 document.

11 c. As used in this subsection:

12 (1) "*Filed document*" means a document filed by the secretary
13 of state under any provision of this chapter except subchapter
14 XV or section 490.1622.

15 (2) "*Plan*" means a plan of domestication, conversion,
16 merger, or share exchange.

17 d. The following provisions of a plan or filed document
18 shall not be made dependent on facts outside the plan or filed
19 document:

20 (1) The name and address of any person required in a filed
21 document.

22 (2) The registered office of any entity required in a filed
23 document.

24 (3) The registered agent of any entity required in a filed
25 document.

26 (4) The number of authorized shares and designation of each
27 class or series of shares.

28 (5) The effective date of a filed document.

29 (6) Any required statement in a filed document of the date
30 on which the underlying transaction was approved or the manner
31 in which that approval was given.

32 e. If a provision of a filed document is made dependent on a
33 fact ascertainable outside of the filed document, and that fact
34 is neither ascertainable by reference to a source described
35 in paragraph "b", subparagraph (1), nor a document that is a

1 matter of public record, and the affected shareholders have
2 not received notice of the fact from the corporation, then the
3 corporation shall file with the secretary of state articles of
4 amendment to the filed document setting forth the fact promptly
5 after the time when the fact referred to is first ascertainable
6 or thereafter changes. Articles of amendment under this
7 paragraph "e" are deemed to be authorized by the authorization
8 of the original filed document to which they relate and may be
9 filed by the corporation without further action by the board of
10 directors or the shareholders.

11 Sec. 3. Section 490.121, Code 2021, is amended by striking
12 the section and inserting in lieu thereof the following:

13 **490.121 Forms.**

14 1. a. The secretary of state may prescribe and furnish on
15 request any of the following forms:

16 (1) An application for a certificate of existence or
17 certificate of registration.

18 (2) A foreign corporation's registration statement.

19 (3) A foreign corporation's statement of withdrawal.

20 (4) A foreign corporation's transfer of registration
21 statement.

22 (5) The biennial report required by section 490.1622.

23 b. If the secretary of state so requires, use of the forms
24 provided in paragraph "a" is mandatory.

25 2. The secretary of state may prescribe and furnish on
26 request forms for other documents required or permitted to be
27 filed pursuant to this chapter but their use is not mandatory.

28 Sec. 4. Section 490.122, Code 2021, is amended by striking
29 the section and inserting in lieu thereof the following:

30 **490.122 Filing, service, and copying fees.**

31 1. The secretary of state shall collect the following fees
32 when the documents described in **this subsection** are delivered
33 to the secretary of state for filing:

34 DOCUMENT	FEE
35 a. Articles of incorporation	\$ 50

1	<i>b.</i>	Application for use of indistinguishable	
2		name	\$ 10
3	<i>c.</i>	Application for reserved name	\$ 10
4	<i>d.</i>	Notice of transfer of reserved name	\$ 10
5	<i>e.</i>	Application for registered name	\$ 20
6	<i>f.</i>	Application for renewal of registered	
7		name	\$ 20
8	<i>g.</i>	Corporation's statement of change of	
9		registered agent or registered office or both	No fee
10	<i>h.</i>	Agent's statement of change of registered office	
11		for each affected corporation not to exceed	
12		a total of	No fee
13	<i>i.</i>	Agent's statement of resignation	No fee
14	<i>j.</i>	Articles of domestication	\$ 50
15	<i>k.</i>	Articles of conversion	\$ 50
16	<i>l.</i>	Amendment of articles of incorporation	\$ 50
17	<i>m.</i>	Restatement of articles of incorporation	
18		with amendment of articles	\$ 50
19	<i>n.</i>	Restatement of articles of incorporation	
20		without amendment of articles	\$ 50
21	<i>o.</i>	Articles of merger or share exchange	\$ 50
22	<i>p.</i>	Articles of dissolution	\$ 5
23	<i>q.</i>	Articles of revocation of dissolution	\$ 5
24	<i>r.</i>	Certificate of administrative dissolution	No fee
25	<i>s.</i>	Application for reinstatement following	
26		administrative dissolution	\$ 5
27	<i>t.</i>	Certificate of reinstatement	No fee
28	<i>u.</i>	Certificate of judicial dissolution	No fee
29	<i>v.</i>	Foreign registration statement	\$ 100
30	<i>w.</i>	Amendment of foreign registration	
31		statement	\$ 100
32	<i>x.</i>	Statement of withdrawal	\$ 10
33	<i>y.</i>	Transfer of foreign registration statement	\$ 100
34	<i>z.</i>	Notice of termination of registration	No fee
35	<i>aa.</i>	Articles of correction	\$ 5

- 1 *ab.* Articles of validation \$ 5
- 2 *ac.* Application for certificate of existence or
- 3 registration..... \$ 5
- 4 *ad.* Biennial report..... \$ 60
- 5 *ae.* Any other document required or permitted to
- 6 be filed by this chapter \$5

7 2. The secretary of state shall collect a fee of five
 8 dollars each time process is served on the secretary of state
 9 under this chapter. The party to a proceeding causing service
 10 of process is entitled to recover this fee as costs if such
 11 party prevails in the proceeding.

12 3. The secretary of state shall collect the following fees
 13 for copying and certifying the copy of any filed document
 14 relating to a domestic or foreign corporation:

- 15 *a.* One dollar a page for copying.
- 16 *b.* Five dollars for the certificate.

17 Sec. 5. Section 490.123, Code 2021, is amended by striking
 18 the section and inserting in lieu thereof the following:

19 **490.123 Effective date of filed document.**

20 1. Except to the extent otherwise provided in section
 21 490.124, subsection 3, and part E, a document accepted for
 22 filing is effective as follows:

23 *a.* On the date and at the time of filing, as provided in
 24 section 490.125, subsection 2.

25 *b.* On the date of filing and at the time specified in the
 26 document as its effective time, if later than the time under
 27 paragraph "a".

28 *c.* At a specified delayed effective date and time which
 29 shall not be more than ninety days after filing.

30 *d.* If a delayed effective date is specified, but no time is
 31 specified, at 12:01 a.m. on the date specified, which shall not
 32 be more than ninety days after the date of filing.

33 2. If a filed document does not specify the time zone or
 34 place at which a date or time or both is to be determined, the
 35 date or time or both at which it becomes effective shall be

1 those prevailing at the place of filing in this state.

2 Sec. 6. Section 490.124, Code 2021, is amended by striking
3 the section and inserting in lieu thereof the following:

4 **490.124 Correcting filed document.**

5 1. A document filed by the secretary of state pursuant to
6 this chapter may be corrected if any of the following applies:

7 a. The document contains an inaccuracy.

8 b. The document was defectively signed, attested, sealed,
9 verified, or acknowledged.

10 c. The electronic transmission was defective.

11 2. A document is corrected by complying with all of the
12 following:

13 a. By preparing articles of correction that do all of the
14 following:

15 (1) Describe the document, including its filing date, or a
16 copy of the document is attached to the articles of correction.

17 (2) Specify the inaccuracy or defect to be corrected.

18 (3) Correct the inaccuracy or defect.

19 b. By delivering the articles of correction to the secretary
20 of state for filing.

21 3. Articles of correction are effective on the effective
22 date of the document they correct except as to persons relying
23 on the uncorrected document and adversely affected by the
24 correction. As to those persons, articles of correction are
25 effective when filed.

26 Sec. 7. Section 490.125, Code 2021, is amended by striking
27 the section and inserting in lieu thereof the following:

28 **490.125 Filing duty of secretary of state.**

29 1. If a document delivered to the office of the secretary of
30 state for filing satisfies the requirements of section 490.120,
31 the secretary of state shall file it.

32 2. The secretary of state files a document by recording
33 it as filed on the date and time of receipt. After filing
34 a document, except the biennial report required by section
35 490.1622, and except as provided in section 490.503, the

1 secretary of state shall return to the person who delivered
2 the document for filing a copy of the document with an
3 acknowledgment of the date and time of filing.

4 3. If the secretary of state refuses to file a document,
5 it shall be returned to the person who delivered the document
6 for filing within five days after the document was delivered,
7 together with a brief, written explanation of the reason for
8 the refusal.

9 4. The secretary of state's duty to file documents under
10 this section is ministerial. The secretary of state's filing
11 or refusing to file a document does not create a presumption
12 of any of the following:

13 a. The document does or does not conform to the requirements
14 of this chapter.

15 b. The information contained in the document is correct or
16 incorrect.

17 Sec. 8. Section 490.126, Code 2021, is amended by striking
18 the section and inserting in lieu thereof the following:

19 **490.126 Appeal from secretary of state's refusal to file**
20 **document.**

21 1. If the secretary of state refuses to file a document
22 delivered for filing, the person that delivered the document
23 for filing may petition the district court of the county where
24 the corporation's principal office or, if none in this state,
25 its registered office, is located to compel its filing. The
26 document and the explanation of the secretary of state's
27 refusal to file must be attached to the petition. The court
28 may decide the matter in a summary proceeding.

29 2. The court may order the secretary of state to file the
30 document or take other action the court considers appropriate.

31 3. The court's final decision may be appealed as in other
32 civil proceedings.

33 Sec. 9. Section 490.127, Code 2021, is amended by striking
34 the section and inserting in lieu thereof the following:

35 **490.127 Evidentiary effect of certified copy of filed**

1 document.

2 A certificate from the secretary of state delivered with
3 a copy of a document filed by the secretary of state is
4 conclusive evidence that the original document is on file with
5 the secretary of state.

6 Sec. 10. Section 490.128, Code 2021, is amended by striking
7 the section and inserting in lieu thereof the following:

8 **490.128 Certificate of existence or registration.**

9 1. Any person may apply to the secretary of state to furnish
10 a certificate of existence for a domestic corporation or a
11 certificate of registration for a foreign corporation.

12 2. A certificate of existence must set forth all of the
13 following:

14 a. The domestic corporation's corporate name.

15 b. That the domestic corporation is duly incorporated under
16 the law of this state, the date of its incorporation, and the
17 period of its duration if less than perpetual.

18 c. That all fees, taxes, and penalties owed to this state
19 have been paid, subject to all of the following:

20 (1) Payment is reflected in the records of the secretary of
21 state.

22 (2) Nonpayment affects the existence of the domestic
23 corporation.

24 d. That its most recent biennial report required by section
25 490.1622 has been filed by the secretary of state.

26 e. That articles of dissolution have not been filed.

27 f. That the corporation is not administratively dissolved
28 and a proceeding is not pending under section 490.1421.

29 g. Other facts of record in the office of the secretary of
30 state that may be requested by the applicant.

31 3. A certificate of registration must set forth all of the
32 following:

33 a. The foreign corporation's name used in this state.

34 b. That the foreign corporation is registered to do business
35 in this state.

1 c. That all fees, taxes, and penalties owed to this state
2 have been paid, subject to all of the following:

3 (1) Payment is reflected in the records of the secretary of
4 state.

5 (2) Nonpayment affects the registration of the foreign
6 corporation.

7 d. That its most recent biennial report required by section
8 490.1622 has been filed by the secretary of state.

9 e. Other facts of record in the office of the secretary of
10 state that may be requested by the applicant.

11 4. Subject to any qualification stated in the certificate,
12 a certificate of existence or registration issued by the
13 secretary of state may be relied upon as conclusive evidence of
14 the facts stated in the certificate.

15 Sec. 11. Section 490.129, Code 2021, is amended by striking
16 the section and inserting in lieu thereof the following:

17 **490.129 Penalty for signing false document.**

18 1. A person commits an offense by signing a document that
19 the person knows is false in any material respect with intent
20 that the document be delivered to the secretary of state for
21 filing.

22 2. An offense under this section is a serious misdemeanor
23 punishable by a fine of not to exceed one thousand dollars.

24 Sec. 12. Section 490.135, Code 2021, is amended by striking
25 the section and inserting in lieu thereof the following:

26 **490.135 Powers.**

27 The secretary of state has the power reasonably necessary to
28 perform the duties required of the secretary of state by this
29 chapter.

30 Sec. 13. Section 490.140, Code 2021, is amended by striking
31 the section and inserting in lieu thereof the following:

32 **490.140 Chapter definitions.**

33 As used in this chapter, unless otherwise specified:

34 1. "*Articles of incorporation*" means the articles of
35 incorporation described in section 490.202, all amendments

1 to the articles of incorporation, and any other documents
2 permitted or required to be delivered for filing by a domestic
3 business corporation with the secretary of state under any
4 provision of this chapter that modify, amend, supplement,
5 restate, or replace the articles of incorporation. After
6 an amendment of the articles of incorporation or any other
7 document filed under this chapter that restates the articles of
8 incorporation in their entirety, the articles of incorporation
9 shall not include any prior documents. When used with respect
10 to a foreign corporation or a domestic or foreign nonprofit
11 corporation, the "*articles of incorporation*" of such an entity
12 means the document of such entity that is equivalent to the
13 articles of incorporation of a domestic business corporation.

14 2. "*Authorized shares*" means the shares of all classes a
15 domestic or foreign corporation is authorized to issue.

16 3. "*Beneficial shareholder*" means a person who owns
17 the beneficial interest in shares, which may be a record
18 shareholder or a person on whose behalf shares are registered
19 in the name of an intermediary or nominee.

20 4. "*Conspicuous*" means so written, displayed, or presented
21 that a reasonable person against whom the writing is to operate
22 should have noticed it.

23 5. "*Cooperative association*" means an entity that is
24 structured and operated on a cooperative basis pursuant to 26
25 U.S.C. §1381(a) and that meets the definitional requirements of
26 an association as provided in 12 U.S.C. §1141j(a) or 7 U.S.C.
27 §291.

28 6. "*Corporation*", "*domestic corporation*", "*business*
29 *corporation*", or "*domestic business corporation*" means a
30 corporation for profit, which is not a foreign corporation,
31 incorporated under this chapter.

32 7. "*Deliver*" or "*delivery*" means any method of delivery
33 used in conventional commercial practice, including delivery
34 by hand, mail, commercial delivery, and, if authorized in
35 accordance with section 490.141, by electronic transmission.

1 8. "*Distribution*" means a direct or indirect transfer of
2 cash or other property, except a corporation's own shares,
3 or inurrence of indebtedness by a corporation to or for the
4 benefit of its shareholders in respect of any of its shares.
5 A distribution may be in the form of a payment of a dividend;
6 a purchase, redemption, or other acquisition of shares; a
7 distribution of indebtedness; a distribution in liquidation;
8 or otherwise.

9 9. "*Document*" means any of the following:

10 a. A tangible medium on which information is inscribed, and
11 includes handwritten, typed, printed or similar instruments,
12 and copies of such instruments.

13 b. An electronic record.

14 10. "*Domestic*", with respect to an entity, means an entity
15 governed as to its internal affairs by the law of this state.

16 11. "*Effective date*", when referring to a document accepted
17 for filing by the secretary of state, means the time and date
18 determined in accordance with section 490.123.

19 12. "*Electronic*" means relating to technology having
20 electrical, digital, magnetic, wireless, optical,
21 electromagnetic, or similar capabilities.

22 13. "*Electronic record*" means information that is stored in
23 an electronic or other nontangible medium and is retrievable in
24 paper form through an automated process used in conventional
25 commercial practice, unless otherwise authorized in accordance
26 with section 490.141, subsection 10.

27 14. "*Electronic transmission*" or "*electronically transmitted*"
28 means any form or process of communication not directly
29 involving the physical transfer of paper or another tangible
30 medium, which is all of the following:

31 a. Suitable for the retention, retrieval, and reproduction
32 of information by the recipient.

33 b. Retrievable in paper form by the recipient through an
34 automated process used in conventional commercial practice,
35 unless otherwise authorized in accordance with section 490.141,

1 subsection 10.

2 15. "*Eligible entity*" means a domestic or foreign
3 unincorporated entity or a domestic or foreign nonprofit
4 corporation.

5 16. "*Eligible interests*" means interests or memberships.

6 17. "*Employee*" includes an officer but not a director.
7 A director may accept duties that make the director also an
8 employee.

9 18. "*Entity*" includes a domestic and foreign business
10 corporation; domestic and foreign nonprofit corporation;
11 estate; trust; domestic and foreign unincorporated entity; and
12 a state, the United States, and a foreign government.

13 19. "*Expenses*" means reasonable expenses of any kind,
14 including reasonable fees and expenses of counsel and experts,
15 that are incurred in connection with a matter.

16 20. "*Filing entity*" means an unincorporated entity, other
17 than a limited liability partnership, that is of a type that
18 is created by filing a public organic record or is required to
19 file a public organic record that evidences its creation.

20 21. "*Foreign*", with respect to an entity, means an entity
21 governed as to its internal affairs by the organic law of a
22 jurisdiction other than this state.

23 22. "*Foreign corporation*" or "*foreign business corporation*"
24 means a corporation incorporated under a law other than the
25 law of this state which would be a business corporation if
26 incorporated under the law of this state.

27 23. "*Foreign nonprofit corporation*" means a corporation
28 incorporated under a law other than the law of this state which
29 would be a nonprofit corporation if incorporated under the law
30 of this state.

31 24. "*Foreign registration statement*" means the foreign
32 registration statement described in section 490.1503.

33 25. "*Governmental subdivision*" includes an authority, city,
34 county, district, and municipality.

35 26. "*Governor*" means any person under whose authority the

1 powers of an entity are exercised and under whose direction the
2 activities and affairs of the entity are managed pursuant to
3 the organic law governing the entity and its organic rules.

4 27. "*Includes*" and "*including*" denote a partial definition
5 or a nonexclusive list.

6 28. "*Individual*" means a natural person.

7 29. "*Interest*" means either or both of the following rights
8 under the organic law governing an unincorporated entity:

9 a. The right to receive distributions from the entity either
10 in the ordinary course or upon liquidation.

11 b. The right to receive notice or vote on issues involving
12 its internal affairs, other than as an agent, assignee, proxy,
13 or person responsible for managing its business and affairs.

14 30. "*Interest holder*" means a person who holds of record an
15 interest.

16 31. a. "*Interest holder liability*" means any of the
17 following:

18 (1) Personal liability for a debt, obligation, or other
19 liability of a domestic or foreign corporation or eligible
20 entity that is imposed on a person by any of the following:

21 (a) Solely by reason of the person's status as a
22 shareholder, member, or interest holder.

23 (b) By the articles of incorporation of the domestic
24 corporation or the organic rules of the eligible entity
25 or foreign corporation that make one or more specified
26 shareholders, members, or interest holders, or categories of
27 shareholders, members, or interest holders, liable in their
28 capacity as shareholders, members, or interest holders for all
29 or specified liabilities of the corporation or eligible entity.

30 (2) An obligation of a shareholder, member, or interest
31 holder under the articles of incorporation of a domestic
32 corporation or the organic rules of an eligible entity or
33 foreign corporation to contribute to the entity.

34 b. For purposes of paragraph "a", except as otherwise
35 provided in the articles of incorporation of a domestic

1 corporation or the organic law or organic rules of an eligible
2 entity or a foreign corporation, interest holder liability
3 arises under paragraph "a", subparagraph (1), when the
4 corporation or eligible entity incurs the liability.

5 32. "*Jurisdiction of formation*" means the state or country
6 the law of which includes the organic law governing a domestic
7 or foreign corporation or eligible entity.

8 33. "*Means*" denotes an exhaustive definition.

9 34. "*Membership*" means the rights of a member in a domestic
10 or foreign nonprofit corporation.

11 35. "*Merger*" means a transaction pursuant to section
12 490.1102.

13 36. "*Nonfiling entity*" means an unincorporated entity that
14 is of a type that is not created by filing a public organic
15 record.

16 37. "*Nonprofit corporation*" or "*domestic nonprofit*
17 *corporation*" means a corporation incorporated under the laws of
18 this state and subject to the provisions of chapter 504.

19 38. "*Organic law*" means the statute governing the internal
20 affairs of a domestic or foreign business or nonprofit
21 corporation or unincorporated entity.

22 39. "*Organic rules*" means the public organic record and
23 private organic rules of a domestic or foreign corporation or
24 eligible entity.

25 40. "*Person*" means a person as defined in section 4.1.

26 41. "*Principal office*" means the office, in or out of this
27 state, so designated in the biennial report required by section
28 490.1622 or foreign registration statement where the principal
29 executive offices of a domestic or foreign corporation are
30 located.

31 42. a. "*Private organic rules*" means any of the following:

32 (1) The bylaws of a domestic or foreign business or
33 nonprofit corporation.

34 (2) The rules, regardless of whether in writing, that govern
35 the internal affairs of an unincorporated entity, are binding

1 on all of its interest holders, and are not part of its public
2 organic record, if any.

3 *b.* Where private organic rules have been amended or
4 restated, the term means the private organic rules as last
5 amended or restated.

6 43. "*Proceeding*" includes a civil suit and criminal,
7 administrative, and investigatory action.

8 44. *a.* "*Public organic record*" means any of the following:

9 (1) The articles of incorporation of a domestic or foreign
10 business or nonprofit corporation.

11 (2) The document, if any, the filing of which is required
12 to create an unincorporated entity, or which creates the
13 unincorporated entity and is required to be filed.

14 *b.* Where a public organic record has been amended or
15 restated, the term means the public organic record as last
16 amended or restated.

17 45. "*Record date*" means the date fixed for determining
18 the identity of the corporation's shareholders and their
19 shareholdings for purposes of this chapter. Unless another
20 time is specified when the record date is fixed, the
21 determination shall be made as of the close of business at the
22 principal office of the corporation on the date so fixed.

23 46. "*Record shareholder*" means any of the following:

24 *a.* The person in whose name shares are registered in the
25 records of the corporation.

26 *b.* The person identified as the beneficial owner of shares
27 in a beneficial ownership certificate pursuant to section
28 490.723 on file with the corporation to the extent of the
29 rights granted by such certificate.

30 47. "*Registered foreign corporation*" means a foreign
31 corporation registered to do business in the state pursuant to
32 subchapter XV.

33 48. "*Secretary*" means the corporate officer to whom the
34 board of directors has delegated responsibility under section
35 490.840, subsection 3, to maintain the minutes of the meetings

1 of the board of directors and of the shareholders and for
2 authenticating records of the corporation.

3 49. "*Share exchange*" means a transaction pursuant to section
4 490.1103.

5 50. "*Shareholder*" means a record shareholder.

6 51. "*Shares*" means the units into which the proprietary
7 interests in a domestic or foreign corporation are divided.

8 52. "*Sign*" or "*signature*" means, with present intent to
9 authenticate or adopt a document, doing any of the following:

10 a. Executing or adopting a tangible symbol to a document,
11 including any manual, facsimile, or conformed signature.

12 b. Attaching to or logically associating with an electronic
13 transmission an electronic sound, symbol, or process,
14 and including an electronic signature in an electronic
15 transmission.

16 53. "*State*", when referring to a part of the United
17 States, includes a state and commonwealth, and their agencies
18 and governmental subdivisions, and a territory and insular
19 possession, and their agencies and governmental subdivisions,
20 of the United States.

21 54. "*Subscriber*" means a person who subscribes for shares in
22 a corporation, whether before or after incorporation.

23 55. "*Type of entity*" means a generic form of entity that is
24 any of the following:

25 a. Recognized at common law.

26 b. Formed under an organic law, regardless of whether
27 some entities formed under that law are subject to provisions
28 of that law that create different categories of the form of
29 entity.

30 56. a. "*Unincorporated entity*" means an organization
31 or artificial legal person that either has a separate legal
32 existence or has the power to acquire an estate in real
33 property in its own name and that is not any of the following:

34 (1) A domestic or foreign business or nonprofit
35 corporation.

1 (2) A series of a limited liability company or of another
2 type of entity.

3 (3) An estate.

4 (4) A trust.

5 (5) A state, the United States, or foreign government.

6 *b. "Unincorporated entity"* includes a general partnership,
7 limited liability company, limited partnership, business
8 trust, joint stock association, and unincorporated nonprofit
9 association.

10 57. *"United States"* includes district, authority, bureau,
11 commission, department, and any other agency of the United
12 States.

13 58. *"Unrestricted voting trust beneficial owner"* means, with
14 respect to any shareholder rights, a voting trust beneficial
15 owner whose entitlement to exercise the shareholder right in
16 question is not inconsistent with the voting trust agreement.

17 59. *"Voting group"* means all shares of one or more
18 classes or series that under the articles of incorporation
19 or this chapter are entitled to vote and be counted together
20 collectively on a matter at a meeting of shareholders. All
21 shares entitled by the articles of incorporation or this
22 chapter to vote generally on the matter are for that purpose
23 a single voting group.

24 60. *"Voting power"* means the current power to vote in the
25 election of directors.

26 61. *"Voting trust beneficial owner"* means an owner of
27 a beneficial interest in shares of the corporation held
28 in a voting trust established pursuant to section 490.730,
29 subsection 1.

30 62. *"Writing"* or *"written"* means any information in the form
31 of a document.

32 Sec. 14. Section 490.141, Code 2021, is amended by striking
33 the section and inserting in lieu thereof the following:

34 **490.141 Notices and other communications.**

35 1. A notice under this chapter must be in writing unless

1 oral notice is reasonable in the circumstances. Unless
2 otherwise agreed between the sender and the recipient, words
3 in a notice or other communication under this chapter must be
4 in English.

5 2. A notice or other communication may be given by any
6 method of delivery, except that electronic transmissions must
7 be in accordance with this section. If the methods of delivery
8 are impracticable, a notice or other communication may be
9 given by means of a broad nonexclusionary distribution to the
10 public, which may include a newspaper of general circulation
11 in the area where published; radio, television, or other
12 form of public broadcast communication; or other methods of
13 distribution that the corporation has previously identified to
14 its shareholders.

15 3. A notice or other communication to a domestic corporation
16 or to a foreign corporation registered to do business in this
17 state may be delivered to the corporation's registered agent at
18 its registered office or to the secretary at the corporation's
19 principal office shown in its most recent biennial report
20 required by section 490.1622 or, in the case of a foreign
21 corporation that has not yet delivered a biennial report, in
22 its foreign registration statement.

23 4. A notice or other communication may be delivered by
24 electronic transmission if consented to by the recipient or if
25 authorized by subsection 10.

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

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

33 b. Such inability becomes known to the secretary or an
34 assistant secretary or to the transfer agent, or other person
35 responsible for the giving of notice or other communications;

1 provided, however, the inadvertent failure to treat such
2 inability as a revocation shall not invalidate any meeting or
3 other action.

4 6. Unless otherwise agreed between the sender and the
5 recipient, an electronic transmission is received when all of
6 the following apply:

7 a. The electronic transmission enters an information
8 processing system that the recipient has designated or uses
9 for the purposes of receiving electronic transmissions or
10 information of the type sent, and from which the recipient is
11 able to retrieve the electronic transmission.

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

14 7. Receipt of an electronic acknowledgment from an
15 information processing system described in subsection 6,
16 paragraph "a", establishes that an electronic transmission was
17 received but, by itself, does not establish that the content
18 sent corresponds to the content received.

19 8. An electronic transmission is received under this
20 section even if no person is aware of its receipt.

21 9. A notice or other communication, if in a comprehensible
22 form or manner, is effective at the earliest of the following:

23 a. If in a physical form, the earliest of when it is
24 actually received, or when it is left at any of the following:

25 (1) A shareholder's address shown on the corporation's
26 record of shareholders maintained by the corporation under
27 section 490.1601, subsection 4.

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

29 (3) The corporation's principal office.

30 b. If mailed by postage prepaid and correctly addressed to a
31 shareholder, upon deposit in the United States mail.

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

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

1 requested, the date shown on the return receipt signed by or on
2 behalf of the addressee.

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

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

7 *e.* If oral, when communicated.

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

13 *a.* The electronic transmission is otherwise retrievable in
14 perceivable form.

15 *b.* The sender and the recipient have consented in writing to
16 the use of such form of electronic transmission.

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

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

31 13. *a.* Whenever notice would otherwise be required to be
32 given under any provision of this subchapter to a shareholder,
33 such notice need not be given if any of the following apply:

34 (1) Notices to the shareholders of two consecutive annual
35 meetings, and all notices of meetings during the period between

1 such two consecutive annual meetings, have been sent to such
2 shareholder at such shareholder's address as shown on the
3 records of the corporation and have been returned undeliverable
4 or could not be delivered.

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

12 b. If any such shareholder shall deliver to the corporation
13 a written notice setting forth such shareholder's then-current
14 address, the requirement that notice be given to such
15 shareholder shall be reinstated.

16 Sec. 15. Section 490.142, Code 2021, is amended by striking
17 the section and inserting in lieu thereof the following:

18 **490.142 Number of shareholders.**

19 1. For purposes of this chapter, any of the following
20 identified as a shareholder in a corporation's current record
21 of shareholders constitutes one shareholder:

22 a. Three or fewer co-owners.

23 b. A corporation, partnership, trust, estate, or other
24 entity.

25 c. The trustees, guardians, custodians, or other fiduciaries
26 of a single trust, estate, or account.

27 2. For purposes of this chapter, shareholdings registered
28 in substantially similar names constitute one shareholder if
29 it is reasonable to believe that the names represent the same
30 person.

31 Sec. 16. Section 490.143, Code 2021, is amended by striking
32 the section and inserting in lieu thereof the following:

33 **490.143 Qualified director.**

34 1. As used in this chapter, a "qualified director" means a
35 director who takes action, if at the time action is to be taken

1 any of the following applies:

2 *a.* Under section 490.202, subsection 2, paragraph "f", is
3 not a director under any of the following circumstances:

4 (1) To whom the limitation or elimination of the duty of
5 an officer to offer potential business opportunities to the
6 corporation would apply.

7 (2) Has a material relationship with any other person to
8 whom the limitation or elimination described in subparagraph
9 (1) would apply.

10 *b.* Under section 490.744, does not have any of the
11 following:

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

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

15 *c.* Under section 490.853 or 490.855, all of the following
16 apply:

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

18 (2) The director is not a director as to whom a transaction
19 is a director's conflicting interest transaction or who sought
20 a disclaimer of the corporation's interest in a business
21 opportunity under section 490.870, which transaction or
22 disclaimer is challenged in the proceeding.

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

25 *d.* Under section 490.862, the director is not any of the
26 following:

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

29 (2) A director who has a material relationship with another
30 director as to whom the transaction is a director's conflicting
31 interest transaction.

32 *e.* Under section 490.870, is not a director who does any of
33 the following:

34 (1) Pursues or takes advantage of the business opportunity,
35 directly or indirectly through or on behalf of another person.

1 (2) Has a material relationship with a director or officer
2 who pursues or takes advantage of the business opportunity,
3 directly, or indirectly through or on behalf of another person.

4 2. As used in this section, all of the following apply:

5 a. "*Material interest*" means an actual or potential
6 benefit or detriment, other than one which would devolve on
7 the corporation or the shareholders generally, that would
8 reasonably be expected to impair the objectivity of the
9 director's judgment when participating in the action to be
10 taken.

11 b. "*Material relationship*" means a familial, financial,
12 professional, employment, or other relationship that would
13 reasonably be expected to impair the objectivity of the
14 director's judgment when participating in the action to be
15 taken.

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

19 a. Nomination or election of the director to the current
20 board by any director who is not a qualified director with
21 respect to the matter, or by any person that has a material
22 relationship with that director, acting alone or participating
23 with others.

24 b. Service as a director of another corporation of which a
25 director who is not a qualified director with respect to the
26 matter, or any individual who has a material relationship with
27 that director, is or was also a director.

28 c. With respect to action to be taken under section 490.744,
29 status as a named defendant, as a director against whom action
30 is demanded, or as a director who approved the conduct being
31 challenged.

32 Sec. 17. Section 490.144, Code 2021, is amended by striking
33 the section and inserting in lieu thereof the following:

34 **490.144 Householding.**

35 1. A corporation has delivered written notice or any

1 other report or statement under this chapter, the articles of
2 incorporation, or the bylaws to all shareholders who share a
3 common address if all of the following apply:

4 *a.* The corporation delivers one copy of the notice, report,
5 or statement to the common address.

6 *b.* The corporation addresses the notice, report, or
7 statement to those shareholders either as a group or to each
8 of those shareholders individually or to the shareholders in a
9 form to which each of those shareholders has consented.

10 *c.* Each of those shareholders consents to delivery of
11 a single copy of such notice, report, or statement to the
12 shareholders' common address.

13 2. Any such consent described in subsection 1, paragraph
14 "*b*" or "*c*", shall be revocable by any of such shareholders who
15 deliver written notice of revocation to the corporation. If
16 such written notice of revocation is delivered, the corporation
17 shall begin providing individual notices, reports, or other
18 statements to the revoking shareholder no later than thirty
19 days after delivery of the written notice of revocation.

20 3. Any shareholder who fails to object by written notice
21 to the corporation, within sixty days of written notice by
22 the corporation of its intention to deliver single copies of
23 notices, reports, or statements to shareholders who share a
24 common address as permitted by subsection 1, shall be deemed
25 to have consented to receiving such single copy at the common
26 address; provided that the notice of intention explains that
27 consent may be revoked and the method for revoking.

28 Sec. 18. NEW SECTION. 490.145 Part definitions.

29 As used in this part:

30 1. "*Corporate action*" means any action taken by or on
31 behalf of the corporation, including any action taken by the
32 incorporator, the board of directors, a committee of the board
33 of directors, an officer or agent of the corporation, or the
34 shareholders.

35 2. "*Date of the defective corporate action*" means the date

1 or, if the defective corporate action occurred or may have
2 occurred on more than one date, the range of dates, or the
3 approximate date or range of dates, if the exact date or range
4 of dates is unknown or not readily ascertainable, the defective
5 corporate action was purported to have been taken.

6 3. "*Defective corporate action*" means all of the following:

7 a. Any corporate action purportedly taken that is, and at
8 the time such corporate action was purportedly taken would
9 have been, within the power of the corporation, but is void or
10 voidable due to a failure of authorization.

11 b. An overissue.

12 4. "*Failure of authorization*" means the failure to
13 authorize, approve, or otherwise effect a corporate action in
14 compliance with the provisions of this chapter, the articles of
15 incorporation or bylaws, a corporate resolution, or any plan
16 or agreement to which the corporation is a party, if and to the
17 extent such failure would render such corporate action void or
18 voidable.

19 5. "*Overissue*" means the purported issuance of any of the
20 following:

21 a. Shares of a class or series in excess of the number of
22 shares of a class or series the corporation has the power to
23 issue under section 490.601 at the time of such issuance.

24 b. Shares of any class or series that is not then authorized
25 for issuance by the articles of incorporation.

26 6. "*Putative shares*" means the shares of any class or
27 series, including shares issued upon exercise of rights,
28 options, warrants or other securities convertible into
29 shares of the corporation, or interests with respect to such
30 shares, that were created or issued as a result of a defective
31 corporate action, and any of the following applies:

32 a. But for any failure of authorization would constitute
33 valid shares.

34 b. Cannot be determined by the board of directors to be
35 valid shares.

1 7. "Valid shares" means the shares of any class or series
2 that have been duly authorized and validly issued in accordance
3 with this chapter, including as a result of ratification or
4 validation under this part.

5 8. a. "Validation effective time" with respect to any
6 defective corporate action ratified under this part means the
7 later of the following:

8 (1) The time at which the ratification of the defective
9 corporate action is approved by the shareholders, or if
10 approval of shareholders is not required, the time at which
11 the notice required by section 490.149 becomes effective in
12 accordance with section 490.141.

13 (2) The time at which any articles of validation filed in
14 accordance with section 490.151 become effective.

15 b. The validation effective time shall not be affected by
16 the filing or pendency of a judicial proceeding under section
17 490.152 or otherwise, unless otherwise ordered by the court.

18 Sec. 19. NEW SECTION. **490.146 Defective corporate actions.**

19 1. A defective corporate action shall not be void or
20 voidable if ratified in accordance with section 490.147 or
21 validated in accordance with section 490.152.

22 2. Ratification under section 490.147 or validation under
23 section 490.152 shall not be deemed to be the exclusive means
24 of ratifying or validating any defective corporate action, and
25 the absence or failure of ratification in accordance with this
26 part shall not, of itself, affect the validity or effectiveness
27 of any corporate action properly ratified under common law or
28 otherwise, nor shall it create a presumption that any such
29 corporate action is or was a defective corporate action or void
30 or voidable.

31 3. In the case of an overissue, putative shares shall be
32 valid shares effective as of the date originally issued or
33 purportedly issued upon any of the following:

34 a. The effectiveness under this part and under subchapter X
35 of an amendment to the articles of incorporation authorizing,

1 designating, or creating such shares.

2 *b.* The effectiveness of any other corporate action under
3 this part ratifying the authorization, designation, or creation
4 of such shares.

5 Sec. 20. NEW SECTION. **490.147 Ratification of defective**
6 **corporate actions.**

7 1. To ratify a defective corporate action under this
8 section, other than the ratification of an election of the
9 initial board of directors under subsection 2, the board of
10 directors shall take action ratifying the action in accordance
11 with section 490.148, stating all of the following:

12 *a.* The defective corporate action to be ratified and, if the
13 defective corporate action involved the issuance of putative
14 shares, the number and type of putative shares purportedly
15 issued.

16 *b.* The date of the defective corporate action.

17 *c.* The nature of the failure of authorization with respect
18 to the defective corporate action to be ratified.

19 *d.* That the board of directors approves the ratification of
20 the defective corporate action.

21 2. In the event that a defective corporate action to be
22 ratified relates to the election of the initial board of
23 directors of the corporation under section 490.205, subsection
24 1, paragraph "b", a majority of the persons who, at the time of
25 the ratification, are exercising the powers of directors may
26 take an action stating all of the following:

27 *a.* The name of the person or persons who first took
28 action in the name of the corporation as the initial board of
29 directors of the corporation.

30 *b.* The earlier of the date on which such persons first
31 took such action or were purported to have been elected as the
32 initial board of directors.

33 *c.* That the ratification of the election of such person or
34 persons as the initial board of directors is approved.

35 3. If any provision of this chapter, the articles of

1 incorporation or bylaws, any corporate resolution, or any
2 plan or agreement to which the corporation is a party in
3 effect at the time action under subsection 1 is taken requires
4 shareholder approval or would have required shareholder
5 approval at the date of the occurrence of the defective
6 corporate action, the ratification of the defective corporate
7 action approved in the action taken by the directors under
8 subsection 1 shall be submitted to the shareholders for
9 approval in accordance with section 490.148.

10 4. Unless otherwise provided in the action taken by the
11 board of directors under subsection 1, after the action by the
12 board of directors has been taken and, if required, approved
13 by the shareholders, the board of directors may abandon the
14 ratification at any time before the validation effective time
15 without further action of the shareholders.

16 Sec. 21. NEW SECTION. 490.148 Action on ratification.

17 1. The quorum and voting requirements applicable to a
18 ratifying action by the board of directors under section
19 490.147, subsection 1, shall be the quorum and voting
20 requirements applicable to the corporate action proposed to be
21 ratified at the time such ratifying action is taken.

22 2. If the ratification of the defective corporate action
23 requires approval by the shareholders under section 490.147,
24 subsection 3, and if the approval is to be given at a meeting,
25 the corporation shall notify each holder of valid and putative
26 shares, regardless of whether entitled to vote, as of the
27 record date for notice of the meeting and as of the date of
28 the occurrence of defective corporate action, provided that
29 notice shall not be required to be given to holders of valid or
30 putative shares whose identities or addresses for notice cannot
31 be determined from the records of the corporation. The notice
32 must state that the purpose, or one of the purposes, of the
33 meeting is to consider ratification of a defective corporate
34 action and must be accompanied by all of the following:

35 a. Either a copy of the action taken by the board of

1 directors in accordance with section 490.147, subsection 1,
2 or the information required by section 490.147, subsection 1,
3 paragraphs "a" through "d".

4 *b.* A statement that any claim that the ratification of
5 such defective corporate action and any putative shares issued
6 as a result of such defective corporate action should not be
7 effective, or should be effective only on certain conditions,
8 shall be brought within one hundred twenty days from the
9 applicable validation effective time.

10 3. Except as provided in subsection 4, with respect to the
11 voting requirements to ratify the election of a director, the
12 quorum and voting requirements applicable to the approval by
13 the shareholders required by section 490.147, subsection 3,
14 shall be the quorum and voting requirements applicable to the
15 corporate action proposed to be ratified at the time of such
16 shareholder approval.

17 4. The approval by shareholders to ratify the election of a
18 director requires that the votes cast within the voting group
19 favoring such ratification exceed the votes cast opposing such
20 ratification of the election at a meeting at which a quorum is
21 present.

22 5. Putative shares on the record date for determining
23 the shareholders entitled to vote on any matter submitted to
24 shareholders under section 490.147, subsection 3, and without
25 giving effect to any ratification of putative shares that
26 becomes effective as a result of such vote, shall neither be
27 entitled to vote nor counted for quorum purposes in any vote to
28 approve the ratification of any defective corporate action.

29 6. If the approval under this section of putative shares
30 would result in an overissue, in addition to the approval
31 required by section 490.147, approval of an amendment to the
32 articles of incorporation under subchapter X to increase
33 the number of shares of an authorized class or series or to
34 authorize the creation of a class or series of shares so there
35 would be no overissue shall also be required.

1 **Sec. 22. NEW SECTION. 490.149 Notice requirements.**

2 1. Unless shareholder approval is required under section
3 490.147, subsection 3, prompt notice of an action taken under
4 section 490.147 shall be given to each holder of valid and
5 putative shares, regardless of whether entitled to vote, as of
6 all of the following:

7 *a.* The date of such action by the board of directors.

8 *b.* The date of the defective corporate action ratified,
9 provided that notice shall not be required to be given to
10 holders of valid and putative shares whose identities or
11 addresses for notice cannot be determined from the records of
12 the corporation.

13 2. The notice must contain all of the following:

14 *a.* Either a copy of the action taken by the board of
15 directors in accordance with section 490.147, subsection 1 or
16 2, or the information required by section 490.147, subsection
17 1, paragraphs "a" through "d", or section 490.147, subsection 2,
18 paragraphs "a" through "c", as applicable.

19 *b.* A statement that any claim that the ratification of
20 the defective corporate action and any putative shares issued
21 as a result of such defective corporate action should not be
22 effective, or should be effective only on certain conditions,
23 shall be brought within one hundred twenty days from the
24 applicable validation effective time.

25 3. No notice under this section is required with respect
26 to any action required to be submitted to shareholders for
27 approval under section 490.147, subsection 3, if notice is
28 given in accordance with section 490.148, subsection 2.

29 4. A notice required by this section may be given in any
30 manner permitted by section 490.141 and, for any corporation
31 subject to the reporting requirements of section 13 or 15(d) of
32 the federal Securities Exchange Act of 1934, may be given by
33 means of a filing or furnishing of such notice with the United
34 States securities and exchange commission.

35 **Sec. 23. NEW SECTION. 490.150 Effect of ratification.**

1 From and after the validation effective time, and without
2 regard to the one hundred twenty-day period during which
3 a claim may be brought under section 490.152, all of the
4 following shall apply:

5 1. Each defective corporate action ratified in accordance
6 with section 490.147 shall not be void or voidable as a result
7 of the failure of authorization identified in the action taken
8 under section 490.147, subsection 1 or 2, and shall be deemed
9 a valid corporate action effective as of the date of the
10 defective corporate action.

11 2. The issuance of each putative share or fraction of a
12 putative share purportedly issued pursuant to a defective
13 corporate action identified in the action taken under section
14 490.147 shall not be void or voidable, and each such putative
15 share or fraction of a putative share shall be deemed to be an
16 identical share or fraction of a valid share as of the time it
17 was purportedly issued.

18 3. Any corporate action taken subsequent to the defective
19 corporate action ratified in accordance with this part in
20 reliance on such defective corporate action having been
21 validly effected and any subsequent defective corporate action
22 resulting directly or indirectly from such original defective
23 corporate action shall be valid as of the time taken.

24 Sec. 24. NEW SECTION. 490.151 Filings.

25 1. If the defective corporate action ratified under this
26 part would have required under any other section of this
27 chapter a filing in accordance with this chapter, then,
28 regardless of whether a filing was previously made in respect
29 of such defective corporate action and in lieu of a filing
30 otherwise required by this chapter, the corporation shall file
31 articles of validation in accordance with this section, and
32 such articles of validation shall serve to amend or substitute
33 for any other filing with respect to such defective corporate
34 action required by this chapter.

35 2. The articles of validation must set forth all of the

1 following:

2 *a.* The defective corporate action that is the subject of the
3 articles of validation, including in the case of any defective
4 corporate action involving the issuance of putative shares, the
5 number and type of putative shares issued and the date or dates
6 upon which such putative shares were purported to have been
7 issued.

8 *b.* The date of the defective corporate action.

9 *c.* The nature of the failure of authorization in respect of
10 the defective corporate action.

11 *d.* A statement that the defective corporate action was
12 ratified in accordance with section 490.147, including
13 the date on which the board of directors ratified such
14 defective corporate action and the date, if any, on which
15 the shareholders approved the ratification of such defective
16 corporate action.

17 *e.* The information required by subsection 3.

18 3. The articles of validation must also contain the
19 following information:

20 *a.* If a filing was previously made in respect of the
21 defective corporate action and no changes to such filing are
22 required to give effect to the ratification of such defective
23 corporate action in accordance with section 490.147, the
24 articles of validation must set forth all of the following:

25 (1) The name, title, and filing date of the filing
26 previously made and any articles of correction to that filing.

27 (2) A statement that a copy of the filing previously made,
28 together with any articles of correction to that filing, is
29 attached as an exhibit to the articles of validation.

30 *b.* If a filing was previously made in respect of the
31 defective corporate action and such filing requires any change
32 to give effect to the ratification of such defective corporate
33 action in accordance with section 490.147, the articles of
34 validation must set forth all of the following:

35 (1) The name, title, and filing date of the filing

1 previously made and any articles of correction to that filing.

2 (2) A statement that a filing containing all of the
3 information required to be included under the applicable
4 section or sections of this chapter to give effect to such
5 defective corporate action is attached as an exhibit to the
6 articles of validation.

7 (3) The date and time that such filing is deemed to have
8 become effective.

9 c. If a filing was not previously made in respect of the
10 defective corporate action and the defective corporate action
11 ratified under section 490.147 would have required a filing
12 under any other section of this chapter, the articles of
13 validation must set forth all of the following:

14 (1) A statement that a filing containing all of the
15 information required to be included under the applicable
16 section or sections of this chapter to give effect to such
17 defective corporate action is attached as an exhibit to the
18 articles of validation.

19 (2) The date and time that such filing is deemed to have
20 become effective.

21 **Sec. 25. NEW SECTION. 490.152 Judicial proceedings**
22 **regarding validity of corporate actions.**

23 1. Upon application by the corporation, any successor
24 entity to the corporation, a director of the corporation, any
25 shareholder, beneficial shareholder, or unrestricted voting
26 trust beneficial owner of the corporation, including any
27 such shareholder, beneficial shareholder, or unrestricted
28 voting trust beneficial owner as of the date of the defective
29 corporate action ratified under section 490.147, or any other
30 person claiming to be substantially and adversely affected by a
31 ratification under section 490.147, the district court of the
32 county where a corporation's principal office or, if none in
33 this state, its registered office, is located may do all of the
34 following:

35 a. Determine the validity and effectiveness of any corporate

1 action or defective corporate action.

2 *b.* Determine the validity and effectiveness of any
3 ratification under section 490.147.

4 *c.* Determine the validity of any putative shares.

5 *d.* Modify or waive any of the procedures specified in
6 section 490.147 or 490.148 to ratify a defective corporate
7 action.

8 2. In connection with an action under this section, the
9 court may make such findings or orders, and take into account
10 any factors or considerations, regarding such matters as it
11 deems proper under the circumstances.

12 3. Service of process of the application under subsection
13 1 on the corporation may be made in any manner provided by
14 statute of this state or by rule of the applicable court for
15 service on the corporation, and no other party need be joined
16 in order for the court to adjudicate the matter. In an action
17 filed by the corporation, the court may require notice of the
18 action to be provided to other persons specified by the court
19 and permit such other persons to intervene in the action.

20 4. Notwithstanding any other provision of this section or
21 otherwise under applicable law, any action asserting that the
22 ratification of any defective corporate action and any putative
23 shares issued as a result of such defective corporate action
24 should not be effective, or should be effective only on certain
25 conditions, shall be brought within one hundred twenty days of
26 the validation effective time.

27 Sec. 26. Section 490.201, Code 2021, is amended by striking
28 the section and inserting in lieu thereof the following:

29 **490.201 Incorporators.**

30 One or more persons may act as the incorporator or
31 incorporators of a corporation by delivering articles of
32 incorporation to the secretary of state for filing.

33 Sec. 27. Section 490.202, Code 2021, is amended by striking
34 the section and inserting in lieu thereof the following:

35 **490.202 Articles of incorporation.**

1 1. The articles of incorporation must set forth all of the
2 following:

3 a. A corporate name for the corporation that satisfies the
4 requirements of section 490.401.

5 b. The number of shares the corporation is authorized to
6 issue.

7 c. The street and mailing addresses of the corporation's
8 initial registered office and the name of its initial
9 registered agent at that office.

10 d. The name and address of each incorporator.

11 2. The articles of incorporation may set forth any of the
12 following:

13 a. The names and addresses of the individuals who are to
14 serve as the initial directors.

15 b. Provisions not inconsistent with law regarding any of the
16 following:

17 (1) The purpose or purposes for which the corporation is
18 organized.

19 (2) Managing the business and regulating the affairs of the
20 corporation.

21 (3) Defining, limiting, and regulating the powers of the
22 corporation, its board of directors, and shareholders.

23 (4) A par value for authorized shares or classes of shares.

24 (5) The imposition of interest holder liability on
25 shareholders.

26 c. Any provision that under this chapter is required or
27 permitted to be set forth in the bylaws.

28 d. A provision eliminating or limiting the liability
29 of a director to the corporation or its shareholders for
30 money damages for any action taken, or any failure to take
31 any action, as a director, except liability for any of the
32 following:

33 (1) The amount of a financial benefit received by a director
34 to which the director is not entitled.

35 (2) An intentional infliction of harm on the corporation or

1 the shareholders.

2 (3) A violation of section 490.833.

3 (4) An intentional violation of criminal law.

4 e. A provision permitting or making obligatory
5 indemnification of a director for liability, as defined in
6 section 490.850, to any person for any action taken, or any
7 failure to take any action, as a director, except liability for
8 any of the following:

9 (1) Receipt of a financial benefit to which the director is
10 not entitled.

11 (2) An intentional infliction of harm on the corporation or
12 its shareholders.

13 (3) A violation of section 490.833.

14 (4) An intentional violation of criminal law.

15 f. A provision limiting or eliminating any duty of a
16 director or any other person to offer the corporation the
17 right to have or participate in any, or one or more classes
18 or categories of, business opportunities, before the pursuit
19 or taking of the opportunity by the director or other person;
20 provided that any application of such a provision to an officer
21 or a related person of that officer is subject to all of the
22 following:

23 (1) It also requires approval of that application by the
24 board of directors, subsequent to the effective date of the
25 provision, by action of qualified directors taken in compliance
26 with the same procedures as are set forth in section 490.862.

27 (2) It may be limited by the authorizing action of the
28 board.

29 3. The articles of incorporation need not set forth any of
30 the corporate powers enumerated in this chapter.

31 4. Provisions of the articles of incorporation may be made
32 dependent upon facts objectively ascertainable outside the
33 articles of incorporation in accordance with section 490.120,
34 subsection 11.

35 5. As used in this section, "*related person*" has the meaning

1 specified in section 490.860.

2 Sec. 28. Section 490.203, Code 2021, is amended by striking
3 the section and inserting in lieu thereof the following:

4 **490.203 Incorporation.**

5 1. Unless a delayed effective date is specified, the
6 corporate existence begins when the articles of incorporation
7 are filed.

8 2. The secretary of state's filing of the articles of
9 incorporation is conclusive proof that the incorporators
10 satisfied all conditions precedent to incorporation except in a
11 proceeding by the state to cancel or revoke the incorporation
12 or involuntarily dissolve the corporation.

13 Sec. 29. Section 490.205, Code 2021, is amended by striking
14 the section and inserting in lieu thereof the following:

15 **490.205 Organization of corporation.**

16 1. After incorporation, the following shall apply:

17 a. If initial directors are named in the articles
18 of incorporation, the initial directors shall hold an
19 organizational meeting, at the call of a majority of the
20 directors, to complete the organization of the corporation by
21 appointing officers, adopting bylaws, and carrying on any other
22 business brought before the meeting.

23 b. If initial directors are not named in the articles of
24 incorporation, the incorporator or incorporators shall hold
25 an organizational meeting at the call of a majority of the
26 incorporators to do any of the following:

27 (1) Elect initial directors and complete the organization
28 of the corporation.

29 (2) Elect a board of directors who shall complete the
30 organization of the corporation.

31 2. Action required or permitted by this chapter to be taken
32 by incorporators at an organizational meeting may be taken
33 without a meeting if the action taken is evidenced by one or
34 more written consents describing the action taken and signed by
35 each incorporator.

1 3. An organizational meeting may be held in or out of this
2 state.

3 Sec. 30. Section 490.206, Code 2021, is amended by striking
4 the section and inserting in lieu thereof the following:

5 **490.206 Bylaws.**

6 1. The incorporators or board of directors of a corporation
7 shall adopt initial bylaws for the corporation.

8 2. The bylaws of a corporation may contain any provision
9 that is not inconsistent with law or the articles of
10 incorporation.

11 3. The bylaws may contain any of the following provisions:

12 a. A requirement that if the corporation solicits proxies
13 or consents with respect to an election of directors, the
14 corporation include in its proxy statement and any form
15 of its proxy or consent, to the extent and subject to such
16 procedures or conditions as are provided in the bylaws, one
17 or more individuals nominated by a shareholder in addition to
18 individuals nominated by the board of directors.

19 b. A requirement that the corporation reimburse the expenses
20 incurred by a shareholder in soliciting proxies or consents in
21 connection with an election of directors, to the extent and
22 subject to such procedures and conditions as are provided in
23 the bylaws, provided that no bylaw so adopted shall apply to
24 elections for which any record date precedes its adoption.

25 4. Notwithstanding section 490.1020, subsection 2,
26 paragraph "b", the shareholders in amending, repealing, or
27 adopting a bylaw described in subsection 3 shall not limit the
28 authority of the board of directors to amend or repeal any
29 condition or procedure set forth in or to add any procedure
30 or condition to such a bylaw to provide for a reasonable,
31 practical, and orderly process.

32 Sec. 31. Section 490.207, Code 2021, is amended by striking
33 the section and inserting in lieu thereof the following:

34 **490.207 Emergency bylaws.**

35 1. Unless the articles of incorporation provide otherwise,

1 the board of directors may adopt bylaws to be effective only in
2 an emergency as defined in subsection 4. The emergency bylaws,
3 which are subject to amendment or repeal by the shareholders,
4 may make all provisions necessary for managing the corporation
5 during the emergency, including any of the following:

6 *a.* Procedures for calling a meeting of the board of
7 directors.

8 *b.* Quorum requirements for the meeting.

9 *c.* Designation of additional or substitute directors.

10 2. All provisions of the regular bylaws not inconsistent
11 with the emergency bylaws remain effective during the
12 emergency. The emergency bylaws are not effective after the
13 emergency ends.

14 3. Corporate action taken in good faith in accordance with
15 the emergency bylaws has all of the following effects:

16 *a.* The action binds the corporation.

17 *b.* The action shall not be used to impose liability on a
18 director, officer, employee, or agent of the corporation.

19 4. An emergency exists for purposes of this section if a
20 quorum of the board of directors cannot readily be assembled
21 because of some catastrophic event.

22 Sec. 32. NEW SECTION. **490.208 Forum selection provisions.**

23 1. The articles of incorporation or bylaws may require
24 that any or all internal corporate claims shall be brought
25 exclusively in any specified court or courts of this state
26 and, if so specified, in any additional courts in this state
27 or in any other jurisdictions with which the corporation has a
28 reasonable relationship.

29 2. A provision of the articles of incorporation or bylaws
30 adopted under subsection 1 shall not have the effect of
31 conferring jurisdiction on any court or over any person or
32 claim, and shall not apply if none of the courts specified
33 by such provision has the requisite personal and subject
34 matter jurisdiction. If the court or courts of this state
35 specified in a provision adopted under subsection 1 do not

1 have the requisite personal and subject matter jurisdiction
2 and another court of this state does have such jurisdiction,
3 then the internal corporate claim may be brought in such other
4 court of this state, notwithstanding that such other court
5 of this state is not specified in such provision, and in any
6 other court specified in such provision that has the requisite
7 jurisdiction.

8 3. No provision of the articles of incorporation or bylaws
9 may prohibit bringing an internal corporate claim in the
10 courts of this state or require such claims to be determined
11 by arbitration.

12 4. "*Internal corporate claim*" means, for the purposes of
13 this section, any of the following:

14 a. Any claim that is based upon a violation of a duty
15 under the laws of this state by a current or former director,
16 officer, or shareholder in such capacity.

17 b. Any derivative action or proceeding brought on behalf of
18 the corporation.

19 c. Any action asserting a claim arising pursuant to any
20 provision of this chapter or the articles of incorporation or
21 bylaws.

22 d. Any action asserting a claim governed by the internal
23 affairs doctrine that is not included in paragraphs "a" through
24 "c".

25 Sec. 33. NEW SECTION. 490.209 Foreign-trade zone
26 corporation.

27 A corporation may be organized under the laws of this state
28 for the purpose of establishing, operating, and maintaining
29 a foreign-trade zone as defined in 19 U.S.C. §81(a). A
30 corporation organized for the purposes set forth in this
31 section has all powers necessary or convenient for applying
32 for a grant of authority to establish, operate, and maintain
33 a foreign-trade zone under 19 U.S.C. §81(a) et seq., and
34 regulations promulgated under that law, and for establishing,
35 operating, and maintaining a foreign-trade zone pursuant to

1 that grant of authority.

2 Sec. 34. Section 490.302, Code 2021, is amended by striking
3 the section and inserting in lieu thereof the following:

4 **490.302 General powers.**

5 Unless its articles of incorporation provide otherwise,
6 every corporation has perpetual duration and succession in its
7 corporate name and has the same powers as an individual to do
8 all things necessary or convenient to carry out its business
9 and affairs, including the power to do all of the following:

10 1. Sue and be sued, complain, and defend in its corporate
11 name.

12 2. Have a corporate seal, which may be altered at will, and
13 to use it, or a facsimile of it, by impressing or affixing it or
14 in any other manner reproducing it.

15 3. Make and amend bylaws, not inconsistent with its articles
16 of incorporation or with the laws of this state, for managing
17 the business and regulating the affairs of the corporation.

18 4. Purchase, receive, lease, or otherwise acquire, and own,
19 hold, improve, use, and otherwise deal with, real or personal
20 property, or any legal or equitable interest in property,
21 wherever located.

22 5. Sell, convey, mortgage, pledge, lease, exchange, and
23 otherwise dispose of all or any part of its property.

24 6. Purchase, receive, subscribe for, or otherwise acquire,
25 own, hold, vote, use, sell, mortgage, lend, pledge, or
26 otherwise dispose of, and deal in and with shares or other
27 interests in, or obligations of, any other entity.

28 7. Make contracts and guarantees, incur liabilities,
29 borrow money, issue its notes, bonds, and other securities
30 and obligations, which may be convertible into or include the
31 option to purchase other securities of the corporation, and
32 secure any of its obligations by mortgage or pledge of any of
33 its property, franchises, or income.

34 8. Lend money, invest and reinvest its funds, and receive
35 and hold real and personal property as security for repayment.

1 9. Be a promoter, partner, member, associate, or manager of
2 any partnership, joint venture, trust, or other entity.

3 10. Conduct its business, locate offices, and exercise the
4 powers granted by this chapter within or without this state.

5 11. Elect directors and appoint officers, employees, and
6 agents of the corporation, define their duties, fix their
7 compensation, and lend them money and credit.

8 12. Pay pensions and establish pension plans, pension
9 trusts, profit sharing plans, share bonus plans, share option
10 plans, and benefit or incentive plans for any or all of its
11 current or former directors, officers, employees, and agents.

12 13. Make donations for the public welfare or for charitable,
13 scientific, or educational purposes.

14 14. Transact any lawful business that will aid governmental
15 policy.

16 15. Make payments or donations, or do any other act, not
17 inconsistent with law, that furthers the business and affairs
18 of the corporation.

19 Sec. 35. Section 490.303, Code 2021, is amended by striking
20 the section and inserting in lieu thereof the following:

21 **490.303 Emergency powers.**

22 1. In anticipation of or during an emergency as defined in
23 subsection 4, the board of directors of a corporation may do
24 all of the following:

25 a. Modify lines of succession to accommodate the incapacity
26 of any director, officer, employee, or agent.

27 b. Relocate the principal office, designate alternative
28 principal offices or regional offices, or authorize the
29 officers to do so.

30 2. During an emergency as defined in subsection 4, unless
31 emergency bylaws provide otherwise:

32 a. Notice of a meeting of the board of directors need be
33 given only to those directors whom it is practicable to reach
34 and may be given in any practicable manner.

35 b. One or more officers of the corporation present at a

1 meeting of the board of directors may be deemed to be directors
2 for the meeting, in order of rank and within the same rank in
3 order of seniority, as necessary to achieve a quorum.

4 3. Corporate action taken in good faith during an emergency
5 under this section to further the ordinary business affairs of
6 the corporation shall both:

7 a. Bind the corporation.

8 b. Not be used to impose liability on a corporate director,
9 officer, employee, or agent.

10 4. An emergency exists for purposes of this section if a
11 quorum of the board of directors cannot readily be assembled
12 because of some catastrophic event.

13 Sec. 36. Section 490.401, Code 2021, is amended by striking
14 the section and inserting in lieu thereof the following:

15 **490.401 Corporate name.**

16 1. A corporate name is subject to all of the following:

17 a. It must contain the word "corporation", "incorporated",
18 "company", or "limited", or the abbreviation "corp.", "inc.",
19 "co.", or "ltd.", or words or abbreviations of like import in
20 another language.

21 b. It must not contain language stating or implying that
22 the corporation is organized for a purpose other than that
23 permitted by section 490.301 and its articles of incorporation.

24 2. Except as authorized by subsections 3 and 4, a corporate
25 name must be distinguishable upon the records of the secretary
26 of state from all of the following:

27 a. The corporate name of a corporation incorporated in
28 this state which is not administratively dissolved, or if such
29 corporation has been administratively dissolved, within five
30 years after the effective date of dissolution.

31 b. A corporate name reserved or registered under section
32 490.402 or 490.403 or any similar provision of the law of this
33 state.

34 c. The name of a foreign corporation registered to do
35 business in this state or an alternate name adopted by a

1 foreign corporation registered to do business in this state
2 because its corporate name is unavailable.

3 *d.* The corporate name of a nonprofit corporation
4 incorporated in this state which is not administratively
5 dissolved.

6 *e.* The name of a foreign nonprofit corporation registered
7 to do business in this state or an alternate name adopted by a
8 foreign nonprofit corporation registered to conduct activities
9 in this state because its real name is unavailable.

10 *f.* The name of a domestic filing entity which is not
11 administratively dissolved.

12 *g.* The name of a foreign unincorporated entity registered
13 to do business in this state or an alternate name adopted by
14 such an entity registered to conduct activities in this state
15 because its real name is unavailable.

16 *h.* A name reserved, registered, or protected as follows:

17 (1) For a limited liability partnership, section 486A.1001
18 or 486A.1002.

19 (2) For a limited partnership, section 488.108, 488.109, or
20 488.810.

21 (3) For a business corporation, this section, or section
22 490.402, 490.403, or 490.1422.

23 (4) For a limited liability company under chapter 489,
24 section 489.108, 489.109, or 489.706.

25 (5) For a nonprofit corporation, section 504.401, 504.402,
26 504.403, or 504.1423.

27 3. A corporation may apply to the secretary of state for
28 authorization to use a name that is not distinguishable upon
29 the secretary of state's records from one or more of the names
30 described in subsection 2. The secretary of state shall
31 authorize use of the name applied for if any of the following
32 conditions apply:

33 *a.* The other corporation or unincorporated entity consents
34 to the use in writing and submits an undertaking in form
35 satisfactory to the secretary of state to change its name to a

1 name that is distinguishable upon the records of the secretary
2 of state from the name of the applying corporation.

3 *b.* The applicant delivers to the secretary of state a
4 certified copy of the final judgment of a court of competent
5 jurisdiction establishing the applicant's right to use the name
6 applied for in this state.

7 4. A corporation may use the name, including the fictitious
8 name, of another domestic or foreign corporation that is used
9 in this state if the other corporation is incorporated or
10 authorized to transact business in this state and the proposed
11 user corporation submits documentation to the satisfaction
12 of the secretary of state establishing any of the following
13 conditions:

14 *a.* Has merged with the other corporation.

15 *b.* Has been formed by reorganization of the other
16 corporation.

17 *c.* Has acquired all or substantially all of the assets,
18 including the corporate name, of the other corporation.

19 5. This chapter does not control the use of fictitious
20 names; however, if a corporation or a foreign corporation
21 uses a fictitious name in this state, it shall deliver to the
22 secretary of state for filing a copy of the resolution of its
23 board of directors, certified by its secretary, adopting the
24 fictitious name.

25 Sec. 37. Section 490.402, Code 2021, is amended by striking
26 the section and inserting in lieu thereof the following:

27 **490.402 Reserved name.**

28 1. A person may reserve the exclusive use of a corporate
29 name, including a fictitious or alternate name for a foreign
30 corporation whose corporate name is not available, by
31 delivering an application to the secretary of state for
32 filing. The application must set forth the name and address
33 of the applicant and the name proposed to be reserved. If the
34 secretary of state finds that the corporate name applied for is
35 available, the secretary of state shall reserve the name for

1 the applicant's exclusive use for a nonrenewable one hundred
2 twenty-day period.

3 2. The owner of a reserved corporate name may transfer the
4 reservation to another person by delivering to the secretary of
5 state a signed notice of the transfer that states the name and
6 address of the transferee.

7 Sec. 38. Section 490.403, Code 2021, is amended by striking
8 the section and inserting in lieu thereof the following:

9 **490.403 Registered name.**

10 1. A foreign corporation may register its corporate
11 name, or its corporate name with the addition of any word
12 or abbreviation listed in section 490.401, subsection 1,
13 paragraph "a", if necessary for the corporate name to comply
14 with section 490.401, subsection 1, paragraph "a", if the name
15 is distinguishable upon the records of the secretary of state
16 from the corporate names that are not available under section
17 490.401, subsection 2.

18 2. A foreign corporation registers its corporate name, or
19 its corporate name with any addition permitted by subsection
20 1, by delivering to the secretary of state for filing an
21 application that complies with all of the following:

22 a. Sets forth that name, the state or country and date of
23 its incorporation, and a brief description of the nature of the
24 business which is to be conducted in this state.

25 b. Is accompanied by a certificate of existence, or a
26 document of similar import, from the state or country of
27 incorporation.

28 3. The name is registered for the applicant's exclusive
29 use upon the effective date of the application and for the
30 remainder of the calendar year, unless renewed.

31 4. A foreign corporation whose name registration is
32 effective may renew it for successive years by delivering
33 to the secretary of state for filing a renewal application,
34 which complies with the requirements of subsection 2, between
35 October 1 and December 31 of the preceding year. The renewal

1 application when filed renews the registration for the
2 following calendar year.

3 5. a. A foreign corporation whose name registration is
4 effective may thereafter do any of the following:

5 (1) Register to do business as a foreign corporation under
6 the registered name, if it complies with section 490.401,
7 subsection 1, paragraph "b".

8 (2) Consent in writing to the use of that name by a domestic
9 corporation thereafter incorporated under this chapter or by
10 another foreign corporation.

11 b. The registration terminates when the domestic corporation
12 is incorporated or the foreign corporation registers to do
13 business under that name.

14 Sec. 39. Section 490.501, Code 2021, is amended by striking
15 the section and inserting in lieu thereof the following:

16 **490.501 Registered office and agent of domestic and**
17 **registered foreign corporations.**

18 1. Each corporation shall continuously maintain in this
19 state all of the following:

20 a. A registered office that may be the same as any of its
21 places of business.

22 b. A registered agent, which may be any of the following:

23 (1) An individual who resides in this state and whose
24 business office is identical with the registered office.

25 (2) A domestic or foreign corporation or eligible entity
26 whose business office is identical with the registered office
27 and, in the case of a foreign corporation or foreign eligible
28 entity, is registered to do business in this state.

29 2. As used in this subchapter, "corporation" means both a
30 domestic corporation and a registered foreign corporation.

31 Sec. 40. Section 490.502, Code 2021, is amended by striking
32 the section and inserting in lieu thereof the following:

33 **490.502 Change of registered office or registered agent.**

34 1. A corporation may change its registered office or
35 registered agent by delivering to the secretary of state

1 for filing a statement of change that sets forth all of the
2 following:

3 *a.* The name of the corporation.

4 *b.* The street and mailing addresses of its current
5 registered office.

6 *c.* If the current registered office is to be changed, the
7 street and mailing addresses of the new registered office.

8 *d.* The name of its current registered agent.

9 *e.* If the current registered agent is to be changed, the
10 name of the new registered agent and the new agent's written
11 consent, either on the statement or attached to it, to the
12 appointment.

13 *f.* That after the change or changes are made, the street and
14 mailing addresses of its registered office and of the business
15 office of its registered agent will be identical.

16 2. If the street or mailing address of a registered agent's
17 business office changes, the agent shall change the street or
18 mailing address of the registered office of any corporation for
19 which the agent is the registered agent by delivering a signed
20 written notice of the change to the corporation and delivering
21 to the secretary of state for filing a signed statement that
22 complies with the requirements of subsection 1 and states that
23 the corporation has been notified of the change.

24 3. If a registered agent changes the registered agent's
25 business address to another place, the registered agent may
26 change the business address and the address of the registered
27 agent by filing a statement as required in subsection 2 for
28 each corporation, or a single statement for all corporations
29 named in the notice, except that it need be signed only by the
30 registered agent and need not be responsive to subsection 1,
31 paragraph "e", and must recite that a copy of the statement has
32 been mailed to each corporation named in the notice.

33 4. A corporation may also change its registered office or
34 registered agent in its biennial report as provided in section
35 490.1622.

1 Sec. 41. Section 490.503, Code 2021, is amended by striking
2 the section and inserting in lieu thereof the following:

3 **490.503 Resignation of registered agent.**

4 1. A registered agent may resign as agent for a corporation
5 by delivering to the secretary of state for filing a statement
6 of resignation signed by the agent which shall state all of the
7 following:

8 *a.* The name of the corporation.

9 *b.* The name of the agent.

10 *c.* The agent resigns from serving as registered agent for
11 the corporation.

12 *d.* The address of the corporation to which the agent will
13 deliver the notice required by subsection 3.

14 2. A statement of resignation takes effect on the earlier
15 of the following:

16 *a.* 12:01 a.m. on the thirty-first day after the day on which
17 it is filed by the secretary of state.

18 *b.* The designation of a new registered agent for the
19 corporation.

20 3. A registered agent promptly shall deliver to the
21 corporation notice of the date on which a statement of
22 resignation was delivered to the secretary of state for filing.

23 4. When a statement of resignation takes effect, the person
24 that resigned ceases to have responsibility under this chapter
25 for any matter thereafter tendered to it as agent for the
26 corporation. The resignation does not affect any contractual
27 rights the corporation has against the agent or that the agent
28 has against the corporation.

29 5. A registered agent may resign with respect to a
30 corporation regardless of whether the corporation is in good
31 standing.

32 Sec. 42. Section 490.504, Code 2021, is amended by striking
33 the section and inserting in lieu thereof the following:

34 **490.504 Service on corporation.**

35 1. A corporation's registered agent is the corporation's

1 agent for service of process, notice, or demand required or
2 permitted by law to be served on the corporation.

3 2. If a corporation has no registered agent, or the agent
4 cannot with reasonable diligence be served, the corporation
5 may be served by registered or certified mail, return receipt
6 requested, addressed to the secretary at the corporation's
7 principal office. Service is perfected under this subsection
8 at the earliest of the following:

9 a. The date the corporation receives the mail.

10 b. The date shown on the return receipt, if signed on behalf
11 of the corporation.

12 c. Five days after its deposit in the United States mail,
13 as evidenced by the postmark, if mailed postpaid and correctly
14 addressed.

15 3. a. The secretary of state shall be an agent of the
16 corporation upon whom process, notice, or demand may be served,
17 if any of the following applies:

18 (1) The process, notice, or demand cannot be served on a
19 corporation pursuant to subsection 1 or 2.

20 (2) The process, notice, or demand is to be served on
21 a registered foreign corporation that has withdrawn its
22 registration pursuant to section 490.1507 or 490.1509, or the
23 registration of which has been terminated pursuant to section
24 490.1511.

25 b. Service of any process, notice, or demand on the
26 secretary of state as agent for a corporation may be made by
27 delivering to the secretary of state duplicate copies of the
28 process, notice, or demand. If process, notice, or demand
29 is served on the secretary of state, the secretary of state
30 shall forward one of the copies by registered or certified
31 mail, return receipt requested, to the corporation at the
32 last address shown in the records of the secretary of state.
33 Service is effected under this subsection at the earliest of
34 the following:

35 (1) The date the corporation receives the process, notice,

1 or demand.

2 (2) The date shown on the return receipt, if signed on
3 behalf of the corporation.

4 (3) Five days after the process, notice, or demand is
5 deposited with the United States mail by the secretary of
6 state.

7 4. This section does not prescribe the only means, or
8 necessarily the required means, of serving a corporation.

9 Sec. 43. Section 490.601, Code 2021, is amended by striking
10 the section and inserting in lieu thereof the following:

11 **490.601 Authorized shares.**

12 1. The articles of incorporation must set forth any classes
13 of shares and series of shares within a class, and the number
14 of shares of each class and series, that the corporation is
15 authorized to issue. If more than one class or series of
16 shares is authorized, the articles of incorporation must
17 prescribe a distinguishing designation for each class or series
18 and, before the issuance of shares of a class or series,
19 describe the terms, including the preferences, rights, and
20 limitations of that class or series. Except to the extent
21 varied as permitted by this section, all shares of a class or
22 series must have terms, including preferences, rights, and
23 limitations that are identical with those of other shares of
24 the same class or series.

25 2. The articles of incorporation must authorize all of the
26 following:

27 a. One or more classes or series of shares that together
28 have full voting rights.

29 b. One or more classes or series of shares, which may be
30 the same class, classes, or series as those with voting rights,
31 that together are entitled to receive the net assets of the
32 corporation upon dissolution.

33 3. The articles of incorporation may authorize one or more
34 classes or series of shares that have any of the following
35 characteristics:

1 *a.* Have special, conditional, or limited voting rights, or
2 no right to vote, except to the extent otherwise provided by
3 this chapter.

4 *b.* Are redeemable or convertible as specified in the
5 articles of incorporation in any of the following ways:

6 (1) At the option of the corporation, the shareholder, or
7 another person or upon the occurrence of a specified event.

8 (2) For cash, indebtedness, securities, or other property.

9 (3) At prices and in amounts specified or determined in
10 accordance with a formula.

11 *c.* Entitle the holders to distributions calculated in
12 any manner, including dividends that may be cumulative,
13 noncumulative, or partially cumulative.

14 *d.* Have preference over any other class or series of shares
15 with respect to distributions, including distributions upon the
16 dissolution of the corporation.

17 4. The terms of shares may be made dependent upon facts
18 objectively ascertainable outside the articles of incorporation
19 in accordance with section 490.120, subsection 11.

20 5. Any of the terms of shares may vary among holders of the
21 same class or series so long as such variations are expressly
22 set forth in the articles of incorporation.

23 6. The description of the preferences, rights, and
24 limitations of classes or series of shares in subsection 3 is
25 not exhaustive.

26 Sec. 44. Section 490.602, Code 2021, is amended by striking
27 the section and inserting in lieu thereof the following:

28 **490.602 Terms of class or series determined by board of**
29 **directors.**

30 1. If the articles of incorporation so provide, the board
31 of directors is authorized, without shareholder approval, to
32 do any of the following:

33 *a.* Classify any unissued shares into one or more classes or
34 into one or more series within a class.

35 *b.* Reclassify any unissued shares of any class into one

1 or more classes or into one or more series within one or more
2 classes.

3 *c.* Reclassify any unissued shares of any series of any class
4 into one or more classes or into one or more series within a
5 class.

6 2. If the board of directors acts pursuant to subsection
7 1, it shall determine the terms, including the preferences,
8 rights, and limitations, to the same extent permitted under
9 section 490.601, of any of the following:

10 *a.* Any class of shares before the issuance of any shares of
11 that class.

12 *b.* Any series within a class before the issuance of any
13 shares of that series.

14 3. Before issuing any shares of a class or series created
15 under this section, the corporation shall deliver to the
16 secretary of state for filing articles of amendment setting
17 forth the terms determined under subsection 1.

18 Sec. 45. Section 490.603, Code 2021, is amended by striking
19 the section and inserting in lieu thereof the following:

20 **490.603 Issued and outstanding shares.**

21 1. A corporation may issue the number of shares of each
22 class or series authorized by the articles of incorporation.
23 Shares that are issued are outstanding shares until they are
24 reacquired, redeemed, converted, or canceled.

25 2. The reacquisition, redemption, or conversion of
26 outstanding shares is subject to the limitations of subsection
27 3 and to section 490.640.

28 3. At all times that shares of the corporation are
29 outstanding, one or more shares that together have full voting
30 rights and one or more shares that together are entitled to
31 receive the net assets of the corporation upon dissolution must
32 be outstanding.

33 Sec. 46. Section 490.604, Code 2021, is amended by striking
34 the section and inserting in lieu thereof the following:

35 **490.604 Fractional shares.**

1 1. A corporation may issue fractions of a share or in lieu
2 of doing so may do any of the following:

3 a. Pay in cash the value of fractions of a share.

4 b. Issue scrip in registered or bearer form entitling the
5 holder to receive a full share upon surrendering enough scrip
6 to equal a full share.

7 c. Arrange for disposition of fractional shares by the
8 holders of such shares.

9 2. Each certificate representing scrip must be
10 conspicuously labeled "scrip" and must contain the information
11 required by section 490.625, subsection 2.

12 3. The holder of a fractional share is entitled to exercise
13 the rights of a shareholder, including the rights to vote,
14 to receive dividends, and to receive distributions upon
15 dissolution. The holder of scrip is not entitled to any of
16 these rights unless the scrip provides for them.

17 4. The board of directors may authorize the issuance of
18 scrip subject to any condition, including any of the following:

19 a. That the scrip will become void if not exchanged for full
20 shares before a specified date.

21 b. That the shares for which the scrip is exchangeable may
22 be sold and the proceeds paid to the scripholders.

23 Sec. 47. Section 490.620, Code 2021, is amended by striking
24 the section and inserting in lieu thereof the following:

25 **490.620 Subscription for shares before incorporation.**

26 1. A subscription for shares entered into before
27 incorporation is irrevocable for six months unless the
28 subscription agreement provides a longer or shorter period or
29 all the subscribers agree to revocation.

30 2. The board of directors may determine the payment terms
31 of subscriptions for shares that were entered into before
32 incorporation, unless the subscription agreement specifies
33 them. A call for payment by the board of directors must be
34 uniform so far as practicable as to all shares of the same
35 class or series, unless the subscription agreement specifies

1 otherwise.

2 3. Shares issued pursuant to subscriptions entered into
3 before incorporation are fully paid and nonassessable when
4 the corporation receives the consideration specified in the
5 subscription agreement.

6 4. If a subscriber defaults in payment of cash or
7 property under a subscription agreement entered into before
8 incorporation, the corporation may collect the amount owed
9 as any other debt. Alternatively, unless the subscription
10 agreement provides otherwise, the corporation may rescind the
11 agreement and may sell the shares if the debt remains unpaid
12 for more than twenty days after the corporation delivers a
13 written demand for payment to the subscriber.

14 5. A subscription agreement entered into after
15 incorporation is a contract between the subscriber and the
16 corporation subject to section 490.621.

17 Sec. 48. Section 490.621, Code 2021, is amended by striking
18 the section and inserting in lieu thereof the following:

19 **490.621 Issuance of shares.**

20 1. The powers granted in this section to the board of
21 directors may be reserved to the shareholders by the articles
22 of incorporation.

23 2. The board of directors may authorize shares to be issued
24 for consideration consisting of any tangible or intangible
25 property or benefit to the corporation, including cash,
26 promissory notes, services performed, contracts for services to
27 be performed, or other securities of the corporation.

28 3. Before the corporation issues shares, the board of
29 directors shall determine that the consideration received or
30 to be received for shares to be issued is adequate. That
31 determination by the board of directors is conclusive insofar
32 as the adequacy of consideration for the issuance of shares
33 relates to whether the shares are validly issued, fully paid,
34 and nonassessable.

35 4. When the corporation receives the consideration for

1 which the board of directors authorized the issuance of shares,
2 the shares issued therefor are fully paid and nonassessable.

3 5. The corporation may place in escrow shares issued for
4 a contract for future services or benefits or a promissory
5 note, or make other arrangements to restrict the transfer of
6 the shares, and may credit distributions in respect of the
7 shares against their purchase price, until the services are
8 performed, the benefits are received, or the note is paid. If
9 the services are not performed, the benefits are not received,
10 or the note is not paid, the shares escrowed or restricted and
11 the distributions credited may be canceled in whole or part.

12 6. *a.* An issuance of shares or other securities convertible
13 into or rights exercisable for shares in a transaction or
14 a series of integrated transactions requires approval of
15 the shareholders, at a meeting at which a quorum consisting
16 of a majority, or such greater number as the articles of
17 incorporation may prescribe, of the votes entitled to be cast
18 on the matter exists, if all of the following conditions are
19 satisfied:

20 (1) The shares, other securities, or rights are to be issued
21 for consideration other than cash or cash equivalents.

22 (2) The voting power of shares that are issued and issuable
23 as a result of the transaction or series of integrated
24 transactions will comprise more than twenty percent of the
25 voting power of the shares of the corporation that were
26 outstanding immediately before the transaction.

27 *b.* For purposes of this subsection, the following shall
28 apply:

29 (1) For purposes of determining the voting power of shares
30 issued and issuable as a result of a transaction or series of
31 integrated transactions, the voting power of shares or other
32 securities convertible into or rights exercisable for shares
33 shall be the greater of the following:

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

35 (b) The voting power of the shares that would be outstanding

1 after giving effect to the conversion of convertible shares and
2 other securities and the exercise of rights to be issued.

3 (2) A series of transactions is integrated only if
4 consummation of one transaction is made contingent on
5 consummation of one or more of the other transactions.

6 Sec. 49. Section 490.622, Code 2021, is amended by striking
7 the section and inserting in lieu thereof the following:

8 **490.622 Liability of shareholders.**

9 1. A purchaser from a corporation of the corporation's own
10 shares is not liable to the corporation or its creditors with
11 respect to the shares except to pay the consideration for which
12 the shares were authorized to be issued or specified in the
13 subscription agreement.

14 2. A shareholder of a corporation is not personally liable
15 for any liabilities of the corporation, including liabilities
16 arising from acts of the corporation, subject to the following
17 exceptions:

18 a. To the extent provided in a provision of the articles
19 of incorporation permitted by section 490.202, subsection 2,
20 paragraph "b", subparagraph (5).

21 b. A shareholder may become personally liable by reason of
22 the shareholder's own acts or conduct.

23 Sec. 50. Section 490.623, Code 2021, is amended by striking
24 the section and inserting in lieu thereof the following:

25 **490.623 Share dividends.**

26 1. Unless the articles of incorporation provide otherwise,
27 shares may be issued pro rata and without consideration to the
28 corporation's shareholders or to the shareholders of one or
29 more classes or series of shares. An issuance of shares under
30 this subsection is a share dividend.

31 2. Shares of one class or series shall not be issued as a
32 share dividend in respect of shares of another class or series
33 unless one or more of the following conditions are met:

34 a. The articles of incorporation so authorize.

35 b. A majority of the votes entitled to be cast by the class

1 or series to be issued approve the issue.

2 c. There are no outstanding shares of the class or series
3 to be issued.

4 3. The board of directors may fix the record date for
5 determining shareholders entitled to a share dividend, which
6 date shall not be retroactive. If the board of directors does
7 not fix the record date for determining shareholders entitled
8 to a share dividend, the record date is the date the board of
9 directors authorizes the share dividend.

10 Sec. 51. Section 490.624, Code 2021, is amended by striking
11 the section and inserting in lieu thereof the following:

12 **490.624 Share rights, options, warrants, and awards.**

13 1. A corporation may issue rights, options, or warrants for
14 the purchase of shares or other securities of the corporation.
15 The board of directors shall determine the terms and conditions
16 upon which the rights, options, or warrants are issued and the
17 terms, including the consideration for which the shares or
18 other securities are to be issued. The authorization by the
19 board of directors for the corporation to issue such rights,
20 options, or warrants constitutes authorization of the issuance
21 of the shares or other securities for which the rights,
22 options, or warrants are exercisable.

23 2. The terms and conditions of such rights, options, or
24 warrants may include restrictions or conditions that do any of
25 the following:

26 a. Preclude or limit the exercise, transfer, or receipt
27 of such rights, options, or warrants by any person or
28 persons owning or offering to acquire a specified number or
29 percentage of the outstanding shares or other securities of the
30 corporation or by any transferee or transferees of any such
31 person or persons.

32 b. Invalidate or void such rights, options, or warrants
33 held by any such person or persons or any such transferee or
34 transferees.

35 3. The board of directors may authorize one or more officers

1 to do any of the following:

2 *a.* Designate the recipients of rights, options, warrants,
3 or other equity compensation awards that involve the issuance
4 of shares.

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

15 Sec. 52. Section 490.625, Code 2021, is amended by striking
16 the section and inserting in lieu thereof the following:

17 **490.625 Form and content of certificates.**

18 1. Shares may, but need not, be represented by certificates.
19 Unless this chapter or another statute expressly provides
20 otherwise, the rights and obligations of shareholders are
21 identical regardless of whether their shares are represented by
22 certificates.

23 2. At a minimum, each share certificate must state on its
24 face all of the following:

25 *a.* The name of the corporation and that it is organized
26 under the law of this state.

27 *b.* The name of the person to whom issued.

28 *c.* The number and class of shares and the designation of the
29 series, if any, the certificate represents.

30 3. *a.* If the corporation is authorized to issue different
31 classes of shares or series of shares within a class, the
32 front or back of each certificate must summarize all of the
33 following:

34 (1) The preferences, rights, and limitations applicable to
35 each class and series.

1 (2) Any variations in preferences, rights, and limitations
2 among the holders of the same class or series.

3 (3) The authority of the board of directors to determine the
4 terms of future classes or series.

5 *b.* Alternatively, each certificate may state conspicuously
6 on its front or back that the corporation will furnish the
7 shareholder this information on request in writing and without
8 charge.

9 4. Each share certificate must be signed by two officers
10 designated in the bylaws.

11 5. If the person who signed a share certificate no longer
12 holds office when the certificate is issued, the certificate
13 is nevertheless valid.

14 Sec. 53. Section 490.626, Code 2021, is amended by striking
15 the section and inserting in lieu thereof the following:

16 **490.626 Shares without certificates.**

17 1. Unless the articles of incorporation or bylaws provide
18 otherwise, the board of directors of a corporation may
19 authorize the issuance of some or all of the shares of any
20 or all of its classes or series without certificates. The
21 authorization does not affect shares already represented by
22 certificates until they are surrendered to the corporation.

23 2. Within a reasonable time after the issuance or transfer
24 of shares without certificates, the corporation shall deliver
25 to the shareholder a written statement of the information
26 required on certificates by section 490.625, subsections 2 and
27 3, and, if applicable, section 490.627.

28 Sec. 54. Section 490.627, Code 2021, is amended by striking
29 the section and inserting in lieu thereof the following:

30 **490.627 Restriction on transfer of shares.**

31 1. The articles of incorporation, the bylaws, an agreement
32 among shareholders, or an agreement between shareholders
33 and the corporation may impose restrictions on the transfer
34 or registration of transfer of shares of the corporation.
35 A restriction does not affect shares issued before the

1 restriction was adopted unless the holders of the shares are
2 parties to the restriction agreement or voted in favor of the
3 restriction.

4 2. A restriction on the transfer or registration of transfer
5 of shares is valid and enforceable against the holder or a
6 transferee of the holder if the restriction is authorized
7 by this section and its existence is noted conspicuously
8 on the front or back of the certificate or is contained
9 in the information statement required by section 490.626,
10 subsection 2. Unless so noted, or contained, a restriction
11 is not enforceable against a person without knowledge of the
12 restriction.

13 3. A restriction on the transfer or registration of transfer
14 of shares is authorized for any of the following purposes:

15 a. To maintain the corporation's status when it is dependent
16 on the number or identity of its shareholders.

17 b. To preserve exemptions under federal or state securities
18 law.

19 c. For any other reasonable purpose.

20 4. A restriction on the transfer or registration of transfer
21 of shares may do any of the following:

22 a. Obligate the shareholder first to offer the corporation
23 or other persons, separately, consecutively, or simultaneously,
24 an opportunity to acquire the restricted shares.

25 b. Obligate the corporation or other persons, separately,
26 consecutively, or simultaneously, to acquire the restricted
27 shares.

28 c. Require the corporation, the holders of any class or
29 series of its shares, or other persons to approve the transfer
30 of the restricted shares, if the requirement is not manifestly
31 unreasonable.

32 d. Prohibit the transfer of the restricted shares to
33 designated persons or classes of persons, if the prohibition
34 is not manifestly unreasonable.

35 5. As used in this section, "shares" includes a security

1 convertible into or carrying a right to subscribe for or
2 acquire shares.

3 Sec. 55. Section 490.630, Code 2021, is amended by striking
4 the section and inserting in lieu thereof the following:

5 **490.630 Shareholders' preemptive rights.**

6 1. The shareholders of a corporation do not have a
7 preemptive right to acquire the corporation's unissued shares
8 except to the extent the articles of incorporation so provide.

9 2. A statement included in the articles of incorporation
10 that "the corporation elects to have preemptive rights", or
11 words of similar effect, means that the following principles
12 apply except to the extent the articles of incorporation
13 expressly provide otherwise:

14 a. The shareholders of the corporation have a preemptive
15 right, granted on uniform terms and conditions prescribed
16 by the board of directors to provide a fair and reasonable
17 opportunity to exercise the right, to acquire proportional
18 amounts of the corporation's unissued shares upon the decision
19 of the board of directors to issue them.

20 b. A preemptive right may be waived by a shareholder. A
21 waiver evidenced by a writing is irrevocable even though it is
22 not supported by consideration.

23 c. There is no preemptive right with respect to any of the
24 following:

25 (1) Shares issued as compensation to directors, officers,
26 employees, or agents of the corporation, its subsidiaries, or
27 its affiliates.

28 (2) Shares issued to satisfy conversion or option rights
29 created to provide compensation to directors, officers,
30 employees, or agents of the corporation, its subsidiaries, or
31 its affiliates.

32 (3) Shares authorized in the articles of incorporation
33 that are issued within six months from the effective date of
34 incorporation.

35 (4) Shares sold otherwise than for cash.

1 *d.* Holders of shares of any class or series without voting
2 power but with preferential rights to distributions have no
3 preemptive rights with respect to shares of any class or
4 series.

5 *e.* Holders of shares of any class or series with voting
6 power but without preferential rights to distributions have no
7 preemptive rights with respect to shares of any class or series
8 with preferential rights to distributions unless the shares
9 with preferential rights are convertible into or carry a right
10 to subscribe for or acquire the shares without preferential
11 rights.

12 *f.* Shares subject to preemptive rights that are not acquired
13 by shareholders may be issued to any person for a period of one
14 year after being offered to shareholders at a consideration
15 set by the board of directors that is not lower than the
16 consideration set for the exercise of preemptive rights. An
17 offer at a lower consideration or after the expiration of one
18 year is subject to the shareholders' preemptive rights.

19 3. As used in this section, "*shares*" includes a security
20 convertible into or carrying a right to subscribe for or
21 acquire shares.

22 Sec. 56. Section 490.640, Code 2021, is amended by striking
23 the section and inserting in lieu thereof the following:

24 **490.640 Distribution to shareholders.**

25 1. A board of directors may authorize and the corporation
26 may make distributions to its shareholders subject to
27 restriction by the articles of incorporation and the limitation
28 in subsection 3.

29 2. The board of directors may fix the record date for
30 determining shareholders entitled to a distribution, which
31 date shall not be retroactive. If the board of directors does
32 not fix a record date for determining shareholders entitled
33 to a distribution, other than one involving a purchase,
34 redemption, or other acquisition of the corporation's shares,
35 the record date is the date the board of directors authorizes

1 the distribution.

2 3. A distribution shall not be made if, after giving it
3 effect, any of the following would result:

4 a. The corporation would not be able to pay its debts as
5 they become due in the usual course of business.

6 b. The corporation's total assets would be less than
7 the sum of its total liabilities plus, unless the articles
8 of incorporation permit otherwise, the amount that would be
9 needed, if the corporation were to be dissolved at the time
10 of the distribution, to satisfy the preferential rights upon
11 dissolution of shareholders whose preferential rights are
12 superior to those receiving the distribution.

13 4. The board of directors may base a determination
14 that a distribution is not prohibited under subsection 3
15 either on financial statements prepared on the basis of
16 accounting practices and principles that are reasonable in the
17 circumstances or on a fair valuation or other method that is
18 reasonable in the circumstances.

19 5. Except as provided in subsection 7, the effect of a
20 distribution under subsection 3 is measured as follows:

21 a. In the case of distribution by purchase, redemption,
22 or other acquisition of the corporation's shares, as of the
23 earlier of the following:

24 (1) The date cash or other property is transferred or debt
25 to a shareholder is incurred by the corporation.

26 (2) The date the shareholder ceases to be a shareholder with
27 respect to the acquired shares.

28 b. In the case of any other distribution of indebtedness, as
29 of the date the indebtedness is distributed.

30 c. In all other cases, as of the following:

31 (1) The date the distribution is authorized if the payment
32 occurs within one hundred twenty days after the date of
33 authorization.

34 (2) The date the payment is made if it occurs more than one
35 hundred twenty days after the date of authorization.

1 6. A corporation's indebtedness to a shareholder incurred
2 by reason of a distribution made in accordance with this
3 section is at parity with the corporation's indebtedness to its
4 general, unsecured creditors except to the extent subordinated
5 by agreement.

6 7. Indebtedness of a corporation, including indebtedness
7 issued as a distribution, is not considered a liability for
8 purposes of determinations under subsection 3 if its terms
9 provide that payment of principal and interest are made
10 only if and to the extent that payment of a distribution to
11 shareholders could then be made under this section. If such
12 indebtedness is issued as a distribution, each payment of
13 principal or interest is treated as a distribution, the effect
14 of which is measured on the date the payment is actually made.

15 8. This section shall not apply to distributions in
16 liquidation under subchapter XIV.

17 Sec. 57. Section 490.701, Code 2021, is amended by striking
18 the section and inserting in lieu thereof the following:

19 **490.701 Annual meeting.**

20 1. Unless directors are elected by written consent in
21 lieu of an annual meeting as permitted by section 490.704, a
22 corporation shall hold a meeting of shareholders annually, at a
23 time stated in or fixed in accordance with the bylaws, at which
24 directors shall be elected.

25 2. Unless the board of directors determines to hold the
26 meeting solely by means of remote communication in accordance
27 with section 490.709, subsection 3, annual meetings may be held
28 as follows:

29 a. In or out of this state at the place stated in or fixed
30 in accordance with the bylaws.

31 b. If no place is stated in or fixed in accordance with the
32 bylaws, at the corporation's principal office.

33 3. The failure to hold an annual meeting at the time stated
34 in or fixed in accordance with a corporation's bylaws does not
35 affect the validity of any corporate action.

1 Sec. 58. Section 490.702, Code 2021, is amended by striking
2 the section and inserting in lieu thereof the following:

3 **490.702 Special meeting.**

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

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

10 b. If the shareholders holding at least ten percent of
11 all the votes entitled to be cast on an issue proposed to be
12 considered at the proposed special meeting sign, date, and
13 deliver to the corporation one or more written demands for the
14 meeting describing the purpose or purposes for which it is
15 to be held, provided that the articles of incorporation may
16 fix a lower percentage or a higher percentage not exceeding
17 twenty-five percent of all the votes entitled to be cast on any
18 issue proposed to be considered. Unless otherwise provided in
19 the articles of incorporation, a written demand for a special
20 meeting may be revoked by a writing to that effect received
21 by the corporation before the receipt by the corporation of
22 demands sufficient in number to require the holding of a
23 special meeting.

24 2. If not otherwise fixed under section 490.703 or 490.707,
25 the record date for determining shareholders entitled to
26 demand a special meeting shall be the first date on which a
27 signed shareholder demand is delivered to the corporation. No
28 written demand for a special meeting shall be effective unless,
29 within sixty days of the earliest date on which such a demand
30 delivered to the corporation as required by this section was
31 signed, written demands signed by shareholders holding at least
32 the percentage of votes specified in or fixed in accordance
33 with subsection 1, paragraph "b", have been delivered to the
34 corporation.

35 3. Unless the board of directors determines to hold the

1 meeting solely by remote participation in accordance with
2 section 490.709, subsection 3, special meetings of shareholders
3 may be held as follows:

4 *a.* In or out of this state at the place stated in or fixed
5 in accordance with the bylaws.

6 *b.* If no place is so stated in or fixed in accordance with
7 the bylaws, at the corporation's principal office.

8 4. Only business within the purpose or purposes described in
9 the meeting notice required by section 490.705, subsection 3,
10 may be conducted at a special meeting of shareholders.

11 5. Notwithstanding subsections 1 through 4, a corporation
12 that has a class of equity securities registered pursuant to
13 section 12 of the federal Securities Exchange Act of 1934 is
14 required to hold a special meeting only upon the occurrence of
15 any of the following:

16 *a.* On call of its board of directors or the person or
17 persons authorized to call a special meeting by the articles of
18 incorporation or bylaws.

19 *b.* If the holders of at least fifty percent of all the votes
20 entitled to be cast on any issue proposed to be considered at
21 the proposed special meeting sign, date, and deliver to the
22 corporation's secretary one or more written demands for the
23 meeting describing the purpose or purposes for which it is to
24 be held.

25 Sec. 59. Section 490.703, Code 2021, is amended by striking
26 the section and inserting in lieu thereof the following:

27 **490.703 Court-ordered meeting.**

28 1. The district court of the county where a corporation's
29 principal office, or, if none in this state, its registered
30 office, is located may summarily order a meeting to be held
31 pursuant to any of the following:

32 *a.* On application of any shareholder of the corporation if
33 an annual meeting was not held or action by written consent in
34 lieu of an annual meeting did not become effective within the
35 earlier of six months after the end of the corporation's fiscal

1 year or fifteen months after its last annual meeting.

2 *b.* On application of one or more shareholders who signed a
3 demand for a special meeting valid under section 490.702 if any
4 of the following applies:

5 (1) Notice of the special meeting was not given within
6 thirty days after the first day on which the requisite number
7 of such demands have been delivered to the corporation.

8 (2) The special meeting was not held in accordance with the
9 notice.

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

19 3. For purposes of subsection 1, paragraph "a",
20 "*shareholder*" means a record shareholder, a beneficial
21 shareholder, and an unrestricted voting trust beneficial owner.

22 Sec. 60. Section 490.704, Code 2021, is amended by striking
23 the section and inserting in lieu thereof the following:

24 **490.704 Action without meeting.**

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

1 2. Except in the case of a corporation that has a class
2 of equity securities registered pursuant to section 12 of
3 the federal Securities Exchange Act of 1934, the articles of
4 incorporation may provide that any action required or permitted
5 by this chapter to be taken at a shareholders' meeting may be
6 taken without a meeting, and without prior notice, if consents
7 in writing setting forth the action so taken are signed by
8 the holders of outstanding shares having not less than the
9 minimum number of votes that would be required to authorize
10 or take the action at a meeting at which all shares entitled
11 to vote on the action were present and voted. However, if a
12 corporation's articles of incorporation authorize shareholders
13 to cumulate their votes when electing directors pursuant to
14 section 490.728, directors shall not be elected by less than
15 unanimous written consent. A written consent must bear the
16 date of signature of the shareholder who signs the consent and
17 be delivered to the corporation for filing by the corporation
18 with the minutes or corporate records.

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

1 to that effect delivered to the corporation before unrevoked
2 written consents sufficient in number to take the corporate
3 action have been delivered to the corporation.

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

13 5. *a.* If this chapter requires that notice of a proposed
14 action be given to nonvoting shareholders and the action is
15 to be taken by written consent of the voting shareholders,
16 the corporation shall give its nonvoting shareholders written
17 notice of the action not more than ten days after any of the
18 following:

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

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

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

29 6. *a.* If action is taken by less than unanimous written
30 consent of the voting shareholders, the corporation shall give
31 its nonconsenting voting shareholders written notice of the
32 action not more than ten days after any of the following:

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

35 (2) Such later date that tabulation of consents is completed

1 pursuant to an authorization under subsection 4.

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

8 7. The notice requirements in subsections 5 and 6 shall not
9 delay the effectiveness of actions taken by written consent,
10 and a failure to comply with such notice requirements shall
11 not invalidate actions taken by written consent, provided that
12 this subsection shall not be deemed to limit judicial power
13 to fashion any appropriate remedy in favor of a shareholder
14 adversely affected by a failure to give such notice within the
15 required time period.

16 Sec. 61. Section 490.705, Code 2021, is amended by striking
17 the section and inserting in lieu thereof the following:

18 **490.705 Notice of meeting.**

19 1. A corporation shall notify shareholders of the date,
20 time, and place of each annual and special shareholders'
21 meeting no fewer than ten nor more than sixty days before
22 the meeting date. If the board of directors has authorized
23 participation by means of remote communication pursuant to
24 section 490.709 for holders of any class or series of shares,
25 the notice to the holders of such class or series of shares
26 must describe the means of remote communication to be used.
27 The notice must include the record date for determining the
28 shareholders entitled to vote at the meeting, if such date is
29 different from the record date for determining shareholders
30 entitled to notice of the meeting. Unless this chapter or the
31 articles of incorporation require otherwise, the corporation
32 is required to give notice only to shareholders entitled to
33 vote at the meeting as of the record date for determining the
34 shareholders entitled to notice of the meeting.

35 2. Unless this chapter or the articles of incorporation

1 require otherwise, the notice of an annual meeting of
2 shareholders need not include a description of the purpose or
3 purposes for which the meeting is called.

4 3. Notice of a special meeting of shareholders must include
5 a description of the purpose or purposes for which the meeting
6 is called.

7 4. If not otherwise fixed under section 490.703 or 490.707,
8 the record date for determining shareholders entitled to notice
9 of and to vote at an annual or special shareholders' meeting is
10 the day before the first notice is delivered to shareholders.

11 5. Unless the bylaws require otherwise, if an annual or
12 special shareholders' meeting is adjourned to a different
13 date, time, or place, if any, notice need not be given of the
14 new date, time, or place, if any, if the new date, time, or
15 place, if any, is announced at the meeting before adjournment.
16 However, if a new record date for the adjourned meeting is or
17 must be fixed under section 490.707, notice of the adjourned
18 meeting shall be given under this section to shareholders
19 entitled to vote at such adjourned meeting as of the record
20 date fixed for notice of such adjourned meeting.

21 Sec. 62. Section 490.706, Code 2021, is amended by striking
22 the section and inserting in lieu thereof the following:

23 **490.706 Waiver of notice.**

24 1. A shareholder may waive any notice required by this
25 chapter, or the articles of incorporation or bylaws, before or
26 after the date and time stated in the notice. The waiver must
27 be in writing, be signed by the shareholder entitled to the
28 notice, and be delivered to the corporation for filing by the
29 corporation with the minutes or corporate records.

30 2. A shareholder's attendance at a meeting does all of the
31 following:

32 a. Waives objection to lack of notice or defective notice
33 of the meeting, unless the shareholder at the beginning of the
34 meeting objects to holding the meeting or transacting business
35 at the meeting.

1 *b.* Waives objection to consideration of a particular matter
2 at the meeting that is not within the purpose or purposes
3 described in the meeting notice, unless the shareholder objects
4 to considering the matter when it is presented.

5 Sec. 63. Section 490.707, Code 2021, is amended by striking
6 the section and inserting in lieu thereof the following:

7 **490.707 Record date for meeting.**

8 1. The bylaws may fix or provide the manner of fixing the
9 record date or dates for one or more voting groups to determine
10 the shareholders entitled to notice of a shareholders' meeting,
11 to demand a special meeting, to vote, or to take any other
12 action. If the bylaws do not fix or provide for fixing a record
13 date, the board of directors may fix the record date.

14 2. A record date fixed under this section shall not be more
15 than seventy days before the meeting or action requiring a
16 determination of shareholders and shall not be retroactive.

17 3. A determination of shareholders entitled to notice of
18 or to vote at a shareholders' meeting is effective for any
19 adjournment of the meeting unless the board of directors fixes
20 a new record date or dates, which it shall do if the meeting is
21 adjourned to a date more than one hundred twenty days after the
22 date fixed for the original meeting.

23 4. If a court orders a meeting adjourned to a date more than
24 one hundred twenty days after the date fixed for the original
25 meeting, it may provide that the original record date or dates
26 continue in effect or it may fix a new record date or dates.

27 5. The record date or dates for a shareholders' meeting
28 fixed by or in the manner provided in the bylaws or by the
29 board of directors shall be the record date for determining
30 shareholders entitled both to notice of and to vote at
31 the shareholders' meeting unless, in the case of a record
32 date fixed by the board of directors and to the extent not
33 prohibited by the bylaws, the board, at the time it fixes the
34 record date for shareholders entitled to notice of the meeting,
35 fixes a later record date on or before the date of the meeting

1 to determine the shareholders entitled to vote at the meeting.

2 Sec. 64. Section 490.708, Code 2021, is amended by striking
3 the section and inserting in lieu thereof the following:

4 **490.708 Conduct of meeting.**

5 1. At each meeting of shareholders, a chair shall preside.
6 The chair shall be appointed as provided in the bylaws or, in
7 the absence of such provision, by the board of directors.

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

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

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

20 Sec. 65. Section 490.709, Code 2021, is amended by striking
21 the section and inserting in lieu thereof the following:

22 **490.709 Remote participation in shareholders' meetings.**

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

30 2. Shareholders participating in a shareholders' meeting
31 by means of remote communication shall be deemed present and
32 may vote at such a meeting if the corporation has implemented
33 reasonable measures to do all of the following:

34 a. Verify that each person participating remotely as a
35 shareholder is a shareholder.

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

6 3. Unless the bylaws require the meeting of shareholders to
7 be held at a place, the board of directors may determine that
8 any meeting of shareholders shall not be held at any place and
9 shall instead be held solely by means of remote communication,
10 but only if the corporation implements the measures specified
11 in subsection 2.

12 Sec. 66. Section 490.720, Code 2021, is amended by striking
13 the section and inserting in lieu thereof the following:

14 **490.720 Shareholders' list for meeting.**

15 1. After fixing a record date for a meeting, a corporation
16 shall prepare an alphabetical list of the names of all its
17 shareholders who are entitled to notice of a shareholders'
18 meeting. If the board of directors fixes a different record
19 date under section 490.707, subsection 5, to determine the
20 shareholders entitled to vote at the meeting, a corporation
21 also shall prepare an alphabetical list of the names of all
22 its shareholders who are entitled to vote at the meeting. A
23 list must be arranged by voting group and within each voting
24 group by class or series of shares, and show the address of and
25 number of shares held by each shareholder. Nothing contained
26 in this subsection shall require the corporation to include
27 on such list the electronic mail address or other electronic
28 contact information of a shareholder.

29 2. *a.* The shareholders' list for notice shall be available
30 for inspection by any shareholder, beginning two business
31 days after notice of the meeting is given for which the
32 list was prepared and continuing through the meeting. The
33 shareholders' list for notice shall be made available at any
34 of the following:

35 (1) The corporation's principal office or at a place

1 identified in the meeting notice in the city where the meeting
2 will be held.

3 (2) A reasonably accessible electronic network, provided
4 that the information required to gain access to such list is
5 provided with the notice of the meeting. In the event that
6 the corporation determines to make the list available on
7 an electronic network, the corporation may take reasonable
8 steps to ensure that such information is available only to
9 shareholders of the corporation.

10 b. A shareholders' list for voting shall be similarly
11 available for inspection promptly after the record date for
12 voting. A shareholder, or the shareholder's agent or attorney,
13 is entitled on written demand to inspect and, subject to the
14 requirements of section 490.1602, subsection 3, to copy a list,
15 during regular business hours and at the shareholder's expense,
16 during the period it is available for inspection.

17 3. If the meeting is to be held at a place, the corporation
18 shall make the list of shareholders entitled to vote available
19 at the meeting, and any shareholder, or the shareholder's
20 agent or attorney, is entitled to inspect the list at any time
21 during the meeting or any adjournment. If the meeting is to be
22 held solely by means of remote communication, then such list
23 shall also be open to such inspection during the meeting on a
24 reasonably accessible electronic network, and the information
25 required to access such list shall be provided with the notice
26 of the meeting.

27 4. If the corporation refuses to allow a shareholder, or
28 the shareholder's agent or attorney, to inspect a shareholders'
29 list before or at the meeting, or copy a list as permitted
30 by subsection 2, the district court of the county where a
31 corporation's principal office or, if none in this state,
32 its registered office, is located, on application of the
33 shareholder, may summarily order the inspection or copying at
34 the corporation's expense and may postpone the meeting for
35 which the list was prepared until the inspection or copying is

1 complete.

2 5. Refusal or failure to prepare or make available the
3 shareholders' list does not affect the validity of action taken
4 at the meeting.

5 Sec. 67. Section 490.721, Code 2021, is amended by striking
6 the section and inserting in lieu thereof the following:

7 **490.721 Voting entitlement of shares.**

8 1. Except as provided in subsections 2 and 4 or unless the
9 articles of incorporation provide otherwise, each outstanding
10 share, regardless of class or series, is entitled to one vote
11 on each matter voted on at a shareholders' meeting. Only
12 shares are entitled to vote.

13 2. Shares of a corporation are not entitled to vote if they
14 are owned by or otherwise belong to the corporation directly,
15 or indirectly through an entity of which a majority of the
16 voting power is held directly or indirectly by the corporation
17 or which is otherwise controlled by the corporation.

18 3. Shares held by the corporation in a fiduciary capacity
19 for the benefit of any person are entitled to vote unless
20 they are held for the benefit of, or otherwise belong to, the
21 corporation directly, or indirectly through an entity of which
22 a majority of the voting power is held directly or indirectly
23 by the corporation or which is otherwise controlled by the
24 corporation.

25 4. Redeemable shares are not entitled to vote after
26 delivery of written notice of redemption is effective and a
27 sum sufficient to redeem the shares has been deposited with a
28 bank, trust company, or other financial institution under an
29 irrevocable obligation to pay the holders the redemption price
30 on surrender of the shares.

31 5. As used in this section, "*voting power*" means the current
32 power to vote in the election of directors of a corporation or
33 to elect, select, or appoint governors of another entity.

34 Sec. 68. Section 490.722, Code 2021, is amended by striking
35 the section and inserting in lieu thereof the following:

1 **490.722 Proxies.**

2 1. A shareholder may vote the shareholder's shares in person
3 or by proxy.

4 2. A shareholder, or the shareholder's agent or
5 attorney-in-fact, may appoint a proxy to vote or otherwise
6 act for the shareholder by signing an appointment form, or
7 by an electronic transmission. An electronic transmission
8 must contain or be accompanied by information from which the
9 recipient can determine the date of the transmission and that
10 the transmission was authorized by the sender or the sender's
11 agent or attorney-in-fact.

12 3. An appointment of a proxy is effective when a signed
13 appointment form or an electronic transmission of the
14 appointment is received by the inspector of election or
15 the officer or agent of the corporation authorized to count
16 votes. An appointment is valid for the term provided in the
17 appointment form, and, if no term is provided, is valid for
18 eleven months unless the appointment is irrevocable under
19 subsection 4.

20 4. An appointment of a proxy is revocable unless the
21 appointment form or electronic transmission states that it is
22 irrevocable and the appointment is coupled with an interest.
23 Appointments coupled with an interest include, but are not
24 limited to, the appointment of any of the following:

25 *a.* A pledgee.

26 *b.* A person who purchased or agreed to purchase the shares.

27 *c.* A creditor of the corporation who extended the
28 corporation credit under terms requiring the appointment.

29 *d.* An employee of the corporation whose employment contract
30 requires the appointment.

31 *e.* A party to a voting agreement created under section
32 490.731.

33 5. The death or incapacity of the shareholder appointing
34 a proxy does not affect the right of the corporation to
35 accept the proxy's authority unless notice of the death or

1 incapacity is received by the secretary or other officer or
2 agent authorized to tabulate votes before the proxy exercises
3 the proxy's authority under the appointment.

4 6. An appointment made irrevocable under subsection 4
5 is revoked when the interest with which it is coupled is
6 extinguished.

7 7. Unless it otherwise provides, an appointment made
8 irrevocable under subsection 4 continues in effect after
9 a transfer of the shares and a transferee takes subject
10 to the appointment, except that a transferee for value of
11 shares subject to an irrevocable appointment may revoke the
12 appointment if the transferee did not know of its existence
13 when acquiring the shares and the existence of the irrevocable
14 appointment was not noted conspicuously on the certificate
15 representing the shares or on the information statement for
16 shares without certificates.

17 8. Subject to section 490.724 and to any express limitation
18 on the proxy's authority stated in the appointment form or
19 electronic transmission, a corporation is entitled to accept
20 the proxy's vote or other action as that of the shareholder
21 making the appointment.

22 Sec. 69. Section 490.723, Code 2021, is amended by striking
23 the section and inserting in lieu thereof the following:

24 **490.723 Shares held by intermediaries and nominees.**

25 1. A corporation's board of directors may establish a
26 procedure under which a person on whose behalf shares are
27 registered in the name of an intermediary or nominee may elect
28 to be treated by the corporation as the record shareholder by
29 filing with the corporation a beneficial ownership certificate.
30 The terms, conditions, and limitations of this treatment shall
31 be specified in the procedure. To the extent such person is
32 treated under such procedure as having rights or privileges
33 that the record shareholder otherwise would have, the record
34 shareholder shall not have those rights or privileges.

35 2. The procedure must specify all of the following:

1 *a.* The types of intermediaries or nominees to which it
2 applies.

3 *b.* The rights or privileges that the corporation recognizes
4 in a person with respect to whom a beneficial ownership
5 certificate is filed.

6 *c.* The manner in which the procedure is selected which must
7 include that the beneficial ownership certificate be signed or
8 assented to by or on behalf of the record shareholder and the
9 person on whose behalf the shares are held.

10 *d.* The information that must be provided when the procedure
11 is selected.

12 *e.* The period for which selection of the procedure is
13 effective.

14 *f.* Requirements for notice to the corporation with respect
15 to the arrangement.

16 *g.* The form and contents of the beneficial ownership
17 certificate.

18 3. The procedure may specify any other aspects of the rights
19 and duties created by the filing of a beneficial ownership
20 certificate.

21 Sec. 70. Section 490.724, Code 2021, is amended by striking
22 the section and inserting in lieu thereof the following:

23 **490.724 Acceptance of votes and other instruments.**

24 1. If the name signed on a vote, ballot, consent, waiver,
25 shareholder demand, or proxy appointment corresponds to the
26 name of a shareholder, the corporation, if acting in good
27 faith, is entitled to accept the vote, ballot, consent, waiver,
28 shareholder demand, or proxy appointment and give it effect as
29 the act of the shareholder.

30 2. If the name signed on a vote, ballot, consent, waiver,
31 shareholder demand, or proxy appointment does not correspond to
32 the name of its shareholder, the corporation, if acting in good
33 faith, is nevertheless entitled to accept the vote, ballot,
34 consent, waiver, shareholder demand, or proxy appointment and
35 give it effect as the act of the shareholder if any of the

1 following applies:

2 *a.* The shareholder is an entity and the name signed purports
3 to be that of an officer or agent of the entity.

4 *b.* The name signed purports to be that of an administrator,
5 executor, guardian, or conservator representing the shareholder
6 and, if the corporation requests, evidence of fiduciary status
7 acceptable to the corporation has been presented with respect
8 to the vote, ballot, consent, waiver, shareholder demand, or
9 proxy appointment.

10 *c.* The name signed purports to be that of a receiver
11 or trustee in bankruptcy of the shareholder and, if the
12 corporation requests, evidence of this status acceptable
13 to the corporation has been presented with respect to the
14 vote, ballot, consent, waiver, shareholder demand, or proxy
15 appointment.

16 *d.* The name signed purports to be that of a pledgee,
17 beneficial owner, or attorney-in-fact of the shareholder
18 and, if the corporation requests, evidence acceptable to
19 the corporation of the signatory's authority to sign for
20 the shareholder has been presented with respect to the
21 vote, ballot, consent, waiver, shareholder demand, or proxy
22 appointment.

23 *e.* Two or more persons are the shareholder as co-tenants or
24 fiduciaries and the name signed purports to be the name of at
25 least one of the co-owners and the person signing appears to be
26 acting on behalf of all the co-owners.

27 3. The corporation is entitled to reject a vote, ballot,
28 consent, waiver, shareholder demand, or proxy appointment if
29 the person authorized to accept or reject such instrument,
30 acting in good faith, has reasonable basis for doubt about
31 the validity of the signature on it or about the signatory's
32 authority to sign for the shareholder.

33 4. Neither the corporation or any person authorized by it,
34 nor an inspector of election appointed under section 490.729,
35 that accepts or rejects a vote, ballot, consent, waiver,

1 shareholder demand, or proxy appointment in good faith and
2 in accordance with the standards of this section or section
3 490.722, subsection 2, is liable in damages to the shareholder
4 for the consequences of the acceptance or rejection.

5 5. Corporate action based on the acceptance or rejection
6 of a vote, ballot, consent, waiver, shareholder demand, or
7 proxy appointment under this section is valid unless a court of
8 competent jurisdiction determines otherwise.

9 6. If an inspector of election has been appointed under
10 section 490.729, the inspector of election also has the
11 authority to request information and make determinations
12 under subsections 1, 2, and 3. Any determination made by the
13 inspector of election under those subsections is controlling.

14 Sec. 71. Section 490.725, Code 2021, is amended by striking
15 the section and inserting in lieu thereof the following:

16 **490.725 Quorum and voting requirements for voting groups.**

17 1. Shares entitled to vote as a separate voting group
18 may take action on a matter at a meeting only if a quorum of
19 those shares exists with respect to that matter. Unless the
20 articles of incorporation or bylaws provide otherwise, shares
21 representing a majority of the votes entitled to be cast on
22 the matter by the voting group constitutes a quorum of that
23 voting group for action on that matter. Whenever this chapter
24 requires a particular quorum for a specified action, the
25 articles of incorporation shall not provide for a lower quorum.

26 2. Once a share is represented for any purpose at a meeting,
27 it is deemed present for quorum purposes for the remainder of
28 the meeting and for any adjournment of that meeting unless a
29 new record date is or must be fixed for that adjourned meeting.

30 3. If a quorum exists, action on a matter, other than the
31 election of directors, by a voting group is approved if the
32 votes cast within the voting group favoring the action exceed
33 the votes cast opposing the action, unless the articles of
34 incorporation require a greater number of affirmative votes.

35 4. An amendment of the articles of incorporation adding,

1 changing, or deleting a quorum or voting requirement for a
2 voting group greater than specified in subsection 1 or 3 is
3 governed by section 490.727.

4 5. The election of directors is governed by section 490.728.

5 6. Whenever a provision of this chapter provides for voting
6 of classes or series as separate voting groups, the rules
7 provided in section 490.1004, subsection 3, for amendments of
8 the articles of incorporation apply to that provision.

9 Sec. 72. Section 490.726, Code 2021, is amended by striking
10 the section and inserting in lieu thereof the following:

11 **490.726 Action by single or multiple voting groups.**

12 1. If the articles of incorporation or this chapter provide
13 for voting by a single voting group on a matter, action on
14 that matter is taken when voted upon by that voting group as
15 provided in section 490.725.

16 2. If the articles of incorporation or this chapter provide
17 for voting by two or more voting groups on a matter, action
18 on that matter is taken only when voted upon by each of those
19 voting groups counted separately as provided in section
20 490.725. Action may be taken by different voting groups on a
21 matter at different times.

22 Sec. 73. Section 490.727, Code 2021, is amended by striking
23 the section and inserting in lieu thereof the following:

24 **490.727 Modifying quorum or voting requirements.**

25 An amendment to the articles of incorporation or bylaws
26 that adds, changes, or deletes a quorum or voting requirement
27 shall meet the same quorum requirement and be adopted by the
28 same vote and voting groups required to take action under the
29 quorum and voting requirements then in effect or proposed to be
30 adopted, whichever is greater.

31 Sec. 74. Section 490.728, Code 2021, is amended by striking
32 the section and inserting in lieu thereof the following:

33 **490.728 Voting for directors — cumulative voting.**

34 1. Unless otherwise provided in the articles of
35 incorporation, directors are elected by a plurality of the

1 votes cast by the shares entitled to vote in the election at a
2 meeting at which a quorum is present.

3 2. Shareholders do not have a right to cumulate their votes
4 for directors unless the articles of incorporation so provide.

5 3. A statement included in the articles of incorporation
6 that "[all] [a designated voting group of] shareholders are
7 entitled to cumulate their votes for directors", or words of
8 similar import, means that the shareholders designated are
9 entitled to multiply the number of votes they are entitled to
10 cast by the number of directors for whom they are entitled to
11 vote and cast the product for a single candidate or distribute
12 the product among two or more candidates.

13 4. Shares otherwise entitled to vote cumulatively shall not
14 be voted cumulatively at a particular meeting unless any of the
15 following applies:

16 a. The meeting notice or proxy statement accompanying
17 the notice states conspicuously that cumulative voting is
18 authorized.

19 b. A shareholder who has the right to cumulate the
20 shareholder's votes gives notice to the corporation not less
21 than forty-eight hours before the time set for the meeting of
22 the shareholder's intent to cumulate votes during the meeting,
23 and if one shareholder gives this notice all other shareholders
24 in the same voting group participating in the election are
25 entitled to cumulate their votes without giving further notice.

26 Sec. 75. Section 490.729, Code 2021, is amended by striking
27 the section and inserting in lieu thereof the following:

28 **490.729 Inspectors of election.**

29 1. A corporation that has a class of equity securities
30 registered pursuant to section 12 of the federal Securities
31 Exchange Act of 1934 shall, and any other corporation
32 may, appoint one or more inspectors to act at a meeting of
33 shareholders in connection with determining voting results.
34 Each inspector shall verify in writing that the inspector
35 will faithfully execute the duties of inspector with strict

1 impartiality and according to the best of the inspector's
2 ability. An inspector may be an officer or employee of the
3 corporation. The inspectors may appoint or retain other
4 persons to assist the inspectors in the performance of the
5 duties of inspector under subsection 2, and may rely on
6 information provided by such persons and other persons,
7 including those appointed to tabulate votes, unless the
8 inspectors believe reliance is unwarranted.

9 2. The inspectors shall do all of the following:

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

12 b. Determine the shares represented at a meeting.

13 c. Determine the validity of proxy appointments and ballots.

14 d. Count all votes.

15 e. Make a written report of the results.

16 3. In performing their duties, the inspectors may examine
17 any of the following:

18 a. The proxy appointment forms and any other information
19 provided in accordance with section 490.722, subsection 2.

20 b. Any envelope or related writing submitted with those
21 appointment forms.

22 c. Any ballots.

23 d. Any evidence or other information specified in section
24 490.724.

25 e. The relevant books and records of the corporation
26 relating to its shareholders and their entitlement to vote,
27 including any securities position list provided by a depository
28 clearing agency.

29 4. a. The inspectors also may consider other information
30 that they believe is relevant and reliable for the purpose
31 of performing any of the duties assigned to them pursuant to
32 subsection 2, including for all of the following purposes:

33 (1) Evaluating inconsistent, incomplete, or erroneous
34 information.

35 (2) Reconciling information submitted on behalf of banks,

1 brokers, their nominees, or similar persons that indicates
2 more votes being cast than a proxy authorized by the record
3 shareholder is entitled to cast.

4 *b.* If the inspectors consider other information allowed by
5 this subsection, they shall in their report under subsection
6 2 specify the information considered by them, including the
7 purpose or purposes for which the information was considered,
8 the person or persons from whom they obtained the information,
9 when the information was obtained, the means by which the
10 information was obtained, and the basis for the inspectors'
11 belief that such information is relevant and reliable.

12 5. Determinations of law by the inspectors of election are
13 subject to de novo review by a court in a proceeding under
14 section 490.749 or other judicial proceeding.

15 Sec. 76. Section 490.730, Code 2021, is amended by striking
16 the section and inserting in lieu thereof the following:

17 **490.730 Voting trusts.**

18 1. One or more shareholders may create a voting trust,
19 conferring on a trustee the right to vote or otherwise act for
20 them, by signing an agreement setting out the provisions of the
21 trust, which may include anything consistent with its purpose,
22 and transferring their shares to the trustee. When a voting
23 trust agreement is signed, the trustee shall prepare a list of
24 the names and addresses of all voting trust beneficial owners,
25 together with the number and class of shares each transferred
26 to the trust, and deliver copies of the list and agreement to
27 the corporation at its principal office.

28 2. A voting trust becomes effective on the date the first
29 shares subject to the trust are registered in the trustee's
30 name.

31 3. Limits, if any, on the duration of a voting trust shall
32 be as set forth in the voting trust. A voting trust that became
33 effective between December 31, 1989, and June 30, 2014, both
34 dates inclusive, is governed by the provisions of this section
35 concerning duration then in effect, unless the voting trust

1 is amended to provide otherwise by unanimous agreement of the
2 parties to the voting trust.

3 Sec. 77. Section 490.731, Code 2021, is amended by striking
4 the section and inserting in lieu thereof the following:

5 **490.731 Voting agreement.**

6 1. Two or more shareholders may provide for the manner in
7 which they will vote their shares by signing an agreement for
8 that purpose. A voting agreement created under this section is
9 not subject to the provisions of section 490.730.

10 2. A voting agreement created under this section is
11 specifically enforceable.

12 Sec. 78. Section 490.732, Code 2021, is amended by striking
13 the section and inserting in lieu thereof the following:

14 **490.732 Shareholder agreement.**

15 1. An agreement among the shareholders of a corporation that
16 complies with this section is effective among the shareholders
17 and the corporation even though it is inconsistent with one or
18 more other provisions of this chapter in that it does any of
19 the following:

20 a. Eliminates the board of directors or restricts the
21 discretion or powers of the board of directors.

22 b. Governs the authorization or making of distributions,
23 regardless of whether they are in proportion to ownership of
24 shares, subject to the limitations in section 490.640.

25 c. Establishes who shall be directors or officers of the
26 corporation, or their terms of office or manner of selection
27 or removal.

28 d. Governs, in general or in regard to specific matters,
29 the exercise or division of voting power by or between
30 the shareholders and directors or by or among any of them,
31 including use of weighted voting rights or director proxies.

32 e. Establishes the terms and conditions of any agreement for
33 the transfer or use of property or the provision of services
34 between the corporation and any shareholder, director, officer,
35 or employee of the corporation, or among any of them.

1 *f.* Transfers to one or more shareholders or other persons
2 all or part of the authority to exercise the corporate powers
3 or to manage the business and affairs of the corporation,
4 including the resolution of any issue about which there exists
5 a deadlock among directors or shareholders.

6 *g.* Requires dissolution of the corporation at the request
7 of one or more of the shareholders or upon the occurrence of a
8 specified event or contingency.

9 *h.* Otherwise governs the exercise of the corporate powers or
10 the management of the business and affairs of the corporation
11 or the relationship among the shareholders, the directors, and
12 the corporation, or among any of them, and is not contrary to
13 public policy.

14 2. An agreement authorized by this section shall satisfy all
15 of the following requirements:

16 *a.* Be as set forth in any of the following:

17 (1) The articles of incorporation or bylaws and approved by
18 all persons who are shareholders at the time of the agreement.

19 (2) A written agreement that is signed by all persons who
20 are shareholders at the time of the agreement and is made known
21 to the corporation.

22 *b.* Be subject to amendment only by all persons who are
23 shareholders at the time of the amendment, unless the agreement
24 provides otherwise.

25 3. The existence of an agreement authorized by this section
26 shall be noted conspicuously on the front or back of each
27 certificate for outstanding shares or on the information
28 statement required by section 490.626, subsection 2. If at the
29 time of the agreement the corporation has shares outstanding
30 represented by certificates, the corporation shall recall the
31 outstanding certificates and issue substitute certificates that
32 comply with this subsection. The failure to note the existence
33 of the agreement on the certificate or information statement
34 shall not affect the validity of the agreement or any action
35 taken pursuant to it. Any purchaser of shares who, at the time

1 of purchase, did not have knowledge of the existence of the
2 agreement shall be entitled to rescission of the purchase. A
3 purchaser shall be deemed to have knowledge of the existence
4 of the agreement if its existence is noted on the certificate
5 or information statement for the shares in compliance with
6 this subsection and, if the shares are not represented by a
7 certificate, the information statement is delivered to the
8 purchaser at or before the time of purchase of the shares. An
9 action to enforce the right of rescission authorized by this
10 subsection shall be commenced within the earlier of ninety days
11 after discovery of the existence of the agreement or two years
12 after the time of purchase of the shares.

13 4. If the agreement ceases to be effective for any reason,
14 the board of directors may, if the agreement is contained or
15 referred to in the corporation's articles of incorporation or
16 bylaws, adopt an amendment to the articles of incorporation or
17 bylaws, without shareholder action, to delete the agreement and
18 any references to it.

19 5. An agreement authorized by this section that limits the
20 discretion or powers of the board of directors shall relieve
21 the directors of, and impose upon the person or persons in
22 whom such discretion or powers are vested, liability for acts
23 or omissions imposed by law on directors to the extent that
24 the discretion or powers of the directors are limited by the
25 agreement.

26 6. The existence or performance of an agreement authorized
27 by this section shall not be a ground for imposing personal
28 liability on any shareholder for the acts or debts of the
29 corporation even if the agreement or its performance treats the
30 corporation as if it were a partnership or results in failure
31 to observe the corporate formalities otherwise applicable to
32 the matters governed by the agreement.

33 7. Incorporators or subscribers for shares may act as
34 shareholders with respect to an agreement authorized by this
35 section if no shares have been issued when the agreement is

1 made.

2 8. Limits, if any, on the duration of an agreement
3 authorized by this section must be set forth in the agreement.
4 An agreement that became effective between January 1, 2003,
5 and June 30, 2014, both dates inclusive, unless the agreement
6 provided otherwise, remains governed by the provisions of this
7 section concerning duration then in effect.

8 Sec. 79. Section 490.740, Code 2021, is amended by striking
9 the section and inserting in lieu thereof the following:

10 **490.740 Part definitions.**

11 As used in this part:

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

15 2. "*Shareholder*" means a record shareholder, a beneficial
16 shareholder, and an unrestricted voting trust beneficial owner.

17 Sec. 80. Section 490.743, Code 2021, is amended by striking
18 the section and inserting in lieu thereof the following:

19 **490.743 Stay of proceedings.**

20 If the corporation commences an inquiry into the allegations
21 made in the demand or complaint, the court may stay any
22 derivative proceeding for such period as the court deems
23 appropriate.

24 Sec. 81. Section 490.744, Code 2021, is amended by striking
25 the section and inserting in lieu thereof the following:

26 **490.744 Dismissal.**

27 1. A derivative proceeding shall be dismissed by the court
28 on motion by the corporation if one of the groups specified
29 in subsection 2 or 5 has determined in good faith, after
30 conducting a reasonable inquiry upon which its conclusions are
31 based, that the maintenance of the derivative proceeding is
32 not in the best interests of the corporation. A corporation
33 moving to dismiss on this basis shall submit in support of the
34 motion a short and concise statement of the reasons for its
35 determination.

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

4 a. A majority vote of qualified directors present at a
5 meeting of the board of directors if the qualified directors
6 constitute a quorum.

7 b. A majority vote of a committee consisting of two or more
8 qualified directors appointed by majority vote of qualified
9 directors present at a meeting of the board of directors,
10 regardless of whether such qualified directors constitute a
11 quorum.

12 3. a. If a derivative proceeding is commenced after
13 a determination has been made rejecting a demand by a
14 shareholder, the complaint shall allege with particularity
15 facts establishing any of the following:

16 (1) That a majority of the board of directors did not
17 consist of qualified directors at the time the determination
18 was made.

19 (2) That the requirements of subsection 1 have not been met.

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

25 4. If a majority of the board of directors consisted
26 of qualified directors at the time the determination was
27 made, the plaintiff shall have the burden of proving that
28 the requirements of subsection 1 have not been met; if not,
29 the corporation shall have the burden of proving that the
30 requirements of subsection 1 have been met.

31 5. Upon motion by the corporation, the court may appoint
32 a panel of one or more individuals to make a determination
33 whether the maintenance of the derivative proceeding is in the
34 best interests of the corporation. In such case, the plaintiff
35 shall have the burden of proving that the requirements of

1 subsection 1 have not been met.

2 Sec. 82. Section 490.745, Code 2021, is amended by striking
3 the section and inserting in lieu thereof the following:

4 **490.745 Discontinuance or settlement.**

5 A derivative proceeding shall not be discontinued or settled
6 without the court's approval. If the court determines that a
7 proposed discontinuance or settlement will substantially affect
8 the interests of the corporation's shareholders or a class or
9 series of shareholders, the court shall direct that notice be
10 given to the shareholders affected.

11 Sec. 83. Section 490.746, Code 2021, is amended by striking
12 the section and inserting in lieu thereof the following:

13 **490.746 Payment of expenses.**

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

16 1. Order the corporation to pay the plaintiff's expenses
17 incurred in the proceeding if it finds that the proceeding has
18 resulted in a substantial benefit to the corporation.

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

23 3. Order a party to pay an opposing party's expenses
24 incurred because of the filing of a pleading, motion, or other
25 paper, if it finds that any of the following apply:

26 a. The pleading, motion, or other paper was not well
27 grounded in fact, after reasonable inquiry, or warranted by
28 existing law or a good faith argument for the extension,
29 modification, or reversal of existing law.

30 b. The pleading, motion, or other paper was interposed for
31 an improper purpose, such as to harass or cause unnecessary
32 delay or needless increase in the cost of litigation.

33 Sec. 84. Section 490.748, Code 2021, is amended by striking
34 the section and inserting in lieu thereof the following:

35 **490.748 Shareholder action to appoint custodian or receiver.**

1 1. The district court of the county where a corporation's
2 principal office or, if none in this state, its registered
3 office, is located may appoint one or more persons to be
4 custodians, or, if the corporation is insolvent, to be
5 receivers, of and for a corporation in a proceeding by a
6 shareholder where it is established that any of the following
7 applies:

8 a. The directors are deadlocked in the management of
9 the corporate affairs, the shareholders are unable to break
10 the deadlock, and irreparable injury to the corporation is
11 threatened or being suffered.

12 b. The directors or those in control of the corporation are
13 acting fraudulently and irreparable injury to the corporation
14 is threatened or being suffered.

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

20 b. The district court shall hold a full hearing, after
21 notifying all parties to the proceeding and any interested
22 persons designated by the district court, before appointing a
23 custodian or receiver.

24 c. The district court has jurisdiction over the corporation
25 and all of its property, wherever located.

26 3. The district court may appoint an individual or domestic
27 or foreign corporation, registered to do business in this
28 state, as a custodian or receiver and may require the custodian
29 or receiver to post bond, with or without sureties, in an
30 amount the district court directs.

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

35 a. A custodian may exercise all of the powers of the

1 corporation, through or in place of its board of directors, to
2 the extent necessary to manage the business and affairs of the
3 corporation.

4 b. A receiver may do any of the following:

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

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

10 5. The district court during a custodianship may
11 redesignate the custodian a receiver, and during a receivership
12 may redesignate the receiver a custodian, if doing so is in the
13 best interests of the corporation.

14 6. The district court from time to time during the
15 custodianship or receivership may order compensation paid and
16 expense disbursements or reimbursements made to the custodian
17 or receiver from the assets of the corporation or proceeds from
18 the sale of its assets.

19 7. As used in this section, "shareholder" means a record
20 shareholder, a beneficial shareholder, and an unrestricted
21 voting trust beneficial owner.

22 Sec. 85. NEW SECTION. 490.749 **Judicial determination of**
23 **corporate offices and review of elections and shareholder votes.**

24 1. Upon application of or in a proceeding commenced by a
25 person specified in subsection 2, the district court of the
26 county where the corporation's principal office or, if none in
27 this state, its registered office, is located may determine all
28 of the following:

29 a. The result or validity of the election, appointment,
30 removal, or resignation of a director or officer of the
31 corporation.

32 b. The right of an individual to hold the office of director
33 or officer of the corporation.

34 c. The result or validity of any vote by the shareholders
35 of the corporation.

1 *d.* The right of a director to membership on a committee of
2 the board of directors.

3 *e.* The right of a person to nominate or an individual to
4 be nominated as a candidate for election or appointment as
5 a director of the corporation, and any right under a bylaw
6 adopted pursuant to section 490.206, subsection 3, or any
7 comparable right under any provision of the articles of
8 incorporation, contract, or applicable law.

9 2. An application or proceeding pursuant to subsection 1 may
10 be filed or commenced by any of the following persons:

11 *a.* The corporation.

12 *b.* Any record shareholder, beneficial shareholder, or
13 unrestricted voting trust beneficial owner of the corporation.

14 *c.* A director of the corporation, an individual claiming
15 the office of director, or a director whose membership on a
16 committee of the board of directors is contested, in each case
17 who is seeking a determination of a right to such office or
18 membership.

19 *d.* An officer of the corporation or an individual claiming
20 to be an officer of the corporation, in each case who is
21 seeking a determination of a right to such office.

22 *e.* A person claiming a right covered by subsection 1,
23 paragraph "e", and who is seeking a determination of such right.

24 3. In connection with any application or proceeding under
25 subsection 1, the following shall be named as defendants,
26 unless such person made the application or commenced the
27 proceeding:

28 *a.* The corporation.

29 *b.* Any individual whose right to office or membership on a
30 committee of the board of directors is contested.

31 *c.* Any individual claiming the office or membership at
32 issue.

33 *d.* Any person claiming a right covered by subsection 1,
34 paragraph "e", that is at issue.

35 4. In connection with any application or proceeding under

1 subsection 1, service of process may be made upon each of the
2 persons specified in subsection 3, by any of the following:

3 *a.* Service of process on the corporation addressed to such
4 person in any manner provided by statute of this state or by
5 rule of the applicable court for service on the corporation.

6 *b.* Service of process on the person in any manner provided
7 by statute of this state or by rule of the applicable court.

8 5. When service of process is made upon a person other than
9 the corporation by service upon the corporation pursuant to
10 subsection 4, paragraph "a", the plaintiff and the corporation
11 or its registered agent shall promptly provide written notice
12 of such service, together with copies of all process and the
13 application or complaint, to the person at the person's last
14 known residence or business address, or as permitted by statute
15 of this state or by rule of the applicable court.

16 6. In connection with any application or proceeding under
17 subsection 1, the court shall dispose of the application or
18 proceeding on an expedited basis and also may do any of the
19 following:

20 *a.* Order such additional or further notice as the court
21 deems proper under the circumstances.

22 *b.* Order that additional persons be joined as parties to
23 the proceeding if the court determines that such joinder is
24 necessary for a just adjudication of matters before the court.

25 *c.* Order an election or meeting be held in accordance with
26 the provisions of section 490.703, subsection 2, or otherwise.

27 *d.* Appoint a master to conduct an election or meeting.

28 *e.* Enter temporary, preliminary, or permanent injunctive
29 relief.

30 *f.* Resolve solely for the purpose of this proceeding any
31 legal or factual issues necessary for the resolution of any of
32 the matters specified in subsection 1, including the right and
33 power of persons claiming to own shares to vote at any meeting
34 of the shareholders.

35 *g.* Order such other relief as the court determines is

1 equitable, just, and proper.

2 7. It is not necessary to make shareholders a party to
3 a proceeding or application pursuant to this section unless
4 the shareholder is a required defendant under subsection
5 3, paragraph "d", relief is sought against the shareholder
6 individually, or the court orders joinder pursuant to
7 subsection 6, paragraph "b".

8 8. Nothing in this section limits, restricts, or abolishes
9 the subject matter jurisdiction or powers of the court
10 as existed before the enactment of this section, and an
11 application or proceeding pursuant to this section is not the
12 exclusive remedy or proceeding available with respect to the
13 matters specified in subsection 1.

14 Sec. 86. Section 490.801, Code 2021, is amended by striking
15 the section and inserting in lieu thereof the following:

16 **490.801 Requirement for and functions of board of directors.**

17 1. Except as may be provided in an agreement authorized
18 under section 490.732, each corporation shall have a board of
19 directors.

20 2. Except as may be provided in an agreement authorized
21 under section 490.732, and subject to any limitation in
22 the articles of incorporation permitted by section 490.202,
23 subsection 2, all corporate powers shall be exercised by or
24 under the authority of the board of directors, and the business
25 and affairs of the corporation shall be managed by or under
26 the direction, and subject to the oversight, of the board of
27 directors.

28 Sec. 87. Section 490.802, Code 2021, is amended by striking
29 the section and inserting in lieu thereof the following:

30 **490.802 Qualifications of directors.**

31 1. The articles of incorporation or bylaws may prescribe
32 qualifications for directors or for nominees for directors.
33 Qualifications must be reasonable as applied to the corporation
34 and be lawful.

35 2. A requirement that is based on a past, prospective,

1 or current action, or expression of opinion, by a nominee
2 or director that could limit the ability of a nominee or
3 director to discharge his or her duties as a director is not a
4 permissible qualification under this section. Notwithstanding
5 the foregoing, qualifications may include not being or having
6 been subject to specified criminal, civil, or regulatory
7 sanctions or not having been removed as a director by judicial
8 action or for cause.

9 3. A director need not be a resident of this state or a
10 shareholder unless the articles of incorporation or bylaws so
11 prescribe.

12 4. A qualification for nomination for director prescribed
13 before a person's nomination shall apply to such person at
14 the time of nomination. A qualification for nomination for
15 director prescribed after a person's nomination shall not apply
16 to such person with respect to such nomination.

17 5. A qualification for director prescribed before a
18 director has been elected or appointed may apply only at the
19 time an individual becomes a director or may apply during a
20 director's term. A qualification prescribed after a director
21 has been elected or appointed shall not apply to that director
22 before the end of that director's term.

23 Sec. 88. Section 490.803, Code 2021, is amended by striking
24 the section and inserting in lieu thereof the following:

25 **490.803 Number and election of directors.**

26 1. A board of directors shall consist of one or more
27 individuals, with the number specified in or fixed in
28 accordance with the articles of incorporation or bylaws.

29 2. The number of directors may be increased or decreased
30 from time to time by amendment to, or in the manner provided
31 in, the articles of incorporation or bylaws.

32 3. Directors are elected at the first annual shareholders'
33 meeting and at each annual shareholders' meeting thereafter
34 unless elected by written consent in lieu of an annual meeting
35 as permitted by section 490.704 or unless their terms are

1 staggered under section 490.806.

2 Sec. 89. Section 490.804, Code 2021, is amended by striking
3 the section and inserting in lieu thereof the following:

4 **490.804 Election of directors by certain classes of series**
5 **of shares.**

6 If the articles of incorporation or action by the board of
7 directors pursuant to section 490.602 authorize dividing the
8 shares into classes or series, the articles of incorporation
9 may also authorize the election of all or a specified number
10 of directors by the holders of one or more authorized classes
11 or series of shares. A class or series, or multiple classes
12 or series, of shares entitled to elect one or more directors
13 is a separate voting group for purposes of the election of
14 directors.

15 Sec. 90. Section 490.805, Code 2021, is amended by striking
16 the section and inserting in lieu thereof the following:

17 **490.805 Terms of directors generally.**

18 1. The terms of the initial directors of a corporation
19 expire at the first shareholders' meeting at which directors
20 are elected.

21 2. *a.* The terms of all other directors expire at the
22 next, or if their terms are staggered in accordance with
23 section 490.806, at the applicable second or third, annual
24 shareholders' meeting following their election.

25 *b.* Paragraph "a" does not apply in any of the following
26 circumstances:

27 (1) To the extent provided in section 490.1022 if a bylaw
28 electing to be governed by that section is in effect.

29 (2) A shorter term is specified in the articles of
30 incorporation in the event of a director nominee failing to
31 receive a specified vote for election.

32 3. A decrease in the number of directors does not shorten
33 an incumbent director's term.

34 4. The term of a director elected to fill a vacancy expires
35 at the next shareholders' meeting at which directors are

1 elected.

2 5. Except to the extent otherwise provided in the articles
3 of incorporation or under section 490.1022, if a bylaw electing
4 to be governed by that section is in effect, despite the
5 expiration of a director's term, the director continues to
6 serve until the director's successor is elected and qualifies
7 or there is a decrease in the number of directors.

8 Sec. 91. Section 490.806, Code 2021, is amended by striking
9 the section and inserting in lieu thereof the following:

10 **490.806 Staggered terms for directors.**

11 The articles of incorporation may provide for staggering the
12 terms of directors by dividing the total number of directors
13 into two or three groups, with each group containing one-half
14 or one-third of the total, as near as may be practicable.

15 In that event, the terms of directors in the first group
16 expire at the first annual shareholders' meeting after their
17 election, the terms of the second group expire at the second
18 annual shareholders' meeting after their election, and the
19 terms of the third group, if any, expire at the third annual
20 shareholders' meeting after their election. At each annual
21 shareholders' meeting held thereafter, directors shall be
22 elected for a term of two years or three years, as the case may
23 be, to succeed those whose terms expire.

24 Sec. 92. Section 490.807, Code 2021, is amended by striking
25 the section and inserting in lieu thereof the following:

26 **490.807 Resignation of directors.**

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

30 2. A resignation is effective as provided in section
31 490.141, subsection 9, unless the resignation provides for a
32 delayed effectiveness, including effectiveness determined upon
33 a future event or events. A resignation that is conditioned
34 upon failing to receive a specified vote for election as a
35 director may provide that it is irrevocable.

1 Sec. 93. Section 490.808, Code 2021, is amended by striking
2 the section and inserting in lieu thereof the following:

3 **490.808 Removal of directors by shareholders.**

4 1. The shareholders may remove one or more directors with or
5 without cause unless the articles of incorporation provide that
6 directors may be removed only for cause.

7 2. If a director is elected by a voting group of
8 shareholders, only the shareholders of that voting group may
9 participate in the vote to remove that director.

10 3. A director may be removed if the number of votes cast
11 to remove exceeds the number of votes cast not to remove the
12 director, except to the extent the articles of incorporation
13 or bylaws require a greater number. However, if cumulative
14 voting is authorized, a director shall not be removed if, in
15 the case of a meeting, the number of votes sufficient to elect
16 the director under cumulative voting is voted against removal
17 and, if action is taken by less than unanimous written consent,
18 voting shareholders entitled to the number of votes sufficient
19 to elect the director under cumulative voting do not consent
20 to the removal.

21 4. A director may be removed by the shareholders only at a
22 meeting called for the purpose of removing the director, and
23 the meeting notice must state that removal of the director is a
24 purpose of the meeting.

25 Sec. 94. Section 490.809, Code 2021, is amended by striking
26 the section and inserting in lieu thereof the following:

27 **490.809 Removal of directors by judicial proceeding.**

28 1. The district court of the county where a corporation's
29 principal office or, if none in this state, its registered
30 office, is located may remove a director from office or
31 may order other relief, including barring the director
32 from reelection for a period prescribed by the court, in a
33 proceeding commenced by or in the right of the corporation if
34 the court finds that all of the following apply:

35 a. The director engaged in fraudulent conduct with respect

1 to the corporation or its shareholders, grossly abused the
2 position of director, or intentionally inflicted harm on the
3 corporation.

4 *b.* Considering the director's course of conduct and the
5 inadequacy of other available remedies, removal or such other
6 relief would be in the best interest of the corporation.

7 2. A shareholder proceeding on behalf of the corporation
8 under subsection 1 shall comply with all of the requirements of
9 subchapter VII, part D, except section 490.741, subsection 1.

10 Sec. 95. Section 490.810, Code 2021, is amended by striking
11 the section and inserting in lieu thereof the following:

12 **490.810 Vacancy on board of directors.**

13 1. Unless the articles of incorporation provide otherwise,
14 if a vacancy occurs on a board of directors, including a
15 vacancy resulting from an increase in the number of directors,
16 the vacancy may be filled in any of the following manners:

17 *a.* The shareholders may fill the vacancy.

18 *b.* The board of directors may fill the vacancy.

19 *c.* If the directors remaining in office are less than a
20 quorum, they may fill the vacancy by the affirmative vote of a
21 majority of all the directors remaining in office.

22 2. If the vacant office was held by a director elected by
23 a voting group of shareholders, only the holders of shares of
24 that voting group are entitled to vote to fill the vacancy
25 if it is filled by the shareholders, and only the remaining
26 directors elected by that voting group, even if less than a
27 quorum, are entitled to fill the vacancy if it is filled by the
28 directors.

29 3. A vacancy that will occur at a specific later date, by
30 reason of a resignation effective at a later date under section
31 490.807, subsection 2, or otherwise, may be filled before the
32 vacancy occurs but the new director shall not take office until
33 the vacancy occurs.

34 Sec. 96. Section 490.820, Code 2021, is amended by striking
35 the section and inserting in lieu thereof the following:

1 **490.820 Meetings.**

2 1. The board of directors may hold regular or special
3 meetings in or out of this state.

4 2. Unless restricted by the articles of incorporation
5 or bylaws, any director may participate in any meeting
6 of the board of directors through the use of any means of
7 communication by which all directors participating may
8 simultaneously hear each other during the meeting. A director
9 participating in a meeting by this means is deemed to be
10 present in person at the meeting.

11 Sec. 97. Section 490.821, Code 2021, is amended by striking
12 the section and inserting in lieu thereof the following:

13 **490.821 Action without meeting.**

14 1. Except to the extent that the articles of incorporation
15 or bylaws require that action by the board of directors be
16 taken at a meeting, action required or permitted by this
17 chapter to be taken by the board of directors may be taken
18 without a meeting if each director signs a consent describing
19 the action to be taken and delivers it to the corporation.

20 2. Action taken under this section is the act of the board
21 of directors when one or more consents signed by all the
22 directors are delivered to the corporation. The consent may
23 specify the time at which the action taken is to be effective.
24 A director's consent may be withdrawn by a revocation signed by
25 the director and delivered to the corporation before delivery
26 to the corporation of unrevoked written consents signed by all
27 the directors.

28 3. A consent signed under this section has the effect of
29 action taken at a meeting of the board of directors and may be
30 described as such in any document.

31 Sec. 98. Section 490.822, Code 2021, is amended by striking
32 the section and inserting in lieu thereof the following:

33 **490.822 Notice of meeting.**

34 1. Unless the articles of incorporation or bylaws provide
35 otherwise, regular meetings of the board of directors may be

1 held without notice of the date, time, place, or purpose of the
2 meeting.

3 2. Unless the articles of incorporation or bylaws provide
4 for a longer or shorter period, special meetings of the board
5 of directors shall be preceded by at least two days' notice of
6 the date, time, and place of the meeting. The notice need not
7 describe the purpose of the special meeting unless required by
8 the articles of incorporation or bylaws.

9 Sec. 99. Section 490.823, Code 2021, is amended by striking
10 the section and inserting in lieu thereof the following:

11 **490.823 Waiver of notice.**

12 1. A director may waive any notice required by this chapter,
13 the articles of incorporation, or the bylaws before or after
14 the date and time stated in the notice. Except as provided
15 by subsection 2, the waiver must be in writing, signed by
16 the director entitled to the notice, and delivered to the
17 corporation for filing by the corporation with the minutes or
18 corporate records.

19 2. A director's attendance at or participation in a meeting
20 waives any required notice to the director of the meeting
21 unless all of the following apply:

22 a. The director at the beginning of the meeting, or promptly
23 upon arrival, objects to holding the meeting or transacting
24 business at the meeting.

25 b. The director does not, after objecting, vote for or
26 assent to action taken at the meeting.

27 Sec. 100. Section 490.824, Code 2021, is amended by striking
28 the section and inserting in lieu thereof the following:

29 **490.824 Quorum and voting.**

30 1. Unless the articles of incorporation or bylaws provide
31 for a greater or lesser number, or unless otherwise expressly
32 provided in this chapter, a quorum of a board of directors
33 consists of a majority of the number of directors specified in
34 or fixed in accordance with the articles of incorporation or
35 bylaws.

1 2. The quorum of the board of directors specified in
2 or fixed in accordance with the articles of incorporation
3 or bylaws shall not consist of less than one-third of the
4 specified or fixed number of directors.

5 3. If a quorum is present when a vote is taken, the
6 affirmative vote of a majority of directors present is the act
7 of the board of directors unless the articles of incorporation
8 or bylaws require the vote of a greater number of directors or
9 unless otherwise expressly provided in this chapter.

10 4. *a.* A director who is present at a meeting of the board
11 of directors or a committee when corporate action is taken is
12 deemed to have assented to the action taken unless one or more
13 of the following occurs:

14 (1) The director objects at the beginning of the meeting, or
15 promptly upon arrival, to holding it or transacting business
16 at the meeting.

17 (2) The dissent or abstention from the action taken is
18 entered in the minutes of the meeting.

19 (3) The director delivers written notice of the director's
20 dissent or abstention to the presiding officer of the meeting
21 before its adjournment or to the corporation immediately after
22 adjournment of the meeting.

23 *b.* The right of dissent or abstention is not available to a
24 director who votes in favor of the action taken.

25 Sec. 101. Section 490.825, Code 2021, is amended by striking
26 the section and inserting in lieu thereof the following:

27 **490.825 Committees of the board.**

28 1. Unless this chapter, the articles of incorporation,
29 or the bylaws provide otherwise, a board of directors may
30 establish one or more board committees composed exclusively
31 of one or more directors to perform functions of the board of
32 directors.

33 2. *a.* The establishment of a board committee and
34 appointment of members to it shall be approved by the greater
35 of the following:

1 (1) A majority of all the directors in office when the
2 action is taken.

3 (2) The number of directors required by the articles of
4 incorporation or bylaws to take action under section 490.824.

5 *b.* Paragraph "a" applies unless, in either case, this
6 chapter or the articles of incorporation provide otherwise.

7 3. Sections 490.820 through 490.824 apply to board
8 committees and their members.

9 4. A board committee may exercise the powers of the board
10 of directors under section 490.801, to the extent specified by
11 the board of directors or in the articles of incorporation or
12 bylaws, except that a board committee shall not do any of the
13 following:

14 *a.* Authorize or approve distributions, except according to
15 a formula or method, or within limits, prescribed by the board
16 of directors.

17 *b.* Approve or propose to shareholders action that this
18 chapter requires be approved by shareholders.

19 *c.* Fill vacancies on the board of directors or, subject to
20 subsection 5, on any board committees.

21 *d.* Adopt, amend, or repeal bylaws.

22 5. The board of directors may appoint one or more directors
23 as alternate members of any board committee to replace any
24 absent or disqualified member during the member's absence
25 or disqualification. If the articles of incorporation, the
26 bylaws, or the resolution creating the board committee so
27 provide, the member or members present at any board committee
28 meeting and not disqualified from voting may, by unanimous
29 action, appoint another director to act in place of an absent
30 or disqualified member during that member's absence or
31 disqualification.

32 Sec. 102. Section 490.830, Code 2021, is amended by striking
33 the section and inserting in lieu thereof the following:

34 **490.830 Standards of conduct for directors.**

35 1. Each member of the board of directors, when discharging

1 the duties of a director, shall act in conformity with all of
2 the following:

3 a. In good faith.

4 b. In a manner the director reasonably believes to be in the
5 best interests of the corporation.

6 2. The members of the board of directors or a board
7 committee, when becoming informed in connection with their
8 decision-making function or devoting attention to their
9 oversight function, shall discharge their duties with the care
10 that a person in a like position would reasonably believe
11 appropriate under similar circumstances.

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

21 4. In discharging board or board committee duties, a
22 director who does not have knowledge that makes reliance
23 unwarranted is entitled to rely on the performance by any of
24 the persons specified in subsection 6, paragraph "a" or "c", to
25 whom the board may have delegated, formally or informally by
26 course of conduct, the authority or duty to perform one or more
27 of the board's functions that are delegable under applicable
28 law.

29 5. In discharging board or board committee duties, a
30 director who does not have knowledge that makes reliance
31 unwarranted is entitled to rely on information, opinions,
32 reports, or statements, including financial statements and
33 other financial data, prepared or presented by any of the
34 persons specified in subsection 6.

35 6. A director is entitled to rely, in accordance with

1 subsection 4 or 5, on any of the following:

2 *a.* One or more officers or employees of the corporation whom
3 the director reasonably believes to be reliable and competent
4 in the functions performed or the information, opinions,
5 reports, or statements provided.

6 *b.* Legal counsel, public accountants, or other persons
7 retained by the corporation as to matters involving skills
8 or expertise the director reasonably believes are any of the
9 following:

10 (1) Matters within the particular person's professional or
11 expert competence.

12 (2) Matters as to which the particular person merits
13 confidence.

14 *c.* A board committee of which the director is not a member
15 if the director reasonably believes the committee merits
16 confidence.

17 Sec. 103. Section 490.831, Code 2021, is amended by striking
18 the section and inserting in lieu thereof the following:

19 **490.831 Standards of liability for directors.**

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

25 *a.* No defense interposed by the director based on any of the
26 following precludes liability:

27 (1) A provision in the articles of incorporation authorized
28 by section 490.202, subsection 2, paragraph "d" or "f".

29 (2) The protection afforded by section 490.861 for action
30 taken in compliance with section 490.862 or section 490.863.

31 (3) The protection afforded by section 490.870.

32 *b.* That the challenged conduct consisted or was the result
33 of any of the following:

34 (1) Action not in good faith.

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

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

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

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

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

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

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

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

30 2. a. The party seeking to hold the director liable for
31 money damages shall also have the burden of establishing all
32 of the following:

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

35 (2) The harm suffered was proximately caused by the

1 director's challenged conduct.

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

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

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

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

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

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

27 Sec. 104. Section 490.833, Code 2021, is amended by striking
28 the section and inserting in lieu thereof the following:

29 **490.833 Directors' liability for unlawful distributions.**

30 1. A director who votes for or assents to a distribution in
31 excess of what may be authorized and made pursuant to section
32 490.640, subsection 1, or section 490.1409, subsection 1, is
33 personally liable to the corporation for the amount of the
34 distribution that exceeds what could have been distributed
35 without violating section 490.640, subsection 1, or section

1 490.1409, subsection 1, if the party asserting liability
2 establishes that when taking the action the director did not
3 comply with section 490.830.

4 2. A director held liable under subsection 1 for an unlawful
5 distribution is entitled to all of the following:

6 a. Contribution from every other director who could be held
7 liable under subsection 1 for the unlawful distribution.

8 b. Recoupment from each shareholder of the prorata portion
9 of the amount of the unlawful distribution the shareholder
10 accepted, knowing the distribution was made in violation of
11 section 490.640, subsection 1, or section 490.1409, subsection
12 1.

13 3. a. A proceeding to enforce the liability of a director
14 under subsection 1 is barred unless it is commenced within two
15 years after any of the following:

16 (1) The date on which the effect of the distribution was
17 measured under section 490.640, subsection 5 or 8.

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

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

23 b. A proceeding to enforce contribution or recoupment
24 under subsection 2 is barred unless it is commenced within
25 one year after the liability of the claimant has been finally
26 adjudicated under subsection 1.

27 Sec. 105. Section 490.840, Code 2021, is amended by striking
28 the section and inserting in lieu thereof the following:

29 **490.840 Officers.**

30 1. A corporation has the officers described in its bylaws
31 or appointed by the board of directors in accordance with the
32 bylaws.

33 2. The board of directors may elect individuals to fill one
34 or more offices of the corporation. An officer may appoint one
35 or more officers if authorized by the bylaws or the board of

1 directors.

2 3. The bylaws or the board of directors shall assign to an
3 officer responsibility for maintaining and authenticating the
4 records of the corporation required to be kept under section
5 490.1601, subsection 1.

6 4. The same individual may simultaneously hold more than one
7 office in a corporation.

8 Sec. 106. Section 490.842, Code 2021, is amended by striking
9 the section and inserting in lieu thereof the following:

10 **490.842 Standards of conduct for officers.**

11 1. An officer, when performing in such capacity, has the
12 duty to act in conformity with all of the following:

13 a. In good faith.

14 b. With the care that a person in a like position would
15 reasonably exercise under similar circumstances.

16 c. In a manner the officer reasonably believes to be in the
17 best interests of the corporation.

18 2. The duty of an officer includes the obligation to do all
19 of the following:

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

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

33 3. In discharging the officer's duties, an officer who does
34 not have knowledge that makes reliance unwarranted is entitled
35 to rely on any of the following:

1 *a.* The performance of properly delegated responsibilities
2 by one or more employees of the corporation whom the officer
3 reasonably believes to be reliable and competent in performing
4 the responsibilities delegated.

5 *b.* Information, opinions, reports, or statements, including
6 financial statements and other financial data, prepared or
7 presented by one or more employees of the corporation whom the
8 officer reasonably believes to be reliable and competent in
9 the matters presented or by legal counsel, public accountants,
10 or other persons retained by the corporation as to matters
11 involving skills or expertise the officer reasonably believes
12 are any of the following:

13 (1) Matters within the particular person's professional or
14 expert competence.

15 (2) Matters as to which the particular person merits
16 confidence.

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

25 Sec. 107. Section 490.843, Code 2021, is amended by striking
26 the section and inserting in lieu thereof the following:

27 **490.843 Resignation and removal of officers.**

28 1. An officer may resign at any time by delivering a
29 written notice to the board of directors, or its chair, or to
30 the appointing officer or the secretary. A resignation is
31 effective as provided in section 490.141, subsection 9, unless
32 the notice provides for a delayed effectiveness, including
33 effectiveness determined upon a future event or events. If
34 effectiveness of a resignation is stated to be delayed and the
35 board of directors or the appointing officer accepts the delay,

1 the board of directors or the appointing officer may fill the
2 pending vacancy before the delayed effectiveness but the new
3 officer shall not take office until the vacancy occurs.

4 2. An officer may be removed at any time with or without
5 cause by any of the following:

6 a. The board of directors.

7 b. The appointing officer, unless the bylaws or the board
8 of directors provide otherwise.

9 c. Any other officer if authorized by the bylaws or the
10 board of directors.

11 3. As used in this section, "*appointing officer*" means the
12 officer, including any successor to that officer, who appointed
13 the officer resigning or being removed.

14 Sec. 108. Section 490.844, Code 2021, is amended by striking
15 the section and inserting in lieu thereof the following:

16 **490.844 Contract rights of officers.**

17 1. The election or appointment of an officer does not itself
18 create contract rights.

19 2. An officer's removal does not affect the officer's
20 contract rights, if any, with the corporation. An officer's
21 resignation does not affect the corporation's contract rights,
22 if any, with the officer.

23 Sec. 109. Section 490.850, Code 2021, is amended by striking
24 the section and inserting in lieu thereof the following:

25 **490.850 Part definitions.**

26 As used in this part:

27 1. "*Corporation*" includes any domestic or foreign
28 predecessor entity of a corporation in a merger.

29 2. "*Director*" or "*officer*" means an individual who is or
30 was a director or officer, respectively, of a corporation
31 or who, while a director or officer of the corporation, is
32 or was serving at the corporation's request as a director,
33 officer, manager, partner, trustee, employee, or agent of
34 another entity or employee benefit plan. A director or
35 officer is considered to be serving an employee benefit plan

1 at the corporation's request if the individual's duties to
2 the corporation also impose duties on, or otherwise involve
3 services by, the individual to the plan or to participants in
4 or beneficiaries of the plan. "Director" or "officer" includes,
5 unless the context requires otherwise, the estate or personal
6 representative of a director or officer.

7 3. "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 expenses incurred
10 with respect to a proceeding.

11 4. a. "Official capacity" means the following:

12 (1) When used with respect to a director, the office of
13 director in a corporation.

14 (2) When used with respect to an officer, as contemplated
15 in section 490.856, the office in a corporation held by the
16 officer.

17 b. "Official capacity" does not include service for any
18 other domestic or foreign corporation or any joint venture,
19 trust, employee benefit plan, or other entity.

20 5. "Party" means an individual who was, is, or is threatened
21 to be made a defendant or respondent in a proceeding.

22 6. "Proceeding" means any threatened, pending, or completed
23 action, suit, or proceeding, whether civil, criminal,
24 administrative, arbitrative, or investigative and whether
25 formal or informal.

26 Sec. 110. Section 490.851, Code 2021, is amended by striking
27 the section and inserting in lieu thereof the following:

28 **490.851 Permissible indemnification.**

29 1. Except as otherwise provided in this section, a
30 corporation may indemnify an individual who is a party to
31 a proceeding because the individual is a director against
32 liability incurred in the proceeding if any of the following
33 apply:

34 a. All of the following apply:

35 (1) The director's conduct was in good faith.

1 (2) The director reasonably believed:

2 (a) In the case of conduct in an official capacity, that
3 the director's conduct was in the best interests of the
4 corporation.

5 (b) In all other cases, that the director's conduct was at
6 least not opposed to the best interests of the corporation.

7 (3) In the case of any criminal proceeding, the director
8 had no reasonable cause to believe the director's conduct was
9 unlawful.

10 *b.* The director engaged in conduct for which broader
11 indemnification has been made permissible or obligatory under a
12 provision of the articles of incorporation, as authorized by
13 section 490.202, subsection 2, paragraph "e".

14 2. A director's conduct with respect to an employee benefit
15 plan for a purpose the director reasonably believed to be in
16 the interests of the participants in, and the beneficiaries
17 of, the plan is conduct that satisfies the requirement of
18 subsection 1, paragraph "a", subparagraph (2), subparagraph
19 division (b).

20 3. The termination of a proceeding by judgment, order,
21 settlement, or conviction, or upon a plea of nolo contendere
22 or its equivalent, is not, of itself, determinative that
23 the director did not meet the relevant standard of conduct
24 described in this section.

25 4. Unless ordered by a court under section 490.854,
26 subsection 1, paragraph "c", a corporation shall not indemnify a
27 director in any of the following circumstances:

28 *a.* In connection with a proceeding by or in the right of the
29 corporation, except for expenses incurred in connection with
30 the proceeding if it is determined that the director has met
31 the relevant standard of conduct under subsection 1.

32 *b.* In connection with any proceeding with respect to conduct
33 for which the director was adjudged liable on the basis of
34 receiving a financial benefit to which the director was not
35 entitled, regardless of whether it involved action in the

1 director's official capacity.

2 Sec. 111. Section 490.852, Code 2021, is amended by striking
3 the section and inserting in lieu thereof the following:

4 **490.852 Mandatory indemnification.**

5 A corporation shall indemnify a director who was wholly
6 successful, on the merits or otherwise, in the defense of
7 any proceeding to which the director was a party because the
8 director is or was a director of the corporation against
9 expenses incurred by the director in connection with the
10 proceeding.

11 Sec. 112. Section 490.853, Code 2021, is amended by striking
12 the section and inserting in lieu thereof the following:

13 **490.853 Advance for expenses.**

14 1. A corporation may, before final disposition of a
15 proceeding, advance funds to pay for or reimburse expenses
16 incurred in connection with the proceeding by an individual
17 who is a party to the proceeding because that individual is a
18 director, if the director delivers to the corporation a signed
19 written undertaking of the director to repay any funds advanced
20 and all of the following apply:

21 a. The director is not entitled to mandatory indemnification
22 under section 490.852.

23 b. It is ultimately determined under section 490.854 or
24 490.855 that the director is not entitled to indemnification.

25 2. The undertaking required by subsection 1 must be an
26 unlimited general obligation of the director but need not be
27 secured and may be accepted without reference to the financial
28 ability of the director to make repayment.

29 3. Authorizations under this section shall be made by any
30 of the following:

31 a. By the board of directors as follows:

32 (1) If there are two or more qualified directors, by a
33 majority vote of all of the qualified directors, a majority
34 of whom shall for such purpose constitute a quorum, or by a
35 majority of the members of a committee consisting solely of two

1 or more qualified directors appointed by such a vote.

2 (2) If there are fewer than two qualified directors,
3 by the vote necessary for action by the board of directors
4 in accordance with section 490.824, subsection 3, in which
5 authorization directors who are not qualified directors may
6 participate.

7 *b.* By the shareholders, but shares owned by or voted under
8 the control of a director who at the time is not a qualified
9 director shall not be voted on the authorization.

10 Sec. 113. Section 490.854, Code 2021, is amended by striking
11 the section and inserting in lieu thereof the following:

12 **490.854 Court-ordered indemnification and advance for**
13 **expenses.**

14 1. A person who is a party to a proceeding because the
15 person is a director may apply for indemnification or an
16 advance for expenses to the court conducting the proceeding
17 or to another court of competent jurisdiction. After receipt
18 of an application and after giving any notice it considers
19 necessary, the court shall do any of the following:

20 *a.* Order indemnification if the court determines that the
21 director is entitled to mandatory indemnification under section
22 490.852.

23 *b.* Order indemnification or advance for expenses if
24 the court determines that the director is entitled to
25 indemnification or advance for expenses pursuant to a provision
26 authorized by section 490.858, subsection 1.

27 *c.* (1) Order indemnification or advance for expenses if the
28 court determines, in view of all the relevant circumstances,
29 that it is fair and reasonable to do any of the following:

30 (a) Indemnify the director.

31 (b) Advance expenses to the director.

32 (2) The court shall order indemnification or advance for
33 expenses, even if in the case of subparagraph (1), subparagraph
34 division (a) or (b), the director has not met the relevant
35 standard of conduct set forth in section 490.851, subsection 1,

1 failed to comply with section 490.853 or was adjudged liable
2 in a proceeding referred to in section 490.851, subsection 4,
3 paragraph "a" or "b". However, if the director was adjudged
4 so liable the director's indemnification shall be limited to
5 expenses incurred in connection with the proceeding.

6 2. If the court determines that the director is entitled
7 to indemnification under subsection 1, paragraph "a", or to
8 indemnification or advance for expenses under subsection 1,
9 paragraph "b", it shall also order the corporation to pay the
10 director's expenses incurred in connection with obtaining
11 court-ordered indemnification or advance for expenses.

12 If the court determines that the director is entitled to
13 indemnification or advance for expenses under subsection 1,
14 paragraph "c", it may also order the corporation to pay the
15 director's expenses to obtain court-ordered indemnification or
16 advance for expenses.

17 Sec. 114. Section 490.855, Code 2021, is amended by striking
18 the section and inserting in lieu thereof the following:

19 **490.855 Determination and authorization of indemnification.**

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

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

26 a. If there are two or more qualified directors, by the
27 board of directors by a majority vote of all the qualified
28 directors, a majority of whom shall for such purpose constitute
29 a quorum, or by a majority of the members of a committee of two
30 or more qualified directors appointed by such a vote.

31 b. By special legal counsel selected in one of the following
32 manners:

33 (1) In the manner prescribed in paragraph "a".

34 (2) If there are fewer than two qualified directors,
35 selected by the board of directors, in which selection

1 directors who are not qualified directors may participate.

2 *c.* By the shareholders, but shares owned by or voted under
3 the control of a director who at the time is not a qualified
4 director shall not be voted on the determination.

5 3. Authorization of indemnification shall be made in
6 the same manner as the determination that indemnification is
7 permissible, except that if there are fewer than two qualified
8 directors or if the determination is made by special legal
9 counsel, authorization of indemnification shall be made by
10 those entitled to select special legal counsel under subsection
11 2, paragraph "b", subparagraph (2).

12 Sec. 115. Section 490.856, Code 2021, is amended by striking
13 the section and inserting in lieu thereof the following:

14 **490.856 Indemnification of officers.**

15 1. A corporation may indemnify and advance expenses under
16 this part to an officer who is a party to a proceeding because
17 the person is an officer, according to all of the following:

18 *a.* To the same extent as a director.

19 *b.* If the person is an officer but not a director, to
20 such further extent as may be provided by the articles of
21 incorporation or bylaws, or by a resolution adopted or a
22 contract approved by the board of directors or shareholders,
23 except for any of the following:

24 (1) Liability in connection with a proceeding by or in the
25 right of the corporation other than for expenses incurred in
26 connection with the proceeding.

27 (2) Liability arising out of conduct that constitutes any
28 of the following:

29 (a) Receipt by the officer of a financial benefit to which
30 the officer is not entitled.

31 (b) An intentional infliction of harm on the corporation or
32 the shareholders.

33 (c) An intentional violation of criminal law.

34 2. The provisions of subsection 1, paragraph "b", shall
35 apply to an officer who is also a director, if the officer is

1 made a party to the proceeding based on an act or omission
2 solely as an officer.

3 3. An officer who is not a director is entitled to mandatory
4 indemnification under section 490.852, and may apply to a court
5 under section 490.854 for indemnification or an advance for
6 expenses, in each case to the same extent to which a director
7 may be entitled to indemnification or advance for expenses
8 under those sections.

9 Sec. 116. Section 490.857, Code 2021, is amended by striking
10 the section and inserting in lieu thereof the following:

11 **490.857 Insurance.**

12 A corporation may purchase and maintain insurance on
13 behalf of an individual who is a director or officer of
14 the corporation, or who, while a director or officer of the
15 corporation, serves at the corporation's request as a director,
16 officer, partner, trustee, employee, or agent of another
17 domestic or foreign corporation, or a joint venture, trust,
18 employee benefit plan, or other entity, against liability
19 asserted against or incurred by the individual in that capacity
20 or arising from the individual's status as a director or
21 officer, regardless of whether the corporation would have power
22 to indemnify or advance expenses to the individual against the
23 same liability under this part.

24 Sec. 117. Section 490.858, Code 2021, is amended by striking
25 the section and inserting in lieu thereof the following:

26 **490.858 Variation by corporate action — application of part.**

27 1. A corporation may, by a provision in its articles
28 of incorporation or bylaws or in a resolution adopted or a
29 contract approved by the board of directors or shareholders,
30 obligate itself in advance of the act or omission giving rise
31 to a proceeding to provide indemnification in accordance
32 with section 490.851 or advance funds to pay for or
33 reimburse expenses in accordance with section 490.853. Any
34 such obligatory provision shall be deemed to satisfy the
35 requirements for authorization referred to in section 490.853,

1 subsection 3, and in section 490.855, subsection 3. Any
2 such provision that obligates the corporation to provide
3 indemnification to the fullest extent permitted by law shall be
4 deemed to obligate the corporation to advance funds to pay for
5 or reimburse expenses in accordance with section 490.853 to the
6 fullest extent permitted by law, unless the provision expressly
7 provides otherwise.

8 2. A right of indemnification or to advances for expenses
9 created by this part or under subsection 1 and in effect at
10 the time of an act or omission shall not be eliminated or
11 impaired with respect to such act or omission by an amendment
12 of the articles of incorporation or bylaws or a resolution
13 of the board of directors or shareholders, adopted after the
14 occurrence of such act or omission, unless, in the case of
15 a right created under subsection 1, the provision creating
16 such right and in effect at the time of such act or omission
17 explicitly authorizes such elimination or impairment after such
18 act or omission has occurred.

19 3. Any provision pursuant to subsection 1 shall not obligate
20 the corporation to indemnify or advance expenses to a director
21 of a predecessor of the corporation, pertaining to conduct
22 with respect to the predecessor, unless otherwise expressly
23 provided. Any provision for indemnification or advance for
24 expenses in the articles of incorporation, or bylaws, or a
25 resolution of the board of directors or shareholders of a
26 predecessor of the corporation in a merger or in a contract
27 to which the predecessor is a party, existing at the time the
28 merger takes effect, shall be governed by section 490.1107,
29 subsection 1, paragraph "d".

30 4. Subject to subsection 2, a corporation may, by a
31 provision in its articles of incorporation, limit any of the
32 rights to indemnification or advance for expenses created by or
33 pursuant to this part.

34 5. This part does not limit a corporation's power to pay
35 or reimburse expenses incurred by a director or an officer in

1 connection with appearing as a witness in a proceeding at a
2 time when the director or officer is not a party.

3 6. This part does not limit a corporation's power to
4 indemnify, advance expenses to, or provide or maintain
5 insurance on behalf of an employee or agent.

6 Sec. 118. Section 490.860, Code 2021, is amended by striking
7 the section and inserting in lieu thereof the following:

8 **490.860 Part definitions.**

9 As used in this part, unless otherwise specified:

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

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

17 b. Being subject to a majority of the risk of loss from the
18 entity's activities or entitled to receive a majority of the
19 entity's residual returns.

20 2. "*Director's conflicting interest transaction*" means
21 a transaction effected or proposed to be effected by the
22 corporation, or by an entity controlled by the corporation, to
23 which, or respecting which, any of the following applies:

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

25 b. Respecting which, at the relevant time, the director
26 had knowledge and a material financial interest known to the
27 director.

28 c. Respecting which, at the relevant time, the director knew
29 that a related person was a party or had a material financial
30 interest.

31 3. "*Fair to the corporation*" means, for purposes of section
32 490.861, subsection 2, paragraph "c", that the transaction
33 as a whole was beneficial to the corporation, taking into
34 appropriate account whether it was all of the following:

35 a. Fair in terms of the director's dealings with the

1 corporation.

2 *b.* Comparable to what might have been obtainable in an arm's
3 length transaction, given the consideration paid or received
4 by the corporation.

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

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

10 *a.* The individual's spouse.

11 *b.* A child, stepchild, grandchild, parent, stepparent,
12 grandparent, sibling, stepsibling, half sibling, aunt,
13 uncle, niece, or nephew, or spouse of any such person, of the
14 individual or of the individual's spouse.

15 *c.* A natural person living in the same home as the
16 individual.

17 *d.* An entity, other than the corporation or an entity
18 controlled by the corporation, controlled by the individual or
19 any person specified in this subsection.

20 *e.* Any of the following:

21 (1) A domestic or foreign business or nonprofit
22 corporation, other than the corporation or an entity controlled
23 by the corporation, of which the individual is a director.

24 (2) A domestic or foreign unincorporated entity of which the
25 individual is a general partner or a member of the governing
26 body.

27 (3) A domestic or foreign individual, trust, or estate
28 for whom or of which the individual is a trustee, guardian,
29 personal representative, or like fiduciary.

30 *f.* A person that is, or an entity that is controlled by, an
31 employer of the individual.

32 6. "*Relevant time*" means the following:

33 *a.* The time at which directors' action respecting the
34 transaction is taken in compliance with section 490.862.

35 *b.* If the transaction is not brought before the board

1 of directors or a board committee for action under section
2 490.862, at the time the corporation or an entity controlled
3 by the corporation becomes legally obligated to consummate the
4 transaction.

5 7. "*Required disclosure*" means disclosure of all of the
6 following:

7 a. The existence and nature of the director's conflicting
8 interest.

9 b. All facts known to the director respecting the subject
10 matter of the transaction that a director free of such
11 conflicting interest would reasonably believe to be material in
12 deciding whether to proceed with the transaction.

13 Sec. 119. Section 490.861, Code 2021, is amended by striking
14 the section and inserting in lieu thereof the following:

15 **490.861 Judicial action.**

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

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

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

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

35 c. The transaction, judged according to the circumstances

1 at the relevant time, is established to have been fair to the
2 corporation.

3 Sec. 120. Section 490.862, Code 2021, is amended by striking
4 the section and inserting in lieu thereof the following:

5 **490.862 Directors' action.**

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

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

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

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

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

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

1 voting on the transaction all of the following:

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

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

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

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

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

20 Sec. 121. Section 490.863, Code 2021, is amended by striking
21 the section and inserting in lieu thereof the following:

22 **490.863 Shareholders' action.**

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

28 (1) Notice to shareholders describing the action to be taken
29 respecting the transaction.

30 (2) Provision to the corporation of the information
31 referred to in subsection 2.

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

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

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

10 3. As used in this section:

11 *a.* "Holder" means and "held by" refers to shares held
12 by a record shareholder, a beneficial shareholder, or an
13 unrestricted voting trust beneficial owner.

14 *b.* "Qualified shares" means all shares entitled to be
15 voted with respect to the transaction except for shares that
16 the secretary or other officer or agent of the corporation
17 authorized to tabulate votes either knows, or under subsection
18 2 is notified, are held by any of the following:

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

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

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

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

1 if any, to the shareholders' vote, as the court considers
2 appropriate in the circumstances.

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

10 Sec. 122. Section 490.870, Code 2021, is amended by striking
11 the section and inserting in lieu thereof the following:

12 **490.870 Business opportunities.**

13 1. If a director or officer pursues or takes advantage of
14 a business opportunity directly, or indirectly through or on
15 behalf of another person, that action shall not be the subject
16 of equitable relief, or give rise to an award of damages or
17 other sanctions against the director, officer, or other person,
18 in a proceeding by or in the right of the corporation on the
19 ground that the opportunity should have first been offered to
20 the corporation, if any of the following apply:

21 a. Before the director, officer, or other person becomes
22 legally obligated respecting the opportunity, the director or
23 officer brings it to the attention of the corporation and any
24 of the following apply:

25 (1) Action by qualified directors disclaiming the
26 corporation's interest in the opportunity is taken in
27 compliance with the same procedures as are set forth in section
28 490.862.

29 (2) Shareholders' action disclaiming the corporation's
30 interest in the opportunity is taken in compliance with the
31 procedures set forth in section 490.863, in either case as if
32 the decision being made concerned a director's conflicting
33 interest transaction; except that, rather than making required
34 disclosure as defined in section 490.860, the director or
35 officer shall have made prior disclosure to those acting on

1 behalf of the corporation of all material facts concerning the
2 business opportunity known to the director or officer.

3 *b.* The duty to offer the corporation the business
4 opportunity has been limited or eliminated pursuant to a
5 provision of the articles of incorporation adopted, and where
6 required, made effective by action of qualified directors, in
7 accordance with section 490.202, subsection 2, paragraph "f".

8 2. In any proceeding seeking equitable relief or other
9 remedies based upon an alleged improper pursuit or taking
10 advantage of a business opportunity by a director or officer,
11 directly, or indirectly through or on behalf of another
12 person, the fact that the director or officer did not employ
13 the procedure described in subsection 1, paragraph "a",
14 subparagraph (1) or (2), before pursuing or taking advantage
15 of the opportunity shall not create an implication that the
16 opportunity should have been first presented to the corporation
17 or alter the burden of proof otherwise applicable to establish
18 that the director or officer breached a duty to the corporation
19 in the circumstances.

20 Sec. 123. Section 490.901, Code 2021, is amended by striking
21 the section and inserting in lieu thereof the following:

22 **490.901 Subchapter definitions.**

23 1. As used in this subchapter:

24 *a.* "Conversion" means a transaction pursuant to part C.

25 *b.* "Converted entity" means the converting entity as it
26 continues in existence after a conversion.

27 *c.* "Converting entity" means the domestic corporation that
28 approves a plan of conversion pursuant to section 490.932
29 or the domestic or foreign eligible entity that approves a
30 conversion pursuant to the organic law of the eligible entity.

31 *d.* "Domesticated corporation" means the domesticating
32 corporation as it continues in existence after a domestication.

33 *e.* "Domesticating corporation" means the domestic
34 corporation that approves a plan of domestication pursuant
35 to section 490.921 or the foreign corporation that approves

1 a domestication pursuant to the organic law of the foreign
2 corporation.

3 *f.* "Domestication" means a transaction pursuant to part B.

4 *g.* "Protected agreement" means any of the following:

5 (1) A document evidencing indebtedness of a domestic
6 corporation or eligible entity and any related agreement in
7 effect immediately before the enactment date.

8 (2) An agreement that is binding on a domestic corporation
9 or eligible entity immediately before the enactment date.

10 (3) The articles of incorporation or bylaws of a domestic
11 corporation or the organic rules of a domestic eligible entity,
12 in each case in effect immediately before the enactment date.

13 (4) An agreement that is binding on any of the shareholders,
14 members, interest holders, directors, or other governors of a
15 domestic corporation or eligible entity, in their capacities as
16 such, immediately before the enactment date.

17 2. As used in subsection 1 and sections 490.920 and
18 490.930, "enactment date" means January 1, 2022, as it relates
19 to domestications and January 1, 2009, as it relates to
20 conversions.

21 Sec. 124. Section 490.902, Code 2021, is amended by striking
22 the section and inserting in lieu thereof the following:

23 **490.902 Excluded transactions.**

24 This subchapter shall not be used to effect a transaction
25 that converts a company organized on the mutual principle to
26 one organized on the basis of share ownership.

27 Sec. 125. NEW SECTION. **490.903 Required approvals.**

28 If a domestic or foreign corporation or eligible entity
29 shall not be a party to a merger without the approval of the
30 superintendent of banking, the commissioner of insurance,
31 or the Iowa utility board, and the applicable statutes or
32 regulations do not specifically deal with transactions under
33 this subchapter but do require such approval for mergers,
34 a corporation or eligible entity shall not be a party to a
35 transaction under this subchapter without the prior approval of

1 that agency or official.

2 Sec. 126. NEW SECTION. 490.904 Relationship of subchapter
3 to other laws.

4 A transaction effected under this subchapter shall not
5 create or impair a right, duty, or obligation of a person under
6 the statutory law of this state other than this subchapter
7 relating to a change in control, business combination,
8 control-share acquisition, or similar transaction involving
9 a domesticating or converting domestic corporation, unless
10 the approval of the plan of domestication or conversion is by
11 a vote of the shareholders or the board of directors which
12 would be sufficient to create or impair the right, duty, or
13 obligation directly under that law.

14 Sec. 127. NEW SECTION. 490.905 Foreign insurance companies
15 becoming domestic.

16 1. The secretary of state, upon a corporation complying with
17 this section and upon the filing of articles of incorporation
18 and upon receipt of the fees as provided in this chapter,
19 shall issue an acknowledgment of receipt of document as
20 of the date of the filing of the articles of incorporation
21 with the secretary of state. The acknowledgment of receipt
22 of document shall state on its face that it is issued in
23 accordance with this section. The secretary of state shall
24 then notify the appropriate officer of the state or country of
25 the corporation's last domicile that the corporation is now a
26 domestic corporation domiciled in this state. This section
27 applies to life insurance companies, and to insurance companies
28 doing business under chapter 515.

29 2. A corporation becoming domiciled in this state under
30 subsection 1 shall not be required to comply with any other
31 requirements under this subchapter.

32 Sec. 128. NEW SECTION. 490.920 Domestication.

33 1. By complying with the provisions of this part applicable
34 to foreign corporations, a foreign corporation may become a
35 domestic corporation if the domestication is permitted by the

1 organic law of the foreign corporation.

2 2. By complying with the provisions of this part, a domestic
3 corporation may become a foreign corporation pursuant to a
4 plan of domestication if the domestication is permitted by the
5 organic law of the foreign corporation.

6 3. The plan of domestication must include all of the
7 following:

8 a. The name of the domesticating corporation.

9 b. The name and jurisdiction of formation of the
10 domesticated corporation.

11 c. The manner and basis of reclassifying the shares of the
12 domesticating corporation into shares or other securities,
13 obligations, rights to acquire shares or other securities,
14 cash, other property, or any combination of the foregoing.

15 d. The proposed articles of incorporation and bylaws of the
16 domesticated corporation.

17 e. The other terms and conditions of the domestication.

18 4. In addition to the requirements of subsection 3, a plan
19 of domestication may contain any other provision not prohibited
20 by law.

21 5. The terms of a plan of domestication may be made
22 dependent upon facts objectively ascertainable outside the plan
23 in accordance with section 490.120, subsection 11.

24 6. If a protected agreement of a domestic domesticating
25 corporation in effect immediately before the domestication
26 becomes effective contains a provision applying to a merger
27 of the corporation and the agreement does not refer to a
28 domestication of the corporation, the provision applies to a
29 domestication of the corporation as if the domestication were a
30 merger until such time as the provision is first amended after
31 the enactment date.

32 Sec. 129. NEW SECTION. 490.921 Action on a plan of
33 domestication.

34 In the case of a domestication of a domestic corporation
35 into a foreign jurisdiction, the plan of domestication shall be

1 adopted in the following manner:

2 1. The plan of domestication shall first be adopted by the
3 board of directors.

4 2. *a.* The plan of domestication shall then be approved by
5 the shareholders. In submitting the plan of domestication to
6 the shareholders for approval, the board of directors shall
7 recommend that the shareholders approve the plan, unless any of
8 the following applies:

9 (1) The board of directors makes a determination that
10 because of conflicts of interest or other special circumstances
11 it should not make such a recommendation.

12 (2) Section 490.826 applies.

13 *b.* If paragraph "a", subparagraph (1) or (2) applies, the
14 board shall inform the shareholders of the basis for its so
15 proceeding.

16 3. The board of directors may set conditions for approval
17 of the plan of domestication by the shareholders or the
18 effectiveness of the plan of domestication.

19 4. If the approval of the shareholders is to be given at
20 a meeting, the corporation shall notify each shareholder,
21 regardless of whether entitled to vote, of the meeting of
22 shareholders at which the plan of domestication is to be
23 submitted for approval. The notice must state that the
24 purpose, or one of the purposes, of the meeting is to consider
25 the plan of domestication and must contain or be accompanied
26 by a copy or summary of the plan. The notice must include
27 or be accompanied by a copy of the articles of incorporation
28 and the bylaws as they will be in effect immediately after the
29 domestication.

30 5. Unless the articles of incorporation, bylaws, or the
31 board of directors acting pursuant to subsection 3, require
32 a greater vote or a greater quorum, approval of the plan of
33 domestication requires all of the following:

34 *a.* The approval of the shareholders at a meeting at which a
35 quorum exists consisting of a majority of the votes entitled

1 to be cast on the plan.

2 *b.* Except as provided in subsection 6, the approval of
3 each class or series of shares voting as a separate voting
4 group at a meeting at which a quorum of the voting group exists
5 consisting of a majority of the votes entitled to be cast on
6 the plan by that voting group.

7 6. The articles of incorporation may expressly limit or
8 eliminate the separate voting rights provided in subsection
9 5, paragraph "b", as to any class or series of shares, except
10 when the articles of incorporation of the foreign corporation
11 resulting from the domestication include what would be in
12 effect an amendment that would entitle the class or series to
13 vote as a separate group under section 490.1004 if it were
14 a proposed amendment of the articles of incorporation of the
15 domestic domesticating corporation.

16 7. If as a result of a domestication one or more
17 shareholders of a domestic domesticating corporation would
18 become subject to interest holder liability, approval of the
19 plan of domestication shall require the signing in connection
20 with the domestication, by each such shareholder, of a separate
21 written consent to become subject to such interest holder
22 liability, unless in the case of a shareholder that already has
23 interest holder liability with respect to the domesticating
24 corporation, the terms and conditions of the interest holder
25 liability with respect to the domesticated corporation are
26 substantially identical to those of the existing interest
27 holder liability, other than for changes that eliminate or
28 reduce such interest holder liability.

29 Sec. 130. NEW SECTION. 490.922 Articles of domestication
30 — effectiveness.

31 1. After a plan of domestication of a domestic corporation
32 has been adopted and approved as required by this chapter, or a
33 foreign corporation that is the domesticating corporation has
34 approved a domestication as required under its organic law,
35 articles of domestication shall be signed by the domesticating

1 corporation. The articles must set forth all of the following:

2 *a.* The name of the domesticating corporation and its
3 jurisdiction of formation.

4 *b.* The name and jurisdiction of formation of the
5 domesticated corporation.

6 *c.* If the domesticating corporation is a domestic
7 corporation, a statement that the plan of domestication
8 was approved in accordance with this subchapter or, if the
9 domesticating corporation is a foreign corporation, a statement
10 that the domestication was approved in accordance with its
11 organic law.

12 2. If the domesticated corporation is a domestic
13 corporation, the articles of domestication must attach
14 articles of incorporation of the domesticated corporation that
15 satisfy the requirements of section 490.202. Provisions that
16 would not be required to be included in restated articles of
17 incorporation may be omitted from the articles of incorporation
18 attached to the articles of domestication.

19 3. The articles of domestication shall be delivered to the
20 secretary of state for filing, and shall take effect at the
21 effective date determined in accordance with section 490.123.

22 4. If the domesticated corporation is a domestic
23 corporation, the domestication becomes effective when the
24 articles of domestication are effective. If the domesticated
25 corporation is a foreign corporation, the domestication becomes
26 effective on the later of the following:

27 *a.* The date and time provided by the organic law of the
28 domesticated corporation.

29 *b.* When the articles of domestication are effective.

30 5. If the domesticating corporation is a foreign
31 corporation that is registered to do business in this state
32 under subchapter XV, its registration statement shall
33 be canceled automatically when the domestication becomes
34 effective.

35 Sec. 131. NEW SECTION. **490.923** **Amendment of plan of**

1 **domestication — abandonment.**

2 1. A plan of domestication of a domestic corporation may be
3 amended by any of the following manners:

4 a. In the same manner as the plan was approved, if the plan
5 does not provide for the manner in which it may be amended.

6 b. In the manner provided in the plan, except that a
7 shareholder that was entitled to vote on or consent to approval
8 of the plan is entitled to vote on or consent to any amendment
9 of the plan that will change any of the following:

10 (1) The amount or kind of shares or other securities,
11 obligations, rights to acquire shares or other securities,
12 cash, other property, or any combination of the foregoing, to
13 be received by any of the shareholders of the domesticating
14 corporation under the plan.

15 (2) The articles of incorporation or bylaws of the
16 domesticated corporation that will be in effect immediately
17 after the domestication becomes effective, except for changes
18 that do not require approval of the shareholders of the
19 domesticated corporation under its organic law or its proposed
20 articles of incorporation or bylaws as set forth in the plan.

21 (3) Any of the other terms or conditions of the plan, if the
22 change would adversely affect the shareholder in any material
23 respect.

24 2. After a plan of domestication has been adopted and
25 approved by a domestic corporation as required by this part,
26 and before the articles of domestication have become effective,
27 the plan may be abandoned by the corporation without action by
28 its shareholders in accordance with any procedures set forth in
29 the plan or, if no such procedures are set forth in the plan, in
30 the manner determined by the board of directors.

31 3. If a domestication is abandoned after the articles of
32 domestication have been delivered to the secretary of state for
33 filing but before the articles of domestication have become
34 effective, articles of abandonment, signed by the domesticating
35 corporation, must be delivered to the secretary of state for

1 filing before the articles of domestication become effective.
2 The articles of abandonment take effect upon filing, and the
3 domestication shall be deemed abandoned and shall not become
4 effective. The articles of abandonment must contain all of the
5 following:

6 *a.* The name of the domesticating corporation.

7 *b.* The date on which the articles of domestication were
8 filed by the secretary of state.

9 *c.* A statement that the domestication has been abandoned in
10 accordance with this section.

11 Sec. 132. NEW SECTION. **490.924 Effect of domestication.**

12 1. When a domestication becomes effective all of the
13 following apply:

14 *a.* All property owned by, and every contract right possessed
15 by, the domesticating corporation are the property and contract
16 rights of the domesticated corporation without transfer,
17 reversion, or impairment.

18 *b.* All debts, obligations, and other liabilities of the
19 domesticating corporation are the debts, obligations, and other
20 liabilities of the domesticated corporation.

21 *c.* The name of the domesticated corporation may but need not
22 be substituted for the name of the domesticating corporation in
23 any pending proceeding.

24 *d.* The articles of incorporation and bylaws of the
25 domesticated corporation become effective.

26 *e.* The shares of the domesticating corporation are
27 reclassified into shares or other securities, obligations,
28 rights to acquire shares or other securities, cash, or other
29 property in accordance with the terms of the domestication, and
30 the shareholders of the domesticating corporation are entitled
31 only to the rights provided to them by those terms and to any
32 appraisal rights they may have under the organic law of the
33 domesticating corporation.

34 *f.* The domesticated corporation is all of the following:

35 (1) Incorporated under and subject to the organic law of the

1 domesticated corporation.

2 (2) The same corporation without interruption as the
3 domesticating corporation.

4 (3) Deemed to have been incorporated on the date the
5 domesticating corporation was originally incorporated.

6 2. When a domestication of a domestic corporation into
7 a foreign jurisdiction becomes effective, the domesticated
8 corporation is deemed to have done all of the following:

9 a. Appointed the secretary of state as its agent for
10 service of process in a proceeding to enforce the rights of
11 shareholders who exercise appraisal rights in connection with
12 the domestication.

13 b. Agreed that it will promptly pay the amount, if any, to
14 which such shareholders are entitled under subchapter XIII.

15 3. Except as otherwise provided in the organic law or
16 organic rules of a domesticating foreign corporation, the
17 interest holder liability of a shareholder in a foreign
18 corporation that is domesticated into this state who had
19 interest holder liability in respect of such domesticating
20 corporation before the domestication becomes effective shall
21 be as follows:

22 a. The domestication does not discharge that prior
23 interest holder liability with respect to any interest holder
24 liabilities that arose before the domestication becomes
25 effective.

26 b. The provisions of the organic law of the domesticating
27 corporation shall continue to apply to the collection or
28 discharge of any interest holder liabilities preserved by
29 paragraph "a", as if the domestication had not occurred.

30 c. The shareholder shall have such rights of contribution
31 from other persons as are provided by the organic law of the
32 domesticating corporation with respect to any interest holder
33 liabilities preserved by paragraph "a", as if the domestication
34 had not occurred.

35 d. The shareholder shall not, by reason of such prior

1 interest holder liability, have interest holder liability with
2 respect to any interest holder liabilities that are incurred
3 after the domestication becomes effective.

4 4. A shareholder who becomes subject to interest holder
5 liability in respect of the domesticated corporation as a
6 result of the domestication shall have such interest holder
7 liability only in respect of interest holder liabilities that
8 arise after the domestication becomes effective.

9 5. A domestication does not constitute or cause the
10 dissolution of the domesticating corporation.

11 6. Property held for charitable purposes under the
12 laws of this state by a domestic or foreign corporation
13 immediately before a domestication shall not, as a result of
14 the transaction, be diverted from the objects for which it was
15 donated, granted, devised, or otherwise transferred except
16 and to the extent permitted by or pursuant to the laws of
17 this state addressing cy pres or dealing with nondiversion of
18 charitable assets.

19 7. A bequest, devise, gift, grant, or promise contained
20 in a will or other instrument of donation, subscription, or
21 conveyance which is made to the domesticating corporation and
22 which takes effect or remains payable after the domestication
23 inures to the domesticated corporation.

24 8. A trust obligation that would govern property if
25 transferred to the domesticating corporation applies to
26 property that is transferred to the domesticated corporation
27 after the domestication takes effect.

28 Sec. 133. NEW SECTION. 490.930 Conversion.

29 1. By complying with this subchapter, a domestic
30 corporation may become any of the following:

31 a. A domestic eligible entity.

32 b. A foreign eligible entity if the conversion is permitted
33 by the organic law of the foreign entity.

34 2. By complying with this part and applicable provisions
35 of its organic law, a domestic eligible entity may become a

1 domestic corporation. If procedures for the approval of a
2 conversion are not provided by the organic law or organic rules
3 of a domestic eligible entity, the conversion shall be adopted
4 and approved in the same manner as a merger of that eligible
5 entity. If the organic law or organic rules of a domestic
6 eligible entity do not provide procedures for the approval
7 of either a conversion or a merger, a plan of conversion may
8 nonetheless be adopted and approved by the unanimous consent
9 of all the interest holders of such eligible entity. In
10 either such case, the conversion thereafter may be effected as
11 provided in the other provisions of this part; and for purposes
12 of applying this subchapter in such a case all of the following
13 apply:

14 *a.* The eligible entity, its members or interest holders,
15 eligible interests and organic rules taken together, shall be
16 deemed to be a domestic business corporation, shareholders,
17 shares and articles of incorporation, respectively and vice
18 versa, as the context may require.

19 *b.* If the business and affairs of the eligible entity are
20 managed by a person or persons that are not identical to the
21 members or interest holders, that person or persons shall be
22 deemed to be the board of directors.

23 3. By complying with the provisions of this part applicable
24 to foreign entities, a foreign eligible entity may become a
25 domestic corporation if the organic law of the foreign eligible
26 entity permits it to become a business corporation in another
27 jurisdiction.

28 4. If a protected agreement of a domestic converting
29 corporation in effect immediately before the conversion becomes
30 effective contains a provision applying to a merger of the
31 corporation that is a converting entity and the agreement does
32 not refer to a conversion of the corporation, the provision
33 applies to a conversion of the corporation as if the conversion
34 were a merger, until such time as the provision is first
35 amended after the enactment date.

1 Sec. 134. NEW SECTION. **490.931 Plan of conversion.**

2 1. A domestic corporation may convert to a domestic or
3 foreign eligible entity under this part by approving a plan of
4 conversion. The plan of conversion must include all of the
5 following:

6 *a.* The name of the converting corporation.

7 *b.* The name, jurisdiction of formation, and type of entity
8 of the converted entity.

9 *c.* The manner and basis of converting the shares of
10 the domestic corporation into eligible interests or other
11 securities, obligations, rights to acquire eligible interests
12 or other securities, cash, other property, or any combination
13 of the foregoing.

14 *d.* The other terms and conditions of the conversion.

15 *e.* The full text, as it will be in effect immediately after
16 the conversion becomes effective, of the organic rules of the
17 converted entity which are to be in writing.

18 2. In addition to the requirements of subsection 1, a plan
19 of conversion may contain any other provision not prohibited
20 by law.

21 3. The terms of a plan of conversion may be made dependent
22 upon facts objectively ascertainable outside the plan in
23 accordance with section 490.120, subsection 11.

24 Sec. 135. NEW SECTION. **490.932 Action on a plan of**
25 **conversion.**

26 In the case of a conversion of a domestic corporation to a
27 domestic or foreign eligible entity, the plan of conversion
28 shall be adopted in the following manner:

29 1. The plan of conversion shall first be adopted by the
30 board of directors.

31 2. *a.* The plan of conversion shall then be approved by
32 the shareholders. In submitting the plan of conversion to the
33 shareholders for their approval, the board of directors must
34 recommend that the shareholders approve the plan, unless any of
35 the following applies:

1 (1) The board of directors makes a determination that
2 because of conflicts of interest or other special circumstances
3 it should not make such a recommendation.

4 (2) Section 490.826 applies.

5 b. If paragraph "a", subparagraph (1) or (2) applies, the
6 board of directors shall inform the shareholders of the basis
7 for its so proceeding.

8 3. The board of directors may set conditions for approval of
9 the plan of conversion by the shareholders or the effectiveness
10 of the plan of conversion.

11 4. If the approval of the shareholders is to be given at
12 a meeting, the corporation shall notify each shareholder,
13 regardless of whether entitled to vote, of the meeting of
14 shareholders at which the plan of conversion is to be submitted
15 for approval. The notice must state that the purpose, or one
16 of the purposes, of the meeting is to consider the plan of
17 conversion and must contain or be accompanied by a copy or
18 summary of the plan. The notice must include or be accompanied
19 by a copy of the organic rules of the converted entity which
20 are to be in writing as they will be in effect immediately
21 after the conversion.

22 5. Unless the articles of incorporation, bylaws, or the
23 board of directors acting pursuant to subsection 3, require
24 a greater vote or a greater quorum, approval of the plan of
25 conversion requires all of the following:

26 a. The approval of the shareholders at a meeting at which a
27 quorum exists consisting of a majority of the votes entitled
28 to be cast on the plan.

29 b. Except as provided in subsection 6, the approval of
30 each class or series of shares voting as a separate voting
31 group at a meeting at which a quorum of the voting group exists
32 consisting of a majority of the votes entitled to be cast on
33 the plan by that voting group.

34 6. If as a result of the conversion one or more shareholders
35 of the converting domestic corporation would become subject to

1 interest holder liability, approval of the plan of conversion
2 shall require the signing in connection with the transaction,
3 by each such shareholder, of a separate written consent to
4 become subject to such interest holder liability.

5 Sec. 136. NEW SECTION. 490.933 Articles of conversion —
6 effectiveness.

7 1. Articles of conversion shall be signed by the converting
8 entity after either a plan of conversion of a domestic
9 corporation has been adopted and approved as required by this
10 chapter or a domestic or foreign eligible entity that is the
11 converting entity has approved a conversion as required under
12 its organic law. The articles of conversion must do all of the
13 following:

14 a. State the name, jurisdiction of formation, and type of
15 entity of the converting entity.

16 b. State the name, jurisdiction of formation, and type of
17 entity of the converted entity.

18 c. (1) If the converting entity is a domestic corporation,
19 state that the plan of conversion was approved in accordance
20 with this part.

21 (2) If the converting entity is an eligible entity, state
22 that the conversion was approved by the eligible entity in
23 accordance with its organic law.

24 (3) If the converting entity is a domestic eligible entity
25 the organic law of which does not provide for approval of the
26 conversion, state that the conversion was approved by the
27 domestic eligible entity in accordance with this part.

28 d. (1) If the converted entity is a domestic business
29 corporation, or a domestic nonprofit corporation or filing
30 entity, have attached the public organic record of the
31 converted entity, except that provisions that would not be
32 required to be included in a restated public organic record may
33 be omitted.

34 (2) If the converted entity is a domestic limited liability
35 partnership, have attached the filing required to become a

1 limited liability partnership.

2 2. If the converted entity is a domestic corporation,
3 its articles of incorporation must satisfy the requirements
4 of section 490.202, except that provisions that would not be
5 required to be included in restated articles of incorporation
6 may be omitted from the articles of incorporation. If the
7 converted entity is a domestic eligible entity, its public
8 organic record, if any, must satisfy the requirements of the
9 organic law of this state, except that the public organic
10 record does not need to be signed.

11 3. The articles of conversion shall be delivered to the
12 secretary of state for filing, and shall take effect at the
13 effective date determined in accordance with section 490.123.

14 4. If a converted entity is a domestic entity, the
15 conversion becomes effective when the articles of conversion
16 are effective. With respect to a conversion in which the
17 converted entity is a foreign eligible entity, the conversion
18 itself shall become effective at the later of the following:

19 a. The date and time provided by the organic law of that
20 eligible entity.

21 b. When the articles of conversion become effective.

22 5. Articles of conversion under this section may be combined
23 with any required conversion filing under the organic law
24 of a domestic eligible entity that is the converting entity
25 or converted entity if the combined filing satisfies the
26 requirements of both this section and the other organic law.

27 6. If the converting entity is a foreign eligible entity
28 that is registered to do business in this state under a
29 provision of law similar to subchapter XV, its registration
30 statement or other type of foreign qualification shall be
31 canceled automatically on the effective date of its conversion.

32 Sec. 137. NEW SECTION. 490.934 Amendment of plan of
33 conversion — abandonment.

34 1. A plan of conversion of a converting entity that is a
35 domestic corporation may be amended in any of the following

1 manners:

2 *a.* In the same manner as the plan was approved, if the plan
3 does not provide for the manner in which it may be amended.

4 *b.* In the manner provided in the plan, except that
5 shareholders that were entitled to vote on or consent to
6 approval of the plan are entitled to vote on or consent to any
7 amendment of the plan that will change any of the following:

8 (1) The amount or kind of eligible interests or other
9 securities, obligations, rights to acquire eligible interests
10 or other securities, cash, other property, or any combination
11 of the foregoing, to be received by any of the shareholders of
12 the converting corporation under the plan.

13 (2) The organic rules of the converted entity that will be
14 in effect immediately after the conversion becomes effective,
15 except for changes that do not require approval of the eligible
16 interest holders of the converted entity under its organic law
17 or organic rules.

18 (3) Any other terms or conditions of the plan, if the
19 change would adversely affect such shareholders in any material
20 respect.

21 2. After a plan of conversion has been approved by a
22 converting entity that is a domestic corporation in the manner
23 required by this part and before the articles of conversion
24 become effective, the plan may be abandoned by the corporation
25 without action by its shareholders in accordance with any
26 procedures set forth in the plan or, if no such procedures are
27 set forth in the plan, in the manner determined by the board of
28 directors.

29 3. If a conversion is abandoned after the articles of
30 conversion have been delivered to the secretary of state for
31 filing and before the articles of conversion become effective,
32 articles of abandonment, signed by the converting entity,
33 must be delivered to the secretary of state for filing before
34 the articles of conversion become effective. The articles
35 of abandonment take effect on filing, and the conversion is

1 abandoned and does not become effective. The articles of
2 abandonment must contain all of the following:

3 *a.* The name of the converting entity.

4 *b.* The date on which the articles of conversion were filed
5 by the secretary of state.

6 *c.* A statement that the conversion has been abandoned in
7 accordance with this section.

8 Sec. 138. NEW SECTION. **490.935 Effect of conversion.**

9 1. When a conversion becomes effective all of the following
10 shall apply:

11 *a.* All property owned by, and every contract right possessed
12 by, the converting entity remain the property and contract
13 rights of the converted entity without transfer, reversion, or
14 impairment.

15 *b.* All debts, obligations, and other liabilities of the
16 converting entity remain the debts, obligations, and other
17 liabilities of the converted entity.

18 *c.* The name of the converted entity may but need not be
19 substituted for the name of the converting entity in any
20 pending action or proceeding.

21 *d.* If the converted entity is a filing entity or a domestic
22 business corporation or a domestic or foreign nonprofit
23 corporation, its public organic record and its private organic
24 rules become effective.

25 *e.* If the converted entity is a nonfiling entity, its
26 private organic rules become effective.

27 *f.* If the converted entity is a limited liability
28 partnership, the filing required to become a limited liability
29 partnership and its private organic rules become effective.

30 *g.* The shares or eligible interests of the converting
31 entity are reclassified into shares, eligible interests or
32 other securities, obligations, rights to acquire shares,
33 eligible interests or other securities, cash, or other property
34 in accordance with the terms of the conversion, and the
35 shareholders or interest holders of the converting entity are

1 entitled only to the rights provided to them by those terms and
2 to any appraisal rights they may have under the organic law of
3 the converting entity.

4 *h.* The converted entity is all of the following:

5 (1) Incorporated or organized under and subject to the
6 organic law of the converted entity.

7 (2) The same entity without interruption as the converting
8 entity.

9 (3) Deemed to have been incorporated or otherwise
10 organized on the date that the converting entity was originally
11 incorporated or organized.

12 2. When a conversion of a domestic corporation to a foreign
13 eligible entity becomes effective, the converted entity is
14 deemed to have done all of the following:

15 *a.* Appointed the secretary of state as its agent for
16 service of process in a proceeding to enforce the rights of
17 shareholders who exercise appraisal rights in connection with
18 the conversion.

19 *b.* Agreed that it will promptly pay the amount, if any, to
20 which such shareholders are entitled under subchapter XIII.

21 3. Except as otherwise provided in the articles of
22 incorporation of a domestic corporation or the organic law or
23 organic rules of a foreign corporation or a domestic or foreign
24 eligible entity, a shareholder or eligible interest holder who
25 becomes subject to interest holder liability in respect of a
26 domestic corporation or eligible entity as a result of the
27 conversion shall have such interest holder liability only in
28 respect of interest holder liabilities that arise after the
29 conversion becomes effective.

30 4. Except as otherwise provided in the organic law or the
31 organic rules of the eligible entity, the interest holder
32 liability of an interest holder in a converting eligible entity
33 that converts to a domestic corporation who had interest holder
34 liability in respect of such converting eligible entity before
35 the conversion becomes effective shall be as follows:

1 *a.* The conversion does not discharge that prior interest
2 holder liability with respect to any interest holder
3 liabilities that arose before the conversion became effective.

4 *b.* The provisions of the organic law of the eligible entity
5 shall continue to apply to the collection or discharge of any
6 interest holder liabilities preserved by paragraph "a", as if
7 the conversion had not occurred.

8 *c.* The eligible interest holder shall have such rights of
9 contribution from other persons as are provided by the organic
10 law of the eligible entity with respect to any interest holder
11 liabilities preserved by paragraph "a", as if the conversion had
12 not occurred.

13 *d.* The eligible interest holder shall not, by reason of such
14 prior interest holder liability, have interest holder liability
15 with respect to any interest holder liabilities that arise
16 after the conversion becomes effective.

17 5. A conversion does not require the converting entity
18 to wind up its affairs and does not constitute or cause the
19 dissolution or termination of the entity.

20 6. Property held for charitable purposes under the laws of
21 this state by a corporation or a domestic or foreign eligible
22 entity immediately before a conversion shall not, as a result
23 of the transaction, be diverted from the objects for which it
24 was donated, granted, devised, or otherwise transferred except
25 and to the extent permitted by or pursuant to the laws of
26 this state addressing cy pres or dealing with nondiversion of
27 charitable assets.

28 7. A bequest, devise, gift, grant, or promise contained
29 in a will or other instrument of donation, subscription, or
30 conveyance which is made to the converting entity and which
31 takes effect or remains payable after the conversion inures to
32 the converted entity.

33 8. A trust obligation that would govern property if
34 transferred to the converting entity applies to property that
35 is transferred to the converted entity after the conversion

1 takes effect.

2 Sec. 139. Section 490.1003, Code 2021, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 **490.1003 Amendment by board of directors and shareholders.**

6 If a corporation has issued shares, an amendment to the
7 articles of incorporation shall be adopted in the following
8 manner:

9 1. The proposed amendment shall first be adopted by the
10 board of directors.

11 2. *a.* Except as provided in sections 490.1005, 490.1007,
12 and 490.1008, the amendment shall then be approved by the
13 shareholders. In submitting the proposed amendment to the
14 shareholders for approval, the board of directors shall
15 recommend that the shareholders approve the amendment, unless
16 any of the following applies:

17 (1) The board of directors makes a determination that
18 because of conflicts of interest or other special circumstances
19 it should not make such a recommendation.

20 (2) Section 490.826 applies.

21 *b.* If paragraph "a", subparagraph (1) or (2) applies, the
22 board must inform the shareholders of the basis for its so
23 proceeding.

24 3. The board of directors may set conditions for the
25 approval of the amendment by the shareholders or the
26 effectiveness of the amendment.

27 4. If the amendment is required to be approved by the
28 shareholders, and the approval is to be given at a meeting,
29 the corporation shall notify each shareholder, regardless of
30 whether entitled to vote, of the meeting of shareholders at
31 which the amendment is to be submitted for approval. The
32 notice must state that the purpose, or one of the purposes,
33 of the meeting is to consider the amendment. The notice must
34 contain or be accompanied by a copy of the amendment.

35 5. Unless the articles of incorporation or bylaws, or the

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

12 6. a. If as a result of an amendment of the articles
13 of incorporation one or more shareholders of a domestic
14 corporation would become subject to new interest holder
15 liability, approval of the amendment requires the signing in
16 connection with the amendment, by each such shareholder, of a
17 separate written consent to become subject to such new interest
18 holder liability.

19 b. Paragraph "a" does not apply in the case of a shareholder
20 that already has interest holder liability and the terms and
21 conditions of the new interest holder liability are any of the
22 following:

23 (1) Substantially identical to those of the existing
24 interest holder liability.

25 (2) Substantially identical to those of the existing
26 interest holder liability, other than changes that eliminate or
27 reduce such interest holder liability.

28 7. As used in subsection 6 and section 490.1009, "*new*
29 *interest holder liability*" means interest holder liability
30 of a person resulting from an amendment of the articles of
31 incorporation if any of the following applies:

32 a. The person did not have interest holder liability before
33 the amendment becomes effective.

34 b. The person had interest holder liability before the
35 amendment becomes effective, the terms and conditions of which

1 are changed when the amendment becomes effective.

2 Sec. 140. Section 490.1004, Code 2021, is amended by
3 striking the section and inserting in lieu thereof the
4 following:

5 **490.1004 Voting on amendments by voting groups.**

6 1. The holders of the outstanding shares of a class are
7 entitled to vote as a separate voting group, if shareholder
8 voting is otherwise required by this chapter, on a proposed
9 amendment to the articles of incorporation if the amendment
10 would do any of the following:

11 *a.* Effect an exchange or reclassification of all or part of
12 the shares of the class into shares of another class.

13 *b.* Effect an exchange or reclassification, or create the
14 right of exchange, of all or part of the shares of another
15 class into shares of the class.

16 *c.* Change the rights, preferences, or limitations of all or
17 part of the shares of the class.

18 *d.* Change the shares of all or part of the class into a
19 different number of shares of the same class.

20 *e.* Create a new class of shares having rights or preferences
21 with respect to distributions that are prior or superior to the
22 shares of the class.

23 *f.* Increase the rights, preferences, or number of authorized
24 shares of any class that, after giving effect to the amendment,
25 have rights or preferences with respect to distributions that
26 are prior or superior to the shares of the class.

27 *g.* Limit or deny an existing preemptive right of all or part
28 of the shares of the class.

29 *h.* Cancel or otherwise affect rights to distributions that
30 have accumulated but not yet been authorized on all or part of
31 the shares of the class.

32 2. If a proposed amendment would affect a series of a class
33 of shares in one or more of the ways described in subsection 1,
34 the holders of shares of that series are entitled to vote as a
35 separate voting group on the proposed amendment.

1 3. If a proposed amendment that entitles the holders of
2 two or more classes or series of shares to vote as separate
3 voting groups under this section would affect those two or more
4 classes or series in the same or a substantially similar way,
5 the holders of shares of all the classes or series so affected
6 shall vote together as a single voting group on the proposed
7 amendment, unless otherwise provided in the articles of
8 incorporation or added as a condition by the board of directors
9 pursuant to section 490.1003, subsection 3.

10 4. A class or series of shares is entitled to the voting
11 rights granted by this section even if the articles of
12 incorporation provide that the shares are nonvoting shares.

13 Sec. 141. Section 490.1006, Code 2021, is amended by
14 striking the section and inserting in lieu thereof the
15 following:

16 **490.1006 Articles of amendment.**

17 1. After an amendment to the articles of incorporation
18 has been adopted and approved in the manner required by this
19 chapter and by the articles of incorporation, the corporation
20 shall deliver to the secretary of state, for filing, articles
21 of amendment, which must set forth all of the following:

22 a. The name of the corporation.

23 b. The text of each amendment adopted, or the information
24 required by section 490.120, subsection 11, paragraph "e".

25 c. If an amendment provides for an exchange,
26 reclassification, or cancellation of issued shares,
27 provisions for implementing the amendment, if not contained in
28 the amendment itself, which may be made dependent upon facts
29 objectively ascertainable outside the articles of amendment in
30 accordance with section 490.120, subsection 11, paragraph "e".

31 d. The date of each amendment's adoption.

32 e. For an amendment, the following:

33 (1) If it was adopted by the incorporators or board of
34 directors without shareholder approval, a statement that the
35 amendment was duly adopted by the incorporators or by the board

1 of directors, as the case may be, and that shareholder approval
2 was not required.

3 (2) If it required approval by the shareholders, a statement
4 that the amendment was duly approved by the shareholders in
5 the manner required by this chapter and by the articles of
6 incorporation.

7 (3) If being filed pursuant to section 490.120, subsection
8 11, paragraph "e", a statement to that effect.

9 2. Articles of amendment shall take effect at the effective
10 date determined in accordance with section 490.123.

11 Sec. 142. Section 490.1007, Code 2021, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 **490.1007 Restated articles of incorporation.**

15 1. A corporation's board of directors may restate its
16 articles of incorporation at any time, without shareholder
17 approval, to consolidate all amendments into a single document.

18 2. If the restated articles include one or more new
19 amendments that require shareholder approval, the amendments
20 shall be adopted and approved as provided in section 490.1003.

21 3. A corporation that restates its articles of
22 incorporation shall deliver to the secretary of state for
23 filing articles of restatement setting forth all of the
24 following:

25 a. The name of the corporation.

26 b. The text of the restated articles of incorporation.

27 c. A statement that the restated articles consolidate all
28 amendments into a single document.

29 d. If a new amendment is included in the restated articles,
30 the statements required under section 490.1006 with respect to
31 the new amendment.

32 4. Duly adopted restated articles of incorporation
33 supersede the original articles of incorporation and all
34 amendments to the articles of incorporation.

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

1 incorporation as the articles of incorporation currently in
2 effect, without including the statements required by subsection
3 3, paragraph "d".

4 Sec. 143. Section 490.1009, Code 2021, is amended by
5 striking the section and inserting in lieu thereof the
6 following:

7 **490.1009 Effect of amendment.**

8 1. An amendment to the articles of incorporation does not
9 affect a cause of action existing against or in favor of the
10 corporation, a proceeding to which the corporation is a party,
11 or the existing rights of persons other than the shareholders.
12 An amendment changing a corporation's name does not affect a
13 proceeding brought by or against the corporation in its former
14 name.

15 2. A shareholder who becomes subject to new interest holder
16 liability in respect of the corporation as a result of an
17 amendment to the articles of incorporation shall have that new
18 interest holder liability only in respect of interest holder
19 liabilities that arise after the amendment becomes effective.

20 3. Except as otherwise provided in the articles of
21 incorporation of the corporation, the interest holder liability
22 of a shareholder who had interest holder liability in respect
23 of the corporation before the amendment becomes effective and
24 has new interest holder liability after the amendment becomes
25 effective shall be as follows:

26 a. The amendment does not discharge that prior interest
27 holder liability with respect to any interest holder
28 liabilities that arose before the amendment becomes effective.

29 b. The provisions of the articles of incorporation of
30 the corporation relating to interest holder liability as in
31 effect immediately prior to the amendment shall continue to
32 apply to the collection or discharge of any interest holder
33 liabilities preserved by paragraph "a", as if the amendment had
34 not occurred.

35 c. The shareholder shall have such rights of contribution

1 from other persons as are provided by the articles of
2 incorporation relating to interest holder liability as in
3 effect immediately prior to the amendment with respect to any
4 interest holder liabilities preserved by paragraph "a", as if
5 the amendment had not occurred.

6 *d.* The shareholder shall not, by reason of such prior
7 interest holder liability, have interest holder liability with
8 respect to any interest holder liabilities that arise after the
9 amendment becomes effective.

10 Sec. 144. Section 490.1020, Code 2021, is amended by
11 striking the section and inserting in lieu thereof the
12 following:

13 **490.1020 Authority to amend.**

14 1. A corporation's shareholders may amend or repeal the
15 corporation's bylaws.

16 2. A corporation's board of directors may amend or repeal
17 the corporation's bylaws unless any of the following apply:

18 *a.* The articles of incorporation, section 490.1021, or, if
19 applicable, section 490.1022, reserve that power exclusively to
20 the shareholders in whole or part.

21 *b.* Except as provided in section 490.206, subsection 4,
22 the shareholders in amending, repealing, or adopting a bylaw
23 expressly provide that the board of directors shall not amend,
24 repeal, or adopt that bylaw.

25 3. A shareholder of the corporation does not have a vested
26 property right resulting from any provision in the bylaws.

27 Sec. 145. Section 490.1021, Code 2021, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 **490.1021 Bylaw increasing quorum or voting requirement for**
31 **directors.**

32 1. A bylaw that increases a quorum or voting requirement
33 for the board of directors or that requires a meeting of
34 shareholders to be held at a place may be amended or repealed
35 as follows:

1 *a.* If originally adopted by the shareholders, only by the
2 shareholders, unless the bylaw otherwise provides.

3 *b.* If adopted by the board of directors, either by the
4 shareholders or by the board of directors.

5 2. A bylaw adopted or amended by the shareholders that
6 increases a quorum or voting requirement for the board of
7 directors may provide that it can be amended or repealed only
8 by a specified vote of either the shareholders or the board of
9 directors.

10 3. Action by the board of directors under subsection 1
11 to amend or repeal a bylaw that changes a quorum or voting
12 requirement for the board of directors shall meet the same
13 quorum requirement and be adopted by the same vote required to
14 take action under the quorum and voting requirement then in
15 effect or proposed to be adopted, whichever is greater.

16 Sec. 146. NEW SECTION. 490.1022 **Bylaw provisions relating**
17 **to the election of directors.**

18 1. Unless the articles of incorporation specifically
19 prohibit the adoption of a bylaw pursuant to this section,
20 alter the vote specified in section 490.728, subsection 1, or
21 provide for cumulative voting, a corporation may elect in its
22 bylaws to be governed in the election of directors as follows:

23 *a.* Each vote entitled to be cast may be voted for or against
24 up to that number of candidates that is equal to the number
25 of directors to be elected, or a shareholder may indicate an
26 abstention, but without cumulating the votes.

27 *b.* To be elected, a nominee shall have received a plurality
28 of the votes cast by holders of shares entitled to vote
29 in the election at a meeting at which a quorum is present,
30 provided that a nominee who is elected but receives more votes
31 against than for election shall serve as a director for a term
32 that shall terminate on the date that is the earlier of the
33 following:

34 (1) (a) Ninety days from the date on which the voting
35 results are determined pursuant to section 490.729, subsection

1 2, paragraph "e".

2 (b) The date on which an individual is selected by the
3 board of directors to fill the office held by such director,
4 which selection shall be deemed to constitute the filling of a
5 vacancy by the board to which section 490.810 applies.

6 (2) Subject to subsection 1, paragraph "c", a nominee who is
7 elected but receives more votes against than for election shall
8 not serve as a director beyond the ninety-day period provided
9 in subparagraph division (a).

10 c. The board of directors may select any qualified
11 individual to fill the office held by a director who received
12 more votes against than for election.

13 2. a. Subsection 1 does not apply to an election of
14 directors by a voting group if any of the following applies:

15 (1) At the expiration of the time fixed under a provision
16 requiring advance notification of director candidates.

17 (2) Absent such a provision, at a time fixed by the board of
18 directors which is not more than fourteen days before notice
19 is given of the meeting at which the election is to occur,
20 there are more candidates for election by the voting group than
21 the number of directors to be elected, one or more of whom are
22 properly proposed by shareholders.

23 b. An individual shall not be considered a candidate for
24 purposes of paragraph "a", if the board of directors determines
25 before the notice of meeting is given that such individual's
26 candidacy does not create a bona fide election contest.

27 3. A bylaw electing to be governed by this section may be
28 repealed under any of the following circumstances:

29 a. If originally adopted by the shareholders, only by the
30 shareholders, unless the bylaw otherwise provides.

31 b. If adopted by the board of directors, by the board of
32 directors or the shareholders.

33 Sec. 147. Section 490.1101, Code 2021, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 **490.1101 Subchapter definitions.**

2 As used in this subchapter:

3 1. "*Acquired entity*" means the domestic or foreign
4 corporation or eligible entity that will have all of one or
5 more classes or series of its shares or eligible interests
6 acquired in a share exchange.

7 2. "*Acquiring entity*" means the domestic or foreign
8 corporation or eligible entity that will acquire all of one or
9 more classes or series of shares or eligible interests of the
10 acquired entity in a share exchange.

11 3. "*New interest holder liability*" means interest holder
12 liability of a person, resulting from a merger or share
13 exchange, that is any of the following:

14 *a.* In respect of an entity which is different from the
15 entity in which the person held shares or eligible interests
16 immediately before the merger or share exchange became
17 effective.

18 *b.* In respect of the same entity as the one in which the
19 person held shares or eligible interests immediately before
20 the merger or share exchange became effective if any of the
21 following apply:

22 (1) The person did not have interest holder liability
23 immediately before the merger or share exchange became
24 effective.

25 (2) The person had interest holder liability immediately
26 before the merger or share exchange became effective, the terms
27 and conditions of which were changed when the merger or share
28 exchange became effective.

29 4. "*Party to a merger*" means any domestic or foreign
30 corporation or eligible entity that will merge under a plan of
31 merger but does not include a survivor created by the merger.

32 5. "*Survivor*" in a merger means the domestic or foreign
33 corporation or eligible entity into which one or more other
34 corporations or eligible entities are merged.

35 Sec. 148. Section 490.1102, Code 2021, is amended by

1 striking the section and inserting in lieu thereof the
2 following:

3 **490.1102 Merger.**

4 1. By complying with this subchapter, all of the following
5 apply:

6 a. One or more domestic business corporations may merge
7 with one or more domestic or foreign business corporations or
8 eligible entities pursuant to a plan of merger, resulting in
9 a survivor.

10 b. Two or more foreign business corporations or domestic or
11 foreign eligible entities may merge, resulting in a survivor
12 that is a domestic business corporation created in the merger.

13 2. By complying with the provisions of this subchapter
14 applicable to foreign entities, a foreign business corporation
15 or a foreign eligible entity may be a party to a merger with
16 a domestic business corporation, or may be created as the
17 survivor in a merger in which a domestic business corporation
18 is a party, but only if the merger is permitted by the organic
19 law of the foreign business corporation or eligible entity.

20 3. If the organic law or organic rules of a domestic
21 eligible entity do not provide procedures for the approval
22 of a merger, a plan of merger may nonetheless be adopted
23 and approved by the unanimous consent of all of the interest
24 holders of such eligible entity, and the merger may thereafter
25 be effected as provided in the other provisions of this
26 subchapter; and for the purposes of applying this subchapter in
27 such a case all of the following shall apply:

28 a. The eligible entity, its members or interest holders,
29 eligible interests and articles of incorporation or other
30 organic rules taken together shall be deemed to be a domestic
31 business corporation, shareholders, shares and articles of
32 incorporation, respectively and vice versa as the context may
33 require.

34 b. If the business and affairs of the eligible entity are
35 managed by a person or persons that are not identical to the

1 members or interest holders, that group shall be deemed to be
2 the board of directors.

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

4 a. As to each party to the merger, its name, jurisdiction of
5 formation, and type of entity.

6 b. The survivor's name, jurisdiction of formation, and type
7 of entity, and, if the survivor is to be created in the merger,
8 a statement to that effect.

9 c. The terms and conditions of the merger.

10 d. The manner and basis of converting the shares of
11 each merging domestic or foreign business corporation and
12 eligible interests of each merging domestic or foreign eligible
13 entity into shares or other securities, eligible interests,
14 obligations, rights to acquire shares, other securities or
15 eligible interests, cash, other property, or any combination
16 of the foregoing.

17 e. The articles of incorporation of any domestic or foreign
18 business or nonprofit corporation, or the public organic
19 record of any domestic or foreign unincorporated entity, to be
20 created by the merger, or if a new domestic or foreign business
21 or nonprofit corporation or unincorporated entity is not to
22 be created by the merger, any amendments to the survivor's
23 articles of incorporation or other public organic record.

24 f. Any other provisions required by the laws under which any
25 party to the merger is organized or by which it is governed, or
26 by the articles of incorporation or organic rules of any such
27 party.

28 5. In addition to the requirements of subsection 4, a plan
29 of merger may contain any other provision not prohibited by
30 law.

31 6. Terms of a plan of merger may be made dependent on facts
32 objectively ascertainable outside the plan in accordance with
33 section 490.120, subsection 11.

34 7. A plan of merger may be amended only with the consent of
35 each party to the merger, except as provided in the plan. A

1 domestic party to a merger may approve an amendment to a plan
2 in any of the following manners:

3 *a.* In the same manner as the plan was approved, if the plan
4 does not provide for the manner in which it may be amended.

5 *b.* In the manner provided in the plan, except that
6 shareholders, members, or interest holders that were entitled
7 to vote on or consent to approval of the plan are entitled
8 to vote on or consent to any amendment of the plan that will
9 change any of the following:

10 (1) The amount or kind of shares or other securities,
11 eligible interests, obligations, rights to acquire shares,
12 other securities or eligible interests, cash, or other property
13 to be received under the plan by the shareholders, members, or
14 interest holders of any party to the merger.

15 (2) The articles of incorporation of any domestic or foreign
16 business or nonprofit corporation, or the organic rules of
17 any unincorporated entity, that will be the survivor of the
18 merger, except for changes permitted by section 490.1005 or by
19 comparable provisions of the organic law of any such foreign
20 corporation or domestic or foreign nonprofit corporation or
21 unincorporated entity.

22 (3) Any of the other terms or conditions of the plan if the
23 change would adversely affect such shareholders, members, or
24 interest holders in any material respect.

25 Sec. 149. Section 490.1103, Code 2021, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 **490.1103 Share exchange.**

29 1. By complying with this subchapter all of the following
30 apply:

31 *a.* A domestic corporation may acquire all of the shares of
32 one or more classes or series of shares of another domestic or
33 foreign corporation, or all of the eligible interests of one or
34 more classes or series of interests of a domestic or foreign
35 eligible entity, in exchange for shares or other securities,

1 eligible interests, obligations, rights to acquire shares or
2 other securities or eligible interests, cash, other property,
3 or any combination of the foregoing, pursuant to a plan of
4 share exchange.

5 *b.* All of the shares of one or more classes or series of
6 shares of a domestic corporation may be acquired by another
7 domestic or foreign corporation or eligible entity, in
8 exchange for shares or other securities, eligible interests,
9 obligations, rights to acquire shares or other securities or
10 eligible interests, cash, other property, or any combination of
11 the foregoing, pursuant to a plan of share exchange.

12 2. A foreign corporation or eligible entity may be the
13 acquired entity in a share exchange only if the share exchange
14 is permitted by the organic law of that corporation or other
15 entity.

16 3. If the organic law or organic rules of a domestic
17 eligible entity do not provide procedures for the approval
18 of a share exchange, a plan of share exchange may be adopted
19 and approved, and the share exchange effected, in accordance
20 with the procedures, if any, for a merger. If the organic
21 law or organic rules of a domestic eligible entity do not
22 provide procedures for the approval of either a share exchange
23 or a merger, a plan of share exchange may nonetheless be
24 adopted and approved by the unanimous consent of all of the
25 interest holders of such eligible entity whose interests will
26 be exchanged under the plan of share exchange, and the share
27 exchange may thereafter be effected as provided in the other
28 provisions of this subchapter; and for purposes of applying
29 this subchapter in such a case all of the following apply:

30 *a.* The eligible entity, its interest holders, interests,
31 and articles of incorporation or other organic rules taken
32 together shall be deemed to be a domestic business corporation,
33 shareholders, shares and articles of incorporation,
34 respectively and vice versa as the context may require.

35 *b.* If the business and affairs of the eligible entity are

1 managed by a person or persons that are not identical to the
2 members or interest holders, that person or those persons shall
3 be deemed to be the board of directors.

4 4. The plan of share exchange must include all of the
5 following:

6 a. The name of each domestic or foreign corporation or other
7 eligible entity the shares or eligible interests of which will
8 be acquired and the name of the domestic or foreign corporation
9 or eligible entity that will acquire those shares or eligible
10 interests.

11 b. The terms and conditions of the share exchange.

12 c. The manner and basis of exchanging shares of a domestic
13 or foreign corporation or eligible interests in a domestic or
14 foreign eligible entity the shares or eligible interests of
15 which will be acquired under the share exchange for shares or
16 other securities, eligible interests, obligations, rights to
17 acquire shares, other securities, or eligible interests, cash,
18 other property, or any combination of the foregoing.

19 d. Any other provisions required by the organic law
20 governing the acquired entity or its articles of incorporation
21 or organic rules.

22 5. The terms of a plan of share exchange may be made
23 dependent on facts objectively ascertainable outside the plan
24 in accordance with section 490.120, subsection 11.

25 6. A plan of share exchange may be amended only with the
26 consent of each party to the share exchange, except as provided
27 in the plan. A domestic entity may approve an amendment to a
28 plan in any of the following manners:

29 a. In the same manner as the plan was approved, if the plan
30 does not provide for the manner in which it may be amended.

31 b. In the manner provided in the plan, except that
32 shareholders, members, or interest holders that were entitled
33 to vote on or consent to approval of the plan are entitled
34 to vote on or consent to any amendment of the plan that will
35 change any of the following:

1 (1) The amount or kind of shares or other securities,
2 eligible interests, obligations, rights to acquire shares,
3 other securities or eligible interests, cash, or other property
4 to be received under the plan by the shareholders, members, or
5 interest holders of the acquired entity.

6 (2) Any of the other terms or conditions of the plan if the
7 change would adversely affect such shareholders, members, or
8 interest holders in any material respect.

9 Sec. 150. Section 490.1104, Code 2021, is amended by
10 striking the section and inserting in lieu thereof the
11 following:

12 **490.1104 Action on a plan of merger or share exchange.**

13 In the case of a domestic corporation that is a party to a
14 merger or the acquired entity in a share exchange, the plan
15 of merger or share exchange shall be adopted in the following
16 manner:

17 1. The plan of merger or share exchange shall first be
18 adopted by the board of directors.

19 2. *a.* Except as provided in subsections 8, 10, and 12, and
20 in section 490.1105, the plan of merger or share exchange shall
21 then be approved by the shareholders. In submitting the plan
22 of merger or share exchange to the shareholders for approval,
23 the board of directors shall recommend that the shareholders
24 approve the plan, or, in the case of an offer referred to in
25 subsection 10, paragraph "b", that the shareholders tender
26 their shares to the offeror in response to the offer, unless
27 any of the following apply:

28 (1) The board of directors makes a determination that
29 because of conflicts of interest or other special circumstances
30 it should not make such a recommendation.

31 (2) Section 490.826 applies.

32 *b.* If either paragraph "a", subparagraph (1) or (2),
33 applies, the board shall inform the shareholders of the basis
34 for its so proceeding.

35 3. The board of directors may set conditions for the

1 approval of the plan of merger or share exchange by the
2 shareholders or the effectiveness of the plan of merger or
3 share exchange.

4 4. If the plan of merger or share exchange is required
5 to be approved by the shareholders, and if the approval is
6 to be given at a meeting, the corporation shall notify each
7 shareholder, regardless of whether entitled to vote, of the
8 meeting of shareholders at which the plan is to be submitted
9 for approval. The notice must state that the purpose, or one
10 of the purposes, of the meeting is to consider the plan and
11 must contain or be accompanied by a copy or summary of the
12 plan. If the corporation is to be merged into an existing
13 foreign or domestic corporation or eligible entity, the notice
14 must also include or be accompanied by a copy or summary of the
15 articles of incorporation and bylaws or the organic rules of
16 that corporation or eligible entity. If the corporation is to
17 be merged with a domestic or foreign corporation or eligible
18 entity and a new domestic or foreign corporation or eligible
19 entity is to be created pursuant to the merger, the notice
20 must include or be accompanied by a copy or a summary of the
21 articles of incorporation and bylaws or the organic rules of
22 the new corporation or eligible entity.

23 5. Unless the articles of incorporation, bylaws, or the
24 board of directors acting pursuant to subsection 3, require
25 a greater vote or a greater quorum, approval of the plan
26 of merger or share exchange requires the approval of the
27 shareholders at a meeting at which a quorum exists consisting
28 of a majority of the votes entitled to be cast on the plan,
29 and, if any class or series of shares is entitled to vote as
30 a separate group on the plan of merger or share exchange, the
31 approval of each such separate voting group at a meeting at
32 which a quorum of the voting group is present consisting of
33 a majority of the votes entitled to be cast on the merger or
34 share exchange by that voting group.

35 6. Subject to subsection 7, separate voting by voting groups

1 is required for each of the following:

2 *a.* On a plan of merger, by each class or series of shares
3 that are any of the following:

4 (1) To be converted under the plan of merger into shares,
5 other securities, eligible interests, obligations, rights to
6 acquire shares, other securities or eligible interests, cash,
7 other property, or any combination of the foregoing.

8 (2) Entitled to vote as a separate group on a provision in
9 the plan that constitutes a proposed amendment to the articles
10 of incorporation of a surviving corporation that requires
11 action by separate voting groups under section 490.1004.

12 *b.* On a plan of share exchange, by each class or series
13 of shares included in the exchange, with each class or series
14 constituting a separate voting group.

15 *c.* On a plan of merger or share exchange, if the voting
16 group is entitled under the articles of incorporation to
17 vote as a voting group to approve a plan of merger or share
18 exchange, respectively.

19 7. The articles of incorporation may expressly limit or
20 eliminate the separate voting rights provided in subsection 6,
21 paragraph "a", subparagraph (1), and subsection 6, paragraph
22 "b", as to any class or series of shares, except when all of the
23 following apply:

24 *a.* The plan of merger or share exchange includes what is
25 or would be in effect an amendment subject to subsection 6,
26 paragraph "a", subparagraph (2).

27 *b.* The plan of merger or share exchange will not effect a
28 substantive business combination.

29 8. Unless the articles of incorporation otherwise provide,
30 approval by the corporation's shareholders of a plan of
31 merger is not required if all of the following conditions are
32 satisfied:

33 *a.* The corporation will survive the merger.

34 *b.* Except for amendments permitted by section 490.1005, its
35 articles of incorporation will not be changed.

1 *c.* Each shareholder of the corporation whose shares were
2 outstanding immediately before the effective date of the merger
3 or share exchange will hold the same number of shares, with
4 identical preferences, rights, and limitations, immediately
5 after the effective date of the merger.

6 *d.* The issuance in the merger of shares or other securities
7 convertible into or rights exercisable for shares does not
8 require a vote under section 490.621, subsection 6.

9 9. *a.* If, as a result of a merger or share exchange, one
10 or more shareholders of a domestic corporation would become
11 subject to new interest holder liability, approval of the plan
12 of merger or share exchange requires the signing in connection
13 with the transaction, by each such shareholder, of a separate
14 written consent to become subject to such new interest holder
15 liability.

16 *b.* Paragraph "a" does not apply in the case of a shareholder
17 that already has interest holder liability with respect to such
18 domestic corporation, if all of the following apply:

19 (1) The new interest holder liability is with respect to
20 a domestic or foreign corporation, which may be a different
21 or the same domestic corporation in which the person is a
22 shareholder.

23 (2) The terms and conditions of the new interest holder
24 liability are substantially identical to those of the existing
25 interest holder liability, other than for changes that
26 eliminate or reduce such interest holder liability.

27 10. Unless the articles of incorporation otherwise provide,
28 approval by the shareholders of a plan of merger or share
29 exchange is not required if all of the following apply:

30 *a.* The plan of merger or share exchange expressly permits or
31 requires the merger or share exchange to be effected under this
32 subsection and provides that, if the merger or share exchange
33 is to be effected under this subsection, the merger or share
34 exchange will be effected as soon as practicable following the
35 satisfaction of the requirement set forth in paragraph "f".

1 *b.* Another party to the merger, the acquiring entity in
2 the share exchange, or a parent of another party to the merger
3 or the acquiring entity in the share exchange, makes an offer
4 to purchase, on the terms provided in the plan of merger or
5 share exchange, any and all of the outstanding shares of the
6 corporation that, absent this subsection, would be entitled to
7 vote on the plan of merger or share exchange, except that the
8 offer may exclude shares of the corporation that are owned at
9 the commencement of the offer by the corporation, the offeror,
10 or any parent of the offeror, or by any wholly owned subsidiary
11 of any of the foregoing.

12 *c.* The offer discloses that the plan of merger or share
13 exchange provides that the merger or share exchange will be
14 effected as soon as practicable following the satisfaction of
15 the requirement set forth in paragraph "*f*" and that the shares
16 of the corporation that are not tendered in response to the
17 offer will be treated as set forth in paragraph "*h*".

18 *d.* The offer remains open for at least ten days.

19 *e.* The offeror purchases all shares properly tendered in
20 response to the offer and not properly withdrawn.

21 *f.* The shares listed below are collectively entitled to cast
22 at least the minimum number of votes on the merger or share
23 exchange that, absent this subsection, would be required by
24 this subchapter and by the articles of incorporation for the
25 approval of the merger or share exchange by the shareholders
26 and by any other voting group entitled to vote on the merger
27 or share exchange at a meeting at which all shares entitled to
28 vote on the approval were present and voted:

29 (1) Shares purchased by the offeror in accordance with the
30 offer.

31 (2) Shares otherwise owned by the offeror or by any parent
32 of the offeror or any wholly owned subsidiary of any of the
33 foregoing.

34 (3) Shares subject to an agreement that they are to be
35 transferred, contributed, or delivered to the offeror, any

1 parent of the offeror, or any wholly owned subsidiary of any of
2 the foregoing in exchange for shares or eligible interests in
3 such offeror, parent, or subsidiary.

4 *g.* The offeror or a wholly owned subsidiary of the offeror
5 merges with or into, or effects a share exchange in which it
6 acquires shares of, the corporation.

7 *h.* Each outstanding share of each class or series of shares
8 of the corporation that the offeror is offering to purchase
9 in accordance with the offer, and that is not purchased in
10 accordance with the offer, is to be converted in the merger
11 into, or into the right to receive, or is to be exchanged
12 in the share exchange for, or for the right to receive,
13 the same amount and kind of securities, eligible interests,
14 obligations, rights, cash, or other property to be paid or
15 exchanged in accordance with the offer for each share of
16 that class or series of shares that is tendered in response
17 to the offer, except that shares of the corporation that are
18 owned by the corporation or that are described in paragraph
19 "f", subparagraph (2) or (3), need not be converted into or
20 exchanged for the consideration described in this paragraph
21 "h".

22 11. As used in subsection 10:

23 *a.* "Offer" means the offer referred to in subsection 10,
24 paragraph "b".

25 *b.* "Offeror" means the person making the offer.

26 *c.* "Parent" of an entity means a person that owns, directly
27 or indirectly, through one or more wholly owned subsidiaries,
28 all of the outstanding shares of or eligible interests in that
29 entity.

30 *d.* Shares tendered in response to the offer shall be deemed
31 to have been "purchased" in accordance with the offer at the
32 earliest time as of which the following applies:

33 (1) The offeror has irrevocably accepted those shares for
34 payment.

35 (2) Either of the following applies:

1 (a) In the case of shares represented by certificates, the
2 offeror, or the offeror's designated depository or other agent,
3 has physically received the certificates representing those
4 shares.

5 (b) In the case of shares without certificates, those shares
6 have been transferred into the account of the offeror or its
7 designated depository or other agent, or an agent's message
8 relating to those shares has been received by the offeror or
9 its designated depository or other agent.

10 e. "*Wholly owned subsidiary*" of a person means an entity of
11 or in which that person owns, directly or indirectly, through
12 one or more wholly owned subsidiaries, all of the outstanding
13 shares or eligible interests.

14 12. Unless the articles of incorporation otherwise provide,
15 all of the following applies:

16 a. Approval of a plan of share exchange by the shareholders
17 of a domestic corporation is not required if the corporation is
18 the acquiring entity in the share exchange.

19 b. Shares not to be exchanged under the plan of share
20 exchange are not entitled to vote on the plan.

21 Sec. 151. Section 490.1105, Code 2021, is amended by
22 striking the section and inserting in lieu thereof the
23 following:

24 **490.1105 Merger between parent and subsidiary or between**
25 **subsidiaries.**

26 1. A domestic or foreign parent entity that owns shares of
27 a domestic corporation which carry at least ninety percent of
28 the voting power of each class and series of the outstanding
29 shares of the subsidiary that has voting power may do any of
30 the following:

31 a. Merge the subsidiary into itself, if it is a domestic
32 or foreign corporation or eligible entity, or into another
33 domestic or foreign corporation or eligible entity in which the
34 parent entity owns at least ninety percent of the voting power
35 of each class and series of the outstanding shares or eligible

1 interests which have voting power.

2 *b.* Merge itself, if it is a domestic or foreign corporation
3 or eligible entity, into such subsidiary, in either case
4 without the approval of the board of directors or shareholders
5 of the subsidiary, unless the articles of incorporation
6 or organic rules of the parent entity or the articles of
7 incorporation of the subsidiary corporation otherwise provide.

8 *c.* Section 490.1104, subsection 9, applies to a merger under
9 this section. The articles of merger relating to a merger
10 under this section do not need to be signed by the subsidiary.

11 2. A parent entity shall, within ten days after the
12 effective date of a merger approved under subsection 1, notify
13 each of the subsidiary's shareholders that the merger has
14 become effective.

15 3. Except as provided in subsections 1 and 2, a merger
16 between a parent entity and a domestic subsidiary corporation
17 shall be governed by the provisions of this subchapter
18 applicable to mergers generally.

19 Sec. 152. Section 490.1106, Code 2021, is amended by
20 striking the section and inserting in lieu thereof the
21 following:

22 **490.1106 Articles of merger or share exchange.**

23 1. After a plan of merger has been adopted and approved as
24 required by this chapter, or if the merger is being effected
25 under section 490.1102, subsection 1, paragraph "b", the merger
26 has been approved as required by the organic law governing the
27 parties to the merger, then articles of merger shall be signed
28 by each party to the merger except as provided in section
29 490.1105, subsection 1. The articles must set forth all of the
30 following:

31 *a.* The name, jurisdiction of formation, and type of entity
32 of each party to the merger.

33 *b.* The name, jurisdiction of formation, and type of entity
34 of the survivor.

35 *c.* If the survivor of the merger is a domestic corporation

1 and its articles of incorporation are amended, or if a new
2 domestic corporation is created as a result of the merger, any
3 of the following:

4 (1) The amendments to the survivor's articles of
5 incorporation.

6 (2) The articles of incorporation of the new corporation.

7 *d.* If the survivor of the merger is a domestic eligible
8 entity and its public organic record is amended, or if a new
9 domestic eligible entity is created as a result of the merger,
10 any of the following:

11 (1) The amendments to the public organic record of the
12 survivor.

13 (2) The public organic record, if any, of the new eligible
14 entity.

15 *e.* If the plan of merger required approval by the
16 shareholders of a domestic corporation that is a party to the
17 merger, a statement that the plan was duly approved by the
18 shareholders and, if voting by any separate voting group was
19 required, by each such separate voting group, in the manner
20 required by this chapter and the articles of incorporation.

21 *f.* If the plan of merger or share exchange did not require
22 approval by the shareholders of a domestic corporation that is
23 a party to the merger, a statement to that effect.

24 *g.* As to each foreign corporation that is a party to the
25 merger, a statement that the participation of the foreign
26 corporation was duly authorized as required by its organic law.

27 *h.* As to each domestic or foreign eligible entity that is a
28 party to the merger, a statement that the merger was approved
29 in accordance with its organic law or section 490.1102,
30 subsection 3.

31 *i.* If the survivor is created by the merger and is a
32 domestic limited liability partnership, the filing required to
33 become a limited liability partnership, as an attachment.

34 2. After a plan of share exchange in which the acquired
35 entity is a domestic corporation or eligible entity has been

1 adopted and approved as required by this chapter, articles
2 of share exchange shall be signed by the acquired entity and
3 the acquiring entity. The articles shall set forth all of the
4 following:

5 *a.* The name of the acquired entity.

6 *b.* The name, jurisdiction of formation, and type of entity
7 of the domestic or foreign corporation or eligible entity that
8 is the acquiring entity.

9 *c.* A statement that the plan of share exchange was duly
10 approved by the acquired entity by all of the following:

11 (1) The required vote or consent of each class or series of
12 shares or eligible interests included in the exchange.

13 (2) The required vote or consent of each other class or
14 series of shares or eligible interests entitled to vote on
15 approval of the exchange by the articles of incorporation or
16 organic rules of the acquired entity or section 490.1103,
17 subsection 3.

18 3. In addition to the requirements of subsection 1 or 2,
19 articles of merger or share exchange may contain any other
20 provision not prohibited by law.

21 4. The articles of merger or share exchange shall be
22 delivered to the secretary of state for filing and, subject to
23 subsection 5, the merger or share exchange shall take effect
24 on the effective date determined in accordance with section
25 490.123.

26 5. With respect to a merger in which one or more foreign
27 entities is a party or a foreign entity created by the merger
28 is the survivor, the merger itself shall become effective at
29 the later of the following:

30 *a.* When all documents required to be filed in foreign
31 jurisdictions to effect the merger have become effective.

32 *b.* When the articles of merger take effect.

33 6. Articles of merger filed under this section may be
34 combined with any filing required under the organic law
35 governing any domestic eligible entity involved in the

1 transaction if the combined filing satisfies the requirements
2 of both this section and the other organic law.

3 Sec. 153. Section 490.1107, Code 2021, is amended by
4 striking the section and inserting in lieu thereof the
5 following:

6 **490.1107 Effect of merger or share exchange.**

7 1. When a merger becomes effective, all of the following
8 apply:

9 a. The domestic or foreign corporation or eligible entity
10 that is designated in the plan of merger as the survivor
11 continues or comes into existence, as the case may be.

12 b. The separate existence of every domestic or foreign
13 corporation or eligible entity that is a party to the merger,
14 other than the survivor, ceases.

15 c. All property owned by, and every contract right possessed
16 by, each domestic or foreign corporation or eligible entity
17 that is a party to the merger, other than the survivor, are the
18 property and contract rights of the survivor without transfer,
19 reversion, or impairment.

20 d. All debts, obligations, and other liabilities of each
21 domestic or foreign corporation or eligible entity that is
22 a party to the merger, other than the survivor, are debts,
23 obligations, or liabilities of the survivor.

24 e. The name of the survivor may, but need not be,
25 substituted in any pending proceeding for the name of any party
26 to the merger whose separate existence ceased in the merger.

27 f. If the survivor is a domestic entity, the articles of
28 incorporation and bylaws or the organic rules of the survivor
29 are amended to the extent provided in the plan of merger.

30 g. The articles of incorporation and bylaws or the organic
31 rules of a survivor that is a domestic entity and is created by
32 the merger become effective.

33 h. The shares of each domestic or foreign corporation
34 that is a party to the merger, and the eligible interests in
35 an eligible entity that is a party to a merger, that are to

1 be converted in accordance with the terms of the merger into
2 shares, or other securities, eligible interests, obligations,
3 rights to acquire shares, other securities, or eligible
4 interests, cash, other property, or any combination of the
5 foregoing, are converted, and the former holders of such shares
6 or eligible interests are entitled only to the rights provided
7 to them by those terms or to any rights they may have under
8 subchapter XIII or the organic law governing the eligible
9 entity or foreign corporation.

10 *i.* Except as provided by law or the terms of the merger,
11 all the rights, privileges, franchises, and immunities of each
12 entity that is a party to the merger, other than the survivor,
13 are the rights, privileges, franchises, and immunities of the
14 survivor.

15 *j.* If the survivor exists before the merger, all of the
16 following apply:

17 (1) All the property and contract rights of the survivor
18 remain its property and contract rights without transfer,
19 reversion, or impairment.

20 (2) The survivor remains subject to all its debts,
21 obligations, and other liabilities.

22 (3) Except as provided by law or the plan of merger, the
23 survivor continues to hold all of its rights, privileges,
24 franchises, and immunities.

25 2. When a share exchange becomes effective, the shares
26 or eligible interests in the acquired entity that are to be
27 exchanged for shares or other securities, eligible interests,
28 obligations, rights to acquire shares, other securities or
29 eligible interests, cash, other property, or any combination of
30 the foregoing, are entitled only to the rights provided to them
31 in the plan of share exchange or to any rights they may have
32 under subchapter XIII or under the organic law governing the
33 acquired entity.

34 3. Except as otherwise provided in the articles of
35 incorporation of a domestic corporation or the organic law

1 governing or organic rules of a foreign corporation or a
2 domestic or foreign eligible entity, the effect of a merger or
3 share exchange on interest holder liability is as follows:

4 *a.* A person who becomes subject to new interest holder
5 liability in respect of an entity as a result of a merger or
6 share exchange shall have that new interest holder liability
7 only in respect of interest holder liabilities that arise after
8 the merger or share exchange becomes effective.

9 *b.* If a person had interest holder liability with respect to
10 a party to the merger or the acquired entity before the merger
11 or share exchange becomes effective with respect to shares or
12 eligible interests of such party or acquired entity which were
13 exchanged in the merger or share exchange, were canceled in
14 the merger, or the terms and conditions of which relating to
15 interest holder liability were amended pursuant to the merger,
16 then all of the following apply:

17 (1) The merger or share exchange does not discharge that
18 prior interest holder liability with respect to any interest
19 holder liabilities that arose before the merger or share
20 exchange becomes effective.

21 (2) The provisions of the organic law governing any entity
22 for which the person had that prior interest holder liability
23 shall continue to apply to the collection or discharge of any
24 interest holder liabilities preserved by subparagraph (1), as
25 if the merger or share exchange had not occurred.

26 (3) The person shall have such rights of contribution from
27 other persons as are provided by the organic law governing the
28 entity for which the person had that prior interest holder
29 liability with respect to any interest holder liabilities
30 preserved by subparagraph (1), as if the merger or share
31 exchange had not occurred.

32 (4) The person shall not, by reason of such prior interest
33 holder liability, have interest holder liability with respect
34 to any interest holder liabilities that arise after the merger
35 or share exchange becomes effective.

1 *c.* If a person has interest holder liability both before
2 and after a merger becomes effective with unchanged terms and
3 conditions with respect to the entity that is the survivor by
4 reason of owning the same shares or eligible interests before
5 and after the merger becomes effective, the merger has no
6 effect on such interest holder liability.

7 *d.* A share exchange has no effect on interest holder
8 liability related to shares or eligible interests of the
9 acquired entity that were not exchanged in the share exchange.

10 4. Upon a merger becoming effective, a foreign corporation,
11 or a foreign eligible entity, that is the survivor of the
12 merger is deemed to have done all of the following:

13 *a.* Appointed the secretary of state as its agent for
14 service of process in a proceeding to enforce the rights of
15 shareholders of each domestic corporation that is a party to
16 the merger who exercise appraisal rights.

17 *b.* Agreed that it will promptly pay the amount, if any, to
18 which such shareholders are entitled under subchapter XIII.

19 5. Except as provided in the organic law governing a party
20 to a merger or in its articles of incorporation or organic
21 rules, the merger does not give rise to any rights that an
22 interest holder, governor, or third party would have upon a
23 dissolution, liquidation, or winding up of that party. The
24 merger does not require a party to the merger to wind up its
25 affairs and does not constitute or cause its dissolution or
26 termination.

27 6. Property held for a charitable purpose under the law of
28 this state by a domestic or foreign corporation or eligible
29 entity immediately before a merger becomes effective shall not,
30 as a result of the transaction, be diverted from the objects
31 for which it was donated, granted, devised, or otherwise
32 transferred except and to the extent permitted by or pursuant
33 to the laws of this state addressing cy pres or dealing with
34 nondiversion of charitable assets.

35 7. A bequest, devise, gift, grant, or promise contained

1 in a will or other instrument of donation, subscription, or
2 conveyance which is made to an entity that is a party to a
3 merger that is not the survivor and which takes effect or
4 remains payable after the merger inures to the survivor.

5 8. A trust obligation that would govern property if
6 transferred to a nonsurviving entity applies to property
7 that is transferred to the survivor after a merger becomes
8 effective.

9 Sec. 154. Section 490.1108, Code 2021, is amended by
10 striking the section and inserting in lieu thereof the
11 following:

12 **490.1108 Abandonment of a merger or share exchange.**

13 1. After a plan of merger or share exchange has been
14 adopted and approved as required by this subchapter, and before
15 articles of merger or share exchange have become effective, the
16 plan may be abandoned by a domestic business corporation that
17 is a party to the plan without action by its shareholders in
18 accordance with any procedures set forth in the plan of merger
19 or share exchange or, if no such procedures are set forth in
20 the plan, in the manner determined by the board of directors.

21 2. If a merger or share exchange is abandoned under
22 subsection 1 after articles of merger or share exchange have
23 been delivered to the secretary of state for filing but before
24 the merger or share exchange has become effective, a statement
25 of abandonment signed by all the parties that signed the
26 articles of merger or share exchange shall be delivered to the
27 secretary of state for filing before the articles of merger
28 or share exchange become effective. The statement shall take
29 effect on filing and the merger or share exchange shall be
30 deemed abandoned and shall not become effective. The statement
31 of abandonment must contain all of the following:

32 a. The name of each party to the merger or the names of the
33 acquiring and acquired entities in a share exchange.

34 b. The date on which the articles of merger or share
35 exchange were filed by the secretary of state.

1 c. A statement that the merger or share exchange has been
2 abandoned in accordance with this section.

3 Sec. 155. Section 490.1201, Code 2021, is amended by
4 striking the section and inserting in lieu thereof the
5 following:

6 **490.1201 Disposition of assets not requiring shareholder**
7 **approval.**

8 No approval of the shareholders is required to do any of
9 the following, unless the articles of incorporation otherwise
10 provide:

11 1. Sell, lease, exchange, or otherwise dispose of any of
12 the corporation's assets in the usual and regular course of
13 business.

14 2. Mortgage, pledge, dedicate to the repayment of
15 indebtedness, whether with or without recourse, or otherwise
16 encumber any or all of the corporation's assets, regardless of
17 whether in the usual and regular course of business.

18 3. Transfer any or all of the corporation's assets to one or
19 more domestic or foreign corporations or other entities, all of
20 the shares or interests of which are owned by the corporation.

21 4. Distribute assets pro rata to the holders of one or more
22 classes or series of the corporation's shares.

23 Sec. 156. Section 490.1202, Code 2021, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 **490.1202 Shareholder approval of certain dispositions.**

27 1. A sale, lease, exchange, or other disposition of assets,
28 other than a disposition described in section 490.1201,
29 requires approval of the corporation's shareholders if the
30 disposition would leave the corporation without a significant
31 continuing business activity. A corporation will conclusively
32 be deemed to have retained a significant continuing business
33 activity if it retains a business activity that represented,
34 for the corporation and its subsidiaries on a consolidated
35 basis, at least twenty-five percent of total assets at the

1 end of the most recently completed fiscal year, and either
2 twenty-five percent of either income from continuing operations
3 before taxes or twenty-five percent of revenues from continuing
4 operations, in each case for the most recently completed fiscal
5 year; but no presumption that the disposition will leave the
6 corporation without a significant continuing business activity
7 shall arise from the fact that the corporation's continuing
8 business activity does not equal or exceed any of these
9 percentages.

10 2. To obtain the approval of the shareholders under
11 subsection 1, all of the following shall apply:

12 a. The board of directors shall first adopt a resolution
13 authorizing the disposition. The disposition shall then be
14 approved by the shareholders. In submitting the disposition
15 to the shareholders for approval, the board of directors shall
16 recommend that the shareholders approve the disposition, unless
17 any of the following apply:

18 (1) The board of directors makes a determination that
19 because of conflicts of interest or other special circumstances
20 it should not make such a recommendation.

21 (2) Section 490.826 applies.

22 b. If paragraph "a", subparagraph (1) or (2), applies, the
23 board shall inform the shareholders of the basis for its so
24 proceeding.

25 3. The board of directors may set conditions for the
26 approval by the shareholders of a disposition or the
27 effectiveness of the disposition.

28 4. If a disposition is required to be approved by the
29 shareholders under subsection 1, and if the approval is to
30 be given at a meeting, the corporation shall notify each
31 shareholder, regardless of whether entitled to vote, of
32 the meeting of shareholders at which the disposition is
33 to be submitted for approval. The notice must state that
34 the purpose, or one of the purposes, of the meeting is to
35 consider the disposition and must contain a description of

1 the disposition, including the terms and conditions of the
2 disposition and the consideration to be received by the
3 corporation.

4 5. Unless the articles of incorporation, bylaws, or the
5 board of directors acting pursuant to subsection 3 require
6 a greater vote or a greater quorum, the approval of a
7 disposition by the shareholders shall require the approval
8 of the shareholders at a meeting at which a quorum exists
9 consisting of a majority of the votes entitled to be cast on
10 the disposition.

11 6. After a disposition has been approved by the shareholders
12 under this subchapter, and at any time before the disposition
13 has been consummated, it may be abandoned by the corporation
14 without action by the shareholders, subject to any contractual
15 rights of other parties to the disposition.

16 7. A disposition of assets in the course of dissolution
17 under subchapter XIV is not governed by this section.

18 8. The assets of a direct or indirect consolidated
19 subsidiary shall be deemed to be the assets of the parent
20 corporation for the purposes of this section.

21 Sec. 157. Section 490.1301, Code 2021, is amended by
22 striking the section and inserting in lieu thereof the
23 following:

24 **490.1301 Subchapter definitions.**

25 As used in this subchapter:

26 1. "*Affiliate*" means a person that directly or indirectly
27 through one or more intermediaries controls, is controlled by,
28 or is under common control with another person or is a senior
29 executive of such person. For purposes of section 490.1302,
30 subsection 2, paragraph "d", a person is deemed to be an
31 affiliate of its senior executives.

32 2. "*Corporation*" means the domestic corporation that is the
33 issuer of the shares held by a shareholder demanding appraisal
34 and, for matters covered in sections 490.1322 through 490.1331,
35 "*corporation*" includes the survivor of a merger.

1 3. "*Fair value*" means the value of the corporation's shares
2 determined according to the following:

3 *a.* Immediately before the effectiveness of the corporate
4 action to which the shareholder objects.

5 *b.* Using customary and current valuation concepts and
6 techniques generally employed for similar businesses in the
7 context of the transaction requiring appraisal.

8 *c.* Without discounting for lack of marketability or minority
9 status except, if appropriate, for amendments to the articles
10 of incorporation pursuant to section 490.1302, subsection 1,
11 paragraph "*d*".

12 4. "*Interest*" means interest from the date the corporate
13 action becomes effective until the date of payment, at the rate
14 of interest on judgments in this state on the effective date
15 of the corporate action.

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

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

1 owned by any member of the group.

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

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

11 (1) Was the beneficial owner of twenty percent or more of
12 the voting power of the corporation, other than as owner of
13 excluded shares.

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

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

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

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

33 (c) In the case of a director of the corporation who will,
34 in the corporate action, become a director or governor of the
35 acquiror or any of its affiliates, rights, and benefits as a

1 director or governor that are provided on the same basis as
2 those afforded by the acquiror generally to other directors or
3 governors of such entity or such affiliate.

4 6. "*Preferred shares*" means a class or series of shares
5 whose holders have preference over any other class or series of
6 shares with respect to distributions.

7 7. "*Senior executive*" means the chief executive officer,
8 chief operating officer, chief financial officer, and any
9 individual in charge of a principal business unit or function.

10 8. "*Shareholder*" means a record shareholder, a beneficial
11 shareholder, and a voting trust beneficial owner.

12 Sec. 158. Section 490.1302, Code 2021, is amended by
13 striking the section and inserting in lieu thereof the
14 following:

15 **490.1302 Right to appraisal.**

16 1. A shareholder is entitled to appraisal rights, and to
17 obtain payment of the fair value of that shareholder's shares,
18 in the event of any of the following corporate actions:

19 a. Consummation of a merger to which the corporation is a
20 party if any of the following apply:

21 (1) Shareholder approval is required for the merger by
22 section 490.1104 or would be required but for the provisions of
23 section 490.1104, subsection 10, except that appraisal rights
24 shall not be available to any shareholder of the corporation
25 with respect to shares of any class or series that remain
26 outstanding after consummation of the merger.

27 (2) The corporation is a subsidiary and the merger is
28 governed by section 490.1105.

29 b. Consummation of a share exchange to which the corporation
30 is a party the shares of which will be acquired, except that
31 appraisal rights shall not be available to any shareholder of
32 the corporation with respect to any class or series of shares
33 of the corporation that is not acquired in the share exchange.

34 c. Consummation of a disposition of assets pursuant to
35 section 490.1202 if the shareholder is entitled to vote on

1 the disposition, except that appraisal rights shall not be
2 available to any shareholder of the corporation with respect to
3 shares of any class or series if all of the following apply:

4 (1) Under the terms of the corporate action approved by the
5 shareholders there is to be distributed to shareholders in cash
6 the corporation's net assets, in excess of a reasonable amount
7 reserved to meet claims of the type described in sections
8 490.1406 and 490.1407, if the distribution is made subject to
9 all of the following:

10 (a) Within one year after the shareholders' approval of the
11 action.

12 (b) In accordance with the shareholders' respective
13 interests determined at the time of distribution.

14 (2) The disposition of assets is not an interested
15 transaction.

16 *d.* An amendment of the articles of incorporation with
17 respect to a class or series of shares that reduces the number
18 of shares of a class or series owned by the shareholder to a
19 fraction of a share if the corporation has the obligation or
20 right to repurchase the fractional share so created.

21 *e.* Any other merger, share exchange, disposition of assets,
22 or amendment to the articles of incorporation, in each case to
23 the extent provided by the articles of incorporation, bylaws,
24 or a resolution of the board of directors.

25 *f.* Consummation of a domestication pursuant to section
26 490.920 if the shareholder does not receive shares in the
27 foreign corporation resulting from the domestication that have
28 terms as favorable to the shareholder in all material respects,
29 and represent at least the same percentage interest of the
30 total voting rights of the outstanding shares of the foreign
31 corporation, as the shares held by the shareholder before the
32 domestication.

33 *g.* Consummation of a conversion of the corporation to a
34 nonprofit corporation pursuant to section 490.930.

35 *h.* Consummation of a conversion of the corporation to an

1 unincorporated entity pursuant to section 490.930.

2 2. Notwithstanding subsection 1, the availability of
3 appraisal rights under subsection 1, paragraphs "a", "b", "c",
4 "d", "f", and "h", shall be limited in accordance with the
5 following provisions:

6 a. Appraisal rights shall not be available for the holders
7 of shares of any class or series of shares which is any of the
8 following:

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

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

18 (3) Issued by an open-end management investment company
19 registered with the United States securities and exchange
20 commission under the federal Investment Company Act of 1940, 15
21 U.S.C. §80a-1 et seq., and which may be redeemed at the option
22 of the holder at net asset value.

23 b. The applicability of paragraph "a" shall be determined
24 according to the following:

25 (1) The record date fixed to determine the shareholders
26 entitled to receive notice of the meeting of shareholders to
27 act upon the corporate action requiring appraisal rights or
28 in the case of an offer made pursuant to section 490.1104,
29 subsection 10, the date of such offer.

30 (2) If there is no meeting of shareholders and no offer made
31 pursuant to section 490.1104, subsection 10, the day before the
32 consummation of the corporate action or effective date of the
33 amendment of the articles of incorporation, as applicable.

34 c. Paragraph "a" shall not be applicable and appraisal
35 rights shall be available pursuant to subsection 1 under the

1 following circumstances:

2 (1) For the holders of any class or series of shares who
3 are required by the terms of the corporate action requiring
4 appraisal rights to accept for such shares anything other than
5 cash or shares of any class or any series of shares of any
6 corporation, or any other proprietary interest of any other
7 entity, that satisfies the standards set forth in paragraph "a",
8 at the time the corporate action becomes effective.

9 (2) For the holders of any class or series of shares, in the
10 case of the consummation of a disposition of assets pursuant
11 to section 490.1202, unless the cash, shares, or proprietary
12 interests received in the disposition are, under the terms
13 of the corporate action approved by the shareholders, to be
14 distributed to the shareholders, as part of a distribution to
15 shareholders of the net assets of the corporation in excess of
16 a reasonable amount to meet claims of the type described in
17 sections 490.1406 and 490.1407, if the distribution is made
18 subject to all of the following:

19 (a) Within one year after the shareholders' approval of the
20 action.

21 (b) In accordance with the shareholders' respective
22 interests determined at the time of the distribution.

23 d. Paragraph "a" shall not be applicable and appraisal
24 rights shall be available pursuant to subsection 1 for the
25 holders of any class or series of shares where the corporate
26 action is an interested transaction.

27 3. Notwithstanding any other provision of this section, the
28 articles of incorporation as originally filed or any amendment
29 to the articles of incorporation may limit or eliminate
30 appraisal rights for any class or series of preferred shares,
31 except that the following shall apply:

32 a. Except as provided in paragraph "b", no such limitation
33 or elimination shall be effective if the class or series does
34 not have the right to vote separately as a voting group, alone
35 or as part of a group, on the action or if the action is a

1 conversion under section 490.930, or a merger having a similar
2 effect as a conversion in which the converted entity is an
3 eligible entity.

4 *b.* Any such limitation or elimination contained in an
5 amendment to the articles of incorporation that limits or
6 eliminates appraisal rights for any of such shares that are
7 outstanding immediately before the effective date of such
8 amendment or that the corporation is or may be required to
9 issue or sell thereafter pursuant to any conversion, exchange,
10 or other right existing immediately before the effective date
11 of such amendment, shall not apply to any corporate action that
12 becomes effective within one year after the effective date of
13 such amendment if such action would otherwise afford appraisal
14 rights.

15 Sec. 159. Section 490.1303, Code 2021, is amended by
16 striking the section and inserting in lieu thereof the
17 following:

18 **490.1303 Assertion of rights by nominees and beneficial**
19 **shareholders.**

20 1. A record shareholder may assert appraisal rights
21 as to fewer than all the shares registered in the record
22 shareholder's name but owned by a beneficial shareholder or a
23 voting trust beneficial owner only if the record shareholder
24 objects with respect to all shares of a class or series owned
25 by the beneficial shareholder or the voting trust beneficial
26 owner and notifies the corporation in writing of the name
27 and address of each beneficial shareholder or voting trust
28 beneficial owner on whose behalf appraisal rights are being
29 asserted. The rights of a record shareholder who asserts
30 appraisal rights for only part of the shares held of record in
31 the record shareholder's name under this subsection shall be
32 determined as if the shares as to which the record shareholder
33 objects and the record shareholder's other shares were
34 registered in the names of different record shareholders.

35 2. A beneficial shareholder and a voting trust beneficial

1 owner may assert appraisal rights as to shares of any class
2 or series held on behalf of the shareholder only if such
3 shareholder does all of the following:

4 *a.* Submits to the corporation the record shareholder's
5 written consent to the assertion of such rights no later
6 than the date referred to in section 490.1322, subsection 2,
7 paragraph "b", subparagraph (2).

8 *b.* Does so with respect to all shares of the class or series
9 that are beneficially owned by the beneficial shareholder or
10 the voting trust beneficial owner.

11 Sec. 160. Section 490.1320, Code 2021, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 **490.1320 Notice of appraisal rights.**

15 1. Where any corporate action specified in section
16 490.1302, subsection 1, is to be submitted to a vote at a
17 shareholders' meeting, the meeting notice, or where no approval
18 of such action is required pursuant to section 490.1104,
19 subsection 10, the offer made pursuant to that section, must
20 state that the corporation has concluded that appraisal rights
21 are, are not, or may be available under this subchapter. If
22 the corporation concludes that appraisal rights are or may be
23 available, a copy of this subchapter must accompany the meeting
24 notice or offer sent to those record shareholders entitled to
25 exercise appraisal rights.

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

32 3. Where any corporate action specified in section
33 490.1302, subsection 1, is to be approved by written consent
34 of the shareholders pursuant to section 490.704, all of the
35 following apply:

1 *a.* Written notice that appraisal rights are, are not, or may
2 be available shall be sent to each record shareholder from whom
3 a consent is solicited at the time consent of such shareholder
4 is first solicited and, if the corporation has concluded that
5 appraisal rights are or may be available, the notice must be
6 accompanied by a copy of this subchapter.

7 *b.* Written notice that appraisal rights are, are not, or
8 may be available must be delivered together with the notice to
9 nonconsenting and nonvoting shareholders required by section
10 490.704, subsections 5 and 6, may include the materials
11 described in section 490.1322, and, if the corporation has
12 concluded that appraisal rights are or may be available, must
13 be accompanied by a copy of this subchapter.

14 4. Where corporate action described in section 490.1302,
15 subsection 1, is proposed, or a merger pursuant to section
16 490.1105 is effected, the notice referred to in subsection 1
17 or 3, if the corporation concludes that appraisal rights are
18 or may be available, and in subsection 2 must be accompanied
19 by all of the following:

20 *a.* Financial statements of the corporation that issued
21 the shares that may be subject to appraisal, consisting of a
22 balance sheet as of the end of a fiscal year ending not more
23 than sixteen months before the date of the notice, an income
24 statement for that year, and a cash flow statement for that
25 year; provided that, if such financial statements are not
26 reasonably available, the corporation shall provide reasonably
27 equivalent financial information.

28 *b.* The latest interim financial statements of such
29 corporation, if any.

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

33 Sec. 161. Section 490.1321, Code 2021, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 **490.1321 Notice of intent to demand payment and consequences**
2 **of voting or consenting.**

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

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

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

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

19 3. If a corporate action specified in section 490.1302,
20 subsection 1, does not require shareholder approval pursuant to
21 section 490.1104, subsection 10, a shareholder who wishes to
22 assert appraisal rights with respect to any class or series of
23 shares must do all of the following:

24 *a.* Deliver to the corporation before the shares are
25 purchased pursuant to the offer written notice of the
26 shareholder's intent to demand payment if the proposed action
27 is effected.

28 *b.* Not tender, or cause or permit to be tendered, any shares
29 of such class or series in response to such offer.

30 4. A shareholder who fails to satisfy the requirements of
31 subsection 1, 2, or 3 is not entitled to payment under this
32 subchapter.

33 Sec. 162. Section 490.1322, Code 2021, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 **490.1322 Appraisal notice and form.**

2 1. If a corporate action requiring appraisal rights
3 under section 490.1302, subsection 1, becomes effective, the
4 corporation shall deliver a written appraisal notice and form
5 required by subsection 2, to all shareholders who satisfy the
6 requirements of section 490.1321, subsection 1, 2, or 3. In
7 the case of a merger under section 490.1105, the parent shall
8 deliver an appraisal notice and form to all record shareholders
9 who may be entitled to assert appraisal rights.

10 2. The appraisal notice shall be delivered no earlier than
11 the date the corporate action specified in section 490.1302,
12 subsection 1, became effective, and no later than ten days
13 after such date, and must do all of the following:

14 *a.* Supply a form that does all of the following:

15 (1) Specifies the first date of any announcement to
16 shareholders made before the date the corporate action became
17 effective of the principal terms of the proposed corporate
18 action.

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

23 (3) Requires the shareholder asserting appraisal rights to
24 certify that such shareholder did not vote for or consent to
25 the transaction as to the class or series of shares for which
26 appraisal is sought.

27 *b.* State all of the following:

28 (1) Where the form shall be sent and where certificates for
29 certificated shares shall be deposited and the date by which
30 those certificates must be deposited, which date shall not be
31 earlier than the date by which the corporation must receive the
32 required form under subparagraph (2).

33 (2) A date by which the corporation shall receive the
34 form, which date shall not be fewer than forty nor more than
35 sixty days after the date the appraisal notice is sent under

1 subsection 1, and state that the shareholder shall have waived
2 the right to demand appraisal with respect to the shares unless
3 the form is received by the corporation by such specified date.

4 (3) The corporation's estimate of the fair value of the
5 shares.

6 (4) That, if requested in writing, the corporation will
7 provide, to the shareholder so requesting, within ten days
8 after the date specified in subparagraph (2) the number of
9 shareholders who return the forms by the specified date and the
10 total number of shares owned by them.

11 (5) The date by which the notice to withdraw under section
12 490.1323 shall be received, which date shall be within twenty
13 days after the date specified in subparagraph (2).

14 c. Be accompanied by a copy of this subchapter.

15 Sec. 163. Section 490.1323, Code 2021, is amended by
16 striking the section and inserting in lieu thereof the
17 following:

18 **490.1323 Perfection of rights — right to withdraw.**

19 1. A shareholder who receives notice pursuant to section
20 490.1322 and who wishes to exercise appraisal rights shall
21 sign and return the form sent by the corporation and, in
22 the case of certificated shares, deposit the shareholder's
23 certificates in accordance with the terms of the notice by the
24 date referred to in the notice pursuant to section 490.1322,
25 subsection 2, paragraph "b", subparagraph (2). In addition,
26 if applicable, the shareholder shall certify on the form
27 whether the beneficial owner of such shares acquired beneficial
28 ownership of the shares before the date required to be set
29 forth in the notice pursuant to section 490.1322, subsection
30 2, paragraph "a", subparagraph (1). If a shareholder fails to
31 make this certification, the corporation may elect to treat the
32 shareholder's shares as after-acquired shares under section
33 490.1325. Once a shareholder deposits that shareholder's
34 certificates or, in the case of uncertificated shares, returns
35 the signed forms, that shareholder loses all rights as a

1 shareholder, unless the shareholder withdraws pursuant to
2 subsection 2.

3 2. A shareholder who has complied with subsection 1 may
4 nevertheless decline to exercise appraisal rights and withdraw
5 from the appraisal process by so notifying the corporation in
6 writing by the date set forth in the appraisal notice pursuant
7 to section 490.1322, subsection 2, paragraph "b", subparagraph
8 (5). A shareholder who fails to so withdraw from the appraisal
9 process shall not thereafter withdraw without the corporation's
10 written consent.

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

16 Sec. 164. Section 490.1324, Code 2021, is amended by
17 striking the section and inserting in lieu thereof the
18 following:

19 **490.1324 Payment.**

20 1. Except as provided in section 490.1325, within thirty
21 days after the form required by section 490.1322, subsection 2,
22 paragraph "b", subparagraph (2), is due, the corporation shall
23 pay in cash to those shareholders who complied with section
24 490.1323, subsection 1, the amount the corporation estimates to
25 be the fair value of their shares, plus interest.

26 2. The payment to each shareholder pursuant to subsection 1
27 must be accompanied by all of the following:

28 a. (1) Financial statements of the corporation that issued
29 the shares to be appraised, consisting of a balance sheet as
30 of the end of a fiscal year ending not more than sixteen months
31 before the date of payment, an income statement for that year,
32 and a cash flow statement for that year; provided that, if
33 such annual financial statements are not reasonably available,
34 the corporation shall provide reasonably equivalent financial
35 information.

1 (2) The latest interim financial statements of such
2 corporation, if any.

3 b. A statement of the corporation's estimate of the fair
4 value of the shares, which estimate shall equal or exceed the
5 corporation's estimate given pursuant to section 490.1322,
6 subsection 2, paragraph "b", subparagraph (3).

7 c. A statement that shareholders described in subsection
8 1 have the right to demand further payment under section
9 490.1326 and that if any such shareholder does not do so within
10 the time period specified in section 490.1326, subsection 2,
11 such shareholder shall be deemed to have accepted the payment
12 under subsection 1 in full satisfaction of the corporation's
13 obligations under this subchapter.

14 Sec. 165. Section 490.1325, Code 2021, is amended by
15 striking the section and inserting in lieu thereof the
16 following:

17 **490.1325 After-acquired shares.**

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

24 2. If the corporation elected to withhold payment under
25 subsection 1, within thirty days after the form required by
26 section 490.1322, subsection 2, paragraph "b", subparagraph
27 (2), is due, the corporation shall notify all shareholders who
28 are described in subsection 1 regarding all of the following:

29 a. Of the information required by section 490.1324,
30 subsection 2, paragraph "a".

31 b. Of the corporation's estimate of fair value pursuant to
32 section 490.1324, subsection 2, paragraph "b".

33 c. That they may accept the corporation's estimate of fair
34 value, plus interest, in full satisfaction of their demands or
35 demand appraisal under section 490.1326.

1 *d.* That those shareholders who wish to accept such offer
2 shall so notify the corporation of their acceptance of the
3 corporation's offer within thirty days after receiving the
4 offer.

5 *e.* That those shareholders who do not satisfy the
6 requirements for demanding appraisal under section 490.1326
7 shall be deemed to have accepted the corporation's offer.

8 3. Within ten days after receiving the shareholder's
9 acceptance pursuant to subsection 2, paragraph "d", the
10 corporation shall pay in cash the amount it offered under
11 subsection 2, paragraph "b", plus interest to each shareholder
12 who agreed to accept the corporation's offer in full
13 satisfaction of the shareholder's demand.

14 4. Within forty days after delivering the notice described
15 in subsection 2, the corporation shall pay in cash the amount
16 it offered to pay under subsection 2, paragraph "b", plus
17 interest to each shareholder described in subsection 2,
18 paragraph "e".

19 Sec. 166. Section 490.1326, Code 2021, is amended by
20 striking the section and inserting in lieu thereof the
21 following:

22 **490.1326 Procedure if shareholder dissatisfied with payment**
23 **or offer.**

24 1. A shareholder paid pursuant to section 490.1324 who is
25 dissatisfied with the amount of the payment shall notify the
26 corporation in writing of that shareholder's estimate of the
27 fair value of the shares and demand payment of that estimate,
28 less any payment under section 490.1324 plus interest. A
29 shareholder offered payment under section 490.1325 who is
30 dissatisfied with that offer shall reject the offer and demand
31 payment of the shareholder's stated estimate of the fair value
32 of the shares plus interest.

33 2. A shareholder who fails to notify the corporation
34 in writing of that shareholder's demand to be paid the
35 shareholder's stated estimate of the fair value plus interest

1 under subsection 1 within thirty days after receiving the
2 corporation's payment or offer of payment under section
3 490.1324 or 490.1325, respectively, waives the right to demand
4 payment under this section and shall be entitled only to the
5 payment made or offered pursuant to those respective sections.

6 Sec. 167. Section 490.1330, Code 2021, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 **490.1330 Court action.**

10 1. If a shareholder makes a demand for payment under
11 section 490.1326 which remains unsettled, the corporation shall
12 commence a proceeding within sixty days after receiving the
13 payment demand and petition the court to determine the fair
14 value of the shares and accrued interest. If the corporation
15 does not commence the proceeding within the sixty-day
16 period, it shall pay in cash to each shareholder the amount
17 the shareholder demanded pursuant to section 490.1326 plus
18 interest.

19 2. The corporation shall commence the proceeding in the
20 district court of the county where the corporation's principal
21 office or, if none, its registered office, in this state is
22 located. If the corporation is a foreign corporation without
23 a registered office in this state, it shall commence the
24 proceeding in the county in this state where the principal
25 office or registered office of the domestic corporation merged
26 with the foreign corporation was located at the time of the
27 transaction.

28 3. The corporation shall make all shareholders, regardless
29 of whether they are residents of this state, whose demands
30 remain unsettled parties to the proceeding as in an action
31 against their shares, and all parties shall be served with a
32 copy of the petition. Nonresidents may be served by registered
33 or certified mail or by publication as provided by law.

34 4. The jurisdiction of the court in which the proceeding
35 is commenced under subsection 2 is plenary and exclusive.

1 The court may appoint one or more persons as appraisers to
2 receive evidence and recommend a decision on the question of
3 fair value. The appraisers shall have the powers described
4 in the order appointing them, or in any amendment to it. The
5 shareholders demanding appraisal rights are entitled to the
6 same discovery rights as parties in other civil proceedings.
7 There shall be no right to a jury trial.

8 5. Each shareholder made a party to the proceeding is
9 entitled to judgment for any of the following:

10 a. The amount, if any, by which the court finds the fair
11 value of the shareholder's shares exceeds the amount paid
12 by the corporation to the shareholder for such shares, plus
13 interest.

14 b. The fair value, plus interest, of the shareholder's
15 shares for which the corporation elected to withhold payment
16 under section 490.1325.

17 Sec. 168. Section 490.1331, Code 2021, is amended by
18 striking the section and inserting in lieu thereof the
19 following:

20 **490.1331 Court costs and expenses.**

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

31 2. The court in an appraisal proceeding may also assess the
32 expenses of the respective parties in amounts the court finds
33 equitable, against any of the following:

34 a. The corporation and in favor of any or all shareholders
35 demanding appraisal if the court finds the corporation did not

1 substantially comply with the requirements of section 490.1320,
2 490.1322, 490.1324, or 490.1325.

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

8 3. If the court in an appraisal proceeding finds that
9 the expenses incurred by any shareholder were of substantial
10 benefit to other shareholders similarly situated and that such
11 expenses should not be assessed against the corporation, the
12 court may direct that such expenses be paid out of the amounts
13 awarded the shareholders who were benefited.

14 4. To the extent the corporation fails to make a required
15 payment pursuant to section 490.1324, 490.1325, or 490.1326,
16 the shareholder may sue directly for the amount owed, and to
17 the extent successful, shall be entitled to recover from the
18 corporation all expenses of the suit.

19 Sec. 169. Section 490.1340, Code 2021, is amended by
20 striking the section and inserting in lieu thereof the
21 following:

22 **490.1340 Other remedies limited.**

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

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

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

- 33 (1) Subchapter IX, X, XI, or XII.
34 (2) The articles of incorporation or bylaws.
35 (3) The resolution of the board of directors authorizing the

1 corporate action.

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

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

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

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

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

23 Sec. 170. Section 490.1402, Code 2021, is amended by
24 striking the section and inserting in lieu thereof the
25 following:

26 **490.1402 Dissolution by board of directors and shareholders.**

27 1. The board of directors may propose dissolution for
28 submission to the shareholders by first adopting a resolution
29 authorizing the dissolution.

30 2. *a.* For a proposal to dissolve to be adopted, it shall
31 then be approved by the shareholders. In submitting the
32 proposal to dissolve to the shareholders for approval, the
33 board of directors shall recommend that the shareholders
34 approve the dissolution, unless any of the following apply:

35 (1) The board of directors determines that because of

1 conflict of interest or other special circumstances it should
2 make no recommendation.

3 (2) Section 490.826 applies.

4 b. If paragraph "a", subparagraph (1) or (2), applies, the
5 board shall inform the shareholders of the basis for its so
6 proceeding.

7 3. The board of directors may set conditions for the
8 approval of the proposal for dissolution by shareholders or the
9 effectiveness of the dissolution.

10 4. If the approval of the shareholders is to be given at
11 a meeting, the corporation shall notify each shareholder,
12 regardless of whether entitled to vote, of the meeting of
13 shareholders at which the dissolution is to be submitted for
14 approval. The notice must state that the purpose, or one of
15 the purposes, of the meeting is to consider dissolving the
16 corporation.

17 5. Unless the articles of incorporation, bylaws, or the
18 board of directors acting pursuant to subsection 3 require a
19 greater vote, a greater quorum, or a vote by voting groups,
20 adoption of the proposal to dissolve shall require the approval
21 of the shareholders at a meeting at which a quorum exists
22 consisting of a majority of the votes entitled to be cast on
23 the proposal to dissolve.

24 Sec. 171. Section 490.1403, Code 2021, is amended by
25 striking the section and inserting in lieu thereof the
26 following:

27 **490.1403 Articles of dissolution.**

28 1. At any time after dissolution is authorized, the
29 corporation may dissolve by delivering to the secretary of
30 state for filing articles of dissolution setting forth all of
31 the following:

32 a. The name of the corporation.

33 b. The date that dissolution was authorized.

34 c. If dissolution was approved by the shareholders, a
35 statement that the proposal to dissolve was duly approved by

1 the shareholders in the manner required by this chapter and by
2 the articles of incorporation and bylaws.

3 2. The articles of dissolution shall take effect at the
4 effective date determined in accordance with section 490.123.
5 A corporation is dissolved upon the effective date of its
6 articles of dissolution.

7 3. As used in this part, "*dissolved corporation*" means a
8 corporation whose articles of dissolution have become effective
9 and includes a successor entity to which the remaining assets
10 of the corporation are transferred subject to its liabilities
11 for purposes of liquidation.

12 Sec. 172. Section 490.1404, Code 2021, is amended by
13 striking the section and inserting in lieu thereof the
14 following:

15 **490.1404 Revocation of dissolution.**

16 1. A corporation may revoke its dissolution within one
17 hundred twenty days after its effective date.

18 2. Revocation of dissolution shall be authorized in the
19 same manner as the dissolution was authorized unless that
20 authorization permitted revocation by action of the board of
21 directors alone, in which event the board of directors may
22 revoke the dissolution without shareholder action.

23 3. After the revocation of dissolution is authorized,
24 the corporation may revoke the dissolution by delivering to
25 the secretary of state for filing articles of revocation
26 of dissolution, together with a copy of its articles of
27 dissolution, that set forth all of the following:

28 a. The name of the corporation.

29 b. The effective date of the dissolution that was revoked.

30 c. The date that the revocation of dissolution was
31 authorized.

32 d. If the corporation's board of directors or incorporators
33 revoked the dissolution, a statement to that effect.

34 e. If the corporation's board of directors revoked a
35 dissolution as authorized by the shareholders, a statement that

1 revocation was permitted by action by the board of directors
2 alone pursuant to that authorization.

3 *f.* If shareholder action was required to revoke the
4 dissolution, a statement that the revocation was duly approved
5 by the shareholders in the manner required by this chapter and
6 by the articles of incorporation and bylaws.

7 4. The articles of revocation of dissolution shall take
8 effect at the effective date determined in accordance with
9 section 490.123. Revocation of dissolution is effective
10 upon the effective date of the articles of revocation of
11 dissolution.

12 5. When the revocation of dissolution is effective, it
13 relates back to and takes effect as of the effective date of
14 the dissolution and the corporation resumes carrying on its
15 business as if the dissolution had never occurred.

16 Sec. 173. Section 490.1405, Code 2021, is amended by
17 striking the section and inserting in lieu thereof the
18 following:

19 **490.1405 Effect of dissolution.**

20 1. A corporation that has dissolved continues its corporate
21 existence but the dissolved corporation shall not carry on any
22 business except that appropriate to wind up and liquidate its
23 business and affairs, including by doing any of the following:

24 *a.* Collecting its assets.

25 *b.* Disposing of its properties that will not be distributed
26 in kind to its shareholders.

27 *c.* Discharging or making provision for discharging its
28 liabilities.

29 *d.* Making distributions of its remaining assets among its
30 shareholders according to their interests.

31 *e.* Doing every other act necessary to wind up and liquidate
32 its business and affairs.

33 2. Dissolution of a corporation does not do any of the
34 following:

35 *a.* Transfer title to the corporation's property.

1 *b.* Prevent transfer of its shares or securities.

2 *c.* Subject its directors or officers to standards of conduct
3 different from those prescribed in subchapter VIII.

4 *d.* Change any of the following:

5 (1) Quorum or voting requirements for its board of directors
6 or shareholders.

7 (2) Provisions for selection, resignation, or removal of
8 its directors or officers or both.

9 (3) Provisions for amending its bylaws.

10 *e.* Prevent commencement of a proceeding by or against the
11 corporation in its corporate name.

12 *f.* Abate or suspend a proceeding pending by or against the
13 corporation on the effective date of dissolution.

14 *g.* Terminate the authority of the registered agent of the
15 corporation.

16 3. A distribution in liquidation under this section may
17 only be made by a dissolved corporation. For purposes of
18 determining the shareholders entitled to receive a distribution
19 in liquidation, the board of directors may fix a record date
20 for determining shareholders entitled to a distribution in
21 liquidation, which date shall not be retroactive. If the
22 board of directors does not fix a record date for determining
23 shareholders entitled to a distribution in liquidation, the
24 record date is the date the board of directors authorizes the
25 distribution in liquidation.

26 Sec. 174. Section 490.1406, Code 2021, is amended by
27 striking the section and inserting in lieu thereof the
28 following:

29 **490.1406 Known claims against dissolved corporation.**

30 1. A dissolved corporation may dispose of the known claims
31 against it by notifying its known claimants in writing of the
32 dissolution at any time after its effective date.

33 2. The written notice must do all of the following:

34 *a.* Describe information that must be included in a claim.

35 *b.* Provide a mailing address where a claim may be sent.

1 *c.* State the deadline, which must not be fewer than one
2 hundred twenty days after the written notice is effective, by
3 which the dissolved corporation shall receive the claim.

4 *d.* State that the claim will be barred if not received by
5 the deadline.

6 3. A claim against the dissolved corporation is barred if
7 any of the following occurs:

8 *a.* A claimant who was given written notice under subsection
9 2 does not deliver the claim to the dissolved corporation by
10 the deadline.

11 *b.* A claimant whose claim was rejected by the dissolved
12 corporation does not commence a proceeding to enforce the claim
13 within ninety days after the rejection notice is effective.

14 4. As used in this section, "*claim*" does not include a
15 contingent liability or a claim based on an event occurring
16 after the effective date of dissolution.

17 Sec. 175. Section 490.1407, Code 2021, is amended by
18 striking the section and inserting in lieu thereof the
19 following:

20 **490.1407 Other claims against dissolved corporation.**

21 1. A dissolved corporation may publish notice of its
22 dissolution and request that persons with claims against the
23 dissolved corporation present them in accordance with the
24 notice.

25 2. The notice must meet all of the following requirements:

26 *a.* Be published in compliance with any of the following:

27 (1) One time in a newspaper of general circulation in the
28 county where the dissolved corporation's principal office, or,
29 if none in this state, its registered office, is or was last
30 located.

31 (2) Be posted conspicuously for at least thirty days on the
32 dissolved corporation's internet site.

33 *b.* Describe the information that must be included in a claim
34 and provide a mailing address where the claim may be sent.

35 *c.* State that a claim against the dissolved corporation will

1 be barred unless a proceeding to enforce the claim is commenced
2 within three years after the publication of the notice.

3 3. If the dissolved corporation publishes a notice in
4 accordance with subsection 2, the claim of each of the
5 following claimants is barred unless the claimant commences
6 a proceeding to enforce the claim against the dissolved
7 corporation within three years after the publication date of
8 the notice:

9 a. A claimant who was not given written notice under section
10 490.1406.

11 b. A claimant whose claim was timely sent to the dissolved
12 corporation but not acted on by the corporation.

13 c. A claimant whose claim is contingent or based on an event
14 occurring after the effective date of dissolution.

15 4. A claim that is not barred by section 490.1406,
16 subsection 2, or subsection 3 of this section, may be enforced
17 in any of the following ways:

18 a. Against the dissolved corporation, to the extent of its
19 undistributed assets.

20 b. Except as provided in section 490.1408, subsection 4,
21 if the assets have been distributed in liquidation, against
22 a shareholder of the dissolved corporation to the extent of
23 the shareholder's pro rata share of the claim or the corporate
24 assets distributed to the shareholder in liquidation, whichever
25 is less, but a shareholder's total liability for all claims
26 under this section shall not exceed the total amount of assets
27 distributed to the shareholder in liquidation.

28 Sec. 176. Section 490.1409, Code 2021, is amended by
29 striking the section and inserting in lieu thereof the
30 following:

31 **490.1409 Director duties.**

32 1. Directors shall cause the dissolved corporation to
33 discharge or make reasonable provision for the payment of
34 claims and make distributions in liquidation of assets to
35 shareholders after payment or provision for claims.

1 2. Directors of a dissolved corporation which has disposed
2 of claims under section 490.1406, 490.1407, or 490.1408 shall
3 not be liable for breach of subsection 1 with respect to claims
4 against the dissolved corporation that are barred or satisfied
5 under section 490.1406, 490.1407, or 490.1408.

6 Sec. 177. Section 490.1420, Code 2021, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 **490.1420 Grounds for administrative dissolution.**

10 The secretary of state may commence a proceeding under
11 section 490.1421 to dissolve a corporation administratively,
12 if any of the following apply:

13 1. The corporation does not pay within sixty days after they
14 are due any fees, taxes, interest, or penalties imposed by this
15 chapter or other laws of this state.

16 2. The corporation does not deliver its biennial report
17 required by section 490.1622 to the secretary of state within
18 sixty days after it is due.

19 3. The corporation is without a registered agent or
20 registered office in this state for sixty days or more.

21 4. The secretary of state has not been notified within sixty
22 days that the corporation's registered agent or registered
23 office has been changed, that its registered agent has
24 resigned, or that its registered office has been discontinued.

25 5. The corporation's period of duration stated in its
26 articles of incorporation expires.

27 Sec. 178. Section 490.1421, Code 2021, is amended by
28 striking the section and inserting in lieu thereof the
29 following:

30 **490.1421 Procedure for and effect of administrative**
31 **dissolution.**

32 1. If the secretary of state determines that one or
33 more grounds exist under section 490.1420 for dissolving a
34 corporation, the secretary of state shall serve the corporation
35 with written notice of such determination under section

1 490.504.

2 2. If the corporation does not correct each ground for
3 dissolution or demonstrate to the reasonable satisfaction of
4 the secretary of state that each ground determined by the
5 secretary of state does not exist within sixty days after
6 service of the notice under section 490.504, the secretary
7 of state shall administratively dissolve the corporation by
8 signing a certificate of dissolution that recites the ground or
9 grounds for dissolution and its effective date. The secretary
10 of state shall file the original of the certificate and serve a
11 copy on the corporation under section 490.504.

12 3. A corporation administratively dissolved continues
13 its corporate existence but shall not carry on any business
14 except that necessary to wind up and liquidate its business
15 and affairs under section 490.1405 and notify claimants under
16 sections 490.1406 and 490.1407.

17 4. The administrative dissolution of a corporation does not
18 terminate the authority of its registered agent.

19 Sec. 179. Section 490.1422, Code 2021, is amended by
20 striking the section and inserting in lieu thereof the
21 following:

22 **490.1422 Reinstatement following administrative dissolution.**

23 1. A corporation administratively dissolved under section
24 490.1421 may apply to the secretary of state for reinstatement
25 at any time after the effective date of dissolution. The
26 application must meet all of the following requirements:

27 a. State the name of the corporation at its date of
28 dissolution and the effective date of its administrative
29 dissolution.

30 b. State that the ground or grounds for dissolution either
31 did not exist or have been eliminated.

32 c. If the application is received more than five years after
33 the effective date of dissolution, state a corporate name that
34 satisfies the requirements of section 490.401.

35 d. State the federal tax identification number of the

1 corporation.

2 2. *a.* The secretary of state shall refer the federal
3 tax identification number contained in the application for
4 reinstatement to the department of workforce development. The
5 department shall report to the secretary of state the tax
6 status of the corporation. If the department reports to the
7 secretary of state that a filing delinquency or liability
8 exists against the corporation, the secretary of state shall
9 not cancel the certificate of dissolution until the filing
10 delinquency or liability is satisfied.

11 *b.* (1) If the secretary of state determines that the
12 application contains the information required by subsection
13 1, and that a delinquency or liability reported pursuant to
14 paragraph "a" has been satisfied, and that the information is
15 correct, the secretary of state shall cancel the certificate
16 of dissolution and prepare a certificate of reinstatement
17 that recites the secretary of state's determination and the
18 effective date of reinstatement, file the certificate of
19 reinstatement, and deliver a copy to the corporation under
20 section 490.504.

21 (2) If the corporate name in subsection 1, paragraph "c", is
22 different from the corporate name in subsection 1, paragraph
23 "a", the certificate of reinstatement shall constitute an
24 amendment to the articles of incorporation insofar as it
25 pertains to the corporate name. A corporation shall not
26 relinquish the right to retain its corporate name if the
27 reinstatement is effective within five years of the effective
28 date of the corporation's dissolution.

29 3. When the reinstatement is effective, it relates back to
30 and takes effect as of the effective date of the administrative
31 dissolution as if the administrative dissolution had never
32 occurred.

33 Sec. 180. Section 490.1423, Code 2021, is amended by
34 striking the section and inserting in lieu thereof the
35 following:

1 **490.1423 Appeal from denial of reinstatement.**

2 1. If the secretary of state denies a corporation's
3 application for reinstatement following administrative
4 dissolution, the secretary of state shall serve the corporation
5 under section 490.504 with a written notice that explains the
6 reason or reasons for denial.

7 2. The corporation may appeal the denial of reinstatement
8 to the district court of the county where the corporation's
9 principal office or, if none in this state, its registered
10 office, is located within thirty days after service of
11 the notice of denial is effected. The corporation appeals
12 by petitioning the court to set aside the dissolution and
13 attaching to the petition copies of the secretary of state's
14 certificate of dissolution, the corporation's application for
15 reinstatement, and the secretary of state's notice of denial.

16 3. The court may summarily order the secretary of state to
17 reinstate the dissolved corporation or may take other action
18 the court considers appropriate.

19 4. The court's final decision may be appealed as in other
20 civil proceedings.

21 Sec. 181. Section 490.1430, Code 2021, is amended by
22 striking the section and inserting in lieu thereof the
23 following:

24 **490.1430 Grounds for judicial dissolution.**

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

27 *a.* A proceeding by the attorney general if it is established
28 that any of the following apply:

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

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

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

35 (1) The directors are deadlocked in the management of

1 the corporate affairs, the shareholders are unable to break
2 the deadlock, and irreparable injury to the corporation is
3 threatened or being suffered, or the business and affairs of
4 the corporation can no longer be conducted to the advantage of
5 the shareholders generally, because of the deadlock.

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

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

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

14 *c.* A proceeding by a creditor if it is established that any
15 of the following applies:

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

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

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

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

27 2. Subsection 1, paragraph "b", shall not apply in the
28 case of a corporation that, on the date of the filing of the
29 proceeding, has a class or series of shares which is any of the
30 following:

31 *a.* A covered security under section 18(b)(1)(A) or (B) of
32 the federal Securities Act of 1933.

33 *b.* Not a covered security, but is held by at least three
34 hundred shareholders and the shares outstanding have a market
35 value of at least twenty million dollars, exclusive of the

1 value of such shares held by the corporation's subsidiaries,
2 senior executives, directors, and if they own more than ten
3 percent of such shares, beneficial shareholders, and voting
4 trust beneficial owners.

5 3. a. As used in subsection 1, "shareholder" means a record
6 shareholder, a beneficial shareholder, and an unrestricted
7 voting trust beneficial owner.

8 b. As used in subsection 2, "shareholder" means a record
9 shareholder, a beneficial shareholder, and a voting trust
10 beneficial owner.

11 Sec. 182. Section 490.1431, Code 2021, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 **490.1431 Procedure for judicial dissolution.**

15 1. Venue for a proceeding by the attorney general
16 to dissolve a corporation lies in Polk county. Venue
17 for a proceeding brought by any other party named in
18 section 490.1430, subsection 1, lies in the county where a
19 corporation's principal office or, if none in this state, its
20 registered office is or was last located.

21 2. It is not necessary to make shareholders parties to a
22 proceeding to dissolve a corporation unless relief is sought
23 against them individually.

24 3. A court in a proceeding brought to dissolve a corporation
25 may issue injunctions, appoint a receiver or custodian during
26 the proceeding with all powers and duties the court directs,
27 take other action required to preserve the corporate assets
28 wherever located, and carry on the business of the corporation
29 until a full hearing can be held.

30 4. Within ten days of the commencement of a proceeding
31 to dissolve a corporation under section 490.1430, subsection
32 1, paragraph "b", the corporation shall deliver to all
33 shareholders, other than the petitioner, a notice stating that
34 the shareholders are entitled to avoid the dissolution of the
35 corporation by electing to purchase the petitioner's shares

1 under section 490.1434, and accompanied by a copy of section
2 490.1434.

3 Sec. 183. Section 490.1432, Code 2021, is amended by
4 striking the section and inserting in lieu thereof the
5 following:

6 **490.1432 Receivership or custodianship.**

7 1. Unless an election to purchase has been filed under
8 section 490.1434, a court in a judicial proceeding brought to
9 dissolve a corporation may appoint one or more receivers to
10 wind up and liquidate, or one or more custodians to manage,
11 the business and affairs of the corporation. The court shall
12 hold a hearing, after notifying all parties to the proceeding
13 and any interested persons designated by the court, before
14 appointing a receiver or custodian. The court appointing a
15 receiver or custodian has jurisdiction over the corporation and
16 all of its property wherever located.

17 2. The court may appoint an individual or a domestic
18 or foreign corporation or eligible entity as a receiver or
19 custodian, which, if a foreign corporation or foreign eligible
20 entity, must be registered to do business in this state. The
21 court may require the receiver or custodian to post bond, with
22 or without sureties, in an amount the court directs.

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

27 a. The receiver may do any or all of the following:

28 (1) Dispose of all or any part of the assets of the
29 corporation wherever located, at a public or private sale.

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

32 b. The custodian may exercise all of the powers of the
33 corporation, through or in place of its board of directors, to
34 the extent necessary to manage the affairs of the corporation
35 in the best interests of its shareholders and creditors.

1 c. The receiver or custodian shall have such other powers
2 and duties as the court may provide in the appointing order,
3 which may be amended from time to time.

4 4. The court during a receivership may redesignate the
5 receiver a custodian and during a custodianship may redesignate
6 the custodian a receiver.

7 5. The court from time to time during the receivership or
8 custodianship may order compensation paid and expenses paid or
9 reimbursed to the receiver or custodian from the assets of the
10 corporation or proceeds from the sale of the assets.

11 Sec. 184. Section 490.1434, Code 2021, is amended by
12 striking the section and inserting in lieu thereof the
13 following:

14 **490.1434 Election to purchase in lieu of dissolution.**

15 1. In a proceeding under section 490.1430, subsection 1,
16 paragraph "b", to dissolve a corporation, the corporation
17 may elect or, if it fails to elect, one or more shareholders
18 may elect to purchase all shares owned by the petitioning
19 shareholder at the fair value of the shares. An election
20 pursuant to this section shall be irrevocable unless the court
21 determines that it is equitable to set aside or modify the
22 election.

23 2. An election to purchase pursuant to this section may
24 be filed with the court at any time within ninety days after
25 the filing of the petition under section 490.1430, subsection
26 1, paragraph "b", or at such later time as the court in its
27 discretion may allow. If the election to purchase is filed
28 by one or more shareholders, the corporation shall, within
29 ten days thereafter, give written notice to all shareholders,
30 other than the petitioner. The notice must state the name
31 and number of shares owned by the petitioner and the name and
32 number of shares owned by each electing shareholder and must
33 advise the recipients of their right to join in the election to
34 purchase shares in accordance with this section. Shareholders
35 who wish to participate shall file notice of their intention

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

17 3. If, within sixty days of the filing of the first
18 election, the parties reach agreement as to the fair value
19 and terms of purchase of the petitioner's shares, the court
20 shall enter an order directing the purchase of the petitioner's
21 shares upon the terms and conditions agreed to by the parties.

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

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

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

17 6. Upon entry of an order under subsection 3 or 5, the
18 court shall dismiss the petition to dissolve the corporation
19 under section 490.1430, subsection 1, paragraph "b", and the
20 petitioning shareholder shall no longer have any rights or
21 status as a shareholder of the corporation, except the right
22 to receive the amounts awarded by the order of the court which
23 shall be enforceable in the same manner as any other judgment.

24 7. The purchase ordered pursuant to subsection 5 shall be
25 made within ten days after the date the order becomes final.

26 8. Any payment by the corporation pursuant to an order under
27 subsection 3 or 5, other than an award of expenses pursuant to
28 subsection 5, is subject to the provisions of section 490.640.

29 Sec. 185. Section 490.1440, Code 2021, is amended by
30 striking the section and inserting in lieu thereof the
31 following:

32 **490.1440 Deposit with state treasurer.**

33 Assets of a dissolved corporation that should be transferred
34 to a creditor, claimant, or shareholder of the corporation who
35 cannot be found or who is not competent to receive them shall

1 be reduced to cash and deposited with the treasurer of state
2 or other appropriate state official for safekeeping. When the
3 creditor, claimant, or shareholder furnishes satisfactory proof
4 of entitlement to the amount deposited, the treasurer of state
5 or other appropriate state official shall pay such person, or
6 the representative of such person, that amount.

7 Sec. 186. Section 490.1501, Code 2021, is amended by
8 striking the section and inserting in lieu thereof the
9 following:

10 **490.1501 Governing law.**

11 1. The law of the jurisdiction of formation of a foreign
12 corporation governs all of the following:

13 a. The internal affairs of the foreign corporation.

14 b. The interest holder liability of its shareholders.

15 2. A foreign corporation is not precluded from registering
16 to do business in this state because of any difference between
17 the law of the foreign corporation's jurisdiction of formation
18 and the law of this state.

19 3. Registration of a foreign corporation to do business in
20 this state does not permit the foreign corporation to engage in
21 any business or affairs or exercise any power that a domestic
22 corporation cannot lawfully engage in or exercise in this
23 state.

24 Sec. 187. Section 490.1502, Code 2021, is amended by
25 striking the section and inserting in lieu thereof the
26 following:

27 **490.1502 Registration to do business in this state.**

28 1. A foreign corporation shall not do business in this
29 state until it registers with the secretary of state under this
30 chapter.

31 2. A foreign corporation doing business in this state shall
32 not maintain a proceeding in any court of this state until it
33 is registered to do business in this state.

34 3. The failure of a foreign corporation to register to
35 do business in this state does not impair the validity of a

1 contract or act of the foreign corporation or preclude it from
2 defending a proceeding in this state.

3 4. A limitation on the liability of a shareholder or
4 director of a foreign corporation is not waived solely because
5 the foreign corporation does business in this state without
6 registering.

7 5. Section 490.1501, subsection 1, applies even if a foreign
8 corporation fails to register under this chapter.

9 Sec. 188. Section 490.1503, Code 2021, is amended by
10 striking the section and inserting in lieu thereof the
11 following:

12 **490.1503 Foreign registration statement.**

13 1. To register to do business in this state, a foreign
14 corporation shall deliver a foreign registration statement to
15 the secretary of state for filing. The registration statement
16 must be signed by the foreign corporation and state all of the
17 following:

18 a. The corporate name of the foreign corporation and, if the
19 name does not comply with section 490.401, an alternate name as
20 required by section 490.1506.

21 b. The foreign corporation's jurisdiction of formation.

22 c. The street and mailing addresses of the foreign
23 corporation's principal office and, if the law of the foreign
24 corporation's jurisdiction of formation requires the foreign
25 corporation to maintain an office in that jurisdiction, the
26 street and mailing addresses of that office.

27 d. The street and mailing addresses of the foreign
28 corporation's registered office in this state and the name of
29 its registered agent at that office.

30 e. The names and business addresses of its directors and
31 principal officers.

32 2. The foreign corporation shall deliver the completed
33 foreign registration statement to the secretary of state,
34 and also deliver to the secretary of state a certificate of
35 existence or a document of similar import duly authenticated

1 by the secretary of state or other official having custody of
2 corporate records in the state or country under whose law it is
3 incorporated which is dated no earlier than ninety days prior
4 to the date the application is filed by the secretary of state.

5 Sec. 189. Section 490.1504, Code 2021, is amended by
6 striking the section and inserting in lieu thereof the
7 following:

8 **490.1504 Amendment of foreign registration statement.**

9 A registered foreign corporation shall sign and deliver to
10 the secretary of state for filing an amendment to its foreign
11 registration statement if there is a change in any of the
12 following:

- 13 1. Its name or alternate name.
- 14 2. Its jurisdiction of formation, unless its registration
15 is deemed to have been withdrawn under section 490.1508 or
16 transferred under section 490.1510.
- 17 3. An address required by section 490.1503, subsection 1,
18 paragraph "c".

19 Sec. 190. Section 490.1505, Code 2021, is amended by
20 striking the section and inserting in lieu thereof the
21 following:

22 **490.1505 Activities not constituting doing business.**

23 1. Activities of a foreign corporation that do not
24 constitute doing business in this state for purposes of this
25 subchapter include all of the following:

- 26 *a.* Maintaining, defending, mediating, arbitrating, or
27 settling a proceeding.
- 28 *b.* Carrying on any activity concerning the internal affairs
29 of the foreign corporation, including holding meetings of its
30 shareholders or board of directors.
- 31 *c.* Maintaining accounts in financial institutions.
- 32 *d.* Maintaining offices or agencies for the transfer,
33 exchange, and registration of securities of the foreign
34 corporation or maintaining trustees or depositories with
35 respect to those securities.

1 e. Selling through independent contractors.

2 f. Soliciting or obtaining orders by any means if the
3 orders require acceptance outside this state before they become
4 contracts.

5 g. Creating or acquiring indebtedness, mortgages, or
6 security interests in property.

7 h. Securing or collecting debts or enforcing mortgages or
8 security interests in property securing the debts, and holding,
9 protecting, or maintaining property so acquired.

10 i. Conducting an isolated transaction that is not in the
11 course of similar transactions.

12 j. Owning, protecting, and maintaining property.

13 k. Doing business in interstate commerce.

14 2. This section does not apply in determining the contacts
15 or activities that may subject a foreign corporation to service
16 of process, taxation, or regulation under the laws of this
17 state other than this chapter.

18 Sec. 191. Section 490.1506, Code 2021, is amended by
19 striking the section and inserting in lieu thereof the
20 following:

21 **490.1506 Noncomplying name of foreign corporation.**

22 1. A foreign corporation whose name does not comply with
23 section 490.401 shall not register to do business in this state
24 until it adopts, for the purpose of doing business in this
25 state, an alternate name that complies with section 490.401 by
26 filing a foreign registration statement under section 490.1503,
27 or if applicable, a transfer of registration statement under
28 section 490.1510, setting forth that alternate name. After
29 registering to do business in this state with an alternate
30 name, a foreign corporation shall do business in this state
31 under any of the following:

32 a. The alternate name.

33 b. The foreign corporation's name, with the addition of its
34 jurisdiction of formation.

35 2. If a registered foreign corporation changes its name

1 after registration to a name that does not comply with section
2 490.401, it shall not do business in this state until it
3 complies with subsection 1 by amending its registration
4 statement to adopt an alternate name that complies with section
5 490.401.

6 Sec. 192. Section 490.1507, Code 2021, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 **490.1507 Withdrawal of registration of registered foreign**
10 **corporation.**

11 1. A registered foreign corporation may withdraw its
12 registration by delivering a statement of withdrawal to the
13 secretary of state for filing. The statement of withdrawal
14 must be signed by the foreign corporation and state all of the
15 following:

16 a. The name of the foreign corporation and its jurisdiction
17 of formation.

18 b. That the foreign corporation is not doing business
19 in this state and that it withdraws its registration to do
20 business in this state.

21 c. That the foreign corporation revokes the authority of its
22 registered agent in this state.

23 d. An address to which process on the foreign corporation
24 may be sent by the secretary of state under section 490.504,
25 subsection 3.

26 2. After the withdrawal of the registration of a foreign
27 corporation, service of process in any proceeding based on
28 a cause of action arising during the time the entity was
29 registered to do business in this state may be made as provided
30 in section 490.504.

31 Sec. 193. Section 490.1508, Code 2021, is amended by
32 striking the section and inserting in lieu thereof the
33 following:

34 **490.1508 Deemed withdrawal upon domestication or conversion**
35 **to certain domestic entities.**

1 A registered foreign corporation that domesticates to
2 a domestic business corporation or converts to a domestic
3 nonprofit corporation or any type of domestic filing entity or
4 to a domestic limited liability partnership is deemed to have
5 withdrawn its registration on the effectiveness of such event.

6 Sec. 194. Section 490.1509, Code 2021, is amended by
7 striking the section and inserting in lieu thereof the
8 following:

9 **490.1509 Withdrawal upon dissolution or conversion to certain**
10 **nonfiling entities.**

11 1. A registered foreign corporation that has dissolved and
12 completed winding up or has converted to a domestic or foreign
13 nonfiling entity other than a limited liability partnership
14 shall deliver to the secretary of state for filing a statement
15 of withdrawal. The statement must be signed by the dissolved
16 corporation or the converted domestic or foreign nonfiling
17 entity and state:

18 *a.* In the case of a foreign corporation that has completed
19 winding up all of the following:

20 (1) Its name and jurisdiction of formation.

21 (2) That the foreign corporation withdraws its registration
22 to do business in this state and revokes the authority of its
23 registered agent to accept service on its behalf.

24 (3) An address to which process on the foreign corporation
25 may be sent by the secretary of state under section 490.504,
26 subsection 3.

27 *b.* In the case of a foreign corporation that has converted
28 to a domestic or foreign nonfiling entity other than a limited
29 liability partnership all of the following:

30 (1) The name of the converting foreign corporation and its
31 jurisdiction of formation.

32 (2) The type of the nonfiling entity to which it has
33 converted and its name and jurisdiction of formation.

34 (3) That it withdraws its registration to do business in
35 this state and revokes the authority of its registered agent to

1 accept service on its behalf.

2 (4) An address to which process on the foreign corporation
3 may be sent by the secretary of state under section 490.504,
4 subsection 3.

5 2. After the withdrawal of the registration of a foreign
6 corporation, service of process in any proceeding based on
7 a cause of action arising during the time the entity was
8 registered to do business in this state may be made as provided
9 in section 490.504.

10 Sec. 195. Section 490.1510, Code 2021, is amended by
11 striking the section and inserting in lieu thereof the
12 following:

13 **490.1510 Transfer of registration.**

14 1. If a registered foreign corporation merges into a
15 nonregistered foreign corporation or converts to a foreign
16 corporation required to register with the secretary of state
17 to do business in this state, the foreign corporation shall
18 deliver to the secretary of state for filing a transfer
19 of registration statement. The transfer of registration
20 statement must be signed by the surviving or converted foreign
21 corporation and state all of the following:

22 a. The name of the registered foreign corporation and its
23 jurisdiction of formation before the merger or conversion.

24 b. The name of the surviving or converted foreign
25 corporation and its jurisdiction of formation after the
26 merger or conversion and, if the name does not comply with
27 section 490.401, an alternate name adopted pursuant to section
28 490.1506.

29 c. All of the following information regarding the
30 surviving or converted foreign corporation after the merger or
31 conversion:

32 (1) The street and mailing addresses of the principal
33 office of the foreign corporation and, if the law of the
34 foreign corporation's jurisdiction of formation requires it to
35 maintain an office in that jurisdiction, the street and mailing

1 addresses of that office.

2 (2) The street and mailing addresses of the foreign
3 corporation's registered office in this state and the name of
4 its registered agent at that office.

5 2. On the effective date of a transfer of registration
6 statement as determined in accordance with section 490.123,
7 the registration of the registered foreign corporation to do
8 business in this state is transferred without interruption to
9 the foreign corporation into which it has merged or to which
10 it has been converted.

11 Sec. 196. NEW SECTION. 490.1511 **Administrative termination**
12 **of registration.**

13 1. The secretary of state may terminate the registration
14 of a registered foreign corporation in the manner provided in
15 subsections 2 and 3, if any of the following applies:

16 a. The foreign corporation does not pay within sixty days
17 after they are due any fees, taxes, interest, or penalties
18 imposed by this chapter or other laws of this state.

19 b. The foreign corporation does not deliver its biennial
20 report to the secretary of state within sixty days after it is
21 due.

22 c. The foreign corporation is without a registered agent or
23 registered office in this state for sixty days or more.

24 d. The secretary of state has not been notified within
25 sixty days that the foreign corporation's registered agent
26 or registered office has been changed, that its registered
27 agent has resigned, or that its registered office has been
28 discontinued.

29 2. The secretary of state may terminate the registration of
30 a registered foreign corporation by doing all of the following:

31 a. Filing a certificate of termination.

32 b. Delivering a copy of the certificate of termination to
33 the foreign corporation's registered agent or, if the foreign
34 corporation does not have a registered agent, to the foreign
35 corporation's principal office.

1 3. The certificate of termination must state all of the
2 following:

3 a. The effective date of the termination, which must be
4 not less than sixty days after the secretary of state delivers
5 the copy of the certificate of termination as prescribed in
6 subsection 2, paragraph "b".

7 b. The grounds for termination under subsection 1.

8 4. The registration of a registered foreign corporation
9 to do business in this state ceases on the effective date
10 of the termination as set forth in the certificate of
11 termination, unless before that date the foreign corporation
12 cures each ground for termination stated in the certificate of
13 termination. If the foreign corporation cures each ground, the
14 secretary of state shall file a statement that the certificate
15 of termination is withdrawn.

16 5. After the effective date of the termination as set forth
17 in the certificate of termination, service of process in any
18 proceeding based on a cause of action arising during the time
19 the entity was registered to do business in this state may be
20 made as provided in section 490.504.

21 Sec. 197. NEW SECTION. **490.1512 Action by attorney general.**

22 The attorney general may maintain an action to enjoin a
23 foreign corporation from doing business in this state in
24 violation of this chapter.

25 Sec. 198. Section 490.1601, Code 2021, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 **490.1601 Corporate records.**

29 1. A corporation shall maintain all of the following
30 records:

31 a. Its articles of incorporation as currently in effect.

32 b. Any notices to shareholders referred to in section
33 490.120, subsection 11, paragraph "e", specifying facts
34 on which a filed document is dependent if those facts are
35 not included in the articles of incorporation or otherwise

1 available as specified in section 490.120, subsection 11,
2 paragraph "e".

3 c. Its bylaws as currently in effect.

4 d. All written communications within the past three years to
5 shareholders generally.

6 e. Minutes of all meetings of, and records of all actions
7 taken without a meeting by, its shareholders, its board of
8 directors, and board committees established under section
9 490.825.

10 f. A list of the names and business addresses of its current
11 directors and officers.

12 g. Its most recent biennial report delivered to the
13 secretary of state under section 490.1622.

14 2. A corporation shall maintain all annual financial
15 statements prepared for the corporation for its last three
16 fiscal years, or such shorter period of existence, and
17 any audit or other reports with respect to such financial
18 statements.

19 3. A corporation shall maintain accounting records in a form
20 that permits preparation of its financial statements.

21 4. A corporation shall maintain a record of its current
22 shareholders in alphabetical order by class or series of shares
23 showing the address of, and the number and class or series of
24 shares held by, each shareholder. Nothing contained in this
25 subsection shall require the corporation to include in such
26 record the electronic mail address or other electronic contact
27 information of a shareholder.

28 5. A corporation shall maintain the records specified in
29 this section in a manner so that they may be made available for
30 inspection within a reasonable time.

31 Sec. 199. Section 490.1602, Code 2021, is amended by
32 striking the section and inserting in lieu thereof the
33 following:

34 **490.1602 Inspection rights of shareholders.**

35 1. A shareholder of a corporation is entitled to inspect

1 and copy, during regular business hours at the corporation's
2 principal office, any of the records of the corporation
3 described in section 490.1601, subsection 1, excluding minutes
4 of meetings of, and records of actions taken without a meeting
5 by, the corporation's board of directors and board committees
6 established under section 490.825, if the shareholder gives
7 the corporation a signed written notice of the shareholder's
8 demand at least five business days before the date on which the
9 shareholder wishes to inspect and copy.

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

18 a. The financial statements of the corporation maintained in
19 accordance with section 490.1601, subsection 2.

20 b. Accounting records of the corporation.

21 c. Excerpts from minutes of any meeting of, or records of
22 any actions taken without a meeting by, the corporation's board
23 of directors and board committees maintained in accordance with
24 section 490.1601, subsection 1.

25 d. The record of shareholders maintained in accordance with
26 section 490.1601, subsection 4.

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

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

31 b. The shareholder's demand describes with reasonable
32 particularity the shareholder's purpose and the records the
33 shareholder desires to inspect.

34 c. The records are directly connected with the shareholder's
35 purpose.

1 4. The corporation may impose reasonable restrictions on
2 the confidentiality, use, or distribution of records described
3 in subsection 2.

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

17 6. The right of inspection granted by this section shall
18 not be abolished or limited by a corporation's articles of
19 incorporation or bylaws.

20 7. This section does not affect any of the following:

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

24 b. The power of a court, independently of this chapter,
25 to compel the production of corporate records for examination
26 and to impose reasonable restrictions as provided in section
27 490.1604, subsection 3, provided that, in the case of
28 production of records described in subsection 2, at the request
29 of a shareholder, the shareholder has met the requirements of
30 subsection 3.

31 8. As used in this section, "*shareholder*" means a record
32 shareholder, a beneficial shareholder, and an unrestricted
33 voting trust beneficial owner.

34 Sec. 200. Section 490.1603, Code 2021, is amended by
35 striking the section and inserting in lieu thereof the

1 following:

2 **490.1603 Scope of inspection right.**

3 1. A shareholder may appoint an agent or attorney to
4 exercise the shareholder's inspection and copying rights under
5 section 490.1602.

6 2. The corporation may, if reasonable, satisfy the right
7 of a shareholder to copy records under section 490.1602 by
8 furnishing to the shareholder copies by photocopy or other
9 means chosen by the corporation, including furnishing copies
10 through an electronic transmission.

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 "d", 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 4. The corporation may impose a reasonable charge to cover
17 the costs of providing copies of documents to the shareholder,
18 which may be based on an estimate of such costs.

19 Sec. 201. Section 490.1604, Code 2021, is amended by
20 striking the section and inserting in lieu thereof the
21 following:

22 **490.1604 Court-ordered inspection.**

23 1. If a corporation does not allow a shareholder who
24 complies with section 490.1602, subsection 1, to inspect and
25 copy any records required by that section to be available
26 for inspection, the district court of the county where the
27 corporation's principal office or, if none in this state, its
28 registered office, is located, may summarily order inspection
29 and copying of the records demanded at the corporation's
30 expense upon application of the shareholder.

31 2. If a corporation does not within a reasonable time allow
32 a shareholder who complies with section 490.1602, subsection
33 2, to inspect and copy the records required by that section,
34 the shareholder who complies with section 490.1602, subsection
35 3, may apply to the district court in the county where the

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

5 3. If the court orders inspection and copying of the
6 records demanded under section 490.1602, subsection 2, it
7 may impose reasonable restrictions on their confidentiality,
8 use, or distribution by the demanding shareholder and it
9 shall also order the corporation to pay the shareholder's
10 expenses incurred to obtain the order, unless the corporation
11 establishes that it refused inspection in good faith because
12 of any of the following:

13 a. The corporation had a reasonable basis for doubt about
14 the right of the shareholder to inspect the records demanded.

15 b. The corporation required reasonable restrictions on the
16 confidentiality, use, or distribution of the records demanded
17 to which the demanding shareholder had been unwilling to agree.

18 Sec. 202. Section 490.1605, Code 2021, is amended by
19 striking the section and inserting in lieu thereof the
20 following:

21 **490.1605 Inspection of records by directors.**

22 1. A director of a corporation is entitled to inspect and
23 copy the books, records, and documents of the corporation at
24 any reasonable time to the extent reasonably related to the
25 performance of the director's duties as a director, including
26 duties as a member of a board committee, but not for any other
27 purpose or in any manner that would violate any duty to the
28 corporation.

29 2. The district court of the county where the corporation's
30 principal office, or if none in this state, its registered
31 office, is located may order inspection and copying of the
32 books, records, and documents at the corporation's expense,
33 upon application of a director who has been refused such
34 inspection rights, unless the corporation establishes that the
35 director is not entitled to such inspection rights. The court

1 shall dispose of an application under this subsection on an
2 expedited basis.

3 3. If an order is issued, the court may include provisions
4 protecting the corporation from undue burden or expense, and
5 prohibiting the director from using information obtained upon
6 exercise of the inspection rights in a manner that would
7 violate a duty to the corporation, and may also order the
8 corporation to reimburse the director for the director's
9 expenses incurred in connection with the application.

10 Sec. 203. Section 490.1620, Code 2021, is amended by
11 striking the section and inserting in lieu thereof the
12 following:

13 **490.1620 Financial statements for shareholders.**

14 1. Upon the written request of a shareholder, a corporation
15 shall deliver or make available to such requesting shareholder
16 by posting on its internet site or by other generally
17 recognized means annual financial statements for the most
18 recent fiscal year of the corporation for which annual
19 financial statements have been prepared for the corporation.
20 If financial statements have been prepared for the corporation
21 on the basis of generally accepted accounting principles
22 for such specified period, the corporation shall deliver or
23 make available such financial statements to the requesting
24 shareholder. If the annual financial statements to be
25 delivered or made available to the requesting shareholder are
26 audited or otherwise reported upon by a public accountant,
27 the report shall also be delivered or made available to the
28 requesting shareholder.

29 2. A corporation shall deliver, or make available and
30 provide written notice of availability of, the financial
31 statements required under subsection 1 to the requesting
32 shareholder within five business days of delivery of such
33 written request to the corporation.

34 3. A corporation may fulfill its responsibilities under
35 this section by delivering the specified financial statements,

1 or otherwise making them available, in any manner permitted by
2 the applicable rules and regulations of the federal securities
3 and exchange commission.

4 4. Notwithstanding the provisions of subsections 1, 2, and
5 3, all of the following apply:

6 a. As a condition to delivering or making available
7 financial statements to a requesting shareholder, the
8 corporation may require the requesting shareholder to agree
9 to reasonable restrictions on the confidentiality, use, and
10 distribution of such financial statements.

11 b. The corporation may, if it reasonably determines that the
12 shareholder's request is not made in good faith or for a proper
13 purpose, decline to deliver or make available such financial
14 statements to that shareholder.

15 5. If a corporation does not respond to a shareholder's
16 request for annual financial statements pursuant to this
17 section in accordance with subsection 2 within five business
18 days of delivery of such request to the corporation all of the
19 following shall apply:

20 a. The requesting shareholder may apply to the district
21 court of the county where the corporation's principal
22 office, or if none in this state, its registered office, is
23 located for an order requiring delivery of or access to the
24 requested financial statements. The court shall dispose of an
25 application under this subsection on an expedited basis.

26 b. If the court orders delivery or access to the requested
27 financial statements, it may impose reasonable restrictions on
28 their confidentiality, use, or distribution.

29 c. In such proceeding, if the corporation has declined to
30 deliver or make available such financial statements because
31 the shareholder had been unwilling to agree to restrictions
32 proposed by the corporation on the confidentiality, use, and
33 distribution of such financial statements, the corporation
34 shall have the burden of demonstrating that the restrictions
35 proposed by the corporation were reasonable.

1 by section 490.1506.

2 *b.* The foreign corporation's jurisdiction of formation.

3 *c.* The street and mailing addresses of the foreign
4 corporation's principal office and, if the law of the foreign
5 corporation's jurisdiction of formation requires the foreign
6 corporation to maintain an office in that jurisdiction, the
7 street and mailing addresses of that office.

8 *d.* The street and mailing addresses of the foreign
9 corporation's registered office in this state and the name of
10 its registered agent at that office.

11 *e.* The names and business addresses of the president,
12 secretary, treasurer, and one of the board of directors.

13 3. Information in the biennial report must be current as
14 of the date the biennial report is signed on behalf of the
15 corporation. The report shall be executed on behalf of the
16 corporation and signed as provided in section 490.120 or by
17 any other person authorized by the board of directors of the
18 corporation.

19 4. The first biennial report shall be delivered to the
20 secretary of state between January 1 and April 1 of the first
21 even-numbered year following the calendar year in which a
22 domestic corporation was incorporated or a foreign corporation
23 was authorized to transact business. Subsequent biennial
24 reports must be delivered to the secretary of state between
25 January 1 and April 1 of the following even-numbered calendar
26 years. For purposes of this section, each biennial report
27 shall contain information related to the two-year period
28 immediately preceding the calendar year in which the report is
29 filed.

30 5. If a biennial report does not contain the information
31 required by this section, the secretary of state shall promptly
32 notify the reporting domestic or foreign corporation in writing
33 and return the report to it for correction. If the report is
34 corrected to contain the information required by this section
35 and delivered to the secretary of state within thirty days

1 after the notice from the secretary of state becomes effective
2 as determined in accordance with section 490.141, it is deemed
3 to be timely filed.

4 6. The secretary of state may provide for the change of
5 registered office or registered agent on the form prescribed by
6 the secretary of state for the biennial report, provided that
7 the form contains the information required in section 490.502.
8 If the secretary of state determines that a biennial report
9 does not contain the information required by this section but
10 otherwise meets the requirements of section 490.502 for the
11 purpose of changing the registered office or registered agent,
12 the secretary of state shall file the statement of change of
13 registered office or registered agent, effective as provided in
14 section 490.123, before returning the biennial report to the
15 corporation as provided in this section. A statement of change
16 of registered office or agent pursuant to this subsection shall
17 be executed by a person authorized to execute the biennial
18 report.

19 Sec. 205. Section 490.1701, Code 2021, is amended by
20 striking the section and inserting in lieu thereof the
21 following:

22 **490.1701 Application of subchapter — definitions.**

23 1. If a corporation elects to become a benefit corporation
24 under this subchapter in the manner prescribed in this
25 subchapter, it is subject in all respects to the provisions
26 of this chapter, except to the extent this subchapter imposes
27 additional or different requirements, in which case such
28 requirements apply. The inclusion of a provision in this
29 subchapter does not imply that a contrary or different rule of
30 law applies to a corporation that is not a benefit corporation.
31 This subchapter does not affect a statute or rule of law that
32 applies to a corporation that is not a benefit corporation.

33 2. As used in this subchapter:

34 *a. "Benefit corporation"* means a corporation that includes
35 in its articles of incorporation a statement that the

1 corporation is subject to this subchapter.

2 *b. "Public benefit"* means a positive effect, or reduction of
3 negative effects, on one or more communities or categories of
4 persons or entities, other than shareholders solely in their
5 capacity as shareholders, or on the environment, including
6 effects of an artistic, charitable, economic, educational,
7 cultural, literary, medical, religious, social, ecological, or
8 scientific nature.

9 *c. "Public benefit provision"* means a provision in the
10 articles of incorporation which states that the corporation
11 shall pursue one or more identified public benefits.

12 *d. "Responsible and sustainable manner"* means a manner that
13 does all of the following:

14 (1) Pursues through the business of the corporation the
15 creation of a positive effect on society and the environment,
16 taken as a whole, that is material taking into consideration
17 the corporation's size and the nature of its business.

18 (2) Considers, in addition to the interests of
19 shareholders, the interests of stakeholders known to be
20 affected by the conduct of the business of the corporation.

21 Sec. 206. Section 490.1702, Code 2021, is amended by
22 striking the section and inserting in lieu thereof the
23 following:

24 **490.1702 Name — share certificates.**

25 1. The name of a benefit corporation may contain the
26 words "benefit corporation", the abbreviation "B.C.", or the
27 designation "BC", any of which shall be deemed to satisfy the
28 requirements of section 490.401, subsection 1, paragraph "a".

29 2. Any share certificate issued by a benefit corporation,
30 and any information statement delivered by a benefit
31 corporation pursuant to section 490.626, subsection 2,
32 must note conspicuously that the corporation is a benefit
33 corporation subject to this subchapter.

34 Sec. 207. Section 490.1703, Code 2021, is amended by
35 striking the section and inserting in lieu thereof the

1 following:

2 **490.1703 Certain amendments and transactions — votes**
3 **required.**

4 1. Unless the articles of incorporation or bylaws require
5 a greater vote, the approval of at least two-thirds of the
6 voting power of the outstanding shares of the corporation
7 entitled to vote thereon, and, if any class or series of shares
8 is entitled to vote as a separate group on any such amendment
9 or transaction, the approval of at least two-thirds of the
10 outstanding shares of each such separate voting group entitled
11 to vote thereon, shall be required for a corporation that is
12 not a benefit corporation to do any of the following:

13 a. Amend its articles of incorporation to include a
14 statement that it is subject to this subchapter.

15 b. Merge with or into, or enter into a share exchange with,
16 another entity, or effect a domestication or conversion, if,
17 as a result of the merger, share exchange, domestication, or
18 conversion, the shares of any voting group would become, or be
19 converted into or exchanged for the right to receive, shares
20 of a benefit corporation or shares or interests in an entity
21 subject to provisions of organic law analogous to those in
22 this subchapter; provided, however, that in the case of this
23 paragraph "b", if the shares of one or more, but not all,
24 voting groups are so affected, then only the shares in the
25 voting groups so affected shall be entitled to vote under this
26 subsection.

27 2. Unless the articles of incorporation or bylaws require a
28 greater vote, the approval of at least two-thirds of the voting
29 power of the outstanding shares of the corporation entitled
30 to vote thereon and, if any class or series of shares is
31 entitled to vote as a separate group on any such amendment or
32 transaction, the approval of at least two-thirds of the voting
33 power of the outstanding shares of each such separate voting
34 group, shall be required for a benefit corporation to do any
35 of the following:

1 *a.* Amend its articles of incorporation to eliminate a
2 statement that the corporation is subject to this subchapter.

3 *b.* Merge with or into, or enter into a share exchange with,
4 another entity, or effect a domestication or conversion if,
5 as a result of the merger, share exchange, domestication, or
6 conversion, the shares of any voting group would become, or be
7 converted into or exchanged for the right to receive, shares or
8 interests in an entity that is neither a benefit corporation
9 nor an entity subject to provisions of organic law analogous to
10 those in this subchapter; provided, however, that in the case
11 of this paragraph "*b*", if the shares of one or more, but not
12 all, voting groups are so affected, then only the shares in the
13 voting groups so affected shall be entitled to vote under this
14 subsection.

15 3. The vote required under subsections 1 and 2 is in
16 addition to any vote otherwise required under this chapter.

17 Sec. 208. NEW SECTION. 490.1704 **Duties of directors.**

18 1. Each member of the board of directors of a benefit
19 corporation, when discharging the duties of a director, shall
20 act according to all of the following:

21 *a.* In a responsible and sustainable manner.

22 *b.* In a manner that pursues the public benefit or benefits
23 identified in any public benefit provision.

24 2. In fulfilling the duties under subsection 1, a director
25 shall consider, to the extent affected, in addition to the
26 interests of shareholders generally, the separate interests
27 of stakeholders known to be affected by the business of the
28 corporation including all of the following:

29 *a.* The employees and workforces of the corporation, its
30 subsidiaries, and its suppliers.

31 *b.* Customers.

32 *c.* Communities or society, including those of each community
33 in which offices or facilities of the corporation, its
34 subsidiaries, or its suppliers are located.

35 *d.* The local and global environment.

1 3. A director of a benefit corporation shall not, by virtue
2 of the duties imposed by subsections 1 and 2, owe any duty to a
3 person other than the benefit corporation due to any interest
4 of the person in the status of the corporation as a benefit
5 corporation or in any public benefit provision.

6 4. Unless otherwise provided in the articles of
7 incorporation, the violation by a director of the duties
8 imposed by subsections 1 and 2 shall not constitute an
9 intentional infliction of harm on the corporation or the
10 shareholders for the purposes of sections 490.202, subsection
11 2, paragraphs "d" and "e".

12 Sec. 209. NEW SECTION. 490.1705 Annual benefit report.

13 1. No less than annually, a benefit corporation shall
14 prepare a benefit report addressing the efforts of the
15 corporation during the preceding year to operate in a
16 responsible and sustainable manner, to pursue any public
17 benefit or benefits identified in any public benefit provision,
18 and to consider the interests described in section 490.1704,
19 subsection 2. The annual benefit report must include all of
20 the following:

21 a. The objectives that the board of directors has
22 established for the corporation to operate in a responsible and
23 sustainable manner, to pursue any public benefit or benefits
24 identified in any public benefit provision, and to consider the
25 interests described in section 490.1704, subsection 2.

26 b. The standards the board of directors has adopted
27 to measure the corporation's progress in operating in a
28 responsible and sustainable manner, in pursuing the public
29 benefit or benefits identified in any public benefit provision,
30 and in considering the interests described in section 490.1704,
31 subsection 2.

32 c. If the articles of incorporation or bylaws require
33 that the corporation use an independent third-party standard
34 in reporting on the corporation's progress in operating in a
35 responsible and sustainable manner, in pursuing any public

1 benefit or benefits identified in any public benefit provision,
2 or in considering the interests described in section 490.1704,
3 subsection 2, or if the board of directors has chosen to use
4 such a standard, the applicable standard so required or chosen.

5 *d.* An assessment of the corporation's success in meeting
6 the objectives and standards identified in paragraphs "a" and
7 "b", and, if applicable, paragraph "c", and the basis for that
8 assessment.

9 2. The benefit corporation shall deliver to each
10 shareholder, or make available and provide written notice to
11 each shareholder of the availability of, the annual benefit
12 report required by subsection 1 on or before the earlier of the
13 following:

14 *a.* One hundred twenty days following the end of the fiscal
15 year of the benefit corporation.

16 *b.* The time that the benefit corporation delivers any
17 other annual reports or annual financial statements to its
18 shareholders.

19 3. Any shareholder that has not received or been given
20 access to an annual benefit report within the time required by
21 subsection 2 may make a written request that the corporation
22 deliver or make available the annual benefit report to the
23 shareholder. If a benefit corporation does not deliver or make
24 available an annual benefit report to the shareholder within
25 five business days of receiving such request, the requesting
26 shareholder may apply to the district court of the county
27 where the corporation's principal office or, if none in this
28 state, its registered office, is located for an order requiring
29 delivery of or access to the annual benefit report. The court
30 shall dispose of an action under this subsection 3 on an
31 expedited basis.

32 4. A benefit corporation shall post all of its annual
33 benefit reports on the public portion of its internet site,
34 if any. If a benefit corporation does not have an internet
35 site, the benefit corporation shall provide a copy of its most

1 recent annual benefit report, without charge, to any person
2 that requests a copy in writing.

3 Sec. 210. NEW SECTION. 490.1706 Rights of action.

4 1. Except in a proceeding authorized under section
5 490.1705, subsection 3, or this section, no person other
6 than the corporation, or a shareholder in the right of the
7 corporation pursuant to subsection 2, may bring an action
8 or assert a claim with respect to the violation of any duty
9 applicable to a benefit corporation or any of its directors
10 under this subchapter.

11 2. Except for a proceeding brought under section 490.1705,
12 subsection 3, a proceeding by a shareholder of a benefit
13 corporation claiming violation of any duty applicable to
14 a benefit corporation or any of its directors under this
15 subchapter is subject to all of the following:

16 a. The proceeding must be brought in a derivative proceeding
17 pursuant to subchapter VII, part 4.

18 b. The proceeding may be brought only by a shareholder
19 of the benefit corporation that at the time of the act or
20 omission complained of either individually, or together with
21 other shareholders bringing such action collectively, owned
22 directly or indirectly at least five percent of a class of
23 the corporation's outstanding shares or, in the case of a
24 corporation with shares traded on an organized market as
25 described in section 490.1302, subsection 2, paragraph "a",
26 subparagraph (2), either that percentage of shares or shares
27 with a market value of at least five million dollars at the
28 time the proceeding is commenced.

29 3. A suit under subsection 2 shall not be maintained if,
30 during the pendency of the suit, the shareholder individually
31 fails, or the shareholders collectively fail, to continue to
32 own directly or indirectly the lesser of the number of shares
33 owned at the time the proceeding is commenced or five percent
34 of a class of the corporation's shares.

35 Sec. 211. NEW SECTION. 490.1801 Application to existing

1 **domestic corporations.**

2 1. This chapter applies to all domestic corporations in
3 existence on January 1, 2022, that were incorporated under any
4 general statute of this state providing for incorporation of
5 corporations for profit if power to amend or repeal the statute
6 under which the corporation was incorporated was reserved.

7 2. *a.* Unless otherwise provided, this chapter does not
8 apply to an entity subject to chapter 174, 497, 498, 499, 499A,
9 501, 501A, 524, or 533, or a corporation organized on the
10 mutual plan under chapter 491, or a telephone company organized
11 as a corporation under chapter 491 qualifying pursuant to
12 an internal revenue service letter ruling under Internal
13 Revenue Code §501(c)(12) as a nonprofit corporation entitled
14 to distribute profits in a manner similar to a chapter 499
15 corporation, unless such entity voluntarily elects to adopt
16 the provisions of this chapter and complies with the procedure
17 prescribed by subsection 3.

18 *b.* A corporation organized under chapter 496C may
19 voluntarily elect to adopt the provisions of this chapter by
20 complying with the provisions prescribed by subsection 3.

21 3. The procedure for the voluntary election referred to in
22 subsection 2 is as follows:

23 *a.* The corporation shall amend or restate its articles of
24 incorporation to indicate that the corporation adopts this
25 chapter and to designate the address of its initial registered
26 office and the name of its registered agent at that office
27 and, if the name of the corporation is not in compliance with
28 the requirements of this chapter, to change the name of the
29 corporation to one complying with the requirements of this
30 chapter.

31 *b.* (1) The instrument shall be delivered to the secretary
32 of state for filing and recording in the secretary of state's
33 office. If the corporation was organized under chapter 524
34 or 533, the instrument shall also be filed and recorded in
35 the office of the county recorder. The corporation shall at

1 the time it files the instrument with the secretary of state
2 deliver also to the secretary of state for filing in the
3 secretary of state's office any biennial report required by
4 section 490.1622 which is then due.

5 (2) If the county of the initial registered office as stated
6 in the instrument for a corporation organized under chapter
7 524 or 533 is one which is other than the county where the
8 principal place of business of the corporation, as designated
9 in its articles of incorporation, was located, the corporation
10 shall forward to the county recorder of the county in which the
11 principal place of business of the corporation was located a
12 copy of the instrument and the corporation shall forward to the
13 recorder of the county in which the initial registered office
14 of the corporation is located, in addition to a copy of the
15 original instrument, a copy of the articles of incorporation of
16 the corporation together with all amendments to them as then
17 on file in the secretary of state's office. The corporation
18 shall, through an officer or director, certify to the secretary
19 of state that a copy has been sent to each applicable county
20 recorder, including the date each copy was sent.

21 *c.* Upon the filing of the instrument by a corporation all
22 of the following apply:

23 (1) All of the provisions of this chapter apply to the
24 corporation.

25 (2) The secretary of state shall issue a certificate as to
26 the filing of the instrument and deliver the certificate to the
27 corporation or its representative.

28 (3) The secretary of state shall not file the instrument
29 with respect to a corporation unless at the time of filing
30 the corporation is validly existing and in good standing in
31 that office under the chapter under which it is incorporated.
32 The corporation shall be considered validly existing and in
33 good standing for the purpose of this chapter for a period of
34 three months following the expiration date of the corporation,
35 provided all biennial reports due have been filed and all fees

1 due in connection with the biennial reports have been paid.

2 *d.* The provisions of this chapter becoming applicable to
3 a corporation voluntarily electing to be governed by this
4 chapter do not affect any right accrued or established, or any
5 liability or penalty incurred, under the chapter under which
6 it is incorporated prior to the filing by the secretary of
7 state in the secretary of state's office of the instrument
8 manifesting the election by the corporation to adopt the
9 provisions of this chapter as provided in this subsection.

10 4. A corporation subject to this chapter is not subject to
11 chapter 491, 492, 493, or 495.

12 Sec. 212. NEW SECTION. 490.1802 **Application to existing**
13 **foreign corporation.**

14 A foreign corporation registered or authorized to do
15 business in this state on the effective date of this division
16 of this Act is subject to this chapter, is deemed to be
17 registered to do business in this state, and is not required to
18 file a foreign registration statement under this chapter.

19 Sec. 213. NEW SECTION. 490.1803 **Savings provisions.**

20 1. Except as to procedural provisions, this division of this
21 Act does not affect a pending action or proceeding or a right
22 accrued before the effective date of this division of this Act,
23 and a pending civil action or proceeding may be completed, and
24 a right accrued may be enforced, as if this division of this
25 Act had not become effective.

26 2. If a penalty or punishment for violation of a statute or
27 rule is reduced by this division of this Act, the penalty, if
28 not already imposed, shall be imposed in accordance with this
29 division of this Act.

30 3. In the event that any provision of this chapter is
31 deemed to modify, limit, or supersede the federal Electronic
32 Signatures in Global and National Commerce Act, 15 U.S.C. §7001
33 et seq., the provisions of this chapter shall control to the
34 maximum extent permitted by section 102(a)(2) of that federal
35 Act.

1 Sec. 214. NEW SECTION. **490.1804 Severability.**

2 If any provision of this chapter or its application to any
3 person or circumstance is held invalid by a court of competent
4 jurisdiction, the invalidity does not affect other provisions
5 or applications of this chapter that can be given effect
6 without the invalid provision or application.

7 Sec. 215. CODE EDITOR DIRECTIVE.

8 1. The Code editor is directed to make the following
9 transfers:

10 a. Section 490.135, as amended by this division of this Act,
11 to section 490.130.

12 b. Section 490.833, as amended by this division of this Act,
13 to section 490.832.

14 c. Section 490.629 to section 490.628.

15 d. Section 490.1622, as amended by this division of this
16 Act, to section 490.1621.

17 2. The Code editor shall correct internal references in the
18 Code and in any enacted legislation as necessary due to the
19 enactment of this section.

20 Sec. 216. REPEAL. Sections 490.624A, 490.628, 490.1111,
21 490.1112, 490.1113, 490.1114, 490.1520, 490.1523, 490.1530,
22 490.1531, 490.1532, and 490.1606, Code 2021, are repealed.

23 Sec. 217. DIRECTIONS TO THE CODE EDITOR. The Code editor
24 is directed to divide Code chapter 490 into subchapters and
25 subdivide certain subchapters into parts, including sections in
26 that chapter not amended in this division of this Act, sections
27 amended or enacted in this division of this Act, and sections
28 transferred in this division of this Act as follows:

29 1. Subchapter I, subdivided into part A, including sections
30 490.101 and 490.102; part B, including sections 490.120 through
31 490.129; part C, including section 490.130; part D, including
32 sections 490.140 through 490.144; and part E, including
33 sections 490.145 through 490.152.

34 2. Subchapter II, including sections 490.201 through
35 490.209.

1 3. Subchapter III, including sections 490.301 through
2 490.304.

3 4. Subchapter IV, including sections 490.401 through
4 490.403.

5 5. Subchapter V, including sections 490.501 through
6 490.504.

7 6. Subchapter VI, subdivided into part A, including
8 sections 490.601 through 490.604; part B, including sections
9 490.620 through 490.628; part C, including sections 490.630 and
10 490.631; and part D, including section 490.640.

11 7. Subchapter VII, subdivided into part A, including
12 sections 490.701 through 490.709; part B, including sections
13 490.720 through 490.729; part C, including sections 490.730
14 through 490.732; part D, including sections 490.740 through
15 490.747; and part E, including sections 490.748 and 490.749.

16 8. Subchapter VIII, subdivided into part A, including
17 sections 490.801 through 490.811; part B, including sections
18 490.820 through 490.826; part C, including sections 490.830
19 through 490.832; part D, including sections 490.840 through
20 490.844; part E, including sections 490.850 through 490.859;
21 part F, including sections 490.860 through 490.863; and part
22 G, including section 490.870.

23 9. Subchapter IX, subdivided into part A, including
24 sections 490.901 through 490.905; part B, including sections
25 490.920 through 490.924; and part C, including sections 490.930
26 through 490.935.

27 10. Subchapter X, subdivided into part A, including
28 sections 490.1001 through 490.1009; and part B, including
29 sections 490.1020 through 490.1022.

30 11. Subchapter XI, including sections 490.1101 through
31 490.1110.

32 12. Subchapter XII, including sections 490.1201 and
33 490.1202.

34 13. Subchapter XIII, subdivided into part A, including
35 sections 490.1301 through 490.1303; part B, including sections

1 490.1320 through 490.1326; subchapter C, including sections
2 490.1330 and 490.1331; and part D, including section 490.1340.

3 14. Subchapter XIV, subdivided into part A, including
4 sections 490.1401 through 490.1409; part B, including sections
5 490.1420 through 490.1423; part C, including sections 490.1430
6 through 490.1434; and part D, including section 490.1440.

7 15. Subchapter XV, including sections 490.1501 through
8 490.1512.

9 16. Subchapter XVI, subdivided into part A, including
10 sections 490.1601 through 490.1605; and part B, including
11 sections 490.1620 and 490.1621.

12 17. Subchapter XVII, including sections 490.1701 through
13 490.1706.

14 18. Subchapter XVIII, including sections 490.1801 through
15 490.1804.

16 PART B

17 CORRESPONDING PROVISIONS

18 Sec. 218. Section 249A.40, Code 2021, is amended to read as
19 follows:

20 **249A.40 Involuntarily dissolved providers — overpayments or**
21 **incorrect payments.**

22 Medical assistance paid to a provider following involuntary
23 administrative dissolution of the provider pursuant to chapter
24 490, subchapter XIV, part B, shall be considered incorrectly
25 paid for the purposes of [section 249A.53](#) and the provider
26 shall be considered to have received an overpayment for the
27 purposes of [this subchapter](#). For the purposes of [this section](#),
28 the overpayment shall not accrue until after a grace period
29 of ninety days following receipt of notice by the provider
30 of the dissolution from the department. Notwithstanding
31 section 490.1422, or any other similar retroactive provision
32 for reinstatement, the director shall recoup any medical
33 assistance paid to a provider while the provider was dissolved
34 if the provider is not retroactively reinstated within the
35 ninety-day grace period. The principals of the provider shall

1 be personally liable for the incorrect payment or overpayment.

2 Sec. 219. Section 455B.397, Code 2021, is amended to read
3 as follows:

4 **455B.397 Financial disclosure.**

5 Immediately upon the incurrence of any liability to
6 the state under this part, the debtor shall submit to the
7 director a report consisting of documentation of the debtor's
8 liabilities and assets, including if filed, a copy of the
9 ~~annual~~ biennial report submitted to the secretary of state
10 pursuant to ~~chapter 490~~ section 490.1622. A subsequent report
11 pursuant to this section shall be submitted annually on April
12 15 for the life of the debt. These reports shall be kept
13 confidential and shall not be available to the public.

14 Sec. 220. Section 455B.430, subsection 5, Code 2021, is
15 amended to read as follows:

16 5. Immediately upon the listing of real property in the
17 registry of hazardous waste or hazardous substance disposal
18 sites, a person liable for cleanup costs shall submit to
19 the director a report consisting of documentation of the
20 responsible person's liabilities and assets, including if
21 filed, a copy of the ~~annual~~ biennial report submitted to the
22 secretary of state pursuant to ~~chapter 490~~ section 490.1622. A
23 subsequent report pursuant to this section shall be submitted
24 annually on April 15 for the period the site remains on the
25 registry.

26 Sec. 221. Section 496C.14, subsection 5, Code 2021, is
27 amended to read as follows:

28 5. Notwithstanding subsections 1 through 4, purchase by
29 the corporation is not required upon the occurrence of any
30 event other than death of a shareholder if the corporation
31 is dissolved or voluntarily elects to adopt the provisions
32 of the Iowa business corporation Act, as provided in section
33 ~~490.1701~~ 490.1801, subsection 2, within sixty days after the
34 occurrence of the event. The articles of incorporation or
35 bylaws may provide that purchase is not required upon the death

1 of a shareholder if the corporation is dissolved within sixty
2 days after the death. Notwithstanding subsections 1 through 4,
3 purchase by the corporation is not required upon the death of a
4 shareholder if the corporation voluntarily elects to adopt the
5 provisions of the Iowa business corporation Act, as provided
6 in section ~~490.1701~~ 490.1801, subsection 2, within sixty days
7 after death.

8 Sec. 222. Section 496C.19, Code 2021, is amended to read as
9 follows:

10 **496C.19 Dissolution or liquidation.**

11 Violation of any provision of **this chapter** by a professional
12 corporation or any of its shareholders, directors, or officers
13 shall be cause for its involuntary dissolution, or liquidation
14 of its assets and business by the district court, as provided
15 in the Iowa business corporation Act, **chapter 490**. Upon the
16 death of the last remaining shareholder of a professional
17 corporation, or whenever the last remaining shareholder is not
18 licensed or ceases to be licensed to practice in this state a
19 profession which the corporation is authorized to practice,
20 or whenever any person other than the shareholder of record
21 becomes entitled to have all shares of the last remaining
22 shareholder of the corporation transferred into that person's
23 name or to exercise voting rights, except as a proxy, with
24 respect to such shares, the corporation shall not practice
25 any profession and it shall either be promptly dissolved or
26 shall promptly elect to adopt the provisions of the Iowa
27 business corporation Act, as provided in section ~~490.1701~~
28 490.1801, subsection 2. However, if prior to such dissolution
29 all outstanding shares of the corporation are acquired by
30 one or more persons licensed to practice in this state a
31 profession which the corporation is authorized to practice,
32 the corporation need not be dissolved and may practice the
33 profession as provided in **this chapter**.

34 Sec. 223. Section 499.69A, subsection 2, paragraph b,
35 subparagraph (2), Code 2021, is amended to read as follows:

1 (2) For a qualified corporation which is a party to the
2 proposed qualified merger, the qualified corporation shall
3 approve the plan as provided in chapter 490, subchapter XI.

4 Sec. 224. Section 499.69A, subsections 5 and 6, Code 2021,
5 are amended to read as follows:

6 5. The effect of a qualified merger for a qualified survivor
7 which is a cooperative association shall be as provided for in
8 this chapter. The effect of a qualified merger for a qualified
9 survivor which is a qualified corporation shall be as provided
10 for corporations under chapter 490, subchapter XI.

11 6. The provisions governing the right of a shareholder or
12 member of a cooperative association to object to a merger or
13 the right of a member to dissent and obtain payment of the
14 fair value of an interest in the cooperative association in
15 the case of a merger as provided in this chapter shall apply
16 to a qualified merger. The provisions governing the right
17 of a shareholder of a corporation to ~~dissent from~~ exercise
18 appraisal rights and obtain payment of the fair value of the
19 shareholder's shares in the case of a merger as provided in
20 ~~subchapter XIII of chapter 490, subchapter XIII,~~ shall apply
21 to a qualified merger.

22 Sec. 225. Section 508.12, subsection 1, Code 2021, is
23 amended to read as follows:

24 1. An insurer which is organized under the laws of any
25 state and has created or will create jobs in this state or
26 which is an affiliate or subsidiary of a domestic insurer,
27 and is admitted to do business in this state for the purpose
28 of writing insurance authorized by this chapter may become a
29 domestic insurer by complying with section ~~490.902~~ 490.905 or
30 491.33 and with all of the requirements of law relative to the
31 organization and licensing of a domestic insurer of the same
32 type and by designating its principal place of business in this
33 state may become a domestic corporation and be entitled to like
34 certificates of its corporate existence and license to transact
35 business in this state, and be subject in all respects to the

1 authority and jurisdiction thereof.

2 Sec. 226. Section 515.78, subsection 1, Code 2021, is
3 amended to read as follows:

4 1. An insurer which is organized under the laws of any
5 state and has created or will create jobs in this state or
6 which is an affiliate or subsidiary of a domestic insurer,
7 and is admitted to do business in this state for the purpose
8 of writing insurance authorized by [this chapter](#) may become a
9 domestic insurer by complying with section ~~490.902~~ [490.905](#) or
10 491.33 and with all of the requirements of law relative to the
11 organization and licensing of a domestic insurer of the same
12 type and by designating its principal place of business in this
13 state may become a domestic corporation and be entitled to like
14 certificates of its corporate existence and license to transact
15 business in this state, and be subject in all respects to the
16 authority and jurisdiction thereof.

17 Sec. 227. Section 515E.3A, subsection 1, paragraph a, Code
18 2021, is amended to read as follows:

19 a. Complying with [section ~~490.902~~ 490.905](#).

20 Sec. 228. Section 515G.3, subsection 2, Code 2021, is
21 amended to read as follows:

22 2. A plan of conversion for an insurer organized on
23 the mutual plan under [chapter 491](#), shall also provide for
24 conversion to a stock company as follows: the insurer
25 organized on the mutual plan under [chapter 491](#) shall amend
26 its articles pursuant to [chapter 491](#) as necessary to become
27 a stock company, and shall immediately convert to a chapter
28 490 corporation as provided in section ~~490.1701~~ [490.1801](#) upon
29 becoming a stock company.

30 PART C

31 EFFECTIVE DATE

32 Sec. 229. EFFECTIVE DATE. This division of this Act takes
33 effect January 1, 2022.

34 DIVISION II

35 NOT FOR PROFIT CORPORATIONS

1 makes a number of changes to most of its sections, in many
2 instances to enhance readability or internal consistency.

3 FORMS AND FILING FEES. The bill revises the types of
4 documents that the secretary of state may prescribe without
5 requiring that the form of such documents are mandatory
6 (amended Code section 490.121). It replaces the schedule
7 of specific filing fees (amended Code section 490.122). It
8 revises requirements to determine when a document filed with
9 the secretary of state becomes effective (amended Code section
10 490.123).

11 DEFINITIONS. The bill rewrites a number of definitions
12 applicable throughout the IBCA, including by eliminating the
13 definition of a "public corporation" (a corporation having a
14 class of voting stock that is listed on a national securities
15 exchange or held of record by more than 2,000 shareholders)
16 which currently distinguishes such entities from closely held
17 corporations (amended Code section 490.140). The bill defines
18 "eligible entities", which include noncorporate entities
19 authorized to engage in transactions with a corporation,
20 including by merger or share exchange (amended Code sections
21 490.140, 490.1102, and 490.1103).

22 FORUM. The bill provides that the article of incorporation
23 or bylaws may specify the forum for litigation involving
24 internal corporate claims (new Code section 490.208).

25 RATIFICATION AS A METHOD TO CURE A DEFECT IN A CORPORATE
26 ACTION. The bill provides a process to remedy a defect
27 in the manner in which a corporate action was authorized
28 ("ratification"), including an action relating to the issuance
29 of shares, thereby creating a "safe harbor" procedure for a
30 corporation to avoid a legal challenge. The remedial action
31 may be taken by the board of directors and if required by
32 the shareholders. It also provides for a judicial remedy.
33 Finally, the bill provides for the retroactive validity of the
34 remedial action (new Code sections 490.145 through 490.152).

35 REGISTERED OFFICES AND REGISTERED AGENTS. The bill provides

1 that the resignation of a registered agent of a foreign
2 corporation takes effect either at 12:01 a.m. on the 31st day
3 after the day on which the registration statement is filed with
4 the secretary of state or the designation of a new registered
5 agent by the corporation, whichever is earlier (amended Code
6 section 490.503).

7 DIRECTORS. The bill provides for the qualifications of
8 directors or nominees for directors, including as may be
9 prescribed by the articles of incorporation or bylaws (e.g.,
10 not being subject to criminal, civil, or administrative
11 sanctions). It requires that the qualifications must be both
12 reasonable and lawful (amended Code section 490.802). It
13 provides for the judicial removal of a director by a court and
14 for a court order barring the director from seeking reelection
15 (amended Code section 490.809). It also provides quorum
16 requirements for a meeting of the board as specified by the
17 articles of incorporation or bylaws so long as it consists
18 of at least one-third of the total number of directors as
19 currently required (amended Code section 490.824). It also
20 provides that in a noncompetitive election, a director who
21 failed to receive a majority vote may fill the office for 90
22 days (new Code section 490.1022).

23 DIRECTORS AND OFFICERS — BUSINESS OPPORTUNITIES AND
24 EXPENSES. A director or officer may be presented with
25 a business opportunity that affects the interest of the
26 corporation, and may create a duty to present the business
27 opportunity to the corporation to be approved by qualified
28 (i.e., disinterested) board members. The bill provides that
29 the articles of incorporation may limit or eliminate this duty
30 (amended Code sections 490.202 and 490.870). It also provides
31 for advancing expenses to directors and officers (e.g., in
32 cases involving litigation). The bill eliminates a requirement
33 that the director or officer must provide a written affirmation
34 that the director or officer has satisfied the required
35 standard of conduct, but does not amend another requirement

1 that requires repayment if the person is not required to be
2 indemnified (amended Code sections 490.851 and 490.853).

3 OFFICERS — STANDARD OF CONDUCT. The bill provides methods
4 for an officer to report a violation of law or other breach of a
5 fiduciary obligation (amended Code section 490.842).

6 SHAREHOLDERS. The bill provides for procedures for
7 notifying shareholders (amended Code section 490.141). It
8 amends provisions allowing for remote participation by
9 shareholders, by providing for such access during annual
10 and special meetings, including remote-only access without
11 a designated location (amended Code section 490.709). It
12 prohibits a corporation from voting shares of an entity
13 which is owned or controlled by the corporation, regardless
14 of the circumstances (amended Code section 490.721). It
15 provides that the articles of incorporation or bylaws cannot
16 establish a quorum that is less than that required by the
17 Code chapter (amended Code section 490.725). It requires
18 that before a shareholder (interest holder) becomes liable
19 for a new obligation due to the amendment to the articles of
20 incorporation (new interest holder liability), the shareholder
21 must provide written consent (amended Code section 490.1003).

22 SHARES AND DISTRIBUTIONS. The bill provides that a
23 shareholder may become personally liable for the debts of
24 the corporation if such liability is due to a shareholder's
25 conduct. It eliminates a provision, not part of the MBCA,
26 referred to as the "poison pill" that allows a board of
27 directors to prevent a hostile takeover (repealed Code
28 section 490.624A). It provides that a board of directors may
29 fix the record date for determining when shareholders are
30 entitled to receive a dividend or distribution (amended Code
31 sections 490.623 and 490.640). The record date is the date
32 for determining the identity of the corporation's shareholders
33 (amended Code section 490.705).

34 DOMESTICATION AND CONVERSION. The bill provides a procedure
35 referred to as domestication which allows an entity organized

1 under Iowa law to change its state of incorporation (to become
2 foreign) to another state or to allow an entity incorporated
3 in another state to be incorporated in Iowa (new Code sections
4 490.920 through 490.924). It also rewrites provisions for
5 the process of conversion in which a domestic corporation may
6 become another type of entity or a foreign entity which is not
7 a corporation may become a domestic corporation (Iowa Code
8 sections 490.1111 through 490.1114 repealed and replaced by new
9 Code sections 490.930 through 490.935).

10 FOREIGN CORPORATIONS. The bill eliminates the term
11 "certificate of authorization" issued to a foreign corporation,
12 replaces that term with "certificate of registration", and
13 includes specific requirements for that document (Code section
14 490.128). It repeals a number of provisions relating to the
15 issuance or revocation of such authorization, including the
16 withdrawal of a foreign corporation's authorization (Code
17 section 490.1520), the transfer of a foreign corporation's
18 authorization to transact business in this state (Code section
19 490.1523), the grounds or the revocation of a certificate of
20 authority (Code section 490.1530), the procedure for such
21 revocation (Code section 490.1531), and a process to repeal
22 that revocation (Code section 490.1532).

23 MERGERS AND SHARE EXCHANGES WITHOUT SHAREHOLDER APPROVAL.
24 The bill amends provisions allowing for both mergers (the
25 combination or consolidation of two or more entities into a
26 new entity) and a share exchange (a transaction in which two
27 corporations exchange shares or securities which results in one
28 corporation controlling the acquired corporation while each
29 corporation remains in existence). The bill allows a merger or
30 share exchange without a shareholder vote in addition to the
31 current short form exception that allows such a transaction
32 only if the acquiring corporation would own 90 percent of the
33 shares in the other corporation after the transaction. Under
34 the bill, the transaction is allowed, so long as a number
35 of conditions are satisfied (amended Code sections 490.1101

1 through 490.1108 and unamended sections 490.1108A through
2 490.1110). The merger or share exchange must follow the tender
3 offer and be made on the terms provided in the plan of merger
4 or share exchange, and the offeror must acquire enough shares
5 to permit it to approve the merger or share exchange as if the
6 matter were submitted to a vote at a meeting of shareholders.
7 It would also allow for a subsidiary corporation to merge with
8 an unincorporated parent entity without the approval of the
9 subsidiary corporation's board of directors or shareholders
10 (amended Code section 490.1105).

11 APPRAISAL RIGHTS. The bill amends provisions that allow
12 a minority (dissenting) shareholder to assert appraisal
13 rights which triggers a payout for the fair value for the
14 shareholder's shares under limited circumstances where a
15 material change in the relationship between the corporation
16 and the shareholder is proposed (e.g., in the case of a merger
17 or share exchange). The bill provides that a domestication
18 or conversion to an unincorporated entity also triggers that
19 right (Code section 490.1302). It also limits the right to an
20 appraisal if the corporate action involves the distribution of
21 the corporation's net assets to the shareholders.

22 DISSOLUTION. The bill allows the board of directors to fix
23 a record date to determine shareholder distribution so long as
24 it is not made retroactive (amended Code section 490.1405). It
25 also requires the board to make reasonable payment of claims
26 and distributions in liquidations of assets to shareholders
27 after satisfying claims (amended Code section 490.1409).
28 The bill largely retains the current provision allowing for
29 reinstatement following administrative dissolution (amended
30 Code section 490.1422).

31 RECORDS AND REPORTS. The bill amends provisions which allow
32 for the inspection of corporate records by shareholders (e.g.,
33 articles of incorporation, bylaws, notices to shareholders,
34 contact information for directors and officers, biennial
35 reports, minutes of meetings, records of action taken without

1 a board or committee meeting, and financial statements). The
2 bill provides that the corporation may impose reasonable
3 restrictions upon a shareholder's request, including
4 confidentiality and the use distribution of such records
5 (amended Code sections 490.1601 and 490.1602). It eliminates
6 a requirement that a corporation deliver or make available
7 to shareholders the corporation's annual financial statement
8 (amended Code section 490.1620). It does not adopt the new
9 MBCA's provisions relating to annual reports but retains and
10 revises the provision requiring corporations to prepare and
11 deliver biennial reports to the secretary of state (amended
12 Code section 490.1622).

13 **BENEFIT CORPORATIONS.** The bill authorizes benefit
14 corporations. A benefit corporation allows an entity to be
15 formed as a corporation but requires directors to consider, in
16 addition to shareholder interests, the social, environmental,
17 and other effects of corporate activity, and allows business
18 decisions to be based on such effects, even where those
19 decisions may be contrary to the financial interests of
20 shareholders (new Code sections 490.1701 through 490.1706).
21 In order to become or stop from being a benefit corporation,
22 the articles of incorporation must be amended by a two-thirds
23 vote of all outstanding shares of the corporation entitled to
24 vote on the question (new Code section 490.1703). A benefit
25 corporation is required to prepare an annual benefit report
26 that addresses the efforts of the corporation during the
27 preceding year, which may be based on a third-party standard
28 (new Code section 490.1705).

29 **TRANSITIONAL PROVISIONS.** The bill includes a number of
30 transitional provisions. This includes exceptions from its
31 provisions, including county and district fairs (Code chapter
32 174), entities organized on a cooperative basis (Code chapters
33 497, 498, 499, 499A, 501, and 501A), financial institutions
34 (Code chapters 524 and 533), corporations organized on a mutual
35 plan (Code chapter 491), and professional corporations (Code

1 chapter 496C). The Code section does not prohibit an entity
2 from electing to adopt the provisions of Code chapter 490 (Code
3 section 490.1701).

4 COORDINATING AMENDMENTS. The bill includes a number of
5 coordinating amendments in various Code chapters.

6 EFFECTIVE DATE. The division of the bill takes effect on
7 January 1, 2022.

8 DIVISION II — NOT FOR PROFIT CORPORATIONS. The bill
9 amends Code section 504.205 which provides that a state agency
10 is prohibited from imposing a requirement on a nonprofit
11 corporation that is more restrictive or expansive than a
12 requirement imposed by state or federal law.

13 EFFECTIVE DATE. The division of the bill takes effect upon
14 enactment.