

Senate Study Bill 3083 - Introduced

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

A BILL FOR

1 An Act relating to corporations by providing for the use of
2 electronic mail and other electronic transmissions, and
3 shareholders' lists.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

SHAREHOLDER NOTICES, LISTS, AND RECORDS

Section 1. Section 490.140, Code 2022, is amended by adding the following new subsections:

NEW SUBSECTION. 12A. "*Electronic mail*" means an electronic transmission directed to a unique electronic mail address.

NEW SUBSECTION. 12B. "*Electronic mail address*" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox, commonly referred to as the "local part" of the address, and a reference to an internet domain, commonly referred to as the "domain part" of the address, whether or not displayed, to which electronic mail may be sent or delivered.

Sec. 2. Section 490.141, Code 2022, is amended to read as follows:

490.141 Notices and other communications.

1. A notice under [this chapter](#) must be in writing unless oral notice is reasonable in the circumstances. Unless otherwise agreed between the sender and the recipient, words in a notice or other communication under [this chapter](#) must be in English.

2. A notice or other communication may be given by any method of delivery, except that a notice or other communication by electronic transmissions ~~transmission~~ must be in accordance with [this section](#). If the methods of delivery are impracticable, a notice or other communication from a corporation may be given by means of a broad nonexclusionary distribution to the public, which may include a newspaper of general circulation in the area where published; radio, television, or other form of public broadcast communication; or other methods of distribution that the corporation has previously identified to its shareholders.

3. A notice or other communication to a domestic corporation or to a registered foreign corporation ~~registered to do business in this state~~ may be delivered to the corporation's

1 registered agent at its registered office or to the secretary
2 at the corporation's principal office shown in its most recent
3 biennial report required by [section 490.1621](#) or, in the case
4 of a foreign corporation that has not yet delivered a biennial
5 report, in its foreign registration statement.

6 4. A notice or other communication from a corporation
7 to a shareholder may be delivered by electronic mail to the
8 electronic mail address for a shareholder required to be
9 included in the record of shareholders maintained pursuant
10 to section 490.1601, subsection 4, unless the shareholder
11 has previously notified the corporation in writing that
12 the shareholder objects to receiving notices and other
13 communication by electronic mail. Any notice or other
14 communication may be delivered to a shareholder by another form
15 of electronic transmission if consented to by the shareholder
16 or if authorized by subsection 10. Any notice or other
17 communication from the corporation to any other person may be
18 delivered by electronic transmission if consented to by the
19 recipient or if authorized by [subsection 10](#).

20 5. Any consent given under this subsection 4 or subsection
21 10 may be revoked with respect to future notices or
22 communications by the person who consented by giving written
23 ~~or electronic~~ notice to the person to whom the consent was
24 delivered. ~~Any such consent is deemed revoked~~

25 5. A notice or other communication shall no longer be
26 delivered to an electronic mail address or other electronic
27 transmission address pursuant to subsection 4, if all of the
28 following apply:

29 a. The corporation ~~is unable to deliver two consecutive~~
30 ~~electronic transmissions given by the corporation in~~
31 ~~accordance with such consent~~ receives notice from the
32 information processing system into which such notice or other
33 communication was entered that two consecutive notices or
34 other communications given by electronic transmission have
35 not been delivered to the electronic mail address or other

1 electronic transmission address to which such notice or other
2 communication was directed.

3 ~~b. Such inability~~ notice of nondelivery becomes known to the
4 secretary, or an assistant secretary or to the transfer agent,
5 or other another person responsible for the giving of notice
6 notices or other communications for the corporation; provided,
7 however, that the inadvertent failure to treat such inability
8 as a revocation recognize such notice of nondelivery as a
9 cessation of authority to provide a shareholder with notice
10 by electronic mail or other electronic transmission shall not
11 invalidate any meeting or other action.

12 6. Unless otherwise agreed between the sender and the
13 recipient, an a notice or other communication by electronic
14 transmission is received when all of the following apply:

15 a. The electronic transmission enters an information
16 processing system ~~that the recipient has designated or uses~~
17 ~~for the purposes of receiving electronic transmissions or~~
18 ~~information of the type sent, and from which the recipient is~~
19 ~~able to retrieve the~~ directed to any of the following:

20 (1) In the case of a shareholder, the electronic mail
21 address for the shareholder required to be included in the
22 record of shareholders maintained pursuant to section 490.1601,
23 subsection 4, or other electronic transmission address at
24 which the shareholder has consented to receive notice or other
25 communications by electronic transmission.

26 (2) In the case of any other recipient, the electronic
27 transmission address at which the recipient has consented
28 to receive notice or other communications by electronic
29 transmission.

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

32 7. Receipt of an electronic acknowledgment from an
33 information processing system described in subsection 6,
34 paragraph "a", establishes that an electronic transmission was
35 received but, by itself, does not establish that the content

1 sent corresponds to the content received.

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

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

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

8 (1) A shareholder's address ~~shown on~~ included in the
9 ~~corporation's~~ record of shareholders maintained ~~by the~~
10 ~~corporation under~~ pursuant to [section 490.1601, subsection 4.](#)

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

12 (3) The domestic or registered foreign corporation's
13 principal office.

14 b. If mailed by United States mail postage prepaid and
15 ~~correctly~~ addressed to a shareholder at the shareholder's
16 address included in the record of shareholders pursuant to
17 section 490.1601, subsection 4, upon deposit in the ~~United~~
18 ~~States~~ mail.

19 c. If mailed by United States mail postage prepaid and
20 ~~correctly~~ addressed to a recipient other than a shareholder, at
21 the address included in the corporation's records the earliest
22 of when it is actually received, or as follows:

23 (1) If sent by registered or certified mail, return receipt
24 requested, the date shown on the return receipt signed by or on
25 behalf of the addressee.

26 (2) Five days after it is deposited in the United States
27 mail.

28 d. If an electronic transmission, when it is received as
29 provided in [subsection 6.](#)

30 e. If oral, when communicated.

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

1 a. The electronic transmission is otherwise retrievable in
2 perceivable form.

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

5 11. If **this chapter** prescribes requirements for notices
6 or other communications in particular circumstances, those
7 requirements govern. If articles of incorporation or bylaws
8 prescribe requirements for notices or other communications,
9 not inconsistent with **this section** or other provisions of
10 this chapter, those requirements govern. The articles of
11 incorporation or bylaws may authorize or require delivery of
12 notices of meetings of directors by electronic transmission.

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

19 13. a. Whenever notice would otherwise be required to
20 be given under any provision of this ~~subchapter~~ chapter
21 to a shareholder, ~~such~~ the notice need not be given if the
22 corporation is not permitted to deliver notice by electronic
23 transmission pursuant to subsections 4 and 5 and any of the
24 following apply:

25 (1) Notices to the shareholders of two consecutive annual
26 meetings, and all notices of meetings during the period
27 between such two consecutive annual meetings, have been sent
28 to such shareholder at such shareholder's address ~~as shown~~
29 ~~on the records of the corporation~~ included in the record
30 of shareholders maintained pursuant to section 490.1601,
31 subsection 4, and have been returned undeliverable or could not
32 be delivered.

33 (2) All, but not less than two, payments of dividends on
34 securities during a twelve-month period, or two consecutive
35 payments of dividends on securities during a period of more

1 than twelve months, have been sent to such shareholder at
2 such shareholder's address ~~as shown on the records of the~~
3 ~~corporation~~ included in the record of shareholders maintained
4 pursuant to section 490.1601, subsection 4, and have been
5 returned undeliverable or could not be delivered.

6 (3) No address has been provided to the corporation by or on
7 behalf of a shareholder and the corporation has not otherwise
8 obtained an address for the shareholder that the corporation
9 believes is reliable.

10 b. If In addition, if any such shareholder ~~shall deliver~~
11 to which this subsection applies delivers to the corporation a
12 written notice setting forth such shareholder's then-current
13 address, the requirement that notice be given to such
14 shareholder shall be reinstated.

15 Sec. 3. Section 490.720, Code 2022, is amended to read as
16 follows:

17 **490.720 ~~Shareholders' list~~ List of shareholders for meeting.**

18 1. After fixing a record date for a meeting, a corporation
19 shall prepare an alphabetical list of the names of all ~~its~~ the
20 shareholders who are entitled to notice of a the shareholders'
21 meeting. If the board of directors fixes a different record
22 date under section 490.707, subsection 5, to determine the
23 shareholders entitled to vote at the meeting, a corporation
24 also shall prepare an alphabetical list of the names of
25 all ~~its~~ the shareholders who are entitled to vote at the
26 meeting. ~~A~~ The list must be arranged by voting group, and
27 within each voting group by class or series of shares, and
28 ~~show~~ contain the address of, and number and class or series
29 of shares held by, each shareholder. ~~Nothing contained in~~
30 this subsection shall require and, if the notice or other
31 communications regarding the meeting has been or will be sent
32 by the corporation to include on such list the a shareholder by
33 electronic mail address or other electronic contact information
34 of a transmission, the electronic mail or other electronic
35 transmission address of that shareholder.

1 2. ~~a.~~ ~~The shareholders' list for~~ of shareholders entitled
2 to notice shall be available for inspection by any shareholder,
3 beginning two business days after notice of the meeting is
4 given for which the list was prepared and continuing through
5 the meeting. The ~~shareholders' list~~ list of shareholders for
6 notice shall be made available at via any of the following:

7 (1) ~~The~~ At the corporation's principal office or at a place
8 identified in the meeting notice in the city where the meeting
9 will be held.

10 (2) ~~A~~ On a reasonably accessible electronic network,
11 provided that the information required to gain access to such
12 list is provided with the notice of the meeting. The list of
13 shareholders entitled to vote shall be similarly available
14 for inspection promptly after the record date for voting. In
15 the event that the corporation determines to make the list
16 available on an electronic network, the corporation may take
17 reasonable steps to ensure that such information is available
18 only to shareholders of the corporation.

19 ~~b. A shareholders' list for voting shall be similarly~~
20 ~~available for inspection promptly after the record date for~~
21 ~~voting.~~ A shareholder, or the shareholder's agent or attorney,
22 is entitled on written demand to inspect and, subject to the
23 requirements of [section 490.1602, subsection 3](#), to copy a
24 list of shareholders, during regular business hours and at
25 the shareholder's expense, during the period it is available
26 for inspection. A corporation may satisfy the shareholder's
27 right to copy a list of shareholders by furnishing a copy
28 in the manner described in section 490.1603, subsection 2.
29 A shareholder and the shareholder's agent or attorney who
30 inspects or is furnished a copy of a list of shareholders under
31 this subsection or under subsection 3 or who copies the list
32 under this subsection may use the information on that list only
33 for purposes related to the meeting and its subject matter and
34 must keep the information on that list confidential.

35 3. If the meeting is to be held at a place, the corporation

1 shall make the list of shareholders entitled to vote available
2 at the meeting and any adjournment, and any shareholder, or the
3 shareholder's agent or attorney, is entitled to inspect the
4 list at any time during the meeting ~~or~~ and any adjournment.
5 If the meeting is to be held solely by means of remote
6 communication, then such list shall also be ~~open to~~ available
7 for such inspection during the meeting and any adjournment on a
8 reasonably accessible electronic network, and the information
9 required to access such list shall be provided with the notice
10 of the meeting. The corporation may satisfy its obligation
11 to make such list available for inspection during a meeting
12 by furnishing a copy of the list in the manner described in
13 section 490.1603, subsection 2, to the shareholders prior to
14 the meeting.

15 4. If the corporation refuses to allow a shareholder, or
16 the shareholder's agent or attorney, to inspect a ~~shareholders'~~
17 list of shareholders before or at the meeting or any
18 adjournment, or copy a list as permitted by subsection 2, the
19 district court of the county where a corporation's principal
20 office or, if none in this state, its registered office, is
21 located, on application of the shareholder, may summarily order
22 the inspection or copying at the corporation's expense and may
23 postpone the meeting for which the list was prepared until the
24 inspection or copying is complete.

25 5. Refusal or failure to prepare or make available the
26 ~~shareholders'~~ list of shareholders does not affect the validity
27 of action taken at the meeting.

28 Sec. 4. Section 490.1601, subsection 4, Code 2022, is
29 amended to read as follows:

30 4. A corporation shall maintain a record of its current
31 shareholders in alphabetical order by class or series of shares
32 showing the address of, ~~and the number and class or series of~~
33 ~~shares held by,~~ each shareholder to which notices and other
34 communications from the corporation are to be sent, and which
35 shall include the number and class or series of shares held by

1 each such shareholder. Nothing contained in this subsection
2 shall require the corporation to include in such record the
3 electronic mail address or other electronic contact information
4 of In addition, if a shareholder has provided an electronic
5 mail address to the corporation or has consented to receive
6 notices or other communications by electronic mail or other
7 electronic transmission, the record of shareholders shall
8 include the electronic mail or other electronic transmission
9 address of the shareholder if notices or other communications
10 are being delivered by the corporation to the shareholder at
11 such electronic mail or other electronic transmission address
12 pursuant to section 490.141, subsection 4. An electronic
13 mail address of a shareholder shall be deemed to be provided
14 by a shareholder if the electronic mail address is contained
15 in a communication to the corporation by or on behalf of
16 the shareholder unless the communication expressly indicates
17 that the electronic mail address shall not be used to deliver
18 notices or other communications.

19 DIVISION II

20 GRAMMATICAL CHANGES

21 Sec. 5. Section 490.140, subsection 57, Code 2022, is
22 amended to read as follows:

23 57. "United States" includes a district, authority, bureau,
24 commission, department, and any other agency of the United
25 States.

26 Sec. 6. Section 490.143, subsection 1, paragraph e,
27 subparagraph (2), Code 2022, is amended to read as follows:

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

31 Sec. 7. Section 490.1704, subsection 4, Code 2022, is
32 amended to read as follows:

33 4. Unless otherwise provided in the articles of
34 incorporation, the violation by a director of the duties
35 imposed by **subsections 1 and 2** shall not constitute an

1 intentional infliction of harm on the corporation or the
2 shareholders for the purposes of ~~sections~~ section 490.202,
3 subsection 2, paragraphs "d" and "e".

4 DIVISION III

5 TERMINOLOGY CHANGES

6 Sec. 8. Section 490.120, subsection 5, Code 2022, is amended
7 to read as follows:

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

14 Sec. 9. Section 490.401, subsection 2, paragraphs c and e,
15 Code 2022, are amended to read as follows:

16 c. The name of a registered foreign corporation ~~registered~~
17 ~~to do business in this state~~ or an alternate name adopted by
18 a registered foreign corporation ~~registered to do business in~~
19 ~~this state~~ because its corporate name is unavailable.

20 e. The name of a foreign nonprofit corporation ~~registered~~
21 authorized to do business in this state or an alternate
22 name adopted by a foreign nonprofit corporation ~~registered~~
23 authorized to conduct activities in this state because its real
24 name is unavailable.

25 Sec. 10. Section 490.401, subsection 4, unnumbered
26 paragraph 1, Code 2022, is amended to read as follows:

27 A corporation may use the name, including the fictitious
28 name, of another domestic or foreign corporation that is used
29 in this state if the other corporation is incorporated or
30 ~~authorized~~ registered to ~~transact~~ do business in this state
31 and the proposed user corporation submits documentation to the
32 satisfaction of the secretary of state establishing any of the
33 following conditions:

34 Sec. 11. Section 490.748, subsection 3, Code 2022, is
35 amended to read as follows:

1 3. The district court may appoint an individual or domestic
2 or registered foreign corporation, ~~registered to do business~~
3 ~~in this state,~~ as a custodian or receiver and may require the
4 custodian or receiver to post bond, with or without sureties,
5 in an amount the district court directs.

6 Sec. 12. Section 490.922, subsection 5, Code 2022, is
7 amended to read as follows:

8 5. If the domesticating corporation is a registered
9 foreign corporation ~~that is registered to do business in this~~
10 ~~state under subchapter XV,~~ its registration statement shall
11 be canceled automatically when the domestication becomes
12 effective.

13 Sec. 13. Section 490.1511, subsection 4, Code 2022, is
14 amended to read as follows:

15 4. The registration of a registered foreign corporation
16 ~~to do business in this state~~ ceases on the effective date
17 of the termination as set forth in the certificate of
18 termination, unless before that date the foreign corporation
19 cures each ground for termination stated in the certificate of
20 termination. If the foreign corporation cures each ground, the
21 secretary of state shall file a statement that the certificate
22 of termination is withdrawn.

23 Sec. 14. Section 490.1621, subsection 4, Code 2022, is
24 amended to read as follows:

25 4. The first biennial report shall be delivered to the
26 secretary of state between January 1 and April 1 of the first
27 even-numbered year following the calendar year in which a
28 domestic corporation was incorporated or a foreign corporation
29 was ~~authorized to transact~~ registered to do business in this
30 state. Subsequent biennial reports must be delivered to
31 the secretary of state between January 1 and April 1 of the
32 following even-numbered calendar years. For purposes of this
33 section, each biennial report shall contain information related
34 to the two-year period immediately preceding the calendar year
35 in which the report is filed.

1

EXPLANATION

2

The inclusion of this explanation does not constitute agreement with
3 the explanation's substance by the members of the general assembly.

3

4 BACKGROUND. This bill amends provisions in the Iowa
5 business corporation Act (IBCA) (Code chapter 490) as
6 revised in HF 844 (2021 Iowa Acts, chapter 165) based on
7 recommendations by the American bar association and published
8 as the 2016 revised version of the "Model Business Corporation
9 Act" (MBCA). The bill includes later additions to the MBCA
10 relating to the use of electronic transmission to deliver and
11 receive communications between a corporation and shareholders.
12 The bill also makes changes to the use of grammar in provisions
13 enacted in HF 844 and the terminology used in the MBCA and
14 enacted in HF 844 to enhance the IBCA's readability.

15 DIVISION I — NOTICES AND OTHER COMMUNICATION. The bill
16 defines electronic mail (email) as any electronic transmission
17 directed to a unique electronic mail address (amended Code
18 section 490.140(12A), (12B)). The use of other forms of
19 electronic transmission is also allowed. The exception for a
20 corporation's use of electronic transmission, including email,
21 to communicate with a shareholder is the shareholder's written
22 objection (amended Code section 490.140(4)). The corporation
23 must also cease using this form of communication if it receives
24 a message that the electronic transmission could not be
25 delivered (amended Code section 490.140(5)).

26 DIVISION I — LIST OF SHAREHOLDERS. The phrase
27 "shareholders' list" refers to a register of all active owners
28 of the corporation's shares which the corporation must keep
29 current. The bill changes the name to "list of shareholders".
30 The bill provides that if a communication regarding a meeting
31 has been sent by the corporation to the shareholder by email
32 or other electronic transmission, the address of the email or
33 other electronic transmission must be included as part of the
34 list (amended Code section 490.720(1)). The bill also provides
35 that a corporation may comply with its obligation to make the

1 list available for inspection by providing a copy of the list
2 prior to meeting; the list is often used for the restricted
3 use of protecting shareholder rights (amended Code section
4 490.720(2)).

5 DIVISION I — RECORD OF SHAREHOLDERS. The corporation is
6 required to maintain a record of shareholders which is the
7 basis for providing communications to shareholders. If a
8 shareholder provides an email address to the corporation or has
9 consented to receive communication by electronic transmission,
10 the record must include the email or other electronic
11 transmission address of the shareholder (amended Code section
12 490.1601(4)). In these cases, the electronic mail address
13 or other electronic transmission address of a shareholder is
14 deemed to be provided by a shareholder to the corporation
15 if it is contained in a communication to the corporation by
16 or on behalf of the shareholder, unless the shareholder's
17 communication expressly indicates otherwise.

18 DIVISION II — GRAMMATICAL CHANGES. The bill amends several
19 provisions to correspond to modern rules of grammar, including
20 the proper use of an indefinite article, a comma, and the
21 singular (amended Code sections 490.140(57), 490.143(1), and
22 490.1704(4)).

23 DIVISION III — TERMINOLOGY CHANGES. Prior to the enactment
24 of the revised MBCA, the IBCA, like other model business
25 organization statutes (e.g., limited liability companies
26 under Code chapter 489 or nonprofit corporations under Code
27 chapter 504), provided that a foreign business was "authorized
28 to transact business in this state" or the equivalent phrase
29 "authorized to do business in this state" by obtaining a
30 certificate of authorization (e.g., Code section 489.208 or
31 504.112). By comparison, a domestic corporation (incorporated
32 with the secretary of state) may obtain a certificate of
33 existence (Code section 490.128) which is also the phrase used
34 by other business organizations, including limited liability
35 companies (Code section 489.208). A domestic or foreign

1 nonprofit corporation may obtain a certificate of existence
2 or certificate of authority (Code section 504.112). The
3 MBCA provides that in order "to do business in this state" a
4 foreign corporation must be registered with the secretary of
5 state and obtain a certificate of registration (Code section
6 490.128). Such a corporation is defined as a "registered
7 foreign corporation" (Code section 490.140(47)).

8 The bill makes changes to this terminology when referring
9 to foreign corporations to conform with the MBCA's use of
10 terms and to enhance readability. The phrase "certificate of
11 existence" is changed to "certificate of registration" (amended
12 Code section 490.120(5)). The phrase "authorized to transact
13 business in this state" is changed to "registered to do
14 business in this state" (amended Code sections 490.401(4) and
15 490.1621(4)). The phrase "foreign corporation registered to
16 do business in this state" is shortened to "registered foreign
17 corporation" (amended Code sections 490.401(2), 490.748(3),
18 490.922(5), and 490.1511(4)). When referring to a foreign
19 nonprofit corporation, the phrase "registered to do business in
20 this state" is changed to "authorized to do business in this
21 state (amended Code section 490.401(2)).