HOUSE FILE 2469
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 630)

(COMPANION TO LSB 5272SV BY
COMMITTEE ON JUDICIARY)

(As Amended and Passed by the House March 14, 2022)

[= New Language by the House

A BILL FOR

An Act relating to corporations by providing for the use of electronic mail and other electronic transmissions, and shareholders' lists.

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

registered agent at its registered office or to the secretary at the corporation's principal office shown in its most recent biennial report required by section 490.1621 or, in the case of a foreign corporation that has not yet delivered a biennial report, in its foreign registration statement.

4. A notice or other communication from a corporation to a shareholder may be delivered by electronic mail to the electronic mail address for a shareholder required to be included in the record of shareholders maintained pursuant to section 490.1601, subsection 4, unless the shareholder has previously notified the corporation in writing that the shareholder objects to receiving notices and other communication by electronic mail. Any notice or other communication may be delivered to a shareholder by another form of electronic transmission if consented to by the shareholder or if authorized by subsection 10. Any notice or other communication from the corporation to any other person may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection 10.

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

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

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

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

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

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

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

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

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

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

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

sent corresponds to the content received.

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

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

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

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

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

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

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

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

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

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

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

e. If oral, when communicated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. ~~A shareholders' list for voting shall be similarly available for inspection promptly after the record date for voting.~~ A shareholder, or the shareholder's agent or attorney, is entitled on written demand to inspect and, subject to the requirements of section 490.1602, subsection 3, to copy a list of shareholders, during regular business hours and at the shareholder's expense, during the period it is available for inspection. A corporation may satisfy the shareholder's right to copy a list of shareholders by furnishing a copy in the manner described in section 490.1603, subsection 2. A shareholder and the shareholder's agent or attorney who inspects or is furnished a copy of a list of shareholders under this subsection or under subsection 3 or who copies the list under this subsection may use the information on that list only for purposes related to the meeting and its subject matter and must keep the information on that list confidential.

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

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

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

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

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

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

each such shareholder. ~~Nothing contained in this subsection shall require the corporation to include in such record the electronic mail address or other electronic contact information of~~ In addition, if a shareholder has provided an electronic mail address to the corporation or has consented to receive notices or other communications by electronic mail or other electronic transmission, the record of shareholders shall include the electronic mail or other electronic transmission address of the shareholder if notices or other communications are being delivered by the corporation to the shareholder at such electronic mail or other electronic transmission address pursuant to section 490.141, subsection 4. An electronic mail address of a shareholder shall be deemed to be provided by a shareholder if the electronic mail address is contained in a communication to the corporation by or on behalf of the shareholder unless the communication expressly indicates that the electronic mail address shall not be used to deliver notices or other communications.

DIVISION II

GRAMMATICAL CHANGES

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

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

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

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

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

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

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

DIVISION III

TERMINOLOGY CHANGES

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

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~~ registration required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

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

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

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

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

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

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

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

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

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

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

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

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

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

[Sec. 15. Section 496C.20, subsection 3, Code 2022, is amended to read as follows:

3. The ~~certificate of authority~~ foreign registration statement of a foreign professional corporation may be revoked by the secretary of state as provided in the Iowa business corporation Act, chapter 490, if the foreign professional corporation fails to comply with any provision of this chapter.]