

**Report on the Review of IC Chapter 490 and the MBCA 4<sup>th</sup> Edition  
By the ISBA Business Law Section Corporate Laws Committee and the  
Recommendations Made to the ISBA Board of Governors and Iowa Legislature**

**1. Introduction**

Along with thirty-three States and the District of Columbia, in enacting the law governing business corporations, Iowa has generally followed the Model Business Corporation Act (“MBCA”) published by the American Bar Association’s Corporate Laws Committee. The ABA Committee draws broadly from experienced practitioners and experts across the country, reviews developments in law and business, and publishes proposed amendments or revisions nationwide for comment and consideration before approving any final version. The Iowa State Bar Association through its Sections, primarily the Business Law Section, has found the ABA’s work and publication substantively sound and well drafted; and independently, the Bar Association has made it a practice to review finalized amendments and revisions to the MBCA. With the large number of State adoptions, the MBCA offers an informed, broad consensus on corporate law, and lawyers and business clients in Iowa benefit in planning and executing transactions from experience under the MBCA and judicial opinions interpreting it, though not binding in Iowa. In 1988 the Section reviewed and recommended the 1984 Revised MBCA for enactment, which was accomplished in 1989; and from time to time since then, and notably in 2002 and 2013, the ISBA Board of Governors has made amendments and revisions made by the ABA Corporate Laws Committee, as the latter may be revised and approved by the Business Law Section, part of its Legislative Program; and the recommendations have been enacted into law.

In December of 2016 the ABA Corporate Laws Committee published a 4<sup>th</sup> Edition of the MBCA. In part it was a restatement of the MBCA to include amendments and revisions that had been approved and published during the years since the 3<sup>rd</sup> Edition, but to a significant extent the review leading up to the publication of the 4<sup>th</sup> Edition reflected a desire to publish an edition of the MBCA that would fit into the Uniform Business Organization Code (“UBOC”) of the Uniform Law Commission (“ULC”). The UBOC is intended as a “hub-and-spoke” Code like the Uniform Commercial Code containing as articles the various chapters dealing with State’s business entities—partnerships, limited partnerships, LLCs, cooperatives, unincorporated nonprofit associations, and both for-profit and nonprofit corporations.<sup>1</sup> Indeed, two Articles of the UBOC were joint projects of the ABA and the ULC.<sup>2</sup> That undertaking required or made desirable additional definitions, recognition of a wider array of inter-entity transactions, and harmonization of content. As reported by the ABA Corporate Laws

<sup>1</sup> Iowa has adopted the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Limited Liability Company Act, and the Uniform Unincorporated Nonprofit Association Act.

<sup>2</sup> UBOC Article I, called “the Hub” (containing provisions on names, filing, registered agents, foreign entity registration or applications for authority to do business in Iowa, and administrative dissolution for all entities in the UBOC); and the Model Entity Transactions Act (covering merger, conversion, domestication, share or interest exchange, and dissolution for all entities in the UBOC).

Committee, it soon realized that quite apart from the UBOC, a review and new edition of the MBCA was in order. In some cases the MBCA was not consistent in the manner in which it expressed transactions calling for the same procedures, for example, fundamental changes; the ABA Corporate Laws Committee also acknowledged that it had found need or opportunity throughout the MBCA for stylistic changes that, while not substantive, improved clarity; and in its continuing work, it recognized that substantive revisions and amendments were appropriate. A new edition enabled it to accomplish these purposes.

In addition, the Official Comments of the MBCA, which provide extremely helpful guidance to practitioners and courts, have been extensively revised to (1) comment on the updated provisions of the MBCA; (2) eliminate language merely restating or paraphrasing the statute; (3) eliminate comparisons to prior versions of the MBCA or other state statutes; and (4) coordinate comments to eliminate inconsistent or redundant discussions. The pre-2016 MBCA comments will no longer be updated.

The ISBA Business Law Section has as one of its objectives working to ensure that Iowa business legislation is up-to-date, sound, and representative of the best in modern business practice and experience. That not only serves Iowans and Iowa business but also promotes economic development and at a minimum enables Iowa to be economically competitive with other States. The Section therefore has made it a practice to monitor business developments, practices, legislation and judicial opinions, especially amendments to legislation that has been enacted in Iowa. In doing so, the Section has often tailored the sections of the MBCA to reflect the experience and practical preferences of Iowa lawyers or businesses or state government administration, especially the Secretary of State's Office; it has amended sections of the MBCA and also proposed and secured enactment of additional, non-uniform sections,<sup>3</sup> which the Section and Bar Association are recommending be retained.

<sup>3</sup> As discussed in this Report, over the years, Iowa has adopted modified provisions of the MBCA or provisions not in the MBCA, including Iowa Code § 490.1108A, which allows for a director, in determining what is in the best interest of the corporation when considering a tender offer or proposal of acquisition, merger, consolidation, or similar proposal, to consider various community interest factors in addition to consideration of the effects on any action on shareholders. The various community interests which the directors may take into account include the interests of the corporation's employees, suppliers, creditors, and customers as well as communities in which the corporation operates. See also § 490.1110 [Business Combinations—Interested Shareholders] [precluding for three years combination of the corporation with a shareholder holding 10% or more of the voting power unless the corporation's board approves]. Except as noted in this Report, the Bar Association's Corporate Laws Committee recommends that these provisions remain in place. In addition, the ISBA Corporate Laws Committee has recommended retention of existing §§ 490.401 [Names] and 490.1422 [Reinstatement following Administrative Dissolution].

For all of the above reasons, in the fall of 2017 the ISBA Business Law Section undertook through its Corporate Laws Committee<sup>4</sup> to review the MBCA 4<sup>th</sup> Edition in comparison to the MBCA as expressed currently in Chapter 490 of the Iowa Code and to make any recommendations concerning the 4<sup>th</sup> Edition to the Section Council for it to consider and, if in agreement, recommend to the Bar Association’s Board of Governors. This Report identifies the major areas in the Iowa Business Corporation Act—Chapter 490—in which the 4<sup>th</sup> Edition makes changes that the Section and the Bar Association recommend. These recommendations include sections to which the Bar Association’s Corporate Laws Committee has itself made amendments or revisions, tailoring the MBCA to Iowa practice as appropriate, as it has done in the past.

## 2. Article 1—General Provisions

Article 1 contains provisions pertaining to the filing of documents, the powers of the Secretary of State, and definitions of terms used in the Act. There are no changes in the powers of the Secretary of State and, in general, not with respect to filing. But there is one new Subchapter, and some points may be noted.

**A. Effective Date.** The time a filing with the Secretary of State becomes effective is an important issue, and careful attention was given in §§ 1.23-1.25 and § 1.40 to the definition and determination of “effective date” where no time is specified in a document, where a time is specified, where a delayed effective date and time is expressed in the document, and where the document fails to specify the time zone or place at which it becomes effective.

**B. Definitions.** As intended by the ABA Corporate Laws Committee (1) because the MBCA was being revised to become part of the Uniform Business Organization Code, which includes unincorporated entities like LLCs and (2) because of the possibility of inter-entity transactions such as a merger, interest exchange, or conversion with unincorporated entities, many new definitions are included in the Definition Section 1.40 of Article 1. Some examples among many that could be given include:

1. “*Eligible entity*” (“a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation”);
2. “*Governor*” (“any person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law governing the entity and its organic rules”);
3. “*Interest*” (“either or both of the following rights under the organic law governing an unincorporated entity: (i) the right to receive distributions from the entity either in the ordinary course or upon liquidation; or (ii) the right to receive notice or vote

<sup>4</sup> The committee consisted of eight members of the Business Law Section; a member of the Iowa Secretary of State’s Office assigned to Business Services, Eric Gookin; and the Chair of the ISBA Corporate Counsel Section, Eric Nemmers. Members of the Business Law Section were Bill Boyd, Frank Carroll, Matt Doré, Beverly Evans, Laura Schmitt, Marc Ward, David Walker, and Greg Wilcox.

on issues involving its internal affairs, other than as an agent, assignee, proxy or person responsible for managing its business and affairs”); and

4. “*Interest holder liability*” (personal liability for a debt, obligation, or other liability of an entity imposed on a person (i)(A) solely by reason of being a shareholder, member, or interest holder of the entity, or (B) by its articles of incorporation or organic rules, or (ii) by an obligation of a shareholder, member or interest holder under the entity’s articles or organic rules to contribute to the entity).

A form of ownership was included in the definitions for the first time, “*voting trust beneficial owner*,” and with respect to corporations, there were some new definitions, *e.g.*, “*beneficial shareholder*” and “*record shareholder*,” and elaboration of the definition in other cases, *e.g.*, “*articles of incorporation*” and “*record date*.” One definition was eliminated, namely for “public corporation.” Corporations exist along a spectrum of size and shareholders, from closely held corporations to ones publicly held whose securities are traded on national securities markets to ones in between where public registration is not required but an active trading market exists nonetheless. The MBCA covers all such corporations, and recognizing variations in size, the MBCA 4<sup>th</sup> Edition eliminates the definition of “public corporation.” Where it was important to preserve a distinction based on the size of the corporation and presumed shareholding body and trading market, *e.g.*, 490.702(5) [Special Meetings] or Section 13.02(b) [Exception to Appraisal Remedy], the notion of a “public corporation” is expressed more precisely, either by the ABA or through amendment by the ISBA, as a corporation with a class of equity security required to be registered with the SEC under the Securities and Exchange Act of 1934.

**C. New Subchapter E: Ratification of Defective Corporate Actions.** It sometimes happens that a corporate action taken by or on behalf of the corporation, within the power of the corporation to take, is “defective” because the manner in which it was authorized, approved, or otherwise effected did not comply with the MBCA, the corporation’s articles or bylaws, a resolution of the board of directors, or an agreement to which the corporation is a party; and as a result of such noncompliance, the corporate action is void or voidable. Many examples are imaginable but include a merger or an overissue (shares not authorized in the articles of incorporation or the issue of more shares than are authorized) of shares. The consequence is uncertainty, delay, claims, litigation, and expense, all of which could have been avoided. The common law recognizes a doctrine of ratification but its lines are not entirely clear in application and its availability to some corporate actions may be questioned. New Subchapter E provides a statutory ratification procedure, supplementing the common law, and essentially enabling the corporation to correct the defect—with proper authorization, notice, disclosure, meetings, quorum, and/or votes—and validate the transaction. The result is that the corporate action is neither void nor voidable, and it is effective as of the date of the defective corporate action. In case of challenge, judicial proceedings are authorized to determine the validity of corporate actions ratification.

### 3. Article 2—Incorporation: Articles and Bylaws

Article 2 of the MBCA covers the articles of incorporation and the process of incorporating and organizing a corporation; liability for preincorporation transactions; and the adoption and content of bylaws. The following changes may be highlighted.

**A. Articles of Incorporation—New Subsection Authorizing Provision Limiting Director’s or Other Person’s Duty To Offer Corporate Opportunity to Corporation.** Section 2.02—which will become § 490.202—states the required content of articles of incorporation filed with the Secretary of State and also provisions that are not required but may be included in this essential document. These include provisions regarding managing the business and regulating the affairs of the corporation, its board of directors and shareholders; and provisions (a) eliminating or limiting the liability of a director to a corporation or its shareholders for any action or failure to act, subject to important exceptions, *e.g.*, improper receipt of financial benefit, intentional infliction of harm on the corporation or its shareholders, approval of an unlawful distribution, and intentional violation of the criminal law, and also (b) a provision permitting or making obligatory indemnification of a director for liability as defined in the MBCA to any person for any action taken or failure to act, again subject to the stated exceptions.

The MBCA 4<sup>th</sup> Edition adds to these “a provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, before the pursuit or taking of the opportunity by the director or other person.” However, any application of this provision to an *officer* or person related to the officer requires application of the conflict of interest provisions in the MBCA, and specifically, § 8.62 [§ 490.862]. In general, a director or officer owes the corporation a fiduciary duty of loyalty to offer a “corporate opportunity” to the corporation before being permitted to seize the opportunity for himself/herself. However, what constitutes a “corporate opportunity” is not always clear and is invariably arguable; and more important, in some or even many business deals the investors go into the deal with specifically limited focus, for example, development, improvement, operation, and possible eventual sale of one specific commercial property, and not any other, whether in the area or not. This new provision enables investors to achieve that result and limit their relationship to the enterprise.

**B. Bylaws.** The recommendations include authorization of three new kinds of bylaws, two of which the ABA Corporate Laws Committee approved before publication of the 4<sup>th</sup> Edition and the third of which it approved with this 4<sup>th</sup> Edition.

1. *Provision Limiting or Eliminating Duty of a Director or Other Person to Offer a Business Opportunity to the Corporation.* The provision discussed immediately above may be included in either the articles of incorporation or the bylaws under § 2.06(b).
2. *Shareholder Access to Corporate Proxy Statement.* MBCA § 2.06(c)(1) provides that the bylaws may contain “a requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy

statement and any form of its proxy or consent, to the extent and subject to such procedures and conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors.” Controversial at one time, “proxy access” as it is called is now, with various stated conditions, fairly widespread among public companies and an option even for companies that do not meet the requirements for SEC registration.

As MBCA § 2.06(c) states expressly, it is “subject to such procedures or conditions as are provided in the bylaws.” The Official Comment gives examples of procedures and conditions that may be included in such a bylaw, *e.g.*, ones relating to the ownership of shares, requirements as to the duration of share ownership, informational requirements, restrictions on the number of directors to be nominated or on the use of the provisions by shareholders seeking to acquire control.” Under § 10.20 shareholders as well as the board have authority to adopt bylaws, but MBCA § 2.06(d) expressly provides that the shareholders “may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw to provide for a reasonable practical, and orderly process.”

3. *Reimbursement by the Corporation of Expenses Incurred by a Shareholder in Soliciting Proxies in an Election of Directors.* MBCA § 2.06(c)(2) provides that the bylaws may contain “a requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures and conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.” Again, such a bylaw is subject to procedures and conditions stated in the bylaw, and the board retains authority to amend or repeal or add any condition or procedure in order “to provide for a reasonable, practical, and orderly process.” The Official Comment gives examples of conditions the corporation might impose on reimbursement, such as “limitations on reimbursement based on the amount spent by the corporation or the proportion of votes cast for the nominee; and limitations concerning the election of directors by cumulative voting.”

4. *Forum Selection Provisions.* § 2.08 authorizes the articles of incorporation or the bylaws to contain a “forum selection provision” that “may require that any or all internal corporate claims shall be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.” An internal corporate claim is defined in § 2.08(d) as “(i) any claim that is based upon a violation of a duty under the laws of this state by a current or former director, officer, or shareholder in such capacity, (ii) any derivative action or proceeding brought on behalf of the corporation, (iii) any action asserting a claim arising pursuant to any provision of this Act or the articles of incorporation or bylaws, or (iv) any action asserting a claim governed by the internal affairs doctrine that is not included in (i) through (iii) above.”

A forum selection provision cannot confer personal or subject matter jurisdiction, and a court lacking either or both cannot adjudicate the case whether it is the forum

selected or not. Section 2.08 states that nothing in the articles or bylaws “may prohibit bringing an internal corporate claim in the courts of this state or require such claims to be determined by arbitration;” but if there is jurisdiction, a forum selection provision is enforceable to require the internal corporate claim to be initiated in the forum selected.

Such clauses are common in contracts and agreements and increasingly so in corporate statutes with respect to internal corporate claims. A forum selection provision would give Iowa corporations the authority to select an Iowa court as the forum for adjudication. Almost inevitably key evidence in a case based on an internal corporate claim—including the testimony of directors and officers, witnesses, and documentary evidence—is located in the forum selected; and to that extent disruption of corporate business is held to a minimum in contrast to having to litigate the claim out-of-state. Moreover, an Iowa corporation that includes a forum selection provision in its articles or bylaws and selects a court or courts in Iowa as the forum would also ensure that an Iowa court will have the opportunity to adjudicate the case and through that adjudication develop Iowa law.

#### **4. Article 5—Office and Agent**

Article 5 of the MBCA covers the registered office and registered agent required of both a domestic corporation and a registered foreign corporation transacting business in Iowa. In Chapter 490 Article 15 covers the change or resignation of the registered agent of a foreign corporation. That is now addressed in Article 5 along with domestic corporations.

There is one significant change applicable to both domestic and registered foreign corporations, and that concerns the effective date of a registered agent’s resignation. Under current Iowa law the resignation takes effect immediately upon the agent’s filing the resignation with the Secretary of State. Under the MBCA 4<sup>th</sup> Edition the resignation takes effect upon the earlier of 12:01 a.m. on the 31<sup>st</sup> day after the day on which it is filed with the Secretary of State OR the designation of a new registered agent by the corporation. Although not the law as found in Chapter 490, that *is* the law presently for Iowa limited liability partnerships under Chapter 486A and Iowa business cooperatives under Chapter 499. The position taken in the 4<sup>th</sup> Edition is calculated to prevent surprise to the corporation and also prevent prejudice to third parties who have claims against the corporation; and it conforms with Uniform Acts governing unincorporated entities.

#### **5. Article 6—Shares and Distributions**

**A. Liability of Shareholders.** Section 6.22 continues to provide that a purchaser of shares from a corporation of the corporation’s own shares is not liable to the corporation’s creditors with respect to those shares “except to pay the consideration for which the shares were authorized to be issued; and except to the extent provided in the articles of incorporation by a provision permitted by § 2.02, a shareholder of the corporation is not liable for debts of the corporation.” Section 6.22 has been amended to add language stating expressly what is also the law, albeit not previously stated in the MBCA, namely, “that a shareholder may become personally liable by reason of the shareholder’s own acts or conduct.” This language

has been added to the MBCA 4<sup>th</sup> Edition for clarity, but it does not reflect any change in corporate law.

**B. Deletion of § 490.624A [Poison Pill].** This section of Chapter 490 is not in the MBCA, and the ISBA Corporate Laws Committee recommends it be deleted. A “poison pill” is a security, option, or warrant authorized and issued by a board of directors facing a hostile takeover, the result of which is ruinous cost or decimation of value to be acquired by the party attempting the takeover. It is a recognized and utilized tool in opposing takeovers that the board determines would disserve the corporation’s shareholders, but the committee concluded there is ample authority to accomplish this result under § 6.24 of the MBCA and existing § 490.624. As a result, § 490.624A is redundant and should be deleted.

**C. Deletion of § 490.628 [Expenses].** This section provides, “A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.” The point made is true, and the MBCA in earlier editions contained this provision for fear that shares might somehow be made assessable if the proceeds of an offering were used for this purpose. There is no contention today that this use of proceeds, entirely common, is inappropriate and a basis for shareholder liability. The ABA Committee concluded it was unnecessary; the ISBA Committee agreed.

**D. Record Dates: Share Dividends and Distributions.** Section 6.23 [Share Dividends] and § 6.40 [Distributions to Shareholders] have both amended to provide explicitly that “[t]he board of directors may fix the record date for determining shareholders entitled to,” respectively, a share dividend or distribution, but the record date set by the board “may not be retroactive.”

## 6. Article 7—Shareholders

**A. Remote Participation in Shareholders’ Meetings.** Article 7 was amended even after publication of the MBCA 4<sup>th</sup> Edition in the fall of 2016. Presently Article 7 requires an annual meeting and authorizes special meetings, and in each case requires the notice of meeting to state “the place” at which the meeting will be held. Section 7.09, which Iowa adopted several years ago, authorizes remote participation in shareholders’ meetings, subject to verification that each person participating remotely as a shareholder *is* a shareholder and further subject to the requirement that the shareholder have reasonable opportunity to participate, including the ability to hear and be heard at the meeting on a substantially concurrent basis. Such “virtual meetings” have gained popularity, and earlier this year the MBCA 4<sup>th</sup> Edition was further amended to authorize annual and special meetings to held totally virtually, *i.e.*, by remote participation. Affected MBCA Sections in Articles 7 and 10 were amended accordingly and approved as amended.

**B. Voting Entitlement of Shares—Corporation Voting Shares It Owns or Controls.** “Absent special circumstances,” Section 7.21(b) has disallowed a corporation from voting shares in the corporation if they were owned, directly or indirectly, by a second corporation (whether domestic or foreign) *and* the corporation owned a majority of the shares entitled to vote for directors of such second corporation. Management’s interest in voting such

shares may conflict with the interest of the shareholders of the corporation. The MBCA 4<sup>th</sup> Edition amends Sections 7.21(b) and (c) to broaden and more carefully express the intended disenfranchisement. The language providing for an exception, namely, “Absent special circumstances,” has been deleted; and Section 7.21(b) was amended to read, “Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation directly or indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation.” Section 7.21(c) continues to allow a corporation to vote shares held by it in a fiduciary capacity for the benefit of another person, but not if it is for the benefit of the corporation itself and the corporation, directly or indirectly, owns or otherwise controls a majority of the voting power.

**C. Quorum and Voting Requirements for Voting Groups.** Section 7.25 of the MBCA provides that unless the articles of incorporation or the MBCA provides otherwise,<sup>5</sup> shares representing a majority of the votes entitled to be cast on a matter by a voting group constitute a quorum for purposes of action by that group on that matter. But as indicated, the articles or bylaws may provide that less than a majority constitutes a quorum. Other sections of the MBCA specify the required forum, for example, fundamental changes such as an amendment of the articles of incorporation or a merger, which require a quorum of the voting group “consisting of a majority of the votes entitled to be cast” on the matter. Section 7.25(a) of the MBCA 4<sup>th</sup> Edition has been amended explicitly to provide, “Whenever this Act requires a particular quorum for a specified action, the articles of incorporation may not provide for a lower quorum.”

**D. Shareholder Agreements.** Section 7.32 authorizes shareholders of a corporation to reach an enforceable agreement regarding the management of the corporation in ways that traditionally were strictly exercisable only by the board of directors, provided certain conditions are met. The agreement is required to be in writing and the written approval of all of the shareholders is mandatory. This section is an indispensable planning tool for shareholders of “close corporations,” enabling them to accomplish the freedom of contract that may be readily achieved in a partnership or limited liability company agreement. What constitutes a “close corporation” has been the subject of much discussion and many definitions, but Section 7.32 has provided in any event that “An agreement authorized by this section shall cease to be effective when the corporation becomes a public corporation.” As indicated earlier, the ABA has recognized that corporations exist along a spectrum of size and the number of shareholders, and the MBCA 4<sup>th</sup> Edition has accordingly eliminated the definition and use in the MBCA of the term “public corporation.” The quoted sentence has therefore been deleted.

**E. Judicial Determination of Corporate Offices and Review of Elections and Shareholder Votes.** Questions can arise in corporate affairs about (1) the results or validity of an election, appointment, removal or resignation of a director or officer of the corporation, (2) the right of an individual to serve as a director or officer, (3) the result or validity of any vote

<sup>5</sup> Iowa law provides that the bylaws may also establish a quorum requirement greater or less than a majority. The ISBA Corporate Laws Committee has retained that authorization, and therefore the prohibition added to § 7.25(a) includes bylaws as well as articles.

by the shareholders, (4) the right of a director to membership on a board committee, (5) the right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director, and (6) other comparable rights under the corporation's articles or bylaws. The MBCA 4<sup>th</sup> Edition includes a new Section 7.49, captioned as above, authorizing judicial determination of these issues and addressing required or authorized procedure.

## 7. Article 8—Directors and Officers

**A. Qualifications of Directors.** Section 8.02 has been amended to give explicit attention to qualifications of board nominees and elected directors. Directors cannot be inhibited or encumbered from the full discharge of their fiduciary duties to the corporation and its shareholders. To this end Section 8.02(b) has been added, which provides, “A requirement that is based on a past, prospective, or current action, or expression of opinion, by a nominee or director that could limit the ability of the nominee or director to discharge his or her duties as a director is not a permissible qualification under this section.” The section goes on to provide, however, that “qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action for cause.” In addition, Section 8.02 has been amended to make clear that a qualification for nomination applies at the time of nomination but that a qualification prescribed *after* a person has been nominated does not apply to that person. Likewise, a qualification for director prescribed before a person has been elected or appointed applies at the time the person becomes a director and during the director's term on the board; but a qualification prescribed *after* a director has been elected or appointed shall not apply to that director before the end of his or her term.

**B. Removal of Directors by Judicial Proceeding.** Under Section 8.02 a court is authorized to remove a director of the corporation from office if it finds that the director “engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation, if considering the director's course of conduct removal would be in the best interest of the corporation. Section 8.02 has been amended to authorize a court not only to remove the director but also to bar the director from reelection for a period prescribed by the court.

**C. Quorum and Voting.** Section 8.24 has dealt separately with quorum and the vote needed for board action depending on whether the articles or bylaws provide for a “fixed” board, *i.e.*, a specific number, or a “variable range size of board” where no number prescribed. Section 8.24 as amended eliminates the distinction and speaks simply of the “number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.” The presumptions that a majority of the board constitutes a quorum and that a majority of a quorum is necessary for board action remain the same, unless the articles or bylaws require a greater number or the MBCA otherwise provides. Under current law and the 4<sup>th</sup> Edition, the quorum may not consist of less than one third of the specified or fixed number of directors.

**D. Advance for Expenses.** When an individual is made a party to a proceeding because the individual is a director of the corporation, Section 8.53 authorizes the corporation to advance funds to pay for expenses incurred in connection with the proceeding or to

reimburse the individual for such expenses. Section 8.53 has required as a condition of advancement of funds that the director submit (1) a signed written affirmation of the director's good faith belief that he or she has met the required standard of conduct or that the proceeding involves conduct for which liability has been eliminated by the articles or bylaws pursuant to Section 2.02, and (2) a signed written undertaking to repay any funds advanced if it is ultimately determined that the director is not entitled to indemnification. The first requirement has been eliminated. The second has not. The director must still submit a signed written undertaking to repay the advance if it is finally determined that the director is not entitled to indemnification.

**E. Business Opportunities.** Section 8.70 of the MBCA, which Iowa adopted several years ago, § 490.870, provides that a director's or officer's pursuit or taking of a business opportunity shall not give rise to an award of damages or be the subject of equitable relief if the director or officer first offered it to the corporation and the corporation rejected it. As discussed above, under Section 2.02(b)(6) of the MBCA 4<sup>th</sup> Edition, a corporation in its articles may limit or eliminate the duty of a director or officer to offer a business opportunity to the corporation before taking advantage of that opportunity for himself or herself. Section 8.70 has been amended to reflect the amendment to Section 2.02.

## **8. Article 9—Domestication and Conversion**

**A. Domestication.** Domestication is a procedure by which (1) an entity organized under Iowa law may become a like foreign entity, *or* (2) a foreign entity may become a like Iowa entity, provided the statutes of each jurisdiction authorize domestication and provided that required procedures are observed. Domestication is a transaction Iowa law *has* authorized for LLCs since 2008 (*see* IC §§ 489.1110-489.1113), but it has not been a part of our corporate law though recognized by many other States and notwithstanding inclusion in the earlier edition of the MBCA. The 4<sup>th</sup> Edition amplifies and clarifies the law regarding domestication. As with other changes regarded as fundamental, board approval and shareholder approval following full disclosure are required. If a corporation would be required to obtain the approval of the Insurance Commissioner, the Public Utility Board, or the Banking Superintendent for a merger, the same approval is required for a domestication; and if a domesticating corporation had in effect a "protected agreement" clause applicable in the event of a merger but not mentioning domestication, the protections contained in the protected agreement clause apply "as if the domestication were a merger until such time as the provision [in the protected agreement] is first amended after the enactment date." The "enactment date" will be the date of enactment of this bill since Chapter 490 has not previously authorized domestication for corporations.

**B. Conversion.** Conversion is a procedure by which a domestic corporation may become another type of authorized business entity or by which a foreign business entity other than a corporation may become domestic, or Iowa, corporation, provided the statutes under which each is organized authorize the conversion, and provided that required procedures, *e.g.*, board approval and shareholder vote following full disclosure, are observed. Corporate law in Iowa has recognized and authorized a conversion since 2008. IC §§ 490.1110—490.1114. The provisions dealing with conversion have been and are located in Article 9 of the MBCA

and in the Recommendations of the Business Law Section and the Bar they will accordingly be moved from Article 11 to Article 9. In addition, the MBCA 4<sup>th</sup> Edition has updated and harmonized to the extent appropriate the provisions dealing with other fundamental changes, *e.g.*, amendment of the articles of incorporation, merger, share exchange, sale of corporate assets, and dissolution; and the same harmonizing treatment has been extended to conversions.

## **9. Article 10—Amendment of Articles of Incorporation and Bylaws**

**A. Amendment Resulting in New Interest Holder Liability.** Amendments to the articles of incorporation generally require the approval of both the board and the shareholders. New Section 10.03(f) recognizes that an amendment of the articles may result in one or more shareholders becoming subject to new interest holder liability for debts, obligations, or other liabilities of the corporation. In that event the new section requires that each such shareholder who would have new interest holder liability must give separate written consent to the amendment that would have that result, unless the new interest holder liability is substantially identical to existing interest holder liability (or would reduce or eliminate it). In addition, under § 10.09(c) the new interest holder liability to which the shareholder may become subject applies only to liabilities incurred after the amendment becomes effective.

**B. Amendment of Bylaws.** Bylaws may be amended or repealed by either the board of directors or the shareholders under § 490.1020 and §10.20 of the MBCA 4<sup>th</sup> Edition. The 4<sup>th</sup> Edition adds a provision to § 10.20, consistent with long held corporate law regarding the articles of incorporation (see IC § 490.1001), that “A shareholder of the corporation does not have a vested property right resulting from any provision in the bylaws.”

**C. New Bylaw Provision Authorized Relating to the Election of Directors.** The recommendations of the Bar include a provision of the MBCA, § 10.22, pertaining to the election of directors, in particular, where the number of candidates for election is the same as the number of directors to be elected and a candidate fails to secure a majority of the votes cast. Under § 7.28, unless the articles provide otherwise, “directors are elected by a plurality of the votes cast by the shares entitled to vote”—*not* a majority. A rationale for providing that a plurality is sufficient is that there are situations when there will be more candidates for election than directors to be elected. When that happens, a candidate may not receive a majority but will still have received more votes than the next candidate; and it is appropriate for the candidate receiving a plurality of the votes cast to be seated on the board. Where the number of candidates equals the number of board seats to be filled, however, and a candidate receives less than a majority, it is clear that a majority of the shares being voted, for whatever reasons, disapproved and have rejected the candidate’s election.

Unless the articles prohibit doing so, provide for cumulative voting, or alter the “plurality” standard of § 7.28, §10.22(a) authorizes a corporation to adopt a bylaw “providing that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that shall terminate on the date that is the earlier of (i) 90 days from the date on which the voting results are determined . . . or (ii) the date on which an individual is selected by the board to fill the office held by such director, which shall be deemed to constitute the filling of a vacancy by the board to which section 8.10 applies.” In that event,

the board of directors “may select any qualified individual to fill the office” being vacated on account of the bylaw.

However, as indicated above, Section 10.22(b) provides that § 10.22(a) does not apply if, at indicated times, “there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders.”

## **10. Article 11—Mergers and Share Exchanges**

**A. Harmonization of Procedures for Approval of Fundamental Changes.** Article 11 deals with fundamental changes<sup>6</sup>—mergers<sup>7</sup> and share exchanges<sup>8</sup>— for which board approval and shareholder approval are typically required. Required procedures have not been consistently expressed in uniform language. The 4<sup>th</sup> Edition harmonizes the language for and treatment of these and other fundamental changes, namely, domestication under Article 9, amendments to the articles of incorporation under Article 10, a sale of assets not in the ordinary course of business under Article 12, and dissolution under Article 14. In addition the MBCA 4<sup>th</sup> Edition authorizes mergers, share exchanges and conversions to involve as parties both a corporation and either another corporation or an “eligible entity,” *i.e.*, any domestic or foreign unincorporated entity such as an LLC or domestic or foreign nonprofit entity; and it deals uniformly with new interest holder liability that may arise in any of these.

### **B. Merger/Share Exchange without Shareholder Vote following Tender Offer.**

Ordinarily a merger or share exchange requires a vote of the shareholders, but if a corporation owns 90% or more of the shares of the other, under Section 11.05, a “short form” merger may be approved without a vote of the acquired company’s shareholders. A not uncommon strategy in mergers and acquisitions is to launch a tender offer followed by a merger, with acquisition of shares through the tender coupled with shares previously acquired reaching the 90% threshold needed for a “short form” merger.

The MBCA 4<sup>th</sup> Edition includes an amendment authorizing a merger without a shareholder vote in additional, narrow circumstances. Adopted after publication of the 3<sup>rd</sup> Edition, Section 11.04(j) authorizes a merger without a shareholder vote following a tender offer even when the tender offer does *not* result in the offeror acquiring and owning 90% or

<sup>6</sup> Article 11 of the Iowa Business Corporation Act, Chapter 490, also covers conversions, but as indicated above, conversions are dealt with in Article 9 of the MBCA 4<sup>th</sup> Edition.

<sup>7</sup> Under the MBCA for many years the term “merger” has included a combination of two or more business entities into one new entity, formerly called a “consolidation.”

<sup>8</sup> A share exchange is a transaction in which, upon the approval of the board and shareholders of each corporation, one corporation exchanges its shares or securities for shares of the other corporation, resulting in a transfer of control by the “acquired corporation” to the “acquiring corporation.” Unlike a merger, a share exchange leaves both corporations in existence such that the acquired corporation does not disappear but instead becomes a subsidiary of the other.

more of the target company's shares, or voting power, if several conditions are met. These conditions include:

1. The articles of incorporation must not provide otherwise;
2. The plan of merger or share exchange and the offer (i) must expressly permit or require the merger or share exchange to be effected under § 11.04(j) and (ii) must provide that, if the merger or share exchange is to be effected under this subsection, it will be effected as soon as practicable following the satisfaction of the ownership requirement (at least the minimum number of votes on the merger or share exchange that, absent this subsection, would be required by this chapter and by the articles of incorporation for the approval of the merger or share exchange);
3. The offer discloses that shares of the corporation that are not tendered and not purchased in response to the offer will be converted in the merger into, or into the right to receive, or is to be exchanged in the share exchange for, or into the right to receive, the same amount and kind of securities and so forth to be paid or exchanged in accordance with the offer for each share of that class or series of shares that is tendered in response to the offer, except for shares that the offeror owns or that are subject to separate agreement; and
4. After the offer, (i) shares purchased by the offeror in accordance with the offer, (ii) shares otherwise owned by the offeror or by any parent or wholly owned subsidiary, and (iii) shares subject to an agreement that they are to be transferred, contributed or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary of any of the foregoing in exchange for shares or eligible interests in such offeror, parent, or subsidiary, must amount to at least the minimum number of votes required for approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the approval.

Essentially, with full disclosure, shares offered and acquired pursuant to the tender offer are viewed as being cast in favor of the merger. If those, together with shares already owned or subject to control by the offer, exceed the minimum number needed for approval of the merger or share exchange, the merger or share exchange is deemed approved. Under § 13.02, appraisal rights are made available to non-tendering shareholders in similar fashion to a short form merger.

## **10. Article 13—Appraisal Rights**

**A. Disposition of Assets.** Under Article 12 [Disposition of Assets], § 12.02, the approval of shareholders is required if the corporation engages in a disposition of assets that leaves the corporation “without a significant continuing business activity,” as defined; and under Article 13, § 13.02, if the disposition is approved and consummated, shareholders entitled to vote who voted against the disposition are entitled to the appraisal remedy. An amendment to § 13.02 approved by the Committee provides, however, that shareholders are *not* entitled to appraisal if “the cash, shares, or proprietary interests received in the disposition are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders, as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims . . . [of known and unknown creditors] “(A)

within one year after the shareholders' approval of the action and (B) in accordance with their respective interests determined at the time of distribution.”

**B. Right to Appraisal.** Section 13.02 addresses when a shareholder is entitled to appraisal. The MBCA 4<sup>th</sup> Edition includes two new transactions giving rise to a right of appraisal, namely, (1) a domestication pursuant to § 9.20 and (2) consummation of a conversion of the corporation to a nonprofit corporation pursuant to § 9.30. *See* § 13.02(a)(6) and § 13.02(a)(7). As has been the law, consummation of a conversion of a corporation to an unincorporated entity also gives rise to appraisal rights. § 130.02(a)(8).

## 11. Article 14—Dissolution

**A. Distributions in Liquidation.** Chapter 490, like predecessor editions of the MBCA 4<sup>th</sup> Edition, does not explicitly deal with distributions made following a corporation's dissolution and in the course of liquidation.

**1.** The 4<sup>th</sup> Edition amends the definition of “distribution” in Section 1.40 clarify the law in that respect and explicitly includes “a distribution in liquidation.” Section 14.05 of the 4<sup>th</sup> Edition has also been amended to clarify a matter about which existing law has not been clear, namely, whether following dissolution the board of directors is authorized to set a record date for entitlement to a distribution in liquidation.

**2.** Section 14.05(c) is new and explicitly authorizes the board to “fix a record date for determining shareholders entitled to a distribution, which date may not be retroactive.”

**3.** Likewise, liquidating distributions are now explicitly covered by § 14.09 [Director's Duties upon Dissolution]. Section 14.09 requires that the “[d]irectors shall cause the dissolved corporation to discharge or make reasonable provision for the payment of claims and make distributions *in liquidation* of assets to shareholders after payment or provision for claims.” (Emphasis added).

**B. Reinstatement following Administrative Dissolution [§ 14.22].** The ISBA Corporate Laws Committee decided to retain the present Iowa Code's version of § 14.22 rather than adopt the MBCA 4<sup>th</sup> Edition's version. Current § 14.22 has been developed in cooperation with the Secretary of State's Office, provides more detail, and the consensus was that it had not presented problems and was working well.

## 12. Article 15—Foreign Corporations

As it does throughout the MBCA, the MBCA 4<sup>th</sup> Edition makes stylistic changes to Chapter 490's treatment of foreign corporations in Article 15 of the Iowa Code, and it makes some changes in organization. For example, it treats the registered office and agent of a foreign corporation in Article 5 along with the registered office and agent of a domestic corporation, and it also addresses service of process on a corporation, whether domestic or foreign. In the ISBA Committee's judgment the changes are clarifying and simplifying and do not represent any significant change in substance.

One change should be noted. Chapter 490 and other chapters of the Iowa Code dealing with business entities provide that a foreign entity wanting to transact business in Iowa “may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing.” § 490.1503(1). The Iowa Code then states what the application must contain. The MBCA 4<sup>th</sup> Edition expresses the procedure in different terms, but the substance and the content of the application remain substantially the same.

The MBCA 4<sup>th</sup> Edition speaks in terms of a foreign corporation “registering” to do business in Iowa rather than “applying for a certificate of authority.” The change reflects a move in business law away from the concept of the Secretary of State “authorizing” a foreign entity to do business in the state and instead expressing and implementing a system of filing a “foreign registration statement,” which if it complies with the MBCA 4<sup>th</sup> Edition’s disclosure requirements, qualifies the foreign entity to do business in the state.

The ISBA Corporate Laws Committee conformed the recommended requirements for a “foreign registration statement” to existing Iowa law.

### **13. Article 16—Records and Reports**

Article 16 of the 4<sup>th</sup> Edition states in § 16.01 what corporate records a corporation is required to maintain and in § 16.02 a shareholder’s right of inspection. The organization is improved. A comprehensive revision of Chapter 16 has been made to modernize shareholder access to information while protecting the interests of the corporation.

**A. Corporate Records.** Current law describes required records in § 16.02 that are better included in § 16.01. Section 16.01 now includes maintaining annual financial statements prepared for a the corporation for its last three years and any audit or other reports concerning them; accounting records in a form that permits preparation of those statements; and a record of its current shareholders. Section 16.01 of the 4<sup>th</sup> Edition is also more comprehensive focused on exercise of the shareholder’s inspection right. For example, it provides that the list of shareholders must be maintained “in alphabetical order,” and it also explicitly states, “A corporation shall maintain the records specified in this section in a manner so that they may be made available for inspection within a reasonable time.” Importantly, the 4<sup>th</sup> Edition adds that “Nothing contained in this subsection shall require the corporation to include in such record the electronic mail address or other electronic contact information of a shareholder.”

**B. Inspection Rights of Shareholders.** The MBCA 4<sup>th</sup> Edition maintains key distinctions in current law insofar as a shareholder’s right of inspection is concerned. Section 16.02 provides that corporate records like articles and bylaws, notices to shareholders, a list of the names and business addresses of its current directors and officers, and biennial reports are available upon “signed written notice of the shareholder’s demand at least five business days before the date on which the shareholder wishes to inspect and copy.” But for the minutes of meetings and records of actions taken without a meeting of the board or board committee, financial statements, accounting records, and the record of shareholders, the shareholder’s demand must be “made in good faith and for a proper purpose,” must describe “with

reasonable particularity the shareholder’s purpose and the records the shareholder desires to inspect,” and the records requested must be “directly connected with the shareholder’s purpose.”

The MBCA 4<sup>th</sup> Edition adds an explicit proviso to a shareholder’s inspection right. Section 16.01(d) provides, “The corporation may impose reasonable restrictions on the confidentiality, use or distribution of records described” in the shareholder’s demand. The ISBA Committee believes the protection of confidentiality of corporate records is appropriate. It is also consistent with current Iowa law concerning LLCs under § 489.410. If the corporation and the shareholder cannot agree, the shareholder may seek court-ordered inspection under Section 16.04, as an Iowa shareholder can do under present law; and in ordering inspection, the court is authorized to “impose reasonable restrictions on their confidentiality, use or distribution by the demanding shareholder . . . .”

**C. Financial Statements for Shareholders.** Current law requires a corporation to prepare and deliver or make available to shareholders annual financial statements as described in § 490.1620; but it makes an exception for corporations with “fewer than one hundred shareholders as of the end of the corporation’s fiscal year” and for ones that operate “on a cooperative basis.” For these entities the corporation is not required to deliver such financial statements to the shareholders but instead the shareholder may make a written request, which if the shareholder fulfills the requirements for inspection stated above, the corporation must fulfill at the corporation’s expense.

Under the MBCA 4<sup>th</sup> Edition the exception is made the general rule. The ISBA Committee noted that in fact this was the law before 2014, and the 4<sup>th</sup> Edition returns the law to the way it worked before an amendment made in the 3<sup>rd</sup> Edition or a supplement to it. Other law may apply. Corporations required to register with the Securities and Exchange Commission must make financial statements available to shareholders under Rules and Regulations promulgated by the SEC.

**D. Biennial Reports.** As it did with Section 14.22, dealing with reinstatement following administrative dissolution by the Secretary of State, the ISBA Committee is substantially retaining the substance of existing Iowa reporting law in § 490.1622. The MBCA 4<sup>th</sup> Edition, like previous editions, requires the report to be filed annually, but Iowa has long only required a biennial report; and the MBCA’s 4<sup>th</sup> Edition requires the report to contain more information than Iowa law, *e.g.*, “the total number of authorized shares, itemized by class and series, if any, within each class,” but Iowa law has not required such for nearly three decades. The ISBA Committee saw no reason for change.

## **14. Article 17—Benefit Corporations**

Article 17 authorizes incorporators to organize, or an existing corporation by amendment of its articles to become, a “benefit corporation.” A benefit corporation will be subject to Chapter 490 in all respects except when Article 17 imposes additional or different requirements. Moreover, the fact that the MBCA addresses benefit corporations in a separate chapter “does not imply that a contrary or different rule of law applies to a corporation that is

not a benefit corporation.” Article 17 explicitly “does not affect a statute or rule of law that applies to a corporation that is not a benefit corporation.”

A corporation may opt into Chapter 17, and a benefit corporation may opt out of it, through amendment of its articles of incorporation with “the approval of at least two thirds of the voting power of the outstanding shares of the corporation entitled to vote thereon” and also of any class or series of shares entitled to vote as a separate group on the amendment.

A benefit corporation is defined as one whose articles of incorporation include a provision stating, “that the corporation shall pursue one or more identified public benefits.” “Public benefit” is broadly defined. It “means a positive effect, or reduction of negative effects, on one or more communities or categories of persons or entities (other than shareholders solely in their capacity as shareholders) or on the environment, including effects of an artistic, charitable, economic, educational, cultural, literary, medical, religious, social, ecological or scientific nature.”

Under § 17.04(a), directors of a benefit corporation are required to “act (i) in a responsible and sustainable manner”<sup>9</sup> and (ii) in a manner that pursues the public benefit or benefits identified in any public benefit provision.” In addition to the interests of shareholders generally, under § 17.04(b) the directors are also obligated to consider “the separate interests of stakeholders known to be affected by the business of the corporation,” including the employees and work forces of the corporation, its subsidiaries, and suppliers; customers; affected communities; and the local and global environment. At the same time, the Act explicitly provides in § 17.04(c) that (a) or (b) do not mean that benefit corporation directors “owe any duty to a person other than the benefit corporation.” Finally, a benefit corporation is required by § 17.05 of the Act annually to prepare a benefit report addressing the efforts of the corporation during the preceding year to operate in a responsible and sustainable manner, to pursue any public benefit or benefits identified in any public benefit provision, and to consider the various stakeholders’ interests in addition to shareholders’ interests. The objectives the board of directors has established, the standards it has adopted by which to measure progress, and an assessment of the corporation’s success in meeting such objectives and standards must be included in the annual report. The board may adopt an independent third-party standard in reporting on the corporation’s progress, but it is not required to do so.

The ISBA has previously recommended and obtained introduction in the Iowa General Assembly of legislation that would authorize benefit corporations to be incorporated and organized in Iowa; but such legislation did not move forward. When the ABA Corporate Laws Committee announced it would be revising the benefit corporation provisions, the ISBA decided to hold off on further recommending legislation until the ABA Corporate Laws

<sup>9</sup> “Responsible and sustainable manner” is a defined term under § 17.01. It “means a manner that (i) pursues through the business of the corporation the creation of a positive effect on society and the environment, taken as a whole, that is material taking into consideration the corporation’s size and the nature of its business; and (ii) considers, in addition to the interests of shareholders, the interests of stakeholders known to be affected by the conduct of the corporation.”

Committee released the proposed language. Other benefit corporation bills, different in important respects, have likewise been introduced but have also not progressed. Benefit corporation legislation of one sort or another has today been adopted in more than two thirds of the States and the District of Columbia, including Nebraska, Minnesota, Wisconsin, and Illinois; and reportedly more than 7,000 benefit corporations have been organized, including well known companies such as Patagonia, Method Corporation, and Ben and Jerry's.

### **15. Article 18 [Transition Provisions]**

Article 18 states to which corporations Chapter 490 does and does not apply, including foreign corporations, and the effective date. It also deals with general provisions such as savings provisions, severability, and repeals.

The Corporate Laws Committee recommended and the Bar Association has approved an effective date of July 1, 2021 for the bill enacting the MBCA 4<sup>th</sup> Edition, as amended and described above. That is a delayed effective date and is in keeping with actions taken in prior years when there has been new business entity legislation. It was also the recommendation of the representative of the Secretary of State's Office serving on the Corporate Laws Committee. The Committee noted that a delayed effective date would give corporations and their counsel full opportunity to digest and implement changes; and it would also give the Secretary of State's Office opportunity to make adjustments programs and systems made necessary by the new law.

In general, under Sections 17.01 and 17.02, the bill will apply "to domestic corporations in existence on its effective date that were incorporated under any general statute of this state providing for incorporation of corporations for profit," and it will also apply to "a foreign corporation registered or authorized to do business in this state on the effective date . . . ."

The bill as approved by the Corporate Laws Committee and the Bar Association retains Sections 490.1701(2) and 490.1701(3) of the current Iowa Code. The former provides that Chapter 490 does *not* apply to an entity subject to Chapter 174 [County and District Fairs], Chapter 497 [Cooperative Associations], Chapter 498 [Nonprofit Cooperative Associations], Chapter 499 [Cooperative Associations], Chapter 499A [Multiple Housing Organized on a Cooperative Basis], Chapter 524 [Banks], Chapter 533 [Credit Unions], Chapter 491 [Corporations Organized on the Mutual Plan], and Chapter 496C [Professional Corporations], unless such an entity voluntarily elects to adopt the provisions of Chapter 490 and follows the procedure in Section 490.1701(3); and the latter section prescribes the procedure to follow for voluntary election authorized by Section 490.1701(2).

David S. Walker, Chair  
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