

**Recent Amendments to the
Iowa Business Corporation Act**

**POLK COUNTY BAR ASSOCIATION
FALL GENERAL PRACTICE CLE**

November 22, 2013
Des Moines, Iowa

By:
Willard L. Boyd III
Nyemaster Goode, P.C.
700 Walnut, Suite 1600
Des Moines, IA 50309
(515) 283-3172
wlb@nyemaster.com

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I. Background

A. Iowa Business Corporation Act

Iowa adopted the Iowa Business Corporation Act in 1989. It is based on the Model Business Corporation Act (“MBCA”) developed by the ABA Corporate Laws Committee. Most states have adopted some form of the MBCA. By having states adopt the MBCA, they are able to utilize the case law that develops in other states in interpreting the MBCA. In addition, the MBCA is continually updated to reflect changes in case law and to facilitate corporate operations.

B. 2013 Amendments

1. House File 469 amended the IBCA to incorporate revisions that have occurred to the MBCA over the past several years (primarily since 2008). The amendments become effective January 1, 2014.
2. In 2011, the General Assembly enacted SF 325 (2011 Iowa Acts, chapter 2), carving out a special provision (Iowa Code section 490.806A) that requires staggered terms of directors of certain public corporations (unless the articles of incorporation or bylaws or other part of Section 490.806A provide otherwise). SF 325 provided for its repeal on December 31, 2014. HF 469 reenacted a definition of “public corporation,” which was to be repealed on December 31, 2014 (Iowa Code section 490.140). The General Assembly enacted HF 358, which repealed SF 325 in part making the definition of “public corporation” permanent.

II. Updates to MBCA – 2013 Amendments to the IBCA

A. Electronic Technology

1. IBCA includes amendments that incorporate the terms of the Uniform Electronic Transactions Act (“UETA”), Iowa Code Chapter 554D and the Federal Electronic Signatures in Global and National Commerce Act (“E-Sign”).
2. IBCA will now include definitions for the following terms that are consistent with UETA and E-Sign:
 - Deliver or delivery
 - Document
 - Electronic
 - Electronic Record
 - Electronic Transmission
 - Sign
 - Writing or Written
3. Iowa Code section 490.141 (Notice and Other Communications) was amended to set forth certain requirements relating to electronic transmissions:
 - a. Notice or other communications may be delivered by electronic transmission if consented to by the recipient or if authorized by Section 490.141(10).
 - b. Any consent to electronic transmission may be revoked by the person who consented.
 - c. Consent shall be deemed revoked if all of the following occur:
 - i. The corporation is unable to deliver two consecutive electronic transmissions given by the corporation in accordance with the consent.
 - ii. Such inability becomes known to the secretary, assistant secretary, transfer agent, or other person responsible for the giving of notice or other communication; provide, however, the inadvertent failure to treat such inability as revocation shall not invalidate any meeting or other action.

- d. Unless otherwise agreed upon by the sender and recipient, an electronic transmission is received when all of the following occur:
 - i. The electronic transmission enters an information processing system that the recipient has designated or uses for purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmissions.
 - ii. The electronic transmission is in a form capable of being processed in that system.
- e. Receipt of an electronic acknowledgement from an information processing system establishes that it was received but not the content received.
- f. An electronic transmission is received even if the intended recipient is not aware of its receipt.

B. Shareholders

1. Householding

IBCA amended to provide that a corporation, upon consent from the shareholder, may deliver one copy of a notice, report, or statement to an address where more than one shareholder resides. Any shareholder may revoke such consent. Iowa Code section 490.144.

2. Action without a Meeting

- a. Under current IBCA, unless the articles provide otherwise, shareholders may take action in lieu of a shareholder meeting pursuant to a written consent executed by holders of the 90 percent or more of the votes entitled to be cast at a meeting at which all shares entitled to vote on the action were present and voted. Iowa Code section 490.704.
- b. IBCA amended to reduce the written action threshold for closely held corporations to the number of votes that would have been required to authorize or take action at a meeting at which all shares entitled to vote on the action were present and voted. This usually is a majority of the shares. (The 90 percent option remains in IBCA.)

- c. In order to take advantage of the reduced voting threshold, it is necessary to include a provision in the corporation's articles of incorporation that permits the lower threshold. If authorized in the articles of incorporation, the lower threshold applies to all shareholder actions unless specifically limited in the articles.
- d. If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than ten days after (a) written consent sufficient to take the action have been delivered to the corporation; or (b) such later date that the tabulation of consents is completed. The notice must reasonably described the action taken and contain or be accompanied by the same material that, under the provisions of IBCA, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.
- e. An electronic transmission may be used to consent to an action, if the electronic transmission contains or is accompanied by information from which the corporation may determine the date on which the electronic transmission was signed and the electronic transmission was authorized by the shareholder, the shareholder's agent or the shareholder's attorney-in-fact.
- f. Other sections of IBCA have been amended to recognize the possibility of a written consent with a lower voting threshold. For example, Section 490.701 is amended to recognize that election of directors may be done pursuant to a written consent; however, if the corporation's articles authorize cumulative voting, directors may not be elected without unanimous consent. In addition, Section 490.1320, which addresses appraisal rights, sets forth certain notice requirements when action is being taken by written consent.

3. Notice and Record Date

- a. IBCA amended to permit the board of directors to set a date for notice to shareholders of an annual or special meeting and a later date as the record date for the voting. Iowa Code section 490.707(5).
- b. The purpose of such provision is to provide the corporation, if the directors so choose, greater flexibility to align shareholder ownership and voting by setting a record date for voting closer to the meeting date. Delaware has a similar provision.

- c. Other sections of IBCA have been amended to address the situation where the record date for the notice and record date for determining the shareholders entitled to vote is different. See, e.g., Iowa Code section 490.1602(2).

4. Remote Participation in Annual and Special Meetings

- a. IBCA amended to permit shareholders to participate in annual and special meetings remotely through use of telephone conference calls or via the internet as long as the board of directors has permitted such participation. Iowa Code section 490.709.
- b. It is necessary to verify that the person participating remotely is a shareholder and that the person can both hear and communicate with those attending the meeting. In addition, shareholders need to be provided a reasonably opportunity to participate in the meeting and to vote on matters submitted to shareholders.

5. Stock Issuance/Compensation

- a. An amended Section 490.624 authorizes the board of directors to authorize one or more officers to designate the recipients of rights, options, warrants or other equity compensation awards that involve the issuance of shares and determine, within an amount and subject to any other limitation established by the board, the number of rights, options, warrants or other equity compensation and the terms thereof. Iowa Code section 490.624(3).
- b. The officer may not designate himself or herself (or anyone else specified as a recipient), and the designation is subject to the board's control and direction.
- c. The law on the authority of the board to permit officers to exercise some or all of the board's functions regarding the award of rights, options, warrants, or other forms of equity compensation is not always clear. Section 490.640(3) is intended to clarify this issue by expressly authorizing such delegation.

6. Cumulative Voting

- a. Section 490.728 amended to provide that shares otherwise entitled to vote cumulatively shall not be voted cumulatively at a particular meeting unless either of the following applies: (i) the meeting notice and proxy statement

accompanying the notice states conspicuously that cumulative voting is authorized; or (ii) a shareholder that has the right to cumulate votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate votes during the meeting, and if one shareholder gives notice, all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

- b. The new subsection is designed to ensure that all shareholders participating in the election understand the rules and to avoid distortions that may be created when some shareholders vote cumulatively and some do not.

7. Action for Custodian/Receiver

- a. A new Section 490.748 added to authorize a shareholder action for appointment of a custodian in certain circumstances or a receiver if the corporation is insolvent.
- b. The shareholders can seek appointment of a custodian where (1) directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable harm to the corporation is threatened or being suffered, or (2) where the directors or those in control of the corporation are acting fraudulently and irreparable harm to the corporation is threatened or being suffered. Iowa Code section 490.748(1).
- c. The circumstances described above are also ones under which a shareholder might seek judicial dissolution of the corporation pursuant to Section 490.1430. The drafters added this section given that dissolution is an extreme remedy. This section would authorize a shareholder to instead seek, and the court to order, appointment of a custodian.

8. Appraisal Remedies

- a. IBCA currently addresses remedies for shareholders that dissent with regard to fundamental changes, such as merger, interest exchange, conversion, sale of certain assets, or as otherwise provided in the articles of incorporation. See Iowa Code section 490.1301, et. seq. Under these provisions, the shareholder is provided the remedy of having the shareholder's shares appraised and purchased at fair value.

- b. Various amendments have been made to the appraisal rights sections of the IBCA as a result of other amendments made to IBCA, including those relating to electronic transmission.
- c. An important amendment to the appraisal remedy provisions is in Section 490.1340 (Other Remedies Limited). Under this section, the general rule is that the appraisal remedy is ordinarily the shareholder's exclusive remedy. The provision also provides, however, that where the corporation does not follow the required procedure, or the result was procured by fraud, or the corporate action was an "interested transaction" not authorized in the manner provided by the new sections on director's conflicting interest transactions, or it was approved by less than unanimous consent pursuant to Section 490.704, other remedies may be available.

9. Judicial Dissolution

- a. Section 490.1430 amended to provide that a court may order dissolution in a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve. Iowa Code section 490.1430(1)(e).
- b. Section 490.1430 also amended to provide that certain proceedings brought by shareholders to dissolve a corporation (on grounds that the directors are deadlocked, on the directors are acting or will act in a manner that is illegal, oppressive, or fraudulent, the shareholders are deadlocked, or the corporate assets are misapplied or wasted) do not apply to publicly traded corporations and other corporations meeting certain size thresholds. Iowa Code section 490.1430(2).

10. Inspection of Records by Shareholders

- a. Section 490.1602 amended to address inspection rights when the record date for determining shareholders entitled to vote at the meeting is different than the record date for the notice of the meeting. Any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation, upon request, the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its internet site. Failure of the corporation to provide such information does not

affect the validity of action taken at the meeting. Iowa Code section 490.1602(2).

- b. The section also amended to provide that the term “shareholder” includes a beneficial owners whose shares are held in a voting trust or by a nominee on the shareholder’s behalf. Iowa Code section 490.1602(7).

11. Financial Statements for Shareholders

- a. Section 490.1620 amended to require a corporation to deliver financial statements on an annual basis to shareholders. Iowa Code section 490.1620(1).
- b. Amended Section 490.1620 further provides that if the annual financial statements are reported upon by a public accountant, the report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation’s accounting records which states the person’s reasonable belief whether the statements were prepared in accordance with GAAP and, if not, describing the basis of the preparation and describes any respects in which the statements were not prepared on a basis of accounting consistent with statements previously prepared. Iowa Code section 490.1620(2).
- c. Within 120 days after the close of each fiscal year, the corporation shall send the annual financial statements to each shareholder. Thereafter, on written request from a shareholder to whom the statements were not sent, the corporation shall send the shareholder the latest financial statement. Iowa Code section 490.1620(3).
- d. Failure to comply with the requirements of Section 490.1620 does not adversely affect the existence of the corporation. Rather, failure to comply gives the aggrieved shareholder rights to compel compliance or to obtain damages, if they can be established, under general principles of law.
- e. A public corporation may comply with the requirements of Section 490.1620 by delivering the financial statements required under the SEC rules. Iowa Code section 490.1620(3).

C. Directors and Officers

1. Qualified Directors

- a. IBCA amendments introduce the concept of a “qualified director.” The term is intended to replace the concept of a “disinterested director” or “independent director” used in IBCA.
- b. IBCA uses the term “qualified director” for purposes of addressing the following situations:
 - i. The committee of directors used in derivative litigation settings (Iowa Code section 490.744).
 - ii. The committee of directors to determine whether a director is to receive an advancement of expenses as part of indemnification (Iowa Code section 490.855).
 - iii. Directors involved in determining whether to approve a director’s conflict of interest transaction (Iowa Code section 490.860-.862).
 - iv. Directors involved in determining whether to approve a director’s business opportunity transaction (Iowa Code section 490.870).
- c. A new section of IBCA, Section 490.143, added to address “qualified director.” The qualifications for a “qualified director” depend on the situation in which the term is being used. A qualified director does not have a “material interest” or “material relationship” with regard to the transaction or parties involved. These terms are defined in Section 490.143.

2. Functions of the Board of Directors and Officers

- a. Section 490.801 amended to expressly reference the functions of the board of directors and the board’s responsibility for the oversight of the corporation.
- b. Section 490.840 amended to describe the “functions” of officers and not the “duties.”

3. Director's Duty to Disclose Information to Others

- a. IBCA sets forth various steps to be taken by directors to fulfill their fiduciary duties to the corporation (i.e., duty of care and duty of loyalty).
- b. IBCA Section 490.830 amended to make clear that directors have such a duty:

“In discharging board or committee duties a director shall disclose, or cause to be disclosed, to the other board and committee members information which the director knows is not already known by them but is known by the director to be material to the discharge of their decision-making or oversight function, except that disclosures are not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.”
- c. Case law and federal regulations impose a duty on directors to inform other directors of information that are relevant to the other directors in fulfilling their fiduciary duties.
- d. The comment to this section states that the duty to disclose information has always been embraced in the standards of conduct set forth in this section: “Thus, for example, when a member of the board knows information that the director recognizes is material to a decision by the board to approve financial statements of the corporation, the director is obligated to see to it that such information is provided to the other members of the board. So long as that disclosure is accomplished, the action required of the director can occur through direct statements in meetings of the board, or by any other timely means, including, for example, communicating the information to the chairman of the board or the chairman of a committee, or to the corporation’s general counsel, and requesting that the recipient inform the other board or committee members of the disclosed information.”
- e. The new section recognizes that a duty of confidentiality may override a director’s obligation to share information with other directors to the extent the director reasonably believes that such duty of confidentiality prohibits it. The comment states that in some circumstances, a duty of confidentiality may even prohibit disclosure of the nature or the existence of the duty itself. Still, “[o]rdinarily . . . a director who withholds material information based on a reasonable belief that a duty of confidentiality prohibits disclosure should advise the other directors of the existence and nature of that duty.”

- f. IBCA differs from MBCA in that it imposes a subjective standard in terms of what the director knows. In addition, a violation of this duty may not result in liability to the director if the corporation has included an exculpation/liability shield in its articles of incorporation (Iowa Code section 490.202(2)(d)) or the protections under Iowa Code section 490.831 otherwise apply.

4. Resignation of Directors

- a. Section 490.807 amended to provide that a director may resign at any time by delivery a written resignation to the board of directors or the chair or secretary of the corporation. Iowa Code section 490.807(1).
- b. Section 490.807 further amended to provide that a resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation that is condition upon failing to receive a specified vote for election as a director may provide that it is irrevocable. Iowa Code section 490.807(2).

5. Vacancies on the Board of Directors

Section 490.810 amended to provide that in the event of a vacancy by a director elected by a voting group of the shareholders only the holders of the shares of such voting group or only the directors elected by a voting group are entitled to fill a vacancy if it is to be filled by the directors.

6. Submission of Matters to Shareholder Vote

- a. New Section 490.826 provides that a corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines that it no longer recommends the matter.
- b. This section is intended to clarify that a corporation may enter into an agreement, such as a merger agreement, containing a force the vote provision. This section applies to several different provisions of the IBCA that require the directors to approve a matter before recommending that the shareholders approve it.

- c. This section is not intended to relieve the board of directors of its duty to carefully consider the proposed transaction and the interests of the shareholders.

7. Indemnification

Section 490.858 is amended to clarify that a right of indemnification or to advances for expenses with respect to an act or omission cannot be eliminated or impaired after such act or omission by an amendment to the articles of incorporation or bylaws or by a director or shareholder resolution. This limitation, however, may itself be qualified by the express terms of the provisions in effect at the time of such act or omission.

8. Conflict of Interest Transactions

- a. The current version of IBCA addresses conflict of interest transactions in Section 490.832. Such section provides that a conflict of interest transaction is not void solely because of the conflict of interest and validates the transaction if there is full disclosure to and approval by disinterested directors or disinterested shareholders, or in the court's judgment it is fair to the corporation. The section does not define in any detail what constitutes a conflict of interest transaction, and courts have interpreted it to require a judicial determination of fairness even if the process of full disclosure to directors and approval by disinterested directors is followed. See, e.g., Holi-Rest, Inc. v. Treloar, 217 N.W.2d 517 (Iowa 1974); Cookie's Food Prods., Inc. v. Lakes Warehouse Distrib. Inc., 430 N.W.2d 447, 452-53 (Iowa 1988); Hansell, Austin, and Wilcox, "Duties of the Board of Directors Under the Iowa Business Corporation Act," 40 Drake L. Rev. 687 (1991); Dore, Iowa Practice Business Organizations, section 28:11 (2012). In addition, the current statute does not clearly identify who would qualify as a disinterested director. As a result, even if a board follows the proper procedures, there is still the risk of litigation because of uncertainties.
- b. The new version addresses conflict of interest transactions in new Sections 409.860-.863. It has four parts. Definitions are in Section 490.860. Section 490.861 prescribes what a court may or may not do in various situations. Section 490.862 prescribes procedures for action by board of directors or duly authorized committees regarding a director's conflicting interest transactions. Section 490.863 prescribes corresponding procedures for shareholders.

- c. The new section defines “director’s conflicting interest transaction” to mean a transaction effected or proposed to be effected by the corporation, or by an entity controlled by the corporation to which, or respecting which, any of the following applies:
 - i. To which, at the relevant time, the director is a party.
 - ii. Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director.
 - iii. Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.
- d. A “material financial interest” is defined to mean a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director’s judgment when participating in action on the authorization of the transaction.
- e. A “related person” is defined to include a (i) director’s spouse, (ii) a child, stepchild grandchild, parent, stepparent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece, or nephew, or spouse of any thereof, of the director or director’s spouse; (iii) an individual living in the same home as the director; (iv) an entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified above; or (v) a domestic or foreign person who is (A) a business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director; (B) an unincorporated entity of which a director is a general partner or member of the governing body, or (C) an individual, trust, or estate for whom or of which the director is a trustee, guardian, personal representative, or like fiduciary; or (vi) a person that is, or an entity that is controlled by, an employer of the director.
- f. Under Section 490.861, a transaction effected or proposed to be effected by the corporation or an entity controlled by the corporation is not subject to equitable relief or to give rise to an award of damages or other sanctions against a director of the corporation on the ground that the director has an interest respecting the transaction, if it is not a director’s conflicting interest transaction.

g. Section 490.861 further provides that a director's conflicting interest transaction is not subject to equitable relief or to give rise to an award of damages or other sanctions against a director if (a) directors' or shareholders' action respecting the transaction was taken in accordance with Section 490.862 or 490.863 at any time or (b) the transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation. The term "fair to the corporation" is defined to mean that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (a) fair in terms of the director's dealings with the corporation; and (b) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation. Iowa Code section 490.861(3).

h. Directors' Action

i. Section 490.862 provides that a directors' action with regard to a director's conflicting interest transaction is effective if the transaction has been authorized by the affirmative vote of a majority, but not fewer than two, of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified director, provided that:

A. The qualified directors have deliberated and voted outside the presence of and without the participation by any other director.

B. Where the action has been taken by a committee, all members of the committee were qualified directors, and any of the following apply: (1) the committee was composed of all the qualified directors on the board; or (2) the members of the committee were appointed by the affirmative vote on a majority of the qualified directors of the committee.

ii. In the situation where the transaction is a director's conflicting interest transaction only because a certain type of related person (i.e., an entity in which the director is a director or member of the governing body or a trustee or other fiduciary or a person or entity that is controlled by an employer of the director), the disclosure obligations are modified such that the director is not required to disclose any information the director reasonably believes would result in the violation of a duty under law, a legally enforceable obligation of confidentiality, or a professional ethics

rule, provided certain information is disclosed (i.e., all other relevant information, the existence of the conflicting interest, and the nature of the conflicted director's duty not to disclose confidential information).

- iii. A majority, but not fewer than two, of all qualified directors on the board of directors or on the committee constitutes a quorum for purposes of complying with Section 490.862.
- iv. Where directors' action does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles, bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board or a committee, in which action directors who are not qualified directors may participate.

i. Shareholders' Action

- i. Section 490.863 provides that shareholders' action respecting a director's conflicting interest transaction is effective if a majority of the votes cast by the holders of all qualified shares (i.e., shares not owned by the director or related person that has a conflicting interest) are in favor of the transaction after (1) notice has been given about the transaction; (2) provision to the corporation of information regarding the number of shares that are not "qualified shares"; and (3) communication to the voting shareholders on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.
- ii. A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with the section. A shareholders' action is generally not affected by the presence of holders, or voting, of shares that are not qualified shares.
- iii. If a shareholders' vote does not comply with the section solely because of the director's failure to notify the corporation of the non-qualified shares, and if the director establishes that the failure is not intended to have influenced and did not in fact determine the outcome of the vote, a court may take such action respecting the transaction and the director, and may give such effect, if any, to the shareholders' vote, as the court considers appropriate.

- iv. Where shareholders' action under the section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles, bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shares that are not qualified shares may participate.

III. Benefit Corporations/Social Purpose Corporations

- A. A number of states have enacted legislation allowing corporations to opt into a legal structure that expressly expands the purpose of the corporation beyond advancing the pecuniary interests of its shareholders. Corporations adopting such expanded purposes are commonly referred to as "benefit corporations" or "social purpose corporations."
- B. Benefit corporation legislation, based on a model proposed by B Lab, a nonprofit promoting the adoption of benefit corporation legislation, requires that the benefit corporation consider the general public welfare before acting, (2) permits that more specific "public" interests be considered, and (3) requires that the corporation's compliance be measured against a standard imposed by an independent third party. HF 288, which was introduced in the Iowa General Assembly in 2013, is based on the B Lab model.
- C. Iowa already has a "constituency" statute; however, it addresses situations when a director is considering a tender offer or proposal of acquisition, merger, consolidate, or similar proposal. See Iowa Code section 490.1108A.
- D. Some states have adopted a less "regulatory" structure that permits directors discretion to take into account public interests in making a decision.
- E. The ABA Corporate Laws Committee has developed model legislation that provides for a more flexible alternative (and that is similar to the recently enacted Delaware benefit corporation legislation). In a white paper issued by the Committee, the following summary of the model legislation is provided:
 1. Establishment of Benefit Corporation. One or more public benefits must be set forth in the corporation's articles of incorporation. "Public benefit" is defined as a positive effect on the environment or one or more communities or categories of persons or entities. The name of the public benefit corporation must identify it as such.

2. Tripartite Mandate. The provisions state that the directors of a public benefit corporation are to consider (a) the public benefits set forth in the articles, (b) the interests of those materially affected by the corporation's conduct, and (c) the pecuniary interests of the corporation and its shareholders. As a result, the provisions require a general benefit and a specific benefit to provide a focus to the benefit nature of the enterprise.
 3. Opting in Requires High Vote and Appraisal. In order for shareholders of a corporation that is not a public benefit corporation to be required to accept stock in a corporation that is not a public benefit corporation – through an amendment to the articles, merger, or share exchange – a vote of 90 percent of each class or series of outstanding stock is required.
 4. High Vote to Change Benefit Provision or Merge. The provisions require a two-thirds vote to change the public benefit provisions to which shareholders were subject, or to merge the corporation or enter into a share exchange.
 5. Exculpation and Indemnification. The provisions provide that, unless the articles of incorporation state otherwise, any failure by disinterested directors to otherwise meet the tripartite standard will not be considered an intentional infliction of harm on the corporation or its shareholders. Such a provision would ensure that if a corporation has adopted the broad exculpation provision permitted under the MBCA, a claim that directors over-accommodated the public benefit would not be subject to personal liability as violating the “intentional infliction” standard. Similarly, the provision ensures that such a claim would not be barred from indemnification protection as a result of being deemed conduct constituting intentional infliction of harm.
 6. Notice and Reporting. The provision requires that notices of meetings to shareholders expressly state that the corporation is a public benefit corporation and also require that a report assessing whether the company is achieving its specified benefits be sent to them at least once every two years.
 7. Derivative Claims. The provisions expressly permit a five percent shareholder group be able to bring derivative claims to enforce the public purpose.
- F. The ISBA Business Law Section will be proposing legislation based on the ABA Corporate Laws Committee proposal. Two modifications are as follows:

1. The legislation would use the term “social purpose corporation” as opposed to “public benefit corporation” because the latter term is used in the Revised Iowa Nonprofit Corporation Act to describe a certain type of nonprofit corporation.
2. The legislation would make clear that the existence of provisions in the IBCA permitting “social purpose corporations” does not of itself create an implication that a contrary or different rule of law is applicable to a business corporation that is not a benefit corporation.