Business Law Seminar

Revised Iowa Nonprofit Corporation Act

10:30-11:15 a.m.

Prepared by:

Willard L. Boyd, III
Nyemaster Law Firm
700 Walnut, Suite 1600
Des Moines IA 50309-3899
Phone: (515) 283-3100
Fax: (515) 283-3108

September 21-23, 2004

REVISED IOWA NONPROFIT CORPORATION ACT

Iowa State Bar Association
Business Law Seminar
September 21, 22 and 23, 2004

Willard L. Boyd III
Nyemaster, Goode,
West, Hansell & O'Brien, P.C.
700 Walnut Street, Suite 1600
Des Moines, IA 50309
515/283-3172
wlb@nyemaster.com

I. Introduction

A. Nonprofit Corporation Law in Iowa

1. Iowa adopted its current nonprofit corporation statute, the Iowa Nonprofit Corporation Act, in 1965. The Act is based on the Model Nonprofit Corporation Act originally developed by the Committee on Corporation Laws of the American Bar Association ("ABA") in 1952 and revised in 1964. See Preface to Model Nonprofit Corporation Act (ALI/ABA 1964). Prior to that time, Iowa nonprofit corporations were governed by Iowa Code Chapter 504 (Corporations Not for Pecuniary Profit).

2. In 1958, the Special Committee on Corporation and Business Law of the Iowa State Bar Association ("Committee") completed its task of producing the Iowa Business Corporation Act. The Committee decided to focus on the "great need for a new nonprofit law." Resume of Proposed New Iowa Non-Profit Corporation Act (ISBA 1963). The Act replaced Iowa Code Chapter 504, which was characterized as follows: "Not only [was] Chapter 504 almost wholly devoid of administrative and procedural guidance, but therein many substantive areas of uncertainty and doubt exist, with respect to which the meager reported Iowa case law on the subject matter lends little or no light." Id.

3. In the report accompanying the proposed legislation that resulted in the enactment of the Iowa Nonprofit Corporation Act, the Committee stated: "Being aware that, as had been the case with profit corporations, Iowa was one of the very few states which has failed to provide its people with a comprehensive and modern act, the Committee concluded it would again be performing a worthwhile public service in undertaking to produce such code." Id. ; see also Comment, Iowa: The Nonprofit Corporation Act Applied, 17 DRAKE L. REV. 107 (1967).

B. Revised Model Nonprofit Corporation Act

1. In 1984, the American Bar Association adopted a revised Model Business Corporation Act ("MBCA"). In 1987, the Iowa State Bar Association recommended, and the Iowa General Assembly adopted, the revised Model Business Corporation Act that is the basis for the Iowa Business Corporation Act, Iowa Code Chapter 490 ("IBCA").

2. In 1987, after an eight-year process, the American Bar Association adopted the Revised Model Nonprofit Corporation Act ("RMNCA") because the 1964 Model Nonprofit Corporation Act did not address several questions, many of which have received increasing attention in recent years. See M. Hone, Revised Model Nonprofit Corporation Act (Prentice Hall Law & Business 1988) ("Hone, RMNCA"). For example, the original model act did not address the standard of care or loyalty for directors or officers of nonprofit corporations or established conflict of interest rules. It also did not address derivative suits, transfer and purchase of memberships, the resignation or termination of members, the merger of such entities, or the sale of their assets. Id.

3. To date, 21 states have adopted the RMNCA in part or in full. The states include Arkansas, Colorado, Indiana, Missouri, Nebraska, and Ohio. The ABA is now in the process of revising the RMNCA.

C. Senate File 2274

1. In 1998, after two years of review, the Nonprofit Corporations Committee of the Business Law Section of the Iowa State Bar Association recommended adoption of the RMNCA with certain modifications. The legislation was originally introduced as a house study bill in 1999 (HSB 229), without further action.

2. In 2002, amendments (proposed by the Iowa State Bar Association, Business Law Section) to the IBCA were adopted. Such amendments were based on updates that had occurred with regard to the MBCA since the initial passage of the IBCA in 1987. The Nonprofit Corporations Committee recommended that many of these amendments be incorporated in the proposed nonprofit corporation legislation. The legislation, as revised, was reintroduced in 2003 ("SF 2274") and passed both houses unanimously in 2004. The Governor signed the bill on April 8, 2004.

3. SF 2274 will replace the current Iowa Nonprofit Corporation Act, Iowa Code Chapter 504A. It will be codified as Iowa Code Chapter 504 and will be called the "Revised Iowa Nonprofit Corporation Act."

4. Effective Dates. SF 2274 becomes effective for existing nonprofits on July 1, 2005 unless such nonprofits elect to have the law apply on an earlier date, which can be as early as July 1, 2004. Iowa Code section 504.1701. It will become effective on January 1, 2005 for any nonprofits created on or after January 1, 2005. Id.

5. Existing Nonprofit Corporations. SF 2274 imposes certain requirements that will be new for existing nonprofit corporations; however, requirements relating to articles of incorporation that are "new" will not be imposed on existing nonprofits. Iowa Code section 504.202.

II. SF 2274 - Overview

A. Summary of the SF 2274

1. The RMNCA was drafted to track the MBCA, which was adopted by Iowa with some modifications. As a result, SF 2274 tracks the IBCA in form and substance, particularly in regard to the filings with the Secretary of State, formation of corporations, corporation powers, qualification of foreign corporations, and requirements for corporate office and agent. See Hone, RMNCA. SF 2274 is organized as follows:

   1. General Provisions
   2. Organization
   3. Purposes and Powers
   4. Names
   5. Office and Agent
   6. Members and Memberships
   7. Members' Meetings and Voting
   8. Directors and Officers
   9. Personal Liability
   10. Amendments to Articles of Incorporation and Bylaws
   11. Mergers
   12. Sale of Assets
   13. Distributions
   14. Dissolution
   15. Foreign Corporations
   16. Records and Reports

2. SF 2274 addresses many areas that are either not addressed in the Iowa Nonprofit Corporation or provide more flexibility than the Iowa Nonprofit Corporation Act.

   a. Steps for Incorporation
   A nonprofit corporation will be deemed created upon the filing of the articles of incorporation as opposed to the Iowa Nonprofit Corporation Act requirement that there be an issuance of a certificate of incorporation by the Iowa Secretary of State's office. Iowa Code section 504.203.

   b. Electronic Filings
   The Iowa Nonprofit Corporation Act requires documents be typewritten or printed and authorizes the Secretary of State to adopt rules for electronic filing of documents but does not directly provide for the electronic filing of documents. SF 2274 adopts the IBCA provisions regarding the authorization of filing of documents by electronic transmission if in a format that can be retrieved or reproduced in typewritten or printed form and to the extent permitted by the Secretary of State. Iowa Code section 504.111. New definitions of "deliver" and "electronic transmission" allow for such filings. Iowa Code section 504.140.

   c. Electronic Communications
   SF 2274 incorporates the recent changes made to the IBCA and expressly authorizes corporations to communicate electronically regarding matters.

   Nonprofit corporations may use electronic communications for proxies, written consents and ballots of members. Iowa Code sections 504.704, 504.708, and 504.715.

   Communications may also occur at the board level for written consents of the board. Iowa Code section 504.822.

   d. Membership
   "Members" under SF 2274 are those individuals or entities that have a right to vote for directors. If members do not have such right, then their rights are limited to the powers designated in the articles of incorporation or bylaws. Iowa Code sections 504.141(22); 504.611.

e. Written Action of Members and Special Meetings

Iowa Code section 504A.97 allows informal action by members of a corporation without a meeting if a consent in writing setting forth the action so taken is signed by all of the members entitled to vote with respect to the subject matter thereof.

Under SF 2274, unless limited or prohibited by the articles or bylaws, action required by members may be approved without a meeting of members if the action is approved by written consent by members holding at least eighty percent of the voting power. Iowa Code section 504.704. Written notice of member approval must be given to all members who have not signed the written consent. Id. If written notice is required, member approval shall be effective ten days after such written notice is given. Id.

SF 2274 also establishes a procedure for revocation of a written consent. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporate action. Id.

SF 2274 also provides that a written demand for a special meeting may be revoked by writings to that effect received by the corporation prior to receipt by the corporation of demands sufficient in number to require holding of a special meeting. Iowa Code section 504.702.

f. Termination, Expulsion or Suspension of Members

See discussion below.

g. Derivative Proceedings

See discussion below.

h. Delegates

See discussion below.

i. Number of Directors

Under the Iowa Nonprofit Corporation Act, the number of directors needs to be fixed in the articles or bylaws. Under SF 2274, a range may be specified. Iowa Code section 504.803.

j. Terms of Directors

Except for designated or appointed directors, and except as otherwise provided in the articles or bylaws, terms of directors may not exceed five years. Iowa Code section 504.805.

k. Written Consent of Directors

Similar to the member consent provision, SF 2274 sets forth a procedure for revocation of a director written consent. Iowa Code section 504.822.

l. Director Right to Inspect Records

SF 2274 provides that a director of a nonprofit corporation is entitled to inspect and copy the books, records, and documents of the corporation. Iowa Code section 504.1606. A district court may order such inspection. Id. If an order is issued, the district court may include provisions protecting the corporation from undue burden or expense. Id. The court may also order the corporation to reimburse the expenses of the director for such action. Id.

m. Election of Directors and Filling of Board Vacancies

SF 2274 addresses in more detail member involvement in the election of directors and filling of board vacancies. Iowa Code sections 504.804 and 504.811.

n. Removal of Directors

SF 2274 sets forth a procedure for removal of directors. The procedure depends on how a director was elected or appointed to the board. Iowa Code section 504.809.

o. Judicial Removal of Directors

SF 2274 addresses removal of directors by judicial proceedings. SF 2274 incorporates the recent changes to the IBCA and provides that any such action may only be brought by or in the name of the corporation. Iowa Code section 504.810. Grounds for such removal include fraudulent conduct with respect to the corporation or its members or the director grossly abused the position or intentionally inflicted harm on the corporation. Id.

p. Resignation of Directors

SF 2274 sets forth a procedure for directors to resign from the board. Iowa Code section 504.807.

q. Duties of Directors and Officers

See discussion below.

r. Director Liability Shield

See discussion below.

s. Indemnification

The Iowa Nonprofit Corporation Act incorporates by reference the indemnification provisions of the IBCA. One issue by including such provision in this manner is that the IBCA refers to shareholders and not members. In addition, the Iowa Nonprofit Corporation Act provides that a corporation "may" indemnify its directors in accordance with the IBCA, which leaves open the question of whether the mandatory indemnification provisions are applicable. Iowa Code section 504A.4(14). SF 2274 incorporates the full text of the IBCA indemnification provisions with modifications where appropriate in the nonprofit corporation context. Iowa Code sections 504.851- - .860

t. Officers

Under the Iowa Nonprofit Corporation Act, a nonprofit corporation must have a president, one or more vice presidents, a secretary and a treasurer. Iowa Code section 504A.23. Under SF 2274, a corporation has the flexibility to determine the types and titles of officers to serve the corporation. In the absence of any provisions in the articles or bylaws, the corporation shall have a president, secretary and treasurer. Iowa Code section 504.841.

u. Duties and Authority of Officers

SF 2274 provides that each officer of a corporation shall have the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribed the duties and authority of other officers. Iowa Code section 504.842.

v. Resignation and Removal of Officers

SF 2274 provides that an officer may be removed at any time without cause by any of the following: (i) board; (ii) officer who appointed such officer; and (iii) any other officer authorized under the bylaws. Iowa Code section 504.844.

w. Officers' Authority to Execute Documents

SF 2274 expressly recognizes the authority of officers to execute documents on behalf of the corporation. Iowa Code section 504.846.

x. Membership Records

See discussion below.

4. In addition, recognizing that public benefit, mutual benefit, and religious nonprofit corporations involve different interests, SF 2274 contains rules and procedures appropriate to each of these three types of nonprofit corporations. Hone, RMNCA.

B. Types of Nonprofit Corporations Under SF 2274

1. Public Benefit Corporation

   a. A "public benefit corporation" is defined in SF 2274 to mean a corporation that is organized for a public or charitable purpose and which upon dissolution must distribute its assets to a public benefit corporation, the United States, a state or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor regulation. Iowa Code sections 504.1705(3) and (4).

   b. A public benefit corporation provides a service or product to the public that is generally not offered by business corporations. It does not have a membership that would limit its accessibility to the nonmembership public in general. Thus, while public benefit institutions often provide memberships to the public for a fee, they usually benefit nonmembers as well.

   c. Members, unlike shareholders in business corporations, can have no ownership interest in their corporation. The assets of the public benefit corporation are held for public or charitable purposes and not to benefit members, directors, officers or controlling persons. The assets cannot be distributed to members, directors or officers either while the public benefit corporation is operating or upon dissolution.

   d. Examples include museums, libraries, hospitals, and schools.

2. Mutual Benefit Corporation

   a. A "mutual benefit corporation" is defined in SF 2274 to mean a nonprofit corporation that is not a religious corporation or a public benefit corporation. Iowa Code section 504.1705(5).

   b. In general, a mutual benefit corporation is formed primarily to serve the members of the corporation. Both sources of funding and the interested parties are concentrated in the membership ranks.

c. A mutual benefit corporation will have many of the attributes of organization and conduct normally associated with business corporations.

d. Examples include trade associations, cooperatives, social organizations and athletic clubs.

3. Religious Corporation

a. A "religious corporation" is defined in SF 2274 to mean a corporation that is organized primarily or exclusively for religious purposes. Iowa Code section 504.1705(2).

b. In general, the rules applicable to the public benefit corporation apply to the religious corporation; however, for constitutional and policy reasons, SF 2274 provides religious corporations with more flexibility with regard to the structure and operations than a public benefit corporation.

4. Importance of Distinction in Types of Nonprofits under SF 2274.
SF 2274 treats public benefit, mutual benefit and religious corporations differently in some respects. Examples include the following:

a. Purchase and Transfer of Membership Interests
Public Benefit and Religious Corporations do not have the ability to purchase or allow for the transfer of membership interests. Mutual benefit corporations can allow for such purchases and transfers. Iowa Code sections 504.612 and 504.623.

b. Ultra Vires Actions
Attorney General's rights regarding bringing ultra vires actions against incumbent and former directors, officers, employees and agents are limited to public benefit corporations. Iowa Code section 504.304.

c. Termination, Expulsion or Suspension of Members
Religious corporations are not subject to provisions regarding termination, expulsion or suspension of members. Iowa Code section 504.622.

d. Duty of Care
Duty of care standard recognizes that reliance of religious corporation directors may be made on religious officials. Iowa Code section 504.831.

e. Membership Records

A religious corporation may deny members the right to access membership records. Iowa Code section 504.1602.

f. Mergers/Dissolution

The assets of a public benefit corporation and religious corporations are required to remain for such use. Iowa Code sections 504.1102 and 504.1406.

C. Duties of Directors and Officers

1. The Iowa Nonprofit Corporation Act does not provide any standards for directors. The current law only provides a liability shield provision at Iowa Code section 504A.101, which, while very helpful in shielding liability of a director, officer, member, or other volunteer, does not provide affirmative steps for a director to take in carrying out the director's fiduciary duties to the corporation.

2. Under the case law, it is well recognized that directors of nonprofit corporations have duties to the corporation similar to business corporation directors. See, e.g., Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses and Missionaries, 381 F. Supp. 1003, 1013 (D.D.C. 1974); see also Hall & Columbo, The Charitable Status of Nonprofit Hospitals: Toward a Donative Theory of Tax Exemption, 66 WASH. L. REV. 307, 381 (1991); Harvey, The Public-Spirited Defendant and Others: Liability of Directors and Officers of Not-For-Profit Corporations, 17 J. MARSHALL L. REV. 665, 674 (1984) ("Harvey, Liability of Directors and Officers").

3. The RMNCA adopts the standards articulated in the MBCA with certain modifications that recognize certain differences between nonprofit corporations and business corporations. SF 2274 incorporates the RMNCA standards with the inclusion of the recent amendments to the IBCA and some other modifications.

4. Duty of Care

   a. The duty of care requires a director to act in a reasonable and informed manner when participating in the board's decisions and its oversight of the corporation's management. The duty requires that a director be informed and that the director discharge his or her duties in good faith, with the care that an ordinary prudent person in a like position would reasonably believe appropriate under similar circumstances. See Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses and Missionaries, 381 F. Supp. at

1013. ("[D]irectors of charitable corporations are required to exercise ordinary and reasonable care in the performance of their duties, exhibiting honesty and good faith.").

b. Duty of Care involves, among other things:

i. Attending meetings.

ii. Exercising independent judgment.

iii. Making reasonable inquiry in appropriate circumstances.

iv. Establishing information systems and procedures.

v. Monitoring of financial and other significant matters.

vi. Participating in decisions in good faith and with the care of an ordinary prudent person in similar circumstances.

See ABA, Guidebook for Directors of Nonprofit Corporations (2nd ed. 2002).

c. Reasonable reliance: The director may rely upon others and delegate if the reliance is in good faith, unless he or she knows or should know that such reliance is unwarranted. See Stern v. Lucy Webb Hayes Nat'l Training School for Deaconesses and Missionaries, 381 F. Supp. at 1014 ("A director who fails to acquire the information necessary to supervise investment policy or consistently fails even to attend the meetings at which such policies are considered has violated his fiduciary duty to the corporation . . . . While a director is, of course, permitted to rely upon the expertise of those to whom he has delegated investment responsibility, such reliance is a tool for interpreting the delegate's reports, not an excuse for dispensing with or ignoring such reports."); Aramony v. United Way of America, 28 F. Supp 2d 147 (S.D.N.Y. 1998), aff'd, rev'd and remanded in part, 191 F.3d 140 (2d Cir. 1999), 86 F.Supp. 2d 199, reversed, 254 F.3d 403 (4th Cir. 2001); United States v. Aramony, 166 F.3d 655 (4th Cir. 1999), cert. denied, 526 U.S. 1146 (1999).

d. SF 2274 requires "[e]ach member of the board of directors of a corporation, when discharging the duties of a director, [to] . . . act . . . in . . . good faith [and] in a manner the director reasonably believes to be in the best interest of the corporation." Iowa Code section 504.831(1).

e. SF 2274 recognizes that as members of the board and committees of the board directors have both a decision-making function and an oversight function.

f. In discharging the duties of director, the director may rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by the following persons if the director reasonably believes are within the person's professional or expert competence: (1) one or more of the officers of the corporation; (2) legal counsel, public accountants, or other persons as to matters involving skills or expertise the director reasonably believes are either of the following: (a) matters within the particular person's professional or expert competence; or (b) matters as to which the particular person merits confidence; (3) a committee of the board; or (4) in the situation of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose positions or duties in the religious organization the director reasonably believes justifies reliance and confidence and whom the director believes to be reliable and competent in the matters presented. Iowa Code section 504.831(5).

g. A director is not acting in good faith if the director has knowledge concerning the matter in question makes the reliance unwarranted. Id.

h. A director is not deemed a trustee with respect to a corporation or any property held or administered by the corporation, including without limitation, property that may be subject to restrictions imposed by he donor or transferor of such property. Id.

i. The standard of conduct for officers includes similar requirements. Iowa Code section 504.843.

5. Business Judgment Rule

a. Directors of nonprofits have been deemed subject to the business judgment rule. The business judgment rule is intended to give directors protection from liability for business judgments by precluding judicial inquiry into actions of corporate directors taken in good faith and in the exercise of honest judgment in the lawful and legitimate furtherance of corporate purposes. See, e.g., Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 954 (Del. 1985) SF 2274 incorporates the IBCA business judgment rule which was part of the 2002 IBCA amendments.

b. SF 2274 incorporates the recent IBCA changes that "bring[] together, restates, and/or codifies many principles drawn from the current MBCA and/or leading corporate law decisions affecting liability of directors." Walker, Updating the Iowa Business Corporation Act (ISBA 2002) ("Walker, Updates to IBCA"), at 26.

6. Conflict of Interest

a. Conflicts of interest have been an increasingly important issue for nonprofit corporations. See, e.g. ABA, Nonprofit Directory Guidebook, at 30. Since nonprofits often recruit able board members who offer the organization a service or good below fair market value, it is important to have a process that manages potential conflicts of interest. See, e.g., Boyd, The Governing Board for Iowa Nonprofits (University of Iowa 2003), at 17-18.

b. Under SF 2274, a conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on a director if the transaction was fair at the time it was entered or approved in accordance with the statute. Iowa Code section 504.833.

c. A transaction in which a director has a conflict of interest may be approved if the material facts of the transaction were disclosed and the board or members that authorized, approved or ratified the transaction. Id.

d. A conflict of interest transaction may be authorized, approved, or ratified if it receives the affirmative vote of the majority of the directors on the board or on the committee that have no direct or indirect interest in the transaction, but a transaction may not be authorized by a single director. Id.

e. The articles, bylaws, or resolution by board may impose additional requirements. Id.

7. Liability Shield for Directors, Officers, Members and Other Volunteers

a. Under the current statute, directors, officers, members and other volunteers have protection from liability unless their conduct constitutes a breach of duty of loyalty to the corporation, an act or omission not in good faith or which involves intentional misconduct or knowing violation of law, or a transaction from which the person derives an improper personal benefit. Iowa Code section 504A.101. Statutes similar to this one have been criticized because of the uncertainty that has arisen in determining whether a particular exception is applicable. For instance, questions have arisen regarding whether particular conduct constitutes a breach of duty of loyalty. Since such duty is not defined in the statute, courts are required to determine on a case-by-case basis the scope of such duty. In addition, the content of "good faith" is imprecise, especially in the context of litigation against directors. Walker, Updates to IBCA at 22. Commentators have stated the concept "has escaped definitive construction" and that judicial pronouncements interpreting it have not been 'very helpful.'" Hansell, Austin & Wilcox, Director Liability under Iowa Law: Duties and Protections, 13 Journal of Corporation Law 369, 396 (1988). There may be instances in which a board's decisions or failure to act seem grossly negligent or reckless and, as such, arguably not in good faith. Walker, Updates to IBCA, at 22.

b. SF 2274 incorporates the recent changes that were made to the IBCA with regard to the director liability shield to make more certain the circumstances under which a director, officer, member or other volunteer would be immune from liability. This, in turn, should make the liability shield less susceptible to litigation of the issue and whether an alleged failure by directors to provide sufficient disclosure was a breach of a care, for which directors would have been shielded from liability, or a breach of the duty of loyalty, in which event the directors would not have been shielded from liability. Walker, Updates to IBCA at 22.

c. In particular, SF 2274 provides that a director, officer, member or other volunteer is not personally liable in that capacity for any action taken or failure to take any action except liability for any of the following:

(1) the amount of any financial benefit to which the person is not entitled;

(2) an intentional infliction of harm on the corporation or members;

(3) a violation of the unlawful distribution provision; and

(4) an intentional violation of criminal law.

Iowa Code section 504.901. With more certainty, volunteers should be more willing to serve on nonprofit boards or volunteer for nonprofit activities. This change will allow the nonprofit statute to conform (with regard to the exceptions to such shield) to the IBCA as well as Iowa Code Chapters 490A (Limited Liability Companies); 491 (Corporations for Pecuniary Profit); 497 (Cooperative Associations); 498 (Nonprofit Cooperative Associations); 499 (Cooperative Associations); and 501 (Cooperatives).

d. In addition, SF 2274 provides certain liability protection to directors who are compensated for their services by the corporation. The current statute applies to "a director, officer, member, or <u>other</u> volunteer." (Emphasis added). Given the language of Iowa Code section 504A.101, there is an issue of whether "paid" directors are entitled to the protection of the liability shield. <u>See</u>, <u>e.g.</u>, Iowa Attorney General Opinion, No. 77-3-8 (March 14, 1977). Under SF 2274, a nonprofit corporation, similar to a business corporation under the recent amendments to the Iowa Business Corporation Act, may include in its articles of incorporation a liability shield for its directors. Iowa Code section 504.202(2)(d). This would protect liability of a director for money damages as against the corporation or its members. In addition, a nonprofit corporation may include the indemnification provision in the articles that requires a corporation to indemnify its directors in a manner consistent with the liability shield. Iowa Code section 504.202(2)(e).

D. Delegates and Members

1. <u>Delegates</u>

a. The Iowa Nonprofit Corporation Act has no provisions expressly addressing the use of delegates in the governance of the nonprofit corporation.

b. Under SF 2274, a nonprofit corporation may operate through a self-perpetuating board of directors or through delegates. In addition, delegates may exercise some or all of the powers of the board of directors and/or members. Iowa Code section 504.641.

c. The articles or bylaws may set forth provisions relating to the characteristics, qualifications, rights, limitations, obligations of delegates; calling, noticing, holding, and conducting meetings of delegates; and carrying on corporate activities during and between meetings of delegates. Id.

2. Purchase and Transfer of Membership Interests

a. The Iowa Nonprofit Corporation Act does not address the transferability of membership interests in a nonprofit corporation.

b. Under SF 2274, public benefit and religious corporations are prohibited from purchasing memberships from members who resign or whose membership has been terminated. Iowa Code section 504.612. SF 2274 also prohibits the transfer of such membership interests by one member to another member for such corporations. Iowa Code section 504.623.

c. SF 2274 allows a mutual benefit corporation to provide in its articles or bylaws the ability of members to transfer their memberships. Id.

d. Under SF 2274, mutual benefit corporations may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in the articles of incorporation or bylaws. Iowa Code section 504.612.

3. Derivative Suits

a. Under the Iowa Nonprofit Corporation Act, it is unclear what parties have standing to challenge corporate action. The case law in this area has developed to recognize that voting members may, in certain instances, bring derivative actions on behalf of the corporation. Harvey, Liability of Directors and Officers, at 691-692.

b. SF 2274 gives certain members and directors the right to bring a suit on behalf of the corporation. Iowa Code section 504.631. In particular, any director, member or members having five percent or more of the voting power, or any fifty members have the right to bring such an action. Id.

c. SF 2274 incorporates the recent revisions to the IBCA provisions regarding shareholder derivative actions. See Iowa Code sections 490.740-.747; 504.631-.638. Among other things, SF 2274 requires that a director or member must in all cases, except where there would be irreparable harm, make a written demand on the board before commencement of a derivative proceeding. Iowa Code section 504.633. The board has ninety days to consider claim and demand and make its decision. Id. A court is to dismiss an action if a panel of independent directors or court appointed independent persons determine in good faith that the action is not in the best interests of the corporation. Iowa Code section 504.635.

4. Resignation and Termination of Members

a. Termination of a membership might occur voluntarily or by an act of the organization pursuant to authority granted to it by the articles of incorporation or bylaws. The Iowa Nonprofit Corporation Act does not address this issue.

b. SF 2274 provides that a member may resign at any time but that the resignation does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to the resignation. Iowa Code section 504.621.

c. While the right of expulsion of a member as penalty for an infraction or disobedience of the laws of the organization is well settled, case law in this area has developed to a point where there is a presumption against the power to expel because it is in the nature of a forfeiture. See, e.g., Phelan, Representing The Nonprofit Organizations, at Section 2.11 (Callaghan & Co. 1987).

d. SF 2274 provides that no member may be expelled or suspended, and no membership may be terminated or suspended except pursuant to a procedure that is fair and reasonable and that is carried out in good faith. Iowa Code section 504.622.

e. SF 2274 provides a procedure "fair and reasonable" when either of the following occur: (1) the articles or bylaws provide for a procedure that provides at least fifteen days prior written notice of the action and an opportunity for the member to be heard not less than five days prior to the effective date; or (2) the procedure requires consideration of all relevant facts and circumstances surrounding the action by the person or persons authorized to make a decision regarding such action. Id.

E. Mergers/Sale of Assets/Dissolution

1. Mergers

   a. The Iowa Nonprofit Corporation Act addresses only the merger of two nonprofit corporations. Iowa Code section 504A.40. The Act is silent with regard to the merger of a nonprofit corporation with or into another corporate entity, such as a business corporation.

   b. SF 2274 provides a procedure similar to the RMNCA that allows for the merger of nonprofit corporations into a business or nonprofit corporation; provided, however that if the corporation is a public benefit or religious corporation, the surviving corporation must either be a public benefit or religious corporation, unless (i) the assets, prior to the merger, are transferred to a public benefit or religious corporation, or (ii) prior approval is obtained from the district court. Iowa Code section Iowa Code section 504.1102.

2. Sale of Assets

   a. The Iowa Nonprofit Corporation Act provides a procedure for the sale of assets of nonprofit corporations. Iowa Code section 504A.46.

   b. SF 2274 adopts an approach similar to the IBCA approach and distinguishes between sale of assets in the regular course of activities and sale of assets other than in regular course of activities. Iowa Code sections 504.1201 and 504.1202.

3. Dissolution

   a. Under the Iowa Nonprofit Corporation Act, a corporation is not required to include in its articles of incorporation a provision for distribution of the corporation's assets on dissolution. Under SF 2274, for nonprofit corporations incorporated on or after January 1, 2005, the incorporators are required to make some provision for distribution of assets. Iowa Code section 504.202.

   b. Under SF 2274, public benefit and religious corporations are required to distribute assets to use for a public benefit purpose. Iowa Code section 504.1406. A mutual benefit corporation may distribute assets to its members or those persons whom the corporation holds itself out as benefiting or serving upon dissolution. Id.

F. Access to Records

1. Under the Iowa Nonprofit Corporation Act, a corporation is to keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any authority of the board of directors, and shall keep at its registered office or principal office in Iowa a record of the names and addresses of the members entitled to vote. Iowa Code section 504A.25. All books and records of the corporation may be inspected by any member, or the member's agent or attorney, for any proper purpose at any reasonable time. Id.

2. A corporation organized pursuant to Iowa Code Chapter 504A, or any other nonprofit agency, which receives federal and state funding, shall provide to any person, upon request, a list of the names of the members of the corporation's or agency's board of directors, and the salary of each officer and director's fee of each director of the corporation or nonprofit agency. Iowa Code section 504A.25A.

3. SF 2274 gives members the right to inspect and copy corporate records including membership lists; however, membership lists, unlike shareholder lists, provide a valuable list of names and addresses of contributors, members, and supporters. Allowing such lists to be used for improper purposes could be extremely harmful to the corporation. As a result, SF 2274 places limits on the access and use of such lists. Iowa Code sections 504.1602 and 504.1603.

4. SF 2274 requires the member to make the demand for inspection in good faith and for a proper purpose. Iowa Code section 504.1602. SF 2274 also requires the member to describe with reasonable particularity the purpose and the records that are desired for the inspection. Id. In addition, SF 2274 requires that the requested records have a connection with the purpose reported by the member in the request. Id. For religious corporations, the right to inspect may be abolished. Id.

5. In addition, a corporation may, with ten days of receiving a demand for inspection of a membership list, deliver a written offer of a reasonable alternative of achieving the purpose identified in the demand without providing access to or a copy of the membership list. A reasonable alternative may include a member-prepared communication mailed by the corporation at the expense of the member. Access to records for purposes unrelated to a member's interest as a member of the corporation is allowed only upon the approval of the corporation's board of directors. Id.

III. Differences Between RMNCA and SF 2274

A. IBCA. As noted above, SF 2274 incorporates many provisions in the IBCA with modifications where appropriate for nonprofits. These relate to:

1. Electronic Filings
2. Electronic Communications
3. Member and director written consents
4. Derivative Actions
5. Duties of Directors
6. Officers
7. Judicial Removal of Directors
8. Indemnification
9. Biennial filings
10. Fictitious Name Filings
11. Registered Agent
12. Administrative Dissolution

B. Affirmative Election Regarding Classifications. The RMNCA requires nonprofits to affirmatively elect their type of nonprofit (i.e. public benefit, mutual benefit or religious corporation). SF 2274 does not require such an election.

C. Attorney General Oversight. SF 2274 does not include the full range of attorney general oversight provisions contained in the RMNCA relating to fundamental events of a corporation and conflict of interest transactions for public benefit and religious corporations.

D. Conflict of Interest. SF 2274 differs from the RMNCA by not treating nonprofits differently with regard to the conflict of interest rules.

E. Liability Shield. The RMNCA does not include a liability shield provision similar to Iowa Code section 504A.101 or the SF 2274 provision at Iowa Code section 504.901. Instead, it allows nonprofit corporations to include the shield in the articles of incorporation and the shield would apply only to monetary liability of directors to members and the corporation.

F. Cumulative Voting. Under the RMNCA, cumulative voting is not authorized for a particular meeting unless: (i) the meeting notice or statement accompanying the notice states that cumulative voting will take place; or (ii) a member gives notice during the meeting and before the vote is taken of the member's intent to cumulate the votes, and if one member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice. RMNCA section 7.25. This provision was not included in the proposed revisions because it is not included in the IBCA.

G. Amendments to Articles and Bylaws. SF 2274 allows for a nonprofit corporation to specify in its articles or bylaws the process for amending the articles and bylaws (in a manner similar to the Iowa Nonprofit Corporation Act). Iowa Code sections 504.1002, 504.1003, 504.1004, 504.1021, 504.1022, and 504.1023.

H. Corporate Records

1. Limitations on Use of Corporate Records. RMNCA's limitation on the use by a member of membership records is expanded under SF 2274 to all corporate records. Iowa Code section 504.1606.

2. Financial Statements to Members. RMNCA's requirements relating to providing financial statements to members is revised under SF 2274 to remove the requirement that a certification be accompanied by any unaudited financial statements. Iowa Code section 504.1611.

3. Alternative to Allowing Access to Membership Records. SF 2274 allows corporations to offer an alternative to member access to membership records. For instance, if the member is seeking access to the records for purposes of communicating with other members, a corporation may agree to mail a member communication to the membership at the expense of the requesting member. This alternative is used in the cooperative statute, Iowa Code section 499.80 as well as other state Nonprofit Statutes. See, e.g., Cal. Corp. Code section 6330.

COMPARISON OF SELECTED PORTIONS OF THE IOWA NONPROFIT CORPORATION ACT TO SF 2274

TOPIC	CURRENT STATUTE	PROPOSED STATUTE
GENERAL PROVISIONS		
Short Title	**Iowa Code Section 504A.1 (Short Title)** Chapter shall be known as "Iowa Nonprofit Corporation Act."	**New I.C. Section 504.101A (Short Title)** New statute would be known as "Revised Iowa Nonprofit Corporation Act."
Reservation of Power to Amend or Repeal	**Iowa Code Section 504A.99 (Reservation of Power)** General Assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or appeal	**New I.C. Section 504.101B (Reservation of Power to Amend or Appeal)** No substantive changes, but language is revised to conform to Iowa Business Corporation Act.
Definitions	**Iowa Code Section 504A.2 (Definitions)** Sets forth 9 definitions. The term, "member" is defined to mean a person having membership rights in a corporation in accordance with the articles of incorporation and bylaws.	**New I.C. Section 504.141 (Chapter Definitions)** New statute provides 37 definitions, including definitions for the terms public benefit corporation, mutual benefit corporation and religious corporation. In addition, the term "member" means a person who has a right to vote for the election of a director. See comment on New I.C. Section 504.611.
PURPOSES AND GENERAL POWERS		
Purposes	**Iowa Code Section 504A.3 (Purposes)** Corporation may be organized under this chapter for any lawful purpose or purposes not for pecuniary profit.	**New I.C. Section 504.301 (Purposes)** Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation. A corporation engaging in activity that is subject to regulation under another statute of this state may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute.
General Powers	**Iowa Code Section 504A.4 (General Powers)** Sets forth a list of the general powers of a nonprofit corporation.	**New I.C. Section 504.302 (General Powers)** Sets forth an expanded list of the powers of a nonprofit corporation (and includes powers relating to payments of pensions). It does not restrict any of the powers that are set forth in the current statute.

TOPIC	CURRENT STATUTE	PROPOSED STATUTE
Defense of Ultra Vires	**Iowa Code Section 504A.5 (Defense of Ultra Vires)** No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted by: (1) in a proceeding by a member or director against the corporation to enjoin action of the corporation; (2) in a proceeding by the corporation against the incumbent or former officers and directors for exceeding authority; in a proceeding by the attorney general to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the attorney general.	**New I.C. Section 504.304 (Ultra Vires)** Similar provisions to current statute except that the attorney general may bring an action challenging an incumbent or former director, officer, employee or agent of a public benefit corporation only.
NAME:		
Corporate Name	**Iowa Code Section 504A.6 (Corporate Name)** Corporate name shall not contain language stating or implying that the corporation is organized for the purpose other than permitted by its articles of incorporation. The name must be distinguishable upon the records of the Secretary of State from other entities. A corporation may use a fictitious name.	**New I.C. Section 504.401 (Corporate Name)** Similar provisions.
Reserved Name	**Iowa Code Section 504A.7 (Reserved Name)** The exclusive right to use the corporate name may be reserved by filing in the Office of Secretary of State an application to preserve a specified corporate name. The right to reserve such name shall be for a period of 120 days.	**New I.C. Section 504.402 (Reserved Name)** Similar provisions.
Registered Name	**Iowa Code: No provision**	**New I.C. Section 504.403 (Registered Name)** A foreign corporation may register its corporate name, or its corporate name with any change required by I.C. Section 504.1506, if the name is distinguishable upon the records of the Secretary of State from other entities filed with the Secretary's Office. Provision conforms to Iowa Business Corporation Act.

TOPIC	CURRENT STATUTE	PROPOSED STATUTE
OFFICE AND AGENT		
Registered Office and Registered Agent	**Iowa Code Section 504A.8 (Registered Office and Registered Agent)** Each corporation shall have and continuously maintain in this state: (1) a registered office that may be, but need not be, the same as its principle office; (2) a registered agent or agents who may be either an individual or individuals resident in the state, the business office of whom shall be identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in the state, having an office identical with such registered office.	**New I.C. Section 504.501 (Registered Office and Registered Name)** No substantive changes, but language is revised to conform in part to Iowa Business Corporation Act.
Change of Registered Office or Registered Agent	**Iowa Code Section 504A.9 (Change of Registered Office and Registered Name)** The corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of the change proposed.	**New I.C. Section 504.502 (Change of Registered Office and Registered Name)** Similar provisions.
Resignation of Registered Agent	**Iowa Code Section 504A.9 (Change of Registered Office and Registered Name)** Registered agent of a corporation may resign as such agent by signing and delivering to the Secretary of State for filing on original statement of the resignation.	**New I.C. Section 504.503 (Resignation of Registered Agent)** Similar provisions.
Service of Process of Incorporation	**Iowa Code Section 504A.10 (Service of Process of Corporation)** The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.	**New I.C. Section 504.504 (Service on Corporation)** No substantive changes, but language is revised to conform to Iowa Business Corporation Act.
FILING DOCUMENTS		
Procedure for Filing and Recording of Documents	**Iowa Code Section 504A.32 (Procedure for Filing and Recording Documents)** Documents are to be filed in hard copy with the Secretary of State's Office. Secretary of State's office may issue rules for electronic filings.	**New I.C. Section 504.111 (Filing Requirements)** Documents to be filed with the Secretary of State's office may be filed electronically as well as in hard copy. New statute expressly provides for electronic filings and electronic signatures.
Forms	**Iowa Code Section 504A.94 (Forms to be Furnished by Secretary of State)** All forms filed with the Secretary of State shall be made on forms prescribed and furnished by the Secretary of State.	**New I.C. Section 504.112 (Forms)** Secretary of State may prescribe and furnish on request, forms for an application for a certificate of existence, foreign corporation, applications for a certificate of authority to transact business in the State, a foreign corporation's application for a certificate of withdrawal, and the biennial report.

TOPIC	CURRENT STATUTE	PROPOSED STATUTE
Filing, Service and Copying Fees	**Iowa Code Section 504A.85 (Fees for Filing Documents and Issuing Certifications)** Sets forth the fees for filing of various documents with the Secretary of State's office.	**New I.C. Section 504.113 (Filing, Service and Copying Fees)** No substantive changes, but language is revised to conform to Iowa Business Corporation Act.
Effective Date of Document	**Iowa Code: No provision**	**New I.C. Section 504.114 (Effective Date of Documents)** A document is effective at the later of the following times: (1) at the time and date of filing; or (2) at the time specified in the document.
Correcting Filed Documents	**Iowa Code 504A.32A (Correcting Filed Documents)** Domestic or foreign corporation may correct a document filed by the Secretary of State under specified circumstances.	**New I.C. Section 504.115 (Correcting Filed Documents)** Similar provisions but allows for correction of electronically filed documents.
Filing Duty of Secretary of State	**Iowa Code 504A.32 (Procedure for Filing and Recording Documents)** Sets forth procedure for filing documents with Secretary of State's Office.	**New I.C. Section 504.116 (Filing Duty of Secretary of State)** If a document delivered to the Office of Secretary of State for filing satisfies the requirements of the chapter, the Secretary of State is to file it. Language is revised to conform to Iowa Business Corporation Act.
Appeal from Secretary of State's Refusal to File Document	**Iowa Code: No provision**	**New I.C. Section 504.117 (Appeal from Secretary of State's Refusal to File Document)** If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's Office, the corporation may appeal such refusal to the district court.
Evidentiary Effective Copy of a Filed Document	**Iowa Code: No provision**	**New I.C. Section 504.118 (Evidentiary Effect of Copy of Filed Document)** A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State is conclusive evidence that the original document is on file with the Secretary of State.
Certificate of Existence	**Iowa Code: No provision**	**New I.C. Section 504.119 (Certificate of Existence)** Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic or foreign corporation.
Penalty for Signing False Document	**Iowa Code: No provision**	**New I.C. Section 504.120 (Penalty for Signing False Document)** A person commits an offense by signing a document the person knows is false in any material respect with the intent that the document be delivered to the Secretary of State for filing.

TOPIC	CURRENT STATUTE	PROPOSED STATUTE
ORGANIZATION		
Incorporators	**Iowa Code Section 504A.28 (Incorporators)** One or more persons having capacity to contract may act as incorporators of a corporation by signing and delivering to the Secretary of State articles of incorporation.	**New I.C. Section 504.201(Incorporators)** No substantive changes but language is revised to conform to Iowa Business Corporation Act.
Articles of Incorporation	**Iowa Code Section 504A.29 (Articles of Incorporation)** The articles of incorporation shall set forth following the name of the corporation, the period of duration if for a limited period, the purpose or purposes for which the corporation is organized, any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation, the address of its initial registered office and the name of the initial registered agent, the number of directors constituting the initial board of directors and the names of such persons, and any provisions not inconsistent with law or the purposes for which the corporation is organized, the date on which corporate existence shall begin, and the name and address of each incorporator.	**New I.C. Section 504.202 (Articles of Incorporation)** The articles of incorporation shall set forth all of the following: the corporate name, the address of the corporation's initial registered office and the name of its initial registered agent at that office, the name and address of each incorporator, and, for corporations incorporated after January 1, 2005, whether the corporation will have members and provisions not inconsistent with law regarding the distribution of assets on dissolution. The articles of incorporation <u>may</u> set forth any of the following: the purpose for which the corporation is organized, the names and addresses of the individuals who will serve as the initial directors, provisions not inconsistent with law regarding managing and regulating the affairs of the corporation, defining, limiting and regulating the powers of the corporation, its board of directors, and members, or any class of members, the characteristics, qualifications, rights, limitations and obligations attaching to each or any class of members, a provision eliminating or limiting the liability of a director to the corporation or its members for money damages, a provision permitting or requiring a corporation to indemnify a director for liability, and any provision that under the chapter is required or permitted to be set forth in the bylaws.
Incorporation	**Iowa Code Section 504A.31 (Effect of Issuance of Certificate of Incorporation)** Upon issuance of the certificate of incorporation, the corporate existence shall begin.	**New I.C. Section 504.203 (Incorporation)** Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed. No certificate of incorporation is necessary.
Liability for Pre-incorporation Transactions	**Iowa Code: No provision**	**New I.C. Section 504.204 (Liability for Preincorporation Transactions)** Language conforms to Iowa Business Corporation Act.
Organization of Corporation	**Iowa Code Section 504A.33 (Organizational Meetings)** After the issuance of the certificate of incorporation an organizational meeting of the board of directors named in the articles of incorporation may be held.	**New I.C. Section 504.205 (Organization of Corporation)** After incorporation the initial directors or, if none identified in the articles, the incorporator, shall hold an organizational meeting for purposes of electing directors and completing the organization of the corporation.

TOPIC	CURRENT STATUTE	PROPOSED STATUTE
Bylaws	**Iowa Code Section 504A.12 (Bylaws)** The initial bylaws of the corporation shall be adopted by its board of directors. The bylaws may contain any provisions for regulation and management of the affairs of the corporation not inconsistent with the law or the articles of incorporation.	**New I.C. Section 504.206 (Bylaws)** No substantive differences, but language is revised to conform to Iowa Business Corporation Act.
Emergency Bylaws	**Iowa Code Section 504A.12 (Bylaws)** The board of directors of any corporation may adopt emergency bylaws, subject to repeal or change by action of the members, which shall, notwithstanding any different provision elsewhere in this chapter or the articles of incorporation or bylaws, be operative during any emergency.	**New I.C. Section 504.207 (Emergency Bylaws and Powers)** Unless the articles provide otherwise, the directors of the corporation may adopt, amend or repeal bylaws to be effective only in an emergency. The emergency bylaws are subject to repeal or amendment by the members.
MEMBERS		
Admission of Members	**Iowa Code: No provision**	**New I.C. Section 504.601 (Admission)** Provides that no person shall be admitted without his or her consent.
Qualifications	**Iowa Code Section 504A.11 (Members)** Qualification of members shall be set forth in the articles or bylaws.	**New I.C. Section 504.601 (Admission)** All members have the same rights unless the articles or bylaws establish classes with different rights or obligations.
No Members	**Iowa Code Section 504A.11 (Members)** A corporation may have no members.	**New I.C. Section 504.603 (No Requirement of Members)** No substantive changes.
Rights of Members	**Iowa Code Section 504A.11 (Members)** Rights of members are to be set forth in articles or bylaws.	**New I.C. Section 504.611 (Differences in Rights and Obligations of Members)** All members have the same rights and obligations with respect to voting, dissolution, redemption and transfer unless the articles or bylaws establish classes of membership with different rights. A person that has no voting rights with respect to election of directors and is identified as a member in the articles of incorporation or bylaws shall have only those rights set forth in the articles or bylaws and does not have rights identified for "members" under the Act.
Transfers and Purchases	**Iowa Code: No provision**	**New I.C. Section 504. 612 (Transfers)** A distinction is made between public benefit and religious corporations, on the one hand, and mutual benefit corporations, on the other. No member of a public benefit or religious corporation may transfer a membership. Members of a mutual benefit corporation may transfer a membership if provided in the articles or bylaws. **New I.C. Section 504.623 (Purchase of Memberships)** A public benefit or religious corporation may not purchase

TOPIC	CURRENT STATUTE	PROPOSED STATUTE
		memberships. A mutual benefit corporation may, under certain circumstances, purchase a membership which has been terminated.
Resignation of Members	**Iowa Code: No provision**	**New I.C. Section 504.621 (Resignation)** A member may resign a membership, but the resignation shall not relieve the member of any obligation incurred prior to the resignation.
Termination of Members	**Iowa Code: No provision**	**New I.C. Section 504.622 (Termination, Expulsion, or Suspension)** Imposes requirement that termination of membership in public benefit and mutual benefit corporations must be based on fair and reasonable procedures and in good faith.
Derivative Suits	**Iowa Code: No provision**	**New I.C. Section 504.631 (Derivative Proceedings)** Any member or members having five percent of the voting power or fifty members, whichever is less, or a director may bring a derivative action against the corporation based on the same standards set forth in the Iowa Business Corporation Act.
Delegates	**Iowa Code: No provision**	**New I.C. Section 504.64 (Delegates)** A corporation may operate with delegates as distinguished from members and a board.
Meetings of the Members	**Iowa Code Section 504A.13 (Meetings of Members)** Meetings of members may be held at such places, either within or without this state, as may be provided in the articles or incorporation or bylaws, as may be fixed from time to time in accordance with the provisions thereof. In absence of any such provisions, all meetings shall be held at the registered office of the corporation. The annual meeting of the members shall be held at such time as may be provided in the articles of incorporation or bylaws. Special meetings of the members may be called by the president or by the board of directors. Special meetings may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or bylaws. In absence of any provision, a special meeting may be called by members having one-twentieth of the votes entitled to be cast at the meeting.	**New I.C. Section 504.701 (Annual and Regular Meetings)** **Iowa Code Section 504.702 (Special Meetings)** No substantive changes, except a report of the financial condition of the corporation is to be given at the annual meeting. In addition, except as provided in the articles or bylaws of a religious corporation, a special meeting may be called by members with at least five percent of the voting power. In addition, procedures are set forth for revoking a request for a special meeting. A record date for determining the 5 percent is provided.
Court-Ordered Meeting	**Iowa Code: No provision**	**New I.C. Section 504.703 (Court Ordered Meeting)** A member may have court-enforced provisions requiring annual, regular and special meetings.

TOPIC	CURRENT STATUTE	PROPOSED STATUTE
Action by Written Consent	**Iowa Code Section 504A.97 (Informal Action by Members or Directors)** Written action of the members may be taken if signed by <u>all</u> members.	**New I.C. Section 504.704 (Action by Written Consent)** Written action of the members may be taken if signed by <u>80%</u> of the membership. Written notice of member approval must be given to all members who have not signed the written consent. If written notice is required, member approval shall be effective 10 days after such written notice is given. Incorporates procedure set forth in Iowa Business Corporation Act for withdrawal of written consent and use of electronic signatures.
Notice of Meetings	**Iowa Code Section 504A.14 (Notice of Members Meetings)** Notice of a meeting of the members must be given no earlier than 10 days prior to the meeting and no later than 50 days from the date of the meeting.	**New I.C. Section 504.705 (Notice of Meeting)** A fair and reasonable notice includes a safe harbor for 10 to 60 days notice; provides that any notice sent by nonprofit mailing privileges (as distinguished from first class mail) must be sent no less than 30 days before the meeting date. Electronic notice of the meeting may be given.
Waiver of Notice	**Iowa Code Section 504A.96 (Waiver of Notice)** Whenever notice is required to be given to a member, a waiver thereof in writing signed by the person entitled to such notice, whether before or after the time stated therein shall be the equivalent of giving such notice.	**New I.C. Section 504.706 (Waiver of Notice)** Section incorporates current statutory provisions but also provides that waiver can occur based on presence of member at meeting unless member at the beginning of meeting objects.
Record Date	**Iowa Code: No provision**	**New I.C. Section 504.707 (Record Date)** The bylaws may fix or provide the manner for fixing a date as the record date for determining the members entitled to notice, vote, or otherwise entitled to take action of a members' meeting.
Action by Written Ballot	**Iowa Code: No provision** Iowa Code Section 504A.15, however, allows elections to be conducted by mail where directors and officers are elected by members.	**New I.C. Section 504.708 (Action by Written Ballot)** An action based on a written ballot may be taken provided the number of votes cast meets the quorum and the number of approvals meets the number requirement. Written ballot may be transmitted electronically.
Quorum	**Iowa Code Section 504A.16 (Quorum)** A quorum constitutes 10 percent of the voting membership in absence of any other provision in the articles or bylaws.	**New I.C. Section 504.713 (Quorum Requirements)** Quorum shall constitute 10 percent of the voting membership in absence of any other provision in the articles or bylaws. Unless one-third of the voting power is present, only those matters which have been specifically noticed may be voted upon.
Voting	**Iowa Code Section 504A.15 (Voting)** The rights of the members to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or, if the articles of incorporation so provide, by the bylaws. Unless so limited, each member, regardless of class shall be entitled to one vote on each matter submitted to a vote of the members.	**New I.C. Section 504.714 (Voting Requirements).** Unless the articles or bylaws or the statute require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting, which affirmative votes also constitute a majority of the required quorum, is the act of the members.

TOPIC	CURRENT STATUTE	PROPOSED STATUTE
Voting by Proxy	**Iowa Code Section 504A.15 (Voting)** Voting by members by proxy is permitted.	**New I.C. Section 504.715 (Proxies)** Voting by members by proxy is permitted. Electronic proxies permitted.
Cumulative Voting	**Iowa Code Section 504A.15 (Voting)** Cumulative voting is allowed if provided in the articles.	**New I.C. Section 504.716 (Cumulative Voting for Directors)** Cumulative voting is allowed if provided in the articles or bylaws; must give notice to utilize at meeting; no right to remove director without cause if votes cast against removal would be sufficient to elect based upon cumulative votes; cumulative vote does not apply if directors and members are identical.
Voting Agreements	**Iowa Code: No provision**	**New I.C. Section 504.721 (Voting Agreements)** Members may enter into voting agreements.
DIRECTORS AND OFFICERS		
Number of Directors	**Iowa Code Section 504A.17 (Board of Directors)** A board of directors can be composed of one or more directors.	**New I.C. Section 504.803 (Number of Directors)** No substantive changes.
	Iowa Code Section 504A.18 (Number and Election of Directors) The number of directors shall be fixed in the bylaws, except the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increase or decreased by amendment to the bylaws unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation.	**New I.C. Section 504.803 (Number of Directors)** The number of directors is specified in or fixed in accordance with the articles or bylaws (allows for <u>range</u> to be identified). The number of directors may be increased or decreased from time to time by amendment to or in the manner prescribed in the articles or bylaws.
Requirements for Board of Directors	**Iowa Code Section 504A.17 (Board of Directors)** Requires the affairs of the corporation to be managed by a board of one or more directors	**New I.C. Section 504.801 (Requirements For and Duties of the Board)** Requires that a corporation have a board of directors. Provides flexibility for the affairs of the corporation being exercised by a person or persons (other than board of directors).
Qualifications of Directors	**Iowa Code Section 504A.17 (Board of Directors)** Directors need not be residents of Iowa. Articles and Bylaws may impose other requirements on directors.	**New I.C. Section 504.802 (Qualifications of Directors)** Directors must be individuals. Articles and bylaws may impose other requirements on directors.

Staggered Terms of Directors	**Iowa Code Section 504A.18 (Number and Election of Directors)** Directors may be divided into classes and the terms of office of the several classes need not be uniform.	**New I.C. Section 504.806 (Staggered Terms for Directors)** The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of the office of the several groups need not be uniform.
Election of Directors	**Iowa Code Section 504A.18 (Number and Election of Directors)** The initial directors shall hold office until the first annual election of directors or for such other period specified in the articles or bylaws. Thereafter, directors shall be elected or appointed in a manner and for the terms provided in the articles or bylaws.	**New I.C. Section 504.804 (Election, Designation and Appointment of Directors)** If the corporation has members, the directors are elected by the members unless otherwise specified in the articles or bylaws. If the corporation has no members, the directors are elected, appointed or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors shall be elected by the board.
Term of Directors	**Iowa Code Section 504A.18 (Number and Election of Directors)** In absence of any such provision, the term of office shall be one year. No decrease in the number of directors shall have the effect of shortening the term of any incumbent director.	**New I.C. Section 504.805 (Terms of Directors Generally)** The articles and bylaws must specify the terms of directors. Except for designated or appointed directors and except as otherwise provided in the articles or bylaws, the terms of directors may not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year.
Vacancies	**Iowa Code Section 504A.19 (Vacancies)** Any vacancy occurring and any directorship to be filled by reason of an increase in the number of directors may be filled by an affirmative vote of the board, though less than a quorum of the board unless the articles or bylaws provide that a vacancy so created shall be filled in some other manner. Unless otherwise provided in the articles or bylaws, a director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the director's predecessor in office or the full term of such new directorship.	**New I.C. Section 504.805 (Terms of Directors Generally)** Except as provided in the articles or bylaws, the term of the director filling a vacancy expires at the next election of the directors by members. The term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling. Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, appointed and qualifies or until there is a decrease in the number of directors. **New I.C. Section 504. 811 (Vacancy on Board)** If a director elected by members ceases to be a director, the vacancy may be filled by the members or the board in absence of a contrary article or bylaw provision. Where a vacancy occurs in any office held by an appointed director, only the person who appointed the director may fill the vacancy in the absence of an article or bylaw provision

		providing some other method of filling the vacancy.
Resignation of Directors	**Iowa Code: No provision**	**New I.C. Section 504.807 (Resignation of Directors)** A director may resign at any time by delivering written notice to the board, its presiding officer or to the president or secretary. A resignation is effective when the notice is effective unless the notice specifies a later date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.
Removal of Directors	**Iowa Code Section 504A.18 (Number and Election of Directors)** A director may be removed from office pursuant to any procedure provided in the articles.	**New I.C. Section 504.809 (Removal of Designated or Appointed Directors);** The members of the corporation may remove one or more of the directors without cause. Special rule if directors elected by cumulative voting. A director elected by the board may be removed without cause by a vote of two-thirds of directors then in office or such greater number as set forth in the articles. If at beginning of director's term, the articles or bylaws provide a director may be removed for missing a specified number of board meetings, the director may be removed for missing the specified number of meetings if voted by a majority of directors in office. A designated or appointed director may be removed by an amendment to articles or bylaws deleting the designation. Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.
Judicial Removal of Directors	**Iowa Code: No Provision**	**New I.C. Section 504.810 (Removal of Directors by Judicial Proceedings)** Judicial removal may occur if the court finds that: (1) the director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation and (2) court believes removal is in the best interest of corporation.

Compensation of Directors	**Iowa Code Section 504A.26 (Shares of Stock and Dividends Prohibited)** A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered.	**New I.C. Section 504.812 (Compensation of Directors)** Unless the articles or bylaws provide otherwise, the board of directors may fix the compensation of the directors.
MEETINGS AND ACTION OF BOARD		
Meetings of Directors	**Iowa Code Section 504A.22 (Place and notice of directors' meetings)** Regular or special meetings may be held either within or without the state. Meetings shall be held upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute waiver of notice except where a director attends a meeting for the express purpose of objecting to the transaction of business because the meeting was not lawfully called or convened. Neither the business to be transacted nor the purpose of the meeting need be specified in the notice unless required by the bylaws. Unless restricted by the articles or bylaws, telephonic meetings may be held.	**New I.C. Section 504.821 (Regular and Special Meetings)** Language is revised to conform to Iowa Business Corporation Act. Meetings authorized through the use of any means of communication pursuant to which all participating directors may hear each other.
Written Action of Directors	**Iowa Code Section 504A.97 (Informal Action by Members and Board)** Written action of the directors may be taken if signed by all of the directors.	**New I.C. Section 504.822 (Action Without Meeting)** Unless the articles or bylaws provide otherwise, action required or permitted to be taken at a board meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents. Incorporates procedure set forth in Iowa Business Corporation Act for withdrawal of written consent and use of electronic signatures.

Notice of Meeting	**Iowa Code Section 504A.22 (Place and Notice of Directors' Meetings)** Meetings of special or regular meetings may be held either within or without this state, and upon such notice as the bylaws may prescribe. Attendance at the meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.	**New I.C. Section 504.823 (Call and Notice of Meetings)** Unless the articles, bylaws or statute provide otherwise, regular meetings may be held without notice. Unless the articles, bylaws or statute provide otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose of the meeting. In a corporation with no members, any board action to remove a director or to approve a matter that would require approval by members if the corporation had members shall not be valid unless each director is given at least seven days written notice that the matter will be voted upon at a meeting. Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president or twenty percent of the directors then in office may call and give notice of a meeting of the board.
Waiver of Notice	**Iowa Code Section 504A.22 (Place and Notice of Directors' Meetings)** Attendance of a director at any meeting shall constitute a waiver of notice except where director attends meeting for express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.	**New I.C. Section 504.824 (Waiver of Notice)** No substantive changes, but language is revised to conform to up to date Iowa Business Corporation Act.
Quorum of Directors	**Iowa Code Section 504A.20 (Quorum of Directors)** A majority of the directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then the number stated in the articles shall constitute a quorum unless otherwise provided in the articles or bylaws; but in no event shall quorum be less than one-third of the directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board unless the act of a greater number is required by the Iowa Act, the articles or bylaws.	**New I.C. Section 504.825 (Quorum and Voting)** Except as otherwise provided in the Act or the articles or bylaws, a quorum of a board consists of a majority of directors in the office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in office or two directors. If a quorum is present when a vote is taken, the affirmative vote of the majority of directors present is the act of the board unless the Act, the articles, or bylaws require the vote of a greater number of directors.

Committees of the Board	**Iowa Code Section 504A.21 (Committees)** If the articles or bylaws so provide, the board, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in a resolution, exercise all the authority of the board. Committee may not amend articles, adopt a plan of merger or consolidation, recommending to members the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation, recommending to the members a voluntary dissolution or revocation thereof, or amending the bylaws of the corporation.	**New I.C. Section 504.826 (Committees of the Board)** Unless prohibited or limited by the articles or bylaws, a board may create one or more committees and appoint members of the board to serve on them. Each committee shall have two or more directors. Creation of a committee and appointment of members to it must be approved by the greater of: (1) a majority of all directors in office (2) the number of directors required by the articles or bylaws Provisions in the new statute addressing meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements, apply to committees. Committees may not (1) authorize distributions; (2) approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of the corporation's assets; (3) elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; (4) adopt, amend or repeal the articles or bylaws.
Telephonic Meetings	**Iowa Code Section 504A.22 (Place and Notice of Directors' Meetings)** Unless restricted by articles or bylaws, directors may participate in meeting of Board or Committee via conference telephone or similar communications equipment.	**New I.C. Section 504.821 (Regular and Special Meetings)** No substantive changes, but language is revised to conform to Iowa Business Corporation Act.

Standards of Conduct		
Duty of Care	**Iowa Code: No provision**	**New I.C. Section 504.831 (General Standards for Directors)** A director shall discharge his or her duties as a director (1) in good faith; and (2) in a manner the director reasonably believes to be in the best interests of the corporation. The members of the board of directors, when becoming informed in connection with their decision-making functions, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances. In discharging such duties, a director may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by the following persons if the director reasonably believes are within the person's professional or expert competence: (1) one or more officers of the corporation; (2) legal counsel, public accountants, or other persons as to matters involving skills or expertise the director reasonably believes are either of the following: (a) matters within the particular person's professional or expert competence; or (b) matters as to which the particular person merits confidence; (3) a committee of the board; or (4) in the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance unwarranted. A director is not deemed a trustee with respect to the corporation or any property held or administered by the corporation, including without limitation, property that may be subject to restrictions imposed by the donor or transferor of such property. (Incorporates Iowa Business Corporation Act provision)
Standards of Liability for Directors	**Iowa Code: No provision**	**New I.C. Section 504.832 (Standards of Liability for Directors)** Adopts the business judgment rule that is also incorporated in the Iowa Business Corporation Act.

Conflict of Interest	**Iowa Code: No provision**	**New I.C. Section 504.833 (Director Conflict of Interest)** A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on a director if the transaction was fair at the time it was entered or approved in accordance with the statute. A transaction in which a director has a conflict of interest may be approved if the material facts of the transaction were disclosed to the board or a committee of the board or the members and the board, committee or members authorized, approved or ratified the transaction. A conflict of interest transaction may be authorized, approved, or ratified if it receives the affirmative vote of the majority of the directors on the board or on the committee that have no direct or indirect interest in the transaction, but a transaction may not be authorized by a single director. A conflict of interest transaction may be authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity giving rise to the conflict, shall not be counted in a vote of members. The articles, bylaws, or resolution by board may impose additional requirements.
Loans to or Guaranties for Directors and Officers	**Iowa Code Section 504A.27 (Loans to Directors and Officers Prohibited)** No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of such loan shall be liable to the corporation for the amount of such loan until repayment thereto.	**New I.C. Section 504.834 (Loans to or Guaranties for Directors and Officers)** A corporation may not lend money to or guaranty the obligation of a director or officer of the corporation. The fact that a loan or guaranty is made is in violation of this section does not affect the borrower's liability on the loan.
Stock and Dividends	**Iowa Code Section 504A.26 (Shares of Stock and Dividends Prohibited)** A corporation shall not have or issues shares of stock. Non dividend shall be paid and no part of the income or profit of the corporation shall be distributed to its	**New I.C. Section 504.1302 (Prohibited Distributions)** A corporation shall not make any distributions. A mutual benefit corporation, however, may purchase memberships.

	members, directors or officers	
Compensation	**Iowa Code Section 504A.26 (Shares of Stock and Dividends Prohibited)** A corporation may pay compensation in reasonable amount to its members, directors or officers for services rendered	**New I.C. Section 504.812 (Compensation of Directors)** No substantive change, but language is revised to conform to the Iowa Business Corporation Act.
Liability for Unlawful Distributions	**Iowa Code: No provision.**	**New I.C. Section 504.835 (Liability for Unlawful Distributions)** Unless a director complies with the applicable standards of conduct set out in Section 504.831, a director who votes for or assents to a distribution made in violation of the Act is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating the Act. A director held liable under the section is entitled to contribution from every other director who voted for or assented to the distribution and from each person who received such distribution for the amount of such distribution.
OFFICERS		
Required Officers	**Iowa Code Section 504A.23 (Officers)** The offices of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and any other officers and assistants as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles or bylaws. In the absence of any provisions to the contrary, all officers shall be elected or appointed annually by the board of directors. Any two or more offices may be held by the same person.	**New I.C. Section 504.841 (Required Officers)** Similar provisions to current statute except: (1) Unless otherwise provided in the articles or bylaws, a corporation shall have a president, a secretary, a treasurer and such other officers as are appointed by the board. (2) The bylaws or board shall delegate to one of the officers the responsibility for preparing the minutes and for authenticating records of the corporation. (3) An officer may appoint one or more officers if authorized by the bylaws or the board of directors. (Incorporates Iowa Business Corporation Act provision).
Duties and Authority of Officers	**Iowa Code: No provision**	**New I.C. Section 504.842 (Duties and Authority of Officers)** Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority of other officers.

Standard of Conduct for Officers	**Iowa Code: No provision**	**New I.C. Section 504.843 (Standards of Conduct for Officers)** An officer shall discharge his or her duties as a director (1) in good faith; and (2) in a manner the director reasonably believes to be in the best interests of the corporation. In discharging such duties, an officer may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by the following persons if the director reasonably believes are within the person's professional or expert competence: (1) one or more officers of the corporation; (2) legal counsel, public accountants, or other persons retained by the corporation as to matters involving the skills or expertise the officer reasonably believes are within the person's professional or expert competence, or as to which the particular person merits confidence; (3) a committee of the board; or (4) in the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons. An officer is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance unwarranted. An officer is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the officer acted in compliance with the Section. (Incorporates Iowa Business Corporation Act provision)
Resignation and Removal of Officers	**Iowa Code Section 504A.24 (Removal of Officers)** Unless otherwise provided in the articles, any officers elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby.	**New I.C. Section 504.844 (Resignation and Removal of Officers)** An officer may resign at any time by delivering notice to the corporation. A board may remove any officer at any time with or without cause.
Contract Rights of Officers	**Iowa Code Section 504A.24 (Removal of Officers)** The removal of an officer shall be without prejudice to the contract rights, if any, the officers removed. Election or appointment of an officer or agent shall not of itself create contract rights.	**New I.C. Section 504.845 (Contract Rights of Officers)** The appointment of an officer does not itself create contract rights. An officer's removal or resignation does not affect the officer's contract rights, if any, with the corporation.

Officers' Authority to Execute Documents	**Iowa Code: No provision**	**New I.C. Section 504.846 (Officers' Authority to Execute Documents)** Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority if it is signed the types of officers identified in the statute.
Liability Shield	**Iowa Code Section 504A.101 (Personal Liability)** Under the current statute, directors, officers, members and other volunteers have protection from liability unless their conduct constitutes (1) a breach of duty of loyalty to the corporation; (2) an act or omission not in good faith or which involves intentional misconduct or knowing violation of law; or (3) a transaction from which the person derives an improper personal benefit. Iowa Code Section 504A.101. Statutes similar to this one have been criticized because of the uncertainty that has arisen in determining whether a particular exception is applicable.	**New I.C. Section 504.901 (Personal Liability)** The new statute incorporates the recent changes that were made to the Iowa Business Corporation Act with regard to the director liability shield to make more certain the circumstances under which a director, officer, member or other volunteer would be immune from liability. In particular, the new statute provides that a director, officer, member or other volunteer is not personally liable in that capacity for any action taken or failure to take any action except liability for any of the following: (1) the amount of any financial benefit to which the person is not entitled; (2) an intentional infliction of harm on the corporation or members; (3) a violation of the unlawful distribution provision; and (4) an intentional violation of criminal law. With more certainty, volunteers should be more willing to serve on nonprofit boards or volunteer for nonprofit activities. **New I.C. Section 504.202 (Articles of Incorporation)** In addition, the new statute provides liability protection to directors who are compensated for their services by the corporation. Under the new statute, a nonprofit corporation, similar to a business corporation under the recent amendments to the Iowa Business Corporation Act, may include in its articles of incorporation a liability shield for its directors. The new statute also incorporates the business judgment rule protection for directors and officers that was adopted in the Iowa Business Corporation Act amendments.

Indemnification	**Iowa Code Section 504A.4 (General Powers)** A corporation operating under Chapter 504A <u>may</u> (but is not required to) indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in Sections 490.850 through 490.859 of the Iowa Business Corporation Act.	**New I.C. Section 504.851 (Definitions)** **New I.C. Section 504.852 (Permissible Indemnification)** **New I.C. Section 504.853 (Mandatory Indemnification)** **New I.C. Section 504.854 (Advance for Expenses)** **New I.C. Section 504.855 (Court-Ordered Indemnification)** **New I.C. Section 504.856 (Determination and Authorization of Indemnification)** **New I.C. Section 504.857 (Indemnification of Officers)** **New I.C. Section 504.858 (Insurance)** **New I.C. Section 504.859 (Application of Part)** **New I.C. Section 504.860 (Exclusivity of Part)** Incorporates the Iowa Business Corporation Act indemnification provisions; however, the entire text of such provisions are included in the statute. In addition, the "mandatory" indemnification provisions would not be "optional" as they are in the current statute (since a corporation is not required to adopt the statutory indemnification provisions). In addition, the Legislation removes any references to shareholders and includes references to members. **New I.C. Section 504.202 (Articles of Incorporation)** Permits corporations to include mandatory indemnification obligation in articles. Such provision is consistent with recent amendment to Iowa Business Corporation Act.
AMENDMENT OF ARTICLES OF INCORPORATION		
Authority to Amend Articles	**Iowa Code Section 504A.34 (Right to Amend Articles of Incorporation)** Amendments are permitted so long as they contain only lawful provisions	**New I.C. Section 504.1001 (Authority to Amend)** Similar to current statute, except that it gives more guidance with respect to the type of amendments allowed. An amendment may be adopted if it: (1) results in provisions permitted in the articles, (2) does not contravene or delete provisions the Act requires the articles to contain, and (3) is adopted pursuant to the provisions of Chapter 10 of new statute.

Procedure for Amendments to Articles of Incorporation	**Iowa Code Section 504A.35** **(Procedure to Amend Articles of Incorporation)** Where there are members entitled to vote thereon, the board shall adopt a resolution setting forth the proposed amendment to be submitted to the members for a vote at either a special or regular meeting. Unless otherwise provided in the articles, upon the written request of at least five percent of the members entitled to vote on amendments to articles, the board shall adopt a resolution setting forth the amendment proposed by such members and directing it be submitted for a vote. Written notice setting forth the proposed amendment is required. The proposed amendment must receive at least two-thirds vote of members present at such meeting. Where there are no members, the directors may vote on amendments. A majority vote of the directors in office is required.	**New I.C. Section 504.1002 (Amendment by Directors)** Unless the articles provide otherwise, a board may adopt one or more amendments to the corporation's articles without member approval: (1) to extend duration of corporation; (2) to delete the names and addresses of the initial directors; (3) to delete the name and address of the initial registered agent or office; (4) to change the corporate name in a limited manner; or (5) make any other change expressly permitted by the new statue to be made by director action.
		New I.C. Section 504.1003 (Amendment by Directors and Members) If a corporation has members, unless the articles or bylaws provide otherwise, an amendment to the articles must be approved by the members by a two-thirds vote of those voting or a majority of the voting power, whichever is less. An amendment may be approved at a membership meeting, by written ballot or written consent. Board approval is not required for amendments relating to number and composition of directors, etc. Section also provides for adoption of an amendment to be conditioned on some higher vote.
		New I.C. Section 504.1004 (Class Voting by Members on Amendments) This section distinguishes between public benefit, religious and mutual benefit corporations. It requires a class vote to amend the articles of public benefit and mutual benefit corporations, unless the articles or bylaws provide otherwise. For public benefit corporations, class voting is only required where the proposed amendment would directly affect the right to vote. For mutual benefit corporations, class voting is allowed in six specific instances (similar to shareholder class voting). The new statute does not require class voting for religious organizations.

Articles of Amendment	**Iowa Code Section 504A.36 (Articles of Amendment)** Articles of amendment are to set forth certain information regarding the amendment and approval process.	**New I.C. Section 504.1005 (Articles of Amendment)** No substantive changes.
Filing of Articles of Amendment	**Iowa Code Section 504A.37 (Filing of Articles of Amendment)** Articles of amendment are to be filed with the Secretary of State's office.	**New I.C. Section 504.1005 (Articles of Amendment)** No substantive changes except the Secretary of State is not required to issue a certificate of amendment.
Restated Articles	**Iowa Code Section 504A.39 (Restated Articles of Incorporation)** A corporation may restate its articles so long as the rested articles contain only such provisions as might be lawfully included in original articles of incorporation at time of such restatement. Where members having voting rights, the board is to adopt a resolution setting forth the restated articles, which may include amendments. Written or printed notice setting forth the proposed restated articles or summary of the provisions thereof shall be given to each member entitled to vote. If restated articles include amendment, the notice shall separate set forth the amendment. The proposed restated articles shall be adopted by at least two-thirds of the votes of the members at which a quorum is present. If there are no members, the restated articles shall be adopted at a meeting of the board.	**New I.C. Section 504.1006 (Restated Articles of Incorporation)** Provides more flexibility to board to adopt restated articles without the approval of the members (unless the articles modify the rights of the members).
Effect of Amendment or Restatement	**Iowa Code Section 504A.38 (Effect of Certificate of Amendment)** Articles of amendment do not become effective until issuance of certificate of amendment issued by the Secretary of State's office. An amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the corporation.	**New I.C. Section 504.1008 (Effect of Amendment or Restatement)** No substantive changes except articles of amendment become effective upon filing with the Secretary of State's office.
Amendment Pursuant to Judicial Reorganization	**Iowa Code: No provision**	**New I.C. Section 504.1007 (Amendment Pursuant to Judicial Reorganization)** Provides a simplified method of conforming corporate documents filed under state law with federal statutes relating to corporate reorganization.

AMENDMENT OF BYLAWS		
Amendments	**Iowa Code Section 504A.12 (Bylaws)** The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation.	**New I.C. Section 504.1021 (Amendment by Directors)** Sets forth procedures for the adoption of bylaws, including notice requirements, where a corporation has no members. **New I.C. Section 504.1022 (Amendment by Directors and Members)** New statute requires the same vote to amend bylaws as to amend articles (including member voting requirement) unless the articles or bylaws provide otherwise. **New I.C. Section 504.1023 (Class Voting by Members on Amendments)** Provides for class voting on amendments to bylaws (unless the articles or bylaws provide otherwise) if the amendment would change the rights of that class as to voting in a different manner vis-à-vis another class. **New I.C. Section 504.1031 (Approval by Third Persons)** Articles may require an amendment to articles or bylaws be approved in writing by a specified person or persons other than the board. **New I.C. Section 504.1032 (Amendment Terminating Members or Redeeming or Canceling Memberships)** The section sets forth a procedure that must be followed to amend articles or bylaws to terminate all members or any class of members or redeem or cancel all memberships or any class of memberships. The procedures are in addition to the normal requirements for amending articles or bylaws and are required to the extraordinary nature of the amendment.

MERGER AND CONVERSION		
Procedure for Mergers	**Iowa Code Section 504A.40 (Procedure for Merger)** Each corporation must adopt a plan of merger setting forth the names of the corporations, the terms and conditions of the planned merger, a statement of any changes to the articles of the surviving corporation to be effected by the merger, such other provisions with respect to the proposed merger as are deemed necessary and desirable. A plan of merger shall be adopted by each domestic corporation in the following manner: (1) where members have voting rights, the board of directors shall adopt a resolution approving the proposed plan and directing it be submitted to a vote at a meeting of members entitled to vote thereon. The proposed plan shall be adopted upon receiving a vote of two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast; (2) where members have no voting rights or there are no members, a vote of a majority of the directors in office.	**New I.C. Section 504.1101 (Approval of Plan of Merger)** Similar provisions, however, where the merger involves a public benefit or religious corporation, the plan of merger must set forth the manner and basis, if any of converting memberships. If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations or securities of the surviving or any other corporation or into cash or other property in whole or part. **New I.C. Section 504.1103 (Action on Plan by Board, Members and Third Persons)** Unless the Act, articles, bylaws or the board of directors or members require a greater vote or voting by class, a plan of merger to be adopted must be approved by (1) the board; (2) the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and (3) in writing by any person or persons whose approval is required by a provision in the articles.
Articles of Merger	**Iowa Code Section 504A.43 (Articles of Merger or Consolidation)** Sets forth requirements for articles of merger to be filed with Secretary of State	**New I.C. Section 504.1104 (Articles of Merger)** No substantive changes.
Effect of Merger	**Iowa Code Section 504A.44 (Effect of Merger or Consolidation)** Sets forth legal effect of merger once it becomes effective.	**New I.C. Section 504.1105 (Effect of Merger)** No substantive changes.
Merger with Foreign Corporation	**Iowa Code Section 504A.45 (Merger or Consolidation of Domestic and Foreign Corporations)** Provides only for the merger of a foreign nonprofit corporation	**New I.C. Section 504.1106 (Merger with Foreign Corporation)** Provides for the merger of a one or more foreign business or nonprofit corporations with one or more domestic nonprofit corporations.

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Limitations on Mergers by Public Benefit or Religious Corporations	**Iowa Code Section 504A.40 (Procedure for Merger)** Any two or more domestic nonprofit corporations (defined as nonprofit) may merge into one of such corporations.	**New I.C. Section 504.1101 (Approval of Plan of Merger)** Subject to the limitations set forth in statute regarding mergers by public benefit or religious corporations, one or more nonprofit corporations may merge into a business or nonprofit corporation or limited liability company. **New I.C. Section 504.1102 (Limitations on Mergers by Public Benefit or Religious Corporations)** Without prior approval of the appropriate court, a public benefit or religious corporation may merge only with (1) a public benefit or religious corporation; (2) a foreign corporation that would qualify as a public benefit or religious corporation; (3) a wholly-owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be public benefit or religious corporation after the merger; or (4) a business or mutual benefit corporation, provided that the assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who have received its assets; it shall return any assets held by it upon condition requiring return; and the merger is approved by a majority of directors of the public benefit corporation or religious corporation who are not and will not become members or shareholders in or officers, employees, agents or consultants to the surviving corporation.
Bequests, Devises and Gifts	**Iowa Code: No provision**	**New I.C. Section 504.1107 (Bequests, Devises and Gifts)** Provides that any bequest or other gift contained in a will, donation or other consequence that is made by corporation will inure to surviving corporation.
Consolidation	**Iowa Code Sections 504A.41 and 504A.42** set forth procedures for consolidation of corporations	**New I.C. Chapter 504:** Similar to the Iowa Business Corporation Act in that it does not provide for consolidation of corporations.
Conversion	**Iowa Code:** No provision	**New I.C. Section 504.1108 (Conversion):** Allows for conversions of nonprofit insurance companies that elect to become mutual insurance companies.

SALE OF ASSETS		
Sale, Lease, Exchange or Mortgage of Assets	**Iowa Code Section 504A.46 (Sale, Lease, Exchange or Mortgage of Assets)** A sale, lease, exchange, or other disposition of all or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, as authorized as follows: (1) If members, the board of directors shall adopt a resolution recommending such sale, etc. to the members and submit it to a vote of the members. Such authorization requires two-thirds of the votes of the members where a quorum is present. (2) If no members, the board of directors shall authorize such sale, etc. by a majority vote of the directors in office.	**New I.C. Section 504.1201 (Sale of Assets in Regular Course of Business and Mortgage of Assets)** **New I.C. Section 504.1202 (Sale of Assets Other Than In the Regular Course of Activities)** Sets forth requirements for sale of assets in the regular course of business and sale of assets other than in the regular course of business. For sale of assets in the regular course of business, no member vote required. For sale of assets other than in the regular course of business, unless the articles and bylaws provide otherwise, the sale must be authorized by the board and the lesser of two-thirds of the votes cast or a majority of the members.
DISSOLUTION		
Voluntary Dissolution	**Iowa Code Section 504A.47 (Voluntary Dissolution)** If there are members, the dissolution is to be approved by the membership after a resolution by the board of directors. Where there are no members, the dissolution may be approved by a vote of the majority of directors in office.	**New I.C. Section 504.1401 (Dissolution by Incorporators or Directors and Third Persons)** **New I.C. Section 504.1402 (Dissolution by Directors, Members, and Third Persons)** No substantive changes except new statue provides more flexibility with regard to allow incorporators to dissolve the corporation if non members. Also provides that third parties may have role in dissolution.
Articles of Dissolution	**Iowa Code Section 504A.51 (Articles of Dissolution)** Sets forth the requirements for articles of dissolution	**New I.C. Section 504.1404 (Articles of Dissolution)** Language is revised to conform to the Iowa Business Corporation Act. Also, there is no requirement for the submission of a plan of distribution or representations that (1) all debts, obligations, and liabilities of corporation have been paid and discharged or that adequate provision has been made therefore; (2) that all of the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of the chapter; or (3) that there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree that may be entered against it in the pending suit.

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Revocation of Voluntary Dissolution	**Iowa Code Section 504A.50 (Revocation of Voluntary Dissolution Proceedings)** A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state revoke the action thereof.	**New I.C. Section 504.1405 (Revocation of Dissolution)** A corporation is able to revoke its dissolution within 120 days of its effective date. The process for revocation is substantially similar to the process set forth in the current statute except that the new statute is revised to conform to the Iowa Business Corporation Act.
Dissolution Process	**Iowa Code Section 504A.48 (Distribution of Assets)** **Iowa Code Section 504A.49 (Plan of Distribution)**	**New I.C. Section 504.1406 (Effect of Dissolution)** **New I.C. Section 504.1407 (Known Claims Against Dissolved Corporation)** **New I.C. Section 504.1408 (Unknown Claims Against Dissolved Corporation)** Language is revised to conform to the Iowa Business Corporation Act (pre-2002 amendments). A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs. If the corporation is a mutual benefit or religious corporation and a provision has not been made in the articles or bylaws for distribution of assets, its assets shall be distributed to one or more persons described in IRC 501(c)(3).
Involuntary Dissolution	**Iowa Code Section 504A.53 (Involuntary Dissolution)** **Iowa Code Section 504A.55 (Venue and Process)** **Iowa Code Section 504A.56 (Jurisdiction of Court to Liquidate Assets and Affairs of Corporation)** **Iowa Code Section 504A.57 (Procedure in Liquidation of Corporation by Court)** **Iowa Code Section 504A.58 (Qualification of Receivers)** **Iowa Code Section 504A.59 (Filing of Claims in Liquidation Proceedings)** **Iowa Code Section 504A.60 (Discontinuance of Liquidation Proceedings)** **Iowa Code Section 504A.61 (Decree of Dissolution)** **Iowa Code Section 504A.62 (Filing of Decree of Dissolution)** **Iowa Code Section 504A.63 (Deposit with State Treasurer)** **Iowa Code Section 504A.64 (Survival of Rights and Remedies after Dissolution or Expiration)**	**New I.C. Section 504.1431 (Grounds for Judicial Dissolution)** **New I.C. Section 504.1432 (Procedure for Judicial Dissolution)** **New I.C. Section 504.1433 (Receivership or Custodianship)** **New I.C. Section 504.1434 (Decree of Dissolution)** **New I.C. Section 504.1441 (Deposit with State Treasurer)** Language is revised to conform to the Iowa Business Corporation Act (pre-2002 amendments).

Administrative Dissolution	**Iowa Code Section 504A.87 (Grounds for Administrative Dissolution)** **Iowa Code Section 504A.87A (Procedure for and Effect of Administrative Dissolution)** **Iowa Code Section 504A.87B (Reinstatement Following Administrative Dissolution)** **Iowa Code Section 504A.87C (Appeal from Denial of Reinstatement)**	**New I.C. Section 504.1421 (Grounds for Administrative Dissolution)** **New I.C. Section 504.1422 (Procedure for and Effect of Administrative Dissolution)** **New I.C. Section 504.1423 (Reinstatement Following Administrative Dissolution)** Language is revised to conform to the Iowa Business Corporation Act.
RECORDS AND REPORTS		
Books and Records	**Iowa Code Section 504A.25 (Books and Records)** Each corporation shall keep minutes of proceedings of its members, board of directors and committees. Each corporation shall keep at its registered office or principal office a record of the names and addresses of members entitled to vote. All books and records may be inspected by any member or member's agent, attorney, for any proper purpose at any reasonable time.	**New I.C. Section 504.1601 (Corporate Records)** Similar provisions to Iowa Code Section 504A.25. In addition, provides for a copy of the following records to be kept at the principal office: articles, bylaws, resolutions, minutes, all written communications to members, list of names and addresses of current directors and officers, most recent annual report delivered to secretary of state. A corporation shall maintain appropriate accounting records. **New I.C. Section 504.1602 (Inspection of Records by Members)** Provides for automatic access to certain records conditioned only upon the member giving written demand at least ten business days before the date of inspection. Provides for limited access to certain other records (excerpts from meetings of the board, records of the board, accounting records, and membership lists) if made in good faith for a proper purpose and the member describes with reasonable particularity the purpose of the demand and the records desired to be inspected. Corporation may, within ten days after receiving a demand for inspection of a membership list, deliver a written offer of an alternative method of achieving the purpose identified in the demand without providing access to or a copy of the membership list. A reasonable alternative may include a member prepared communication mailed by the corporation at the expense of the individual. For religious corporations, the articles or bylaws may limit or abolish the rights of inspection. **New I.C. Section 504.1603 (Scope of Inspection Rights)**

		A member's agent and attorney have the same inspection rights of a member. **New I.C. Section 504.1604 (Court-Ordered Inspection)** If the corporation refuses to allow inspection of the records, the member or members may seek summary order directing the corporation to allow inspection and copying at the corporation's expense. The Legislation also provides for an expedited procedure for refusal of a corporation to comply with the Section. **New I.C. Section 504.1605 (Limitation on Use of Membership List)** Without the consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member.
Director's Access to Records	**Iowa Code: No Provision**	**New I.C. Section 504.1606 (Inspection of Records by Directors)** A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation to the extent reasonably related to the performance of the duties of a director as a director. The Legislation provides for a summary court proceeding in the event the corporation denies such access.
Availability of Certain Information	**Iowa Code Section 504A.25A (Availability of certain information of nonprofit corporations and agencies)** A corporation or other nonprofit agency that receives federal or state funding shall provide to any person, upon request, a list of the names of the members of the corporation's or agency's board and the salary of each officer and director's fee.	**New I.C. Section 504.1602 (Inspection of Records of Members)** **New I.C. Section 504.1606 (Inspection of Records by Directors)** Inspection of records limited to members and directors. **New I.C. Section 504.1611 (Financial Statements for Members** Except as set forth in the articles or bylaws of a religious corporation, a corporation, upon written demand from a member, is to furnish that member with the corporation's latest financial statements.

Prepared by:
Willard L. Boyd III
Chair
Nonprofit Corporations Committee
Business Law Section
Iowa State Bar Association
515/283-3172
wlb@nyemaster.com

Dated: May 28, 2004