

PROPOSED REVISIONS TO UPDATE THE IDAHO BUSINESS CORPORATION ACT.

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The Idaho Business Corporation Act (IBCA) was last updated in 2004. There have been many developments in corporate law since then that should be addressed in the IBCA.

The IBCA closely follows the Model Business Corporation Act (MBCA) published by the American Bar Association's Business Law Section.

The MBCA was thoroughly reviewed and revised in 2016.

A committee of the Business and Corporate Law Section has been reviewing the IBCA and the 2016 MBCA in order to propose to the Idaho legislature revisions to the IBCA.

The 2016 MBCA can be found here:

https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.authcheckdam.pdf

A good introductory article about the 2016 MBCA can be found here:

https://www.americanbar.org/content/dam/aba/publications/business_lawyer/2016/71_4/report-changes-mbca-201610.authcheckdam.pdf

Here are some of the key revisions the committee is currently planning to propose:

- Inclusion of provisions on shareholder actions that permit shareholder written consents that may be less than unanimous if authorized in the articles of incorporation, and remote participation by shareholders in meetings if authorized by the board of directors.
- Modernization of the Act to accommodate electronic means of transmission and filing and to recognize electronic signing and delivery (section 1.41).
- Addition of a new subchapter of chapter 1 of the Act, permitting the ratification of defective corporate actions, including actions in connection with the issuance of shares.
- Revisions to permit corporations to include in their articles of incorporation a provision that limits or eliminates a director's or an officer's duty to present a business opportunity to the corporation.
- Addition of section 2.08 to permit the articles of incorporation or the bylaws to specify the forum or forums for litigation of internal corporate claims.

- Clarifications in section 8.02 of the scope and operation of qualifications for nomination and election as directors.

- Elimination of the requirements in sections 8.53 and 8.54 that a director or officer seeking advancement of expenses provide a written affirmation that he or she has met the applicable standards for indemnification under the Act or, in the case of a director, that the proceeding involves conduct for which liability has been eliminated under the articles of incorporation.

- Authorization of the merger of corporations without a shareholder vote following a tender offer if certain conditions are met.

- Revision of chapter 16 to address, among other things, the obligations of corporations to make financial statements available to shareholders, the maintenance of corporate records, and the inspection rights of shareholders and directors of corporations.

- Authorization of “force the vote” provisions in fundamental transactions by permitting directors to submit matters to shareholders for action without director recommendation.

- Making uniform the language for the procedural steps for approval of fundamental changes.

The Official Comment to the MBCA was extensively revised.

Many of the 2016 revisions to the MBCA are to allow the MBCA to fit in as one of the spokes of the Uniform Business Organizations Code.