



Rep. Deanne M. Mazzochi

Filed: 5/7/2021

10200SB1872ham001

LRB102 13519 JLS 26190 a

1 AMENDMENT TO SENATE BILL 1872

2 AMENDMENT NO. _____. Amend Senate Bill 1872 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Business Corporation Act of 1983 is
5 amended by adding Article 1A as follows:

6 (805 ILCS 5/Art. 1A heading new)

7 ARTICLE 1A. RATIFICATION AND VALIDATION
8 OF DEFECTIVE CORPORATE ACTIONS

9 (805 ILCS 5/1A.05 new)

10 Sec. 1A.05. Definitions. In this Article:

11 "Board" means the board of directors.

12 "Corporate action" means any action taken by:

13 (1) or on behalf of a corporation;

14 (2) the incorporators;

15 (3) the board;

1 (4) a committee of the board;

2 (5) an officer or agent of the corporation; or

3 (6) the shareholders.

4 "Date of the defective corporate action" means the date
5 (or the approximate date, if the exact date is unknown) the
6 potentially defective corporate action was purported to have
7 been taken.

8 "Defective corporate action" means any corporate action
9 taken or purportedly taken that is, and at the time such
10 corporate action was taken or purportedly taken would have
11 been, within the power of the corporation without regard to
12 the failure of authorization identified in item (3) of
13 subsection (a) of Section 1A.15, but with respect to which
14 proper documentation is not presently available, or that is or
15 may be shown to have been void or voidable due to a failure or
16 possible failure of authorization or of the documentation
17 thereof.

18 "Failure of authorization" means the failure to authorize,
19 approve, or otherwise effect a corporate action in compliance
20 with this Act, the articles of incorporation or by-laws, a
21 corporate resolution or any plan or agreement to which the
22 corporation is a party, or the disclosure set forth in any
23 proxy or consent solicitation statement, if and to the extent
24 such failure would render such corporate action void or
25 voidable.

26 "Validation effective time" with respect to any defective

1 corporate action ratified or validated under this Article
2 means the latest of:

3 (1) the time at which the ratification of the
4 defective corporate action is approved by the shareholders
5 or, if approval of shareholders is not required, the time
6 at which the notice required by Section 1A.25 becomes
7 effective;

8 (2) the time at which any articles of validation filed
9 in accordance with Section 1A.35 become effective; and

10 (3) if the corporation or any successor entity to the
11 corporation brings an application for validation under
12 subsection (a) of Section 1A.40, the time at which the
13 circuit court determines such validity or at such other
14 time as the circuit court may determine in accordance with
15 subsection (b) of Section 1A.40.

16 The validation effective time shall not be affected by the
17 filing or pendency of a judicial proceeding under Section
18 1A.40 or otherwise unless the corporation or any successor
19 entity to the corporation initiates the application for
20 validation under subsection (a) of Section 1A.40 or unless
21 otherwise ordered by the circuit court.

22 (805 ILCS 5/1A.10 new)

23 Sec. 1A.10. Defective corporate actions.

24 (a) A defective corporate action shall not be void or
25 voidable if ratified in accordance with Section 1A.15 or

1 validated in accordance with Section 1A.40.

2 (b) Ratification under Section 1A.15 or validation under
3 Section 1A.40 shall not be deemed to be the exclusive means of
4 ratifying or validating any defective corporate action and the
5 absence or failure of ratification or validation in accordance
6 with this Article shall not, of itself, affect the validity or
7 effectiveness of any corporate action that was or may be shown
8 to have been properly taken or ratified under common law or
9 otherwise, nor shall it create a presumption that any such
10 corporate action is or was a defective corporate action or
11 void or voidable.

12 (805 ILCS 5/1A.15 new)

13 Sec. 1A.15. Ratification of defective corporate actions.

14 (a) To ratify a defective corporate action under this
15 Section (other than the ratification of an election or
16 designation of the initial directors under subsection (b)),
17 the board shall take action ratifying the action in accordance
18 with Section 1A.20, stating:

19 (1) the defective corporate action to be ratified;

20 (2) the date of the defective corporate action;

21 (3) the nature of the failure of authorization with
22 respect to the defective corporate action to be ratified;
23 and

24 (4) that the board approves the ratification of the
25 defective corporate action.

1 (b) If a defective corporate action to be ratified relates
2 to the election or designation of the initial directors of the
3 corporation, regardless of whether the initial directors are
4 set forth in the articles of incorporation pursuant to item
5 (1) of subsection (b) of Section 2.10, a majority of the
6 persons who, at the time of the ratification, are exercising
7 the powers of directors may take an action stating:

8 (1) the name of the person or persons who first took
9 action in the name of the corporation as the initial
10 directors of the corporation;

11 (2) the earlier of the date on which such person or
12 persons first took such action or were purported to have
13 been elected or designated as the initial directors; and

14 (3) that the ratification of the election or
15 designation of such person or persons as the initial
16 directors is approved.

17 (c) If:

18 (1) any provision of this Act, the articles of
19 incorporation or by-laws, any corporate resolution or any
20 plan or agreement to which the corporation is a party in
21 effect at the time action under subsection (a) is taken
22 requires shareholder approval or would have required
23 shareholder approval at the date of the occurrence of the
24 defective corporate action, or

25 (2) the action under subsection (a) is to ratify a
26 defective corporate action due to a failure to comply with

1 either or both of Sections 7.85 and 11.75,
2 then the ratification of the defective corporate action
3 approved in the action taken by the board under subsection (a)
4 shall be submitted to the shareholders for approval.

5 (d) Unless otherwise provided in the action taken by the
6 board under subsection (a), after the action by the board has
7 been taken and, if required, approved by the shareholders, the
8 board may abandon the ratification at any time before the
9 validation effective time without further action of the
10 shareholders.

11 (805 ILCS 5/1A.20 new)

12 Sec. 1A.20. Action on ratification.

13 (a) The quorum and voting requirements applicable to a
14 ratifying action by the board under subsection (a) of Section
15 1A.15 shall be the quorum and voting requirements applicable
16 to the corporate action proposed to be ratified at the time
17 such ratifying action is taken; provided, however, that if the
18 articles of incorporation or by-laws of the corporation, any
19 plan or agreement to which the corporation was a party, or any
20 provision of this Act, in each case as in effect as of the time
21 of the defective corporate action, would have required a
22 larger number or portion of directors or of specified
23 directors for a quorum to be present or to approve the
24 defective corporate action, such larger number or portion of
25 such directors or such specified directors shall be required

1 for a quorum to be present or to adopt the resolutions to
2 ratify the defective corporate action, as applicable, except
3 that the presence or approval of any director elected,
4 appointed, or nominated by holders of any class or series of
5 which no shares are then outstanding, or by any person who is
6 no longer a shareholder, shall not be required.

7 (b) If the ratification of the defective corporate action
8 requires approval by the shareholders under subsection (c) of
9 Section 1A.15, and if the approval is to be given at a meeting,
10 the corporation shall notify each holder of shares, regardless
11 of whether entitled to vote as of:

12 (1) the record date for notice of the meeting, and

13 (2) the date of the occurrence of the defective
14 corporate action (or, in the case of any defective
15 corporate action that involved the establishment of a
16 record date for notice of or voting at any meeting of
17 shareholders, for informal action by shareholders in lieu
18 of a meeting, or for any other purpose, the record date for
19 notice of or voting at such meeting, the record date for
20 informal action by written consent, or the record date for
21 such other action, as the case may be),

22 provided that in each case notice shall not be required to be
23 given to holders of shares whose identities or addresses for
24 notice cannot be determined from the records of the
25 corporation. The notice must state that the purpose, or one of
26 the purposes, of the meeting, is to consider ratification of a

1 defective corporate action and must be accompanied by:

2 (A) either a copy of the action taken by the board in
3 accordance with subsection (a) of Section 1A.15 or the
4 information required by items (1) through (4) of
5 subsection (a) of Section 1A.15, and

6 (B) a statement that any claim that the ratification
7 of such defective corporate action should not be
8 effective, or should be effective only on certain
9 conditions, shall be brought within 120 days from the
10 applicable validation effective time.

11 (c) The quorum and voting requirements applicable to the
12 approval by the shareholders required by subsection (c) of
13 Section 1A.15 shall be the quorum and voting requirements
14 applicable to the corporate action proposed to be ratified at
15 the time of such shareholder approval; provided, however,
16 that:

17 (1) If the articles of incorporation or by-laws of the
18 corporation, any plan or agreement to which the
19 corporation was a party, or any provision of this Act in
20 effect as of the time of the defective corporate action
21 would have required a larger number or portion of stock or
22 of any class or series thereof or of specified
23 shareholders for a quorum to be present or to approve the
24 defective corporate action, the presence or approval of
25 such larger number or portion of stock or of such class or
26 series thereof or of such specified shareholders shall be

1 required for a quorum to be present or to approve the
2 ratification of the defective corporate action, as
3 applicable, except that the presence or approval of shares
4 of any class or series of which no shares are then
5 outstanding, or of any person that is no longer a
6 shareholder, shall not be required.

7 (2) The approval by shareholders to ratify the
8 election of a director requires the affirmative vote of
9 the majority of the votes of the shares which are
10 represented at a meeting at which a quorum is present and
11 entitled to vote on the matter, except that if the
12 articles of incorporation or by-laws of the corporation
13 then in effect or in effect at the time of the defective
14 election require or required a larger number or portion of
15 stock or of any class or series thereof or of specified
16 shareholders to elect such director, the affirmative vote
17 of such larger number or portion of stock or of any class
18 or series thereof or of such specified shareholders shall
19 be required to ratify the election of such director,
20 except that the presence or approval of shares of any
21 class or series of which no shares are then outstanding,
22 or of any person that is no longer a shareholder, shall not
23 be required.

24 (3) In the event of a failure of authorization
25 resulting from a failure to comply with the provisions of
26 Section 7.85, the ratification of the defective corporate

1 action shall require the vote of shareholders set forth in
2 subsection B of Section 7.85, regardless of whether such
3 vote would have otherwise been required. In the event of a
4 failure of authorization resulting from a failure to
5 comply with Section 11.75, the ratification of the
6 defective corporate action shall require the vote of
7 shareholders set forth in clause (3) of subsection (a) of
8 Section 11.75, regardless of whether such vote would have
9 otherwise been required.

10 (805 ILCS 5/1A.25 new)

11 Sec. 1A.25. Notice requirements.

12 (a) Unless (1) shareholder approval is required under
13 subsection (c) of Section 1A.15 and (2) shareholder approval
14 is to be given at a meeting of shareholders in accordance with
15 subsection (b) of Section 1A.20, rather than by informal
16 action of shareholders pursuant to Section 7.10, prompt notice
17 of an action taken under Section 1A.15 shall be given to each
18 holder of shares, regardless of whether entitled to vote, as
19 of:

20 (A) the date of such action by the board; and

21 (B) the date of the defective corporate action
22 ratified (or, in the case of any defective corporate
23 action that involved the establishment of a record date
24 for notice of or voting at any meeting of shareholders,
25 for informal action by shareholders in lieu of a meeting,

1 or for any other purpose, the record date for notice of or
2 voting at such meeting, the record date for informal
3 action by written consent, or the record date for such
4 other action, as the case may be);

5 provided that in each case notice shall not be required to be
6 given to holders of shares whose identities or addresses for
7 notice cannot be determined from the records of the
8 corporation.

9 (b) The notice must contain:

10 (1) either a copy of the action taken by the board in
11 accordance with subsection (a) or (b) of Section 1A.15 or
12 the information required by items (1) through (4) of
13 subsection (a) or items (1) through (3) of subsection (b)
14 of Section 1A.15, as applicable, and

15 (2) a statement that any claim that the ratification
16 of the defective corporate action should not be effective,
17 or should be effective only on certain conditions, shall
18 be brought within 120 days from the applicable validation
19 effective time.

20 (c) No notice under this Section is required with respect
21 to any action required to be submitted to shareholders for
22 approval under subsection (c) of Section 1A.15 if notice is
23 given in accordance with subsection (b) of Section 1A.20.

24 (d) A notice required by this Section may be given in any
25 manner permitted by the by-laws of the corporation or, if the
26 by-laws are silent, this Act. In addition, for any corporation

1 subject to the reporting requirements of Section 13 or Section
2 15(d) of the Securities Exchange Act of 1934, or the
3 corresponding provisions of any subsequent federal securities
4 laws, rules, or regulations, a notice required by this Section
5 or by subsection (b) of Section 1A.20 may be given by means of
6 a filing or furnishing of such notice with the United States
7 Securities and Exchange Commission.

8 (805 ILCS 5/1A.30 new)

9 Sec. 1A.30. Effect of ratification and validation. From
10 and after the validation effective time, and without regard to
11 the 120-day period during which a claim may be brought under
12 Section 1A.40:

13 (1) each defective corporate action ratified in
14 accordance with Section 1A.15 shall not be void or
15 voidable as a result of the failure of authorization
16 identified in the action taken under subsection (a) or (b)
17 of Section 1A.15 and shall be deemed a valid corporate
18 action effective as of the date of the defective corporate
19 action; and

20 (2) any corporate action taken subsequent to and in
21 direct or indirect reliance on any defective corporate
22 action that is ratified or validated in accordance with
23 this Article and all corporate actions, including any
24 subsequent defective corporate action, resulting directly
25 or indirectly therefrom shall be valid as of the time

1 taken.

2 (805 ILCS 5/1A.35 new)

3 Sec. 1A.35. Filings.

4 (a) If the defective corporate action ratified under this
5 Article would have required under any other Section of this
6 Act a filing in accordance with this Act, then, regardless of
7 whether a filing was previously made in respect of such
8 defective corporate action, the corporation shall make the
9 correct or corrected filing otherwise required by this Act,
10 and the corporation shall file articles of validation in
11 accordance with this Section.

12 (b) The articles of validation must set forth:

13 (1) the defective corporate action that is the subject
14 of the articles of validation;

15 (2) the date of the defective corporate action;

16 (3) the nature of the failure of authorization in
17 respect of the defective corporate action;

18 (4) a statement that the defective corporate action
19 was ratified in accordance with Section 1A.15, including
20 the date on which the board ratified such defective
21 corporate action and the date, if any, on which the
22 shareholders approved the ratification of such defective
23 corporate action; and

24 (5) the information required by subsection (c).

25 (c) The articles of validation must also contain the

1 following information:

2 (1) if a filing was previously made in respect of the
3 defective corporate action and no changes to such filing
4 are required to give effect to the ratification of such
5 defective corporate action in accordance with Section
6 1A.15, the articles of validation must set forth (i) the
7 name, title, and filing date of the filing previously made
8 and any statement of correction to that filing and (ii) a
9 statement that a copy of the filing previously made,
10 together with any statement of correction to that filing,
11 is attached as an exhibit to the articles of validation;

12 (2) if a filing was previously made in respect of the
13 defective corporate action and such filing requires any
14 change to give effect to the ratification of such
15 defective corporate action in accordance with Section
16 1A.15, the articles of validation must set forth (i) the
17 name, title and filing date of the filing previously made
18 and any statement of correction to that filing, (ii) a
19 statement that a filing containing all of the information
20 required to be included under the applicable Section or
21 Sections of this Act to give effect to such defective
22 corporate action is attached as an exhibit to the articles
23 of validation, and (iii) the date and time that such
24 filing is deemed to have become effective; or

25 (3) if a filing was not previously made in respect of
26 the defective corporate action and the defective corporate

1 action ratified under Section 1A.15 would have required a
2 filing under any other Section of this Act, the articles
3 of validation must set forth (i) a statement that a filing
4 containing all of the information required to be included
5 under the applicable Section or Sections of this Act to
6 give effect to such defective corporate action is being
7 filed at the same time as the articles of validation, and
8 (ii) the date and time that such filing is deemed to have
9 become effective.

10 (805 ILCS 5/1A.40 new)

11 Sec. 1A.40. Judicial proceedings regarding validity of
12 corporate actions.

13 (a) Upon application to the circuit court of the county in
14 which either the registered office or principal office of the
15 corporation is located by the corporation, any successor
16 entity to the corporation, a director of the corporation, any
17 shareholder, beneficial shareholder or unrestricted voting
18 trust beneficial owner of the corporation, including any such
19 shareholder, beneficial shareholder or unrestricted voting
20 trust beneficial owner as of the date of the defective
21 corporate action ratified under Section 1A.15, or any other
22 person claiming to be substantially and adversely affected by
23 a ratification under Section 1A.15, the circuit court may:

24 (1) determine the validity and effectiveness of any
25 corporate action or defective corporate action;

1 (2) determine the validity and effectiveness of any
2 ratification under Section 1A.15; and

3 (3) modify or waive any of the procedures specified in
4 Section 1A.15 or Section 1A.20 to ratify a defective
5 corporate action.

6 (b) In connection with an action under this Section, the
7 circuit court may make such findings or orders, and take into
8 account any factors or considerations, regarding such matters
9 as it deems proper under the circumstances.

10 (c) Service of process of the application under subsection
11 (a) on the corporation may be made in any manner provided by
12 statute of this State or by rule of the applicable court for
13 service on the corporation, and no other party need be joined
14 in order for the court to adjudicate the matter. In an action
15 filed by the corporation, the court may require notice of the
16 action be provided to other persons specified by the court and
17 permit such other persons to intervene in the action.

18 (d) Notwithstanding any other provision of this Section or
19 otherwise under applicable law, any action asserting that the
20 ratification of any defective corporate action should not be
21 effective, or should be effective only on certain conditions,
22 shall be brought within 120 days of the validation effective
23 time."