



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1872

Introduced 2/26/2021, by Sen. Jason A. Barickman

SYNOPSIS AS INTRODUCED:

805 ILCS 5/Art. 1A heading new
805 ILCS 5/1A.05 new
805 ILCS 5/1A.10 new
805 ILCS 5/1A.15 new
805 ILCS 5/1A.20 new
805 ILCS 5/1A.25 new
805 ILCS 5/1A.30 new
805 ILCS 5/1A.35 new
805 ILCS 5/1A.40 new

Amends the Business Corporation Act of 1983. Adds an Article to the Act to provide for the ratification and validation of defective corporate actions. Authorizes corporations to correct actions taken without proper documentation or the overissuance of shares. Provides that such actions are not void if ratified as provided. Defines terms.

LRB102 13519 JLS 18866 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Business Corporation Act of 1983 is amended
5 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;

16 (4) a committee of the board;

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

18 (6) the shareholders.

19 "Date of the defective corporate action" means the date
20 (or the approximate date, if the exact date is unknown) the
21 potentially defective corporate action was purported to have
22 been taken.

1 "Defective corporate action" means:

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

11 (2) an overissue.

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

20 "Overissue" means the purported issuance of:

21 (1) shares of a class or series in excess of the number
22 of shares of a class or series the corporation has the
23 power to issue under Section 6.05 at the time of such
24 issuance; or

25 (2) shares of any class or series that is not then
26 authorized for issuance by the articles of incorporation.

1 "Putative shares" means the shares of any class or series
2 (including shares issued upon exercise of rights, options,
3 warrants, or other securities convertible into shares of the
4 corporation, or interests with respect to such shares) that
5 were created or issued as a result of a defective corporate
6 action that:

7 (1) but for any failure of authorization would
8 constitute valid shares; or

9 (2) cannot be determined by the board to be valid
10 shares.

11 "Valid shares" means the shares of any class or series
12 that have been duly authorized and validly issued in
13 accordance with this Act, including as a result of
14 ratification or validation under this Article.

15 "Validation effective time" with respect to any defective
16 corporate action ratified or validated under this Article
17 means the latest of:

18 (1) the time at which the ratification of the
19 defective corporate action is approved by the shareholders
20 or, if approval of shareholders is not required, the time
21 at which the notice required by Section 1A.25 becomes
22 effective;

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

25 (3) if the corporation or any successor entity to the
26 corporation brings an application for validation under

1 subsection (a) of Section 1A.40, the time at which the
2 circuit court determines such validity or at such other
3 time as the circuit court may determine in accordance with
4 subsection (b) of Section 1A.40.

5 The validation effective time shall not be affected by the
6 filing or pendency of a judicial proceeding under Section
7 1A.40 or otherwise unless the corporation or any successor
8 entity to the corporation initiates the application for
9 validation under subsection (a) of Section 1A.40 or unless
10 otherwise ordered by the circuit court.

11 (805 ILCS 5/1A.10 new)

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

13 (a) A defective corporate action shall not be void or
14 voidable if ratified in accordance with Section 1A.15 or
15 validated in accordance with Section 1A.40.

16 (b) Ratification under Section 1A.15 or validation under
17 Section 1A.40 shall not be deemed to be the exclusive means of
18 ratifying or validating any defective corporate action and the
19 absence or failure of ratification or validation in accordance
20 with this Article shall not, of itself, affect the validity or
21 effectiveness of any corporate action that was or may be shown
22 to have been properly taken or ratified under common law or
23 otherwise, nor shall it create a presumption that any such
24 corporate action is or was a defective corporate action or
25 void or voidable.

1 (c) In the case of an overissue, putative shares shall be
2 valid shares effective as of the date originally issued or
3 purportedly issued upon:

4 (1) the effectiveness under this Article 1A and under
5 Article 10 of an amendment to the articles of
6 incorporation authorizing, designating or creating such
7 shares; or

8 (2) the effectiveness of any other corporate action
9 under this Article 1A ratifying or validating the
10 authorization, designation or creation of such shares.

11 (805 ILCS 5/1A.15 new)

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

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

18 (1) the defective corporate action to be ratified and,
19 if the defective corporate action involved the issuance of
20 putative shares, the number and type of putative shares
21 purportedly issued;

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

23 (3) the nature of the failure of authorization with
24 respect to the defective corporate action to be ratified,
25 and

1 (4) that the board approves the ratification of the
2 defective corporate action.

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

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

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

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

18 (c) If:

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

26 (2) the action under subsection (a) is to ratify a

1 defective corporate action due to a failure to comply with
2 either or both of Sections 7.85 and 11.75,
3 then the ratification of the defective corporate action
4 approved in the action taken by the board under subsection (a)
5 shall be submitted to the shareholders for approval unless, as
6 of the record date for determining the shareholders entitled
7 to vote on the ratification of such defective corporate
8 action, there are no valid shares outstanding and entitled to
9 vote thereon, regardless of whether there then exist any
10 putative shares.

11 (d) Unless otherwise provided in the action taken by the
12 board under subsection (a), after the action by the board has
13 been taken and, if required, approved by the shareholders, the
14 board may abandon the ratification at any time before the
15 validation effective time without further action of the
16 shareholders.

17 (805 ILCS 5/1A.20 new)

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

19 (a) The quorum and voting requirements applicable to a
20 ratifying action by the board under subsection (a) of Section
21 1A.15 shall be the quorum and voting requirements applicable
22 to the corporate action proposed to be ratified at the time
23 such ratifying action is taken; provided, however, that if the
24 articles of incorporation or by-laws of the corporation, any
25 plan or agreement to which the corporation was a party, or any

1 provision of this Act, in each case as in effect as of the time
2 of the defective corporate act, would have required a larger
3 number or portion of directors or of specified directors for a
4 quorum to be present or to approve the defective corporate
5 act, such larger number or portion of such directors or such
6 specified directors shall be required for a quorum to be
7 present or to adopt the resolutions to ratify the defective
8 corporate act, as applicable, except that the presence or
9 approval of any director elected, appointed, or nominated by
10 holders of any class or series of which no shares are then
11 outstanding, or by any person who is no longer a shareholder,
12 shall not be required.

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

18 (1) the record date for notice of the meeting and

19 (2) the date of the occurrence of the defective
20 corporate action (or, in the case of any defective
21 corporate action that involved the establishment of a
22 record date for notice of or voting at any meeting of
23 shareholders, for informal action by shareholders in lieu
24 of a meeting, or for any other purpose, the record date for
25 notice of or voting at such meeting, the record date for
26 informal action by written consent, or the record date for

1 such other action, as the case may be),
2 provided that in each case notice shall not be required to be
3 given to holders of valid or putative shares whose identities
4 or addresses for notice cannot be determined from the records
5 of the corporation. The notice must state that the purpose, or
6 one of the purposes, of the meeting, is to consider
7 ratification of a defective corporate action and must be
8 accompanied by:

9 (A) either a copy of the action taken by the board in
10 accordance with subsection (a) of Section 1A.15 or the
11 information required by items (1) through (4) of
12 subsection (a) of Section 1A.15 and

13 (B) a statement that any claim that the ratification
14 of such defective corporate action and any putative shares
15 issued as a result of such defective corporate action
16 should not be effective, or should be effective only on
17 certain conditions, shall be brought within 120 days from
18 the applicable validation effective time.

19 (c) The quorum and voting requirements applicable to the
20 approval by the shareholders required by subsection (c) of
21 Section 1A.15 shall be the quorum and voting requirements
22 applicable to the corporate action proposed to be ratified at
23 the time of such shareholder approval; provided, however,
24 that:

25 (1) If the articles of incorporation or by-laws of the
26 corporation, any plan or agreement to which the

1 corporation was a party, or any provision of this Act in
2 effect as of the time of the defective corporate act would
3 have required a larger number or portion of stock or of any
4 class or series thereof or of specified shareholders for a
5 quorum to be present or to approve the defective corporate
6 act, the presence or approval of such larger number or
7 portion of stock or of such class or series thereof or of
8 such specified shareholders shall be required for a quorum
9 to be present or to approve the ratification of the
10 defective corporate act, as applicable, except that the
11 presence or approval of shares of any class or series of
12 which no shares are then outstanding, or of any person
13 that is no longer a shareholder, shall not be required.

14 (2) The approval by shareholders to ratify the
15 election of a director requires the affirmative vote of
16 the majority of the votes of the shares which are
17 represented at a meeting at which a quorum is present and
18 entitled to vote on the matter, except that if the
19 articles of incorporation or by-laws of the corporation
20 then in effect or in effect at the time of the defective
21 election require or required a larger number or portion of
22 stock or of any class or series thereof or of specified
23 shareholders to elect such director, the affirmative vote
24 of such larger number or portion of stock or of any class
25 or series thereof or of such specified shareholders shall
26 be required to ratify the election of such director,

1 except that the presence or approval of shares of any
2 class or series of which no shares are then outstanding,
3 or of any person that is no longer a shareholder, shall not
4 be required.

5 (3) In the event of a failure of authorization
6 resulting from a failure to comply with the provisions of
7 Section 7.85, the ratification of the defective corporate
8 act shall require the vote of shareholders set forth in
9 subsection B of Section 7.85, regardless of whether such
10 vote would have otherwise been required. In the event of a
11 failure of authorization resulting from a failure to
12 comply with Section 11.75, the ratification of the
13 defective corporate act shall require the vote of
14 shareholders set forth in clause (3) of subsection (a) of
15 Section 11.75, regardless of whether such vote would have
16 otherwise been required.

17 (d) Putative shares on the record date for determining the
18 shareholders entitled to vote on any matter submitted to
19 shareholders under subsection (c) of Section 1A.15 (and
20 without giving effect to any ratification of putative shares
21 that becomes effective as a result of such vote) shall neither
22 be entitled to vote nor counted for quorum purposes in any vote
23 to approve the ratification of any defective corporate action.

24 (e) If the approval under this Section of putative shares
25 would result in an overissue, in addition to the approval
26 required by Section 1A.15, approval of an amendment to the

1 articles of incorporation under Article 10 to increase the
2 number of shares of an authorized class or series or to
3 authorize the creation of a class or series of shares so there
4 would be no overissue shall also be required.

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

6 Sec. 1A.25. Notice requirements.

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

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

16 (B) the date of the defective corporate action
17 ratified (or, in the case of any defective corporate
18 action that involved the establishment of a record date
19 for notice of or voting at any meeting of shareholders,
20 for informal action by shareholders in lieu of a meeting,
21 or for any other purpose, the record date for notice of or
22 voting at such meeting, the record date for informal
23 action by written consent, or the record date for such
24 other action, as the case may be);

25 provided that in each case notice shall not be required to be

1 given to holders of valid and putative shares whose identities
2 or addresses for notice cannot be determined from the records
3 of the corporation.

4 (b) The notice must contain:

5 (1) either a copy of the action taken by the board in
6 accordance with subsection (a) or (b) of Section 1A.15 or
7 the information required by items (1) through (4) of
8 subsection (a) or items (1) through (3) of subsection (b)
9 of Section 1A.15, as applicable, and

10 (2) a statement that any claim that the ratification
11 of the defective corporate action and any putative shares
12 issued as a result of such defective corporate action
13 should not be effective, or should be effective only on
14 certain conditions, shall be brought within 120 days from
15 the applicable validation effective time.

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

20 (d) A notice required by this Section may be given in any
21 manner permitted by the by-laws of the corporation or, if the
22 by-laws are silent, this Act. In addition, for any corporation
23 subject to the reporting requirements of Section 13 or Section
24 15(d) of the Securities Exchange Act of 1934, or the
25 corresponding provisions of any subsequent federal securities
26 laws, rules, or regulations, a notice required by this Section

1 or by subsection (b) of Section 1A.20 may be given by means of
2 a filing or furnishing of such notice with the United States
3 Securities and Exchange Commission.

4 (805 ILCS 5/1A.30 new)

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

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

16 (2) the issuance of each putative share or fraction of
17 a putative share purportedly issued pursuant to a
18 defective corporate action identified in the action taken
19 under Section 1A.15 shall not be void or voidable and each
20 such putative share or fraction of a putative share shall
21 be deemed to be an identical share or fraction of a share
22 that was duly authorized and validly issued as of the time
23 it was purportedly issued; and

24 (3) any corporate action taken subsequent to and in
25 direct or indirect reliance on any defective corporate

1 action that is ratified or validated in accordance with
2 this Article and all corporate actions, including any
3 subsequent defective corporate action, resulting directly
4 or indirectly therefrom shall be valid as of the time
5 taken.

6 (805 ILCS 5/1A.35 new)

7 Sec. 1A.35. Filings.

8 (a) If the defective corporate action ratified under this
9 Article would have required under any other Section of this
10 Act a filing in accordance with this Act, then, regardless of
11 whether a filing was previously made in respect of such
12 defective corporate action and in lieu of a filing otherwise
13 required by this Act, the corporation shall file articles of
14 validation in accordance with this Section, and such articles
15 of validation shall serve to amend or substitute for any other
16 filing with respect to such defective corporate action
17 required by this Act.

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

19 (1) the defective corporate action that is the subject
20 of the articles of validation (including, in the case of
21 any defective corporate action involving the issuance of
22 putative shares, the number and type of putative shares
23 issued and the date or dates upon which such putative
24 shares were purported to have been issued);

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

1 (3) the nature of the failure of authorization in
2 respect of the defective corporate action;

3 (4) a statement that the defective corporate action
4 was ratified in accordance with Section 1A.15, including
5 the date on which the board ratified such defective
6 corporate action and the date, if any, on which the
7 shareholders approved the ratification of such defective
8 corporate action; and

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

10 (c) The articles of validation must also contain the
11 following information:

12 (1) if a filing was previously made in respect of the
13 defective corporate action and no changes to such filing
14 are required 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 articles of correction to that filing and (ii) a
19 statement that a copy of the filing previously made,
20 together with any statement of correction to that filing,
21 is attached as an exhibit to the articles of validation;

22 (2) if a filing was previously made in respect of the
23 defective corporate action and such filing requires any
24 change to give effect to the ratification of such
25 defective corporate action in accordance with Section
26 1A.15, the articles of validation must set forth (i) the

1 name, title and filing date of the filing previously made
2 and any statement of correction to that filing, (ii) a
3 statement that a filing containing all of the information
4 required to be included under the applicable Section or
5 Sections of this Act to give effect to such defective
6 corporate action is attached as an exhibit to the articles
7 of validation, and (iii) the date and time that such
8 filing is deemed to have become effective; or

9 (3) if a filing was not previously made in respect of
10 the defective corporate action and the defective corporate
11 action ratified under Section 1A.15 would have required a
12 filing under any other Section of this Act, the articles
13 of validation must set forth (i) a statement that a filing
14 containing all of the information required to be included
15 under the applicable Section or Sections of this Act to
16 give effect to such defective corporate action is attached
17 as an exhibit to the articles of validation, and (ii) the
18 date and time that such filing is deemed to have become
19 effective.

20 (805 ILCS 5/1A.40 new)

21 Sec. 1A.40. Judicial proceedings regarding validity of
22 corporate actions.

23 (a) Upon application to the circuit court of the county in
24 which either the registered office or principal office of the
25 corporation is located by the corporation, any successor

1 entity to the corporation, a director of the corporation, any
2 shareholder, beneficial shareholder or unrestricted voting
3 trust beneficial owner of the corporation, including any such
4 shareholder, beneficial shareholder or unrestricted voting
5 trust beneficial owner as of the date of the defective
6 corporate action ratified under Section 1A.15, or any other
7 person claiming to be substantially and adversely affected by
8 a ratification under Section 1A.15, the circuit court may:

9 (1) determine the validity and effectiveness of any
10 corporate action or defective corporate action;

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

13 (3) determine the validity of any putative shares; and

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

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

21 (c) Service of process of the application under subsection
22 (a) on the corporation may be made in any manner provided by
23 statute of this State or by rule of the applicable court for
24 service on the corporation, and no other party need be joined
25 in order for the court to adjudicate the matter. In an action
26 filed by the corporation, the court may require notice of the

1 action be provided to other persons specified by the court and
2 permit such other persons to intervene in the action.

3 (d) Notwithstanding any other provision of this Section or
4 otherwise under applicable law, any action asserting that the
5 ratification of any defective corporate action, including any
6 putative shares issued as a result of such defective corporate
7 action, should not be effective, or should be effective only
8 on certain conditions, shall be brought within 120 days of the
9 validation effective time.