

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 20-0764.01 Thomas Morris x4218

HOUSE BILL 20-1013

HOUSE SPONSORSHIP

Snyder, Bird, Exum, Kraft-Tharp, Woodrow

SENATE SPONSORSHIP

Lee,

House Committees
Business Affairs & Labor

Senate Committees
Business, Labor, & Technology

A BILL FOR AN ACT

101 **CONCERNING THE SPECIFICATION OF PROCEDURES FOR THE**
102 **RATIFICATION OF DEFECTIVE CORPORATE ACTIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill provides a statutory procedure for the ratification or validation of corporate actions that may not have been properly authorized and for shares that may not have been properly issued. The statutory ratification procedure supplements common-law ratification and is available only when the board of directors specifies the nature of the defective authorization. Prompt judicial review and validation of the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
March 2, 2020

HOUSE
3rd Reading Unamended
February 12, 2020

HOUSE
2nd Reading Unamended
February 10, 2020

ratification process is available when a listed person claims to be substantially and adversely affected by the ratification.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 7-103-106 as
3 follows:

4 **7-103-106. Ratification of defective corporate actions -**
5 **definitions. (1) Defective corporate actions. (a)** A DEFECTIVE
6 CORPORATE ACTION IS NOT VOID OR VOIDABLE IF RATIFIED IN
7 ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION OR VALIDATED IN
8 ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION.

9 (b) RATIFICATION UNDER SUBSECTION (2) OF THIS SECTION OR
10 VALIDATION UNDER SUBSECTION (7) OF THIS SECTION IS NOT THE
11 EXCLUSIVE MEANS OF RATIFYING OR VALIDATING ANY DEFECTIVE
12 CORPORATE ACTION, AND THE ABSENCE OR FAILURE OF RATIFICATION OR
13 VALIDATION IN ACCORDANCE WITH THIS SECTION DOES NOT, OF ITSELF,
14 AFFECT THE VALIDITY OR EFFECTIVENESS OF ANY CORPORATE ACTION
15 PROPERLY RATIFIED UNDER COMMON LAW OR OTHERWISE, NOR DOES IT
16 CREATE A PRESUMPTION THAT ANY SUCH CORPORATE ACTION IS OR WAS
17 A DEFECTIVE CORPORATE ACTION OR VOID OR VOIDABLE.

18 (c) IN THE CASE OF AN OVERISSUE, PUTATIVE SHARES ARE VALID
19 SHARES EFFECTIVE AS OF THE DATE ORIGINALLY ISSUED OR PURPORTEDLY
20 ISSUED UPON:

21 (I) THE EFFECTIVENESS UNDER THIS SECTION AND UNDER ARTICLE
22 110 OF THIS TITLE 7 OF AN AMENDMENT TO THE ARTICLES OF
23 INCORPORATION AUTHORIZING, DESIGNATING, OR CREATING THE SHARES;
24 OR

25 (II) THE EFFECTIVENESS OF ANY OTHER CORPORATE ACTION UNDER

1 THIS SECTION RATIFYING THE AUTHORIZATION, DESIGNATION, OR
2 CREATION OF THE SHARES.

3 (2) **Ratification of defective corporate actions.** (a) TO RATIFY
4 A DEFECTIVE CORPORATE ACTION UNDER THIS SECTION OTHER THAN THE
5 RATIFICATION OF AN ELECTION OF THE INITIAL BOARD OF DIRECTORS
6 UNDER SUBSECTION (2)(b) OF THIS SECTION, THE BOARD OF DIRECTORS
7 MUST TAKE ACTION RATIFYING THE ACTION IN ACCORDANCE WITH
8 SUBSECTION (3) OF THIS SECTION, STATING:

9 (I) THE DEFECTIVE CORPORATE ACTION TO BE RATIFIED AND, IF
10 THE DEFECTIVE CORPORATE ACTION INVOLVED THE ISSUANCE OF PUTATIVE
11 SHARES, THE NUMBER AND TYPE OF PUTATIVE SHARES PURPORTEDLY
12 ISSUED;

13 (II) THE DATE OF THE DEFECTIVE CORPORATE ACTION;

14 (III) THE NATURE OF THE FAILURE OF AUTHORIZATION WITH
15 RESPECT TO THE DEFECTIVE CORPORATE ACTION TO BE RATIFIED; AND

16 (IV) THAT THE BOARD OF DIRECTORS APPROVES THE RATIFICATION
17 OF THE DEFECTIVE CORPORATE ACTION.

18 (b) IF A DEFECTIVE CORPORATE ACTION TO BE RATIFIED RELATES
19 TO THE ELECTION OF THE INITIAL BOARD OF DIRECTORS UNDER SECTION
20 7-102-105 (1)(a), A MAJORITY OF THE PERSONS WHO, AT THE TIME OF THE
21 RATIFICATION, ARE EXERCISING THE POWERS OF DIRECTORS MAY TAKE AN
22 ACTION STATING:

23 (I) THE NAME OF THE PERSON OR PERSONS WHO FIRST TOOK
24 ACTION IN THE NAME OF THE CORPORATION AS THE INITIAL BOARD OF
25 DIRECTORS;

26 (II) THE EARLIER OF THE DATE ON WHICH THE PERSONS FIRST TOOK
27 THE ACTION OR WERE PURPORTED TO HAVE BEEN ELECTED AS THE INITIAL

1 BOARD OF DIRECTORS; AND

2 (III) THAT THE RATIFICATION OF THE ELECTION OF THE PERSON OR
3 PERSONS AS THE INITIAL BOARD OF DIRECTORS IS APPROVED.

4 (c) IF ANY PROVISION OF ARTICLES 101 TO 117 OF THIS TITLE 7, THE
5 ARTICLES OF INCORPORATION OR BYLAWS, OR A CORPORATE RESOLUTION
6 OR ANY PLAN OR AGREEMENT TO WHICH THE CORPORATION IS A PARTY IN
7 EFFECT AT THE TIME ACTION UNDER SUBSECTION (2)(a) OF THIS SECTION
8 IS TAKEN REQUIRES SHAREHOLDER APPROVAL OR WOULD HAVE REQUIRED
9 SHAREHOLDER APPROVAL AT THE DATE OF THE OCCURRENCE OF THE
10 DEFECTIVE CORPORATE ACTION, THE RATIFICATION OF THE DEFECTIVE
11 CORPORATE ACTION APPROVED IN THE ACTION TAKEN BY THE BOARD OF
12 DIRECTORS UNDER SUBSECTION (2)(a) OF THIS SECTION MUST BE
13 SUBMITTED TO THE SHAREHOLDERS FOR APPROVAL IN ACCORDANCE WITH
14 SUBSECTION (3) OF THIS SECTION.

15 (d) UNLESS OTHERWISE PROVIDED IN THE ACTION TAKEN BY THE
16 BOARD OF DIRECTORS UNDER SUBSECTION (2)(a) OF THIS SECTION, AFTER
17 THE ACTION BY THE BOARD OF DIRECTORS HAS BEEN TAKEN AND, IF
18 REQUIRED, APPROVED BY THE SHAREHOLDERS, THE BOARD OF DIRECTORS
19 MAY ABANDON THE RATIFICATION AT ANY TIME BEFORE THE VALIDATION
20 EFFECTIVE TIME WITHOUT FURTHER ACTION OF THE SHAREHOLDERS.

21 (3) **Action on ratification.** (a) THE QUORUM AND VOTING
22 REQUIREMENTS APPLICABLE TO A RATIFYING ACTION BY THE BOARD OF
23 DIRECTORS UNDER SUBSECTION (2) OF THIS SECTION ARE THE QUORUM
24 AND VOTING REQUIREMENTS APPLICABLE TO THE CORPORATE ACTION
25 PROPOSED TO BE RATIFIED AT THE TIME SUCH RATIFYING ACTION IS TAKEN.

26 (b) IF THE RATIFICATION OF THE DEFECTIVE CORPORATE ACTION
27 REQUIRES APPROVAL BY THE SHAREHOLDERS UNDER SUBSECTION (2)(c)

1 OF THIS SECTION AND IF THE APPROVAL IS TO BE GIVEN AT A MEETING, THE
2 CORPORATION SHALL NOTIFY EACH HOLDER OF VALID AND PUTATIVE
3 SHARES, REGARDLESS OF WHETHER ENTITLED TO VOTE, AS OF THE RECORD
4 DATE FOR NOTICE OF THE MEETING. THE NOTICE MUST STATE THAT THE
5 PURPOSE, OR ONE OF THE PURPOSES, OF THE MEETING IS TO CONSIDER
6 RATIFICATION OF A DEFECTIVE CORPORATE ACTION AND MUST BE
7 ACCOMPANIED BY:

8 (I) EITHER A COPY OF THE WRITTEN ACTION TAKEN BY THE BOARD
9 OF DIRECTORS IN ACCORDANCE WITH SUBSECTION (2)(a) OF THIS SECTION
10 OR THE INFORMATION REQUIRED BY SUBSECTIONS (2)(a)(I) TO (2)(a)(IV)
11 OF THIS SECTION; AND

12 (II) A STATEMENT THAT ANY CLAIM THAT THE RATIFICATION OF
13 THE DEFECTIVE CORPORATE ACTION AND ANY PUTATIVE SHARES ISSUED
14 AS A RESULT OF THE DEFECTIVE CORPORATE ACTION SHOULD NOT BE
15 EFFECTIVE, OR SHOULD BE EFFECTIVE ONLY ON CERTAIN CONDITIONS,
16 MUST BE BROUGHT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE
17 APPLICABLE VALIDATION EFFECTIVE TIME.

18 (c) EXCEPT AS PROVIDED IN SUBSECTION (3)(d) OF THIS SECTION
19 WITH RESPECT TO THE VOTING REQUIREMENTS TO RATIFY THE ELECTION
20 OF A DIRECTOR, THE QUORUM AND VOTING REQUIREMENTS APPLICABLE TO
21 THE APPROVAL BY THE SHAREHOLDERS REQUIRED BY SUBSECTION (2)(c)
22 OF THIS SECTION ARE THE QUORUM AND VOTING REQUIREMENTS
23 APPLICABLE TO THE CORPORATE ACTION PROPOSED TO BE RATIFIED AT THE
24 TIME OF THE SHAREHOLDER APPROVAL, NOT THE REQUIREMENTS FOR
25 SHAREHOLDER APPROVAL EXISTING AT THE TIME THAT THE DEFECTIVE
26 CORPORATE ACTION REQUIRING THE RATIFICATION WAS ORIGINALLY
27 TAKEN.

1 (d) THE APPROVAL BY SHAREHOLDERS TO RATIFY THE ELECTION
2 OF A DIRECTOR REQUIRES THAT THE VOTES CAST WITHIN THE VOTING
3 GROUP FAVORING THE RATIFICATION EXCEED THE VOTES CAST OPPOSING
4 THE RATIFICATION OF THE ELECTION AT A MEETING AT WHICH A QUORUM
5 IS PRESENT.

6 (e) HOLDERS OF PUTATIVE SHARES ON THE RECORD DATE FOR
7 DETERMINING THE SHAREHOLDERS ENTITLED TO VOTE ON ANY MATTER
8 SUBMITTED TO SHAREHOLDERS UNDER SUBSECTION (2)(c) OF THIS
9 SECTION, AND WITHOUT GIVING EFFECT TO ANY RATIFICATION OF
10 PUTATIVE SHARES THAT BECOMES EFFECTIVE AS A RESULT OF SUCH VOTE,
11 ARE NOT ENTITLED TO VOTE AND SHALL NOT BE COUNTED FOR QUORUM
12 PURPOSES IN ANY VOTE TO APPROVE THE RATIFICATION OF ANY DEFECTIVE
13 CORPORATE ACTION.

14 (f) IF THE APPROVAL UNDER THIS SECTION OF PUTATIVE SHARES
15 WOULD RESULT IN AN OVERISSUE, IN ADDITION TO THE APPROVAL
16 REQUIRED BY SUBSECTION (2) OF THIS SECTION, APPROVAL OF AN
17 AMENDMENT TO THE ARTICLES OF INCORPORATION UNDER ARTICLE 110 OF
18 THIS TITLE 7 TO INCREASE THE NUMBER OF SHARES OF AN AUTHORIZED
19 CLASS OR SERIES OR TO AUTHORIZE THE CREATION OF A CLASS OR SERIES
20 OF SHARES AS NECESSARY TO PRECLUDE AN OVERISSUE IS ALSO REQUIRED.

21 (4) **Notice requirements.** (a) UNLESS SHAREHOLDER APPROVAL
22 IS REQUIRED UNDER SUBSECTION (2)(c) OF THIS SECTION, PROMPT NOTICE
23 OF AN ACTION TAKEN UNDER SUBSECTION (2) OF THIS SECTION SHALL BE
24 GIVEN TO EACH HOLDER OF VALID AND PUTATIVE SHARES, REGARDLESS OF
25 WHETHER ENTITLED TO VOTE, AS OF:

- 26 (I) THE DATE OF THE ACTION BY THE BOARD OF DIRECTORS; AND
27 (II) THE DATE OF THE DEFECTIVE CORPORATE ACTION RATIFIED;

1 EXCEPT THAT NOTICE IS NOT REQUIRED TO BE GIVEN TO HOLDERS OF VALID
2 AND PUTATIVE SHARES WHOSE IDENTITIES OR ADDRESSES FOR NOTICE
3 CANNOT BE DETERMINED FROM THE RECORDS OF THE CORPORATION.

4 (b) THE NOTICE MUST CONTAIN:

5 (I) EITHER A COPY OF THE WRITTEN ACTION TAKEN BY THE BOARD
6 OF DIRECTORS IN ACCORDANCE WITH SUBSECTION (2)(a) OR (2)(b) OF THIS
7 SECTION OR THE INFORMATION REQUIRED BY SUBSECTIONS (2)(a)(I) TO
8 (2)(a)(IV) OR (2)(b)(I) TO (2)(b)(III) OF THIS SECTION, AS APPLICABLE;
9 AND

10 (II) A STATEMENT THAT ANY CLAIM THAT THE RATIFICATION OF
11 THE DEFECTIVE CORPORATE ACTION AND ANY PUTATIVE SHARES ISSUED
12 AS A RESULT OF THE DEFECTIVE CORPORATE ACTION SHOULD NOT BE
13 EFFECTIVE, OR SHOULD BE EFFECTIVE ONLY ON CERTAIN CONDITIONS,
14 MUST BE BROUGHT WITHIN ONE HUNDRED TWENTY DAYS AFTER THE
15 APPLICABLE VALIDATION EFFECTIVE TIME.

16 (c) NOTICE UNDER THIS SECTION IS NOT REQUIRED WITH RESPECT
17 TO ANY ACTION REQUIRED TO BE SUBMITTED TO SHAREHOLDERS FOR
18 APPROVAL UNDER SUBSECTION (2)(c) OF THIS SECTION IF NOTICE IS GIVEN
19 IN ACCORDANCE WITH SUBSECTION (4)(b) OF THIS SECTION.

20 (d) A NOTICE REQUIRED BY THIS SECTION MAY BE GIVEN IN ANY
21 MANNER PERMITTED BY SECTION 7-101-402 AND, FOR ANY CORPORATION
22 SUBJECT TO THE REPORTING REQUIREMENTS OF SECTION 13 OR 15 (d) OF
23 THE FEDERAL "SECURITIES EXCHANGE ACT OF 1934", AS AMENDED, 15
24 U.S.C. SEC. 78m AND 15 U.S.C. SEC. 78m (d), MAY BE GIVEN BY MEANS
25 OF A FILING OR FURNISHING OF THE NOTICE WITH THE UNITED STATES
26 SECURITIES AND EXCHANGE COMMISSION.

27 (e) THE FAILURE TO GIVE THE NOTICE DOES NOT INVALIDATE THE

1 RATIFICATION OF THE DEFECTIVE CORPORATE ACTION.

2 (5) **Effect of ratification.** FROM AND AFTER THE VALIDATION
3 EFFECTIVE TIME, AND WITHOUT REGARD TO THE
4 ONE-HUNDRED-TWENTY-DAY PERIOD DURING WHICH A CLAIM MAY BE
5 BROUGHT UNDER SUBSECTION (7) OF THIS SECTION:

6 (a) EACH DEFECTIVE CORPORATE ACTION RATIFIED IN
7 ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION IS NOT VOID OR
8 VOIDABLE AS A RESULT OF THE FAILURE OF AUTHORIZATION IDENTIFIED IN
9 THE ACTION TAKEN UNDER SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION
10 AND SHALL BE DEEMED A VALID CORPORATE ACTION EFFECTIVE AS OF THE
11 DATE OF THE DEFECTIVE CORPORATE ACTION;

12 (b) THE ISSUANCE OF EACH PUTATIVE SHARE OR FRACTION OF A
13 PUTATIVE SHARE PURPORTEDLY ISSUED PURSUANT TO A DEFECTIVE
14 CORPORATE ACTION IDENTIFIED IN THE ACTION TAKEN UNDER SUBSECTION
15 (2) OF THIS SECTION IS NOT VOID OR VOIDABLE, AND EACH SUCH PUTATIVE
16 SHARE OR FRACTION OF A PUTATIVE SHARE SHALL BE DEEMED TO BE AN
17 IDENTICAL SHARE OR FRACTION OF A VALID SHARE AS OF THE TIME IT WAS
18 PURPORTEDLY ISSUED; AND

19 (c) ANY CORPORATE ACTION TAKEN AFTER THE DEFECTIVE
20 CORPORATE ACTION RATIFIED IN ACCORDANCE WITH THIS SECTION IN
21 RELIANCE ON THE DEFECTIVE CORPORATE ACTION HAVING BEEN VALIDLY
22 EFFECTED AND ANY SUBSEQUENT DEFECTIVE CORPORATE ACTION
23 RESULTING DIRECTLY OR INDIRECTLY FROM THE ORIGINAL DEFECTIVE
24 CORPORATE ACTION IS VALID AS OF THE TIME TAKEN.

25 (6) **Filings.** (a) IF THE DEFECTIVE CORPORATE ACTION RATIFIED
26 UNDER THIS SECTION WOULD HAVE REQUIRED UNDER ANY OTHER SECTION
27 OF ARTICLES 101 TO 117 OF THIS TITLE 7 A FILING IN ACCORDANCE WITH

1 ARTICLES 101 TO 117 OF THIS TITLE 7, THEN, REGARDLESS OF WHETHER A
2 FILING WAS PREVIOUSLY MADE WITH RESPECT TO THE DEFECTIVE
3 CORPORATE ACTION AND IN LIEU OF A FILING OTHERWISE REQUIRED BY
4 ARTICLES 101 TO 117 OF THIS TITLE 7, THE CORPORATION SHALL FILE
5 ARTICLES OF AMENDMENT IN ACCORDANCE WITH THIS SECTION, AND THE
6 ARTICLES OF AMENDMENT AMEND OR SUBSTITUTE FOR ANY OTHER FILING
7 WITH RESPECT TO THE DEFECTIVE CORPORATE ACTION REQUIRED BY
8 ARTICLES 101 TO 117 OF THIS TITLE 7.

9 (b) THE ARTICLES OF AMENDMENT MUST SET FORTH IN AN
10 ATTACHMENT TO THE ARTICLES:

11 (I) THE DEFECTIVE CORPORATE ACTION THAT IS THE SUBJECT OF
12 THE ARTICLES OF AMENDMENT INCLUDING, IN THE CASE OF ANY DEFECTIVE
13 CORPORATE ACTION INVOLVING THE ISSUANCE OF PUTATIVE SHARES, THE
14 NUMBER AND TYPE OF PUTATIVE SHARES ISSUED AND THE DATE OR DATES
15 UPON WHICH THE PUTATIVE SHARES WERE PURPORTED TO HAVE BEEN
16 ISSUED;

17 (II) THE DATE OF THE DEFECTIVE CORPORATE ACTION;

18 (III) THE NATURE OF THE FAILURE OF AUTHORIZATION WITH
19 RESPECT TO THE DEFECTIVE CORPORATE ACTION;

20 (IV) A STATEMENT THAT THE DEFECTIVE CORPORATE ACTION WAS
21 RATIFIED IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION,
22 INCLUDING THE DATE ON WHICH THE BOARD OF DIRECTORS RATIFIED THE
23 DEFECTIVE CORPORATE ACTION AND THE DATE, IF ANY, ON WHICH THE
24 SHAREHOLDERS APPROVED THE RATIFICATION OF THE DEFECTIVE
25 CORPORATE ACTION; AND

26 (V) THE INFORMATION REQUIRED BY SUBSECTION (6)(c) OF THIS
27 SECTION.

1 (c) THE ARTICLES OF AMENDMENT MUST ALSO CONTAIN THE
2 FOLLOWING INFORMATION IN AN ATTACHMENT TO THE ARTICLES:

3 (I) IF A FILING WAS PREVIOUSLY MADE WITH RESPECT TO THE
4 DEFECTIVE CORPORATE ACTION AND NO CHANGES TO THE FILING ARE
5 REQUIRED TO GIVE EFFECT TO THE RATIFICATION OF THE DEFECTIVE
6 CORPORATE ACTION IN ACCORDANCE WITH SUBSECTION (2) OF THIS
7 SECTION, THE ARTICLES OF AMENDMENT MUST SET FORTH:

8 (A) THE NAME, TITLE, AND FILING DATE OF THE FILING PREVIOUSLY
9 MADE AND ANY ARTICLES OF CORRECTION TO THAT FILING; AND

10 (B) A STATEMENT THAT A COPY OF THE FILING PREVIOUSLY MADE,
11 TOGETHER WITH ANY ARTICLES OF CORRECTION TO THAT FILING, IS
12 ATTACHED AS AN EXHIBIT TO THE ARTICLES OF AMENDMENT;

13 (II) IF A FILING WAS PREVIOUSLY MADE WITH RESPECT TO THE
14 DEFECTIVE CORPORATE ACTION AND THE FILING REQUIRES ANY CHANGE
15 TO GIVE EFFECT TO THE RATIFICATION OF THE DEFECTIVE CORPORATE
16 ACTION IN ACCORDANCE WITH THIS SUBSECTION (6)(c), THE ARTICLES OF
17 AMENDMENT MUST SET FORTH:

18 (A) THE NAME, TITLE, DOCUMENT NUMBER, AND FILING DATE OF
19 THE FILING PREVIOUSLY MADE AND ANY ARTICLES OF CORRECTION TO
20 THAT FILING;

21 (B) A STATEMENT THAT A FILING CONTAINING ALL OF THE
22 INFORMATION REQUIRED TO BE INCLUDED UNDER THE APPLICABLE
23 SECTION OR SECTIONS OF ARTICLES 101 TO 117 OF THIS TITLE 7 TO GIVE
24 EFFECT TO THE DEFECTIVE CORPORATE ACTION IS ATTACHED AS AN
25 EXHIBIT TO THE ARTICLES OF AMENDMENT; AND

26 (C) THE DATE AND TIME THAT THE FILING IS DEEMED TO HAVE
27 BECOME EFFECTIVE; OR

1 (III) IF A FILING WAS NOT PREVIOUSLY MADE WITH RESPECT TO THE
2 DEFECTIVE CORPORATE ACTION AND THE DEFECTIVE CORPORATE ACTION
3 RATIFIED UNDER SUBSECTION (2) OF THIS SECTION WOULD HAVE REQUIRED
4 A FILING UNDER ANY OTHER SECTION OF ARTICLES 101 TO 117 OF THIS
5 TITLE 7, THE ARTICLES OF AMENDMENT MUST SET FORTH:

6 (A) A STATEMENT THAT A FILING CONTAINING ALL OF THE
7 INFORMATION REQUIRED TO BE INCLUDED UNDER THE APPLICABLE
8 SECTION OR SECTIONS OF ARTICLES 101 TO 117 OF THIS TITLE 7 TO GIVE
9 EFFECT TO THE DEFECTIVE CORPORATE ACTION IS ATTACHED AS AN
10 EXHIBIT TO THE ARTICLES OF AMENDMENT; AND

11 (B) THE DATE AND TIME THAT THE FILING IS DEEMED TO HAVE
12 BECOME EFFECTIVE.

13 (7) **Judicial proceedings regarding validity of corporate**
14 **actions.** (a) UPON APPLICATION BY THE CORPORATION, ANY SUCCESSOR
15 ENTITY TO THE CORPORATION, A DIRECTOR OF THE CORPORATION, ANY
16 BENEFICIAL OWNER OF THE CORPORATION, INCLUDING ANY SUCH
17 BENEFICIAL OWNER AS OF THE DATE OF THE DEFECTIVE CORPORATE
18 ACTION RATIFIED UNDER SUBSECTION (2) OF THIS SECTION, OR ANY OTHER
19 PERSON CLAIMING TO BE SUBSTANTIALLY AND ADVERSELY AFFECTED BY
20 A RATIFICATION UNDER SUBSECTION (2) OF THIS SECTION, THE COURT
21 AUTHORIZED TO ACT UNDER SECTION 7-107-103 MAY:

22 (I) DETERMINE THE VALIDITY AND EFFECTIVENESS OF ANY
23 CORPORATE ACTION OR DEFECTIVE CORPORATE ACTION;

24 (II) DETERMINE THE VALIDITY AND EFFECTIVENESS OF ANY
25 RATIFICATION UNDER SUBSECTION (2) OF THIS SECTION;

26 (III) DETERMINE THE VALIDITY OF ANY PUTATIVE SHARES; AND

27 (IV) MODIFY OR WAIVE ANY OF THE PROCEDURES SPECIFIED IN

1 SUBSECTION (2) OR (3) OF THIS SECTION TO RATIFY A DEFECTIVE
2 CORPORATE ACTION.

3 (b) IN CONNECTION WITH AN ACTION UNDER THIS SECTION, THE
4 COURT MAY MAKE SUCH FINDINGS OR ORDERS, AND TAKE INTO ACCOUNT
5 ANY FACTORS OR CONSIDERATIONS, REGARDING SUCH MATTERS AS IT
6 DEEMS PROPER UNDER THE CIRCUMSTANCES.

7 (c) SERVICE OF PROCESS OF THE APPLICATION UNDER SUBSECTION
8 (7)(a) OF THIS SECTION ON THE CORPORATION MAY BE MADE IN ANY
9 MANNER PROVIDED BY STATUTE OF THIS STATE OR BY RULE OF THE
10 APPLICABLE COURT FOR SERVICE ON THE CORPORATION, AND NO OTHER
11 PARTY NEED BE JOINED IN ORDER FOR THE COURT TO ADJUDICATE THE
12 MATTER. IN AN ACTION FILED BY THE CORPORATION, THE COURT MAY
13 REQUIRE NOTICE OF THE ACTION BE PROVIDED TO OTHER PERSONS
14 SPECIFIED BY THE COURT AND PERMIT SUCH OTHER PERSONS TO
15 INTERVENE IN THE ACTION.

16 (d) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION OR
17 OTHERWISE UNDER APPLICABLE LAW, ANY ACTION ASSERTING THAT THE
18 RATIFICATION OF A DEFECTIVE CORPORATE ACTION AND ANY PUTATIVE
19 SHARES ISSUED AS A RESULT OF THE DEFECTIVE CORPORATE ACTION
20 SHOULD NOT BE EFFECTIVE, OR SHOULD BE EFFECTIVE ONLY ON CERTAIN
21 CONDITIONS, MUST BE BROUGHT WITHIN ONE HUNDRED TWENTY DAYS
22 AFTER THE VALIDATION EFFECTIVE TIME.

23 (8) **Definitions.** AS USED IN THIS SECTION:

24 (a) "CORPORATE ACTION" MEANS ANY ACTION TAKEN BY OR ON
25 BEHALF OF THE CORPORATION, INCLUDING ANY ACTION TAKEN BY THE
26 INCORPORATOR, THE BOARD OF DIRECTORS, A COMMITTEE OF THE BOARD
27 OF DIRECTORS, AN OFFICER OR AGENT OF THE CORPORATION, OR THE

1 SHAREHOLDERS.

2 (b) "DATE OF THE DEFECTIVE CORPORATE ACTION" MEANS THE
3 DATE, OR THE APPROXIMATE DATE IF THE EXACT DATE IS UNKNOWN, ON
4 WHICH THE DEFECTIVE CORPORATE ACTION WAS PURPORTED TO HAVE
5 BEEN TAKEN.

6 (c) "DEFECTIVE CORPORATE ACTION" MEANS:

7 (I) ANY CORPORATE ACTION PURPORTEDLY TAKEN THAT IS, AND
8 AT THE TIME THE CORPORATE ACTION WAS PURPORTEDLY TAKEN WOULD
9 HAVE BEEN, WITHIN THE POWER OF THE CORPORATION, WITHOUT REGARD
10 TO THE FAILURE OF AUTHORIZATION IDENTIFIED IN SUBSECTION (2)(a) OF
11 THIS SECTION, BUT IS VOID OR VOIDABLE DUE TO A FAILURE OF
12 AUTHORIZATION; AND

13 (II) AN OVERISSUE.

14 (d) "FAILURE OF AUTHORIZATION" MEANS THE FAILURE TO
15 AUTHORIZE, APPROVE, OR OTHERWISE EFFECT A CORPORATE ACTION IN
16 COMPLIANCE WITH ANY OF THE FOLLOWING, IF AND TO THE EXTENT THE
17 FAILURE WOULD RENDER THE CORPORATE ACTION VOID OR VOIDABLE:

18 (I) ARTICLES 101 TO 117 OF THIS TITLE 7;

19 (II) THE ARTICLES OF INCORPORATION OR BYLAWS;

20 (III) A CORPORATE RESOLUTION OR ANY PLAN OR AGREEMENT TO
21 WHICH THE CORPORATION IS A PARTY; OR

22 (IV) THE DISCLOSURE SET FORTH IN ANY PROXY OR CONSENT
23 SOLICITATION STATEMENT.

24 (e) "OVERISSUE" MEANS THE PURPORTED ISSUANCE OF:

25 (I) SHARES OF A CLASS OR SERIES IN EXCESS OF THE NUMBER OF
26 SHARES OF A CLASS OR SERIES THE CORPORATION HAS THE POWER TO ISSUE
27 UNDER SECTION 7-106-101 AT THE TIME OF THE ISSUANCE; OR

1 (II) SHARES OF ANY CLASS OR SERIES THAT ARE NOT THEN
2 AUTHORIZED FOR ISSUANCE BY THE ARTICLES OF INCORPORATION.

3 (f) "PUTATIVE SHARES" MEANS THE SHARES OF ANY CLASS OR
4 SERIES, INCLUDING SHARES ISSUED UPON THE EXERCISE OF RIGHTS,
5 OPTIONS, WARRANTS, OR OTHER SECURITIES CONVERTIBLE INTO SHARES
6 OF THE CORPORATION, OR INTERESTS WITH RESPECT TO THE SHARES, THAT
7 WERE CREATED OR ISSUED AS A RESULT OF A DEFECTIVE CORPORATE
8 ACTION, THAT:

9 (I) BUT FOR ANY FAILURE OF AUTHORIZATION, WOULD CONSTITUTE
10 VALID SHARES; OR

11 (II) CANNOT BE DETERMINED BY THE BOARD OF DIRECTORS TO BE
12 VALID SHARES.

13 (g) (I) "VALIDATION EFFECTIVE TIME", WITH RESPECT TO ANY
14 DEFECTIVE CORPORATE ACTION RATIFIED UNDER THIS SECTION, MEANS
15 THE LATER OF:

16 (A) THE TIME AT WHICH THE RATIFICATION OF THE DEFECTIVE
17 CORPORATE ACTION IS APPROVED BY THE SHAREHOLDERS OR, IF APPROVAL
18 OF SHAREHOLDERS IS NOT REQUIRED, THE TIME AT WHICH THE NOTICE
19 REQUIRED BY SUBSECTION (4) OF THIS SECTION TAKES EFFECT IN
20 ACCORDANCE WITH SECTION 7-101-402; AND

21 (B) THE TIME AT WHICH ANY ARTICLES OF AMENDMENT FILED IN
22 ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION BECOME EFFECTIVE.

23 (II) THE VALIDATION EFFECTIVE TIME IS NOT AFFECTED BY THE
24 FILING OR PENDENCY OF A JUDICIAL PROCEEDING UNDER SUBSECTION (7)
25 OF THIS SECTION OR OTHERWISE, UNLESS OTHERWISE ORDERED BY THE
26 COURT.

27 (h) "VALID SHARES" MEANS THE SHARES OF ANY CLASS OR SERIES

1 THAT HAVE BEEN DULY AUTHORIZED AND VALIDLY ISSUED IN
2 ACCORDANCE WITH ARTICLES 101 TO 117 OF THIS TITLE 7, INCLUDING AS
3 A RESULT OF RATIFICATION OR VALIDATION UNDER THIS SECTION.

4 **SECTION 2. Act subject to petition - effective date -**
5 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
6 the expiration of the ninety-day period after final adjournment of the
7 general assembly (August 5, 2020, if adjournment sine die is on May 6,
8 2020); except that, if a referendum petition is filed pursuant to section 1
9 (3) of article V of the state constitution against this act or an item, section,
10 or part of this act within such period, then the act, item, section, or part
11 will not take effect unless approved by the people at the general election
12 to be held in November 2020 and, in such case, will take effect on the
13 date of the official declaration of the vote thereon by the governor.

14 (2) This act applies to conduct occurring on or after the applicable
15 effective date of this act.