

February 21, 1969

SENATE FILE 292

Passed on File

*Ordinance 2-24, Page 3-11
Plan " 4-30, Page 1-12-70, adopted 1-14*

By STANLEY and SHURLEY

Passed Senate, Date *4-25-69* Passed House, Date *1-15-70*

Vote: Ayes *49* Nays *0* Vote: Ayes *102* Nays *1*

Approved *Jan. 20, 1970*

A BILL FOR

- 1 An Act relating to indemnification of officers, directors,
- 2 employees, and agents of business corporations.
- 3 *Be It Enacted by the General Assembly of the State of Iowa:*
- 4 Section 1. Section two (2) of chapter three hundred sixty-
- 5 three (363), Acts of the Sixty-second General Assembly, is
- 6 repealed.
- 7 Sec. 2. Section four hundred ninety-six A point four
- 8 (496A.4), Code 1966, is amended by adding the following new
- 9 subsection:
- 10 "To make indemnification to the following extent and under
- 11 the following circumstances:
- 12 a. To indemnify any person who was or is a party or is
- 13 threatened to be made a party to any threatened, pending, or
- 14 completed action, suit, or proceeding, whether civil, criminal,
- 15 administrative, or investigative (other than an action by or in
- 16 the right of the corporation) by reason of the fact that he is
- 17 or was a director, officer, employee, or agent of the corpora-
- 18 tion, or is or was serving at the request of the corporation
- 19 as a director, officer, employee, or agent of another corpora-
- 20 tion, partnership, joint venture, trust or enterprise, against
- 21 expenses (including attorneys' fees), judgments, fines, and
- 22 amounts paid in settlement actually and reasonably incurred by
- 23 him in connection with such action, suit, or proceeding if he
- 24 acted in good faith and in a manner he reasonably believed to be
- 25 in or not opposed to the best interests of the corporation, and,

1 with respect to any criminal action or proceeding, had no
2 reasonable cause to believe his conduct was unlawful. The
3 termination of any action, suit, or proceeding by judgment,
4 order, settlement, conviction, or upon a plea of nolo con-
5 tendere or its equivalent, shall not, of itself, create a
6 presumption that the person did not act in good faith and in
7 a manner which he reasonably believed to be in or not opposed
8 to the best interests of the corporation, and, with respect
9 to any criminal action or proceeding, had reasonable cause
10 to believe that his conduct was unlawful.

11 b. To indemnify any person who was or is a party or is
12 threatened to be made a party to any threatened, pending, or
13 completed action or suit by or in the right of the corpor-
14 ation to procure a judgment in its favor by reason of the
15 fact that he is or was a director, officer, employee, or
16 agent of the corporation, or is or was serving at the request
17 of the corporation as a director, officer, employee, or agent
18 of another corporation, partnership, joint venture, trust, or
19 another enterprise against expenses (including attorneys' fees)
20 actually and reasonably incurred by him in connection with the
21 defense or settlement of such action or suit if he acted in
22 good faith and in a manner he reasonably believed to be in or
23 not opposed to the best interests of the corporation and ex-
24 cept that no indemnification shall be made in respect of any
25 claim, issue, or matter as to which such person shall have been
26 adjudged to be liable for negligence or misconduct in the per-
27 formance of his duty to the corporation unless and only to the
28 extent that the court in which such action or suit was brought
29 shall determine upon application that, despite the adjudica-
30 tion of liability but in view of all circumstances of the case,
31 such person is fairly and reasonably entitled to indemnity for
32 such expenses which such court shall deem proper.

33 c. To the extent that a director, officer, employee, or
34 agent of a corporation has been successful on the merits or
35 otherwise in defense of any action, suit, or proceeding re-

1 ferred to in paragraphs "a" and "b", or in defense of any
2 claim, issue, or matter therein, he shall be indemnified
3 against expenses (including attorneys' fees) actually and
4 reasonably incurred by him in connection therewith.

5 d. Any indemnification under paragraphs "a" and "b" (unless
6 ordered by a court) shall be made by the corporation only as
7 authorized in the specific case upon a determination that the
8 indemnification of the director, officer, employee, or agent
9 is proper in the circumstances because he has met the appli-
10 cable standard of conduct set forth in paragraphs "a" and "b".
11 Such determination shall be made (1) by the board of directors
12 by a majority vote of a quorum consisting of directors who were
13 not parties to such action, suit, or proceeding, or (2) if such
14 a quorum is not obtainable, or, even if obtainable, a quorum of
15 disinterested directors so directs, by independent legal coun-
16 sel in a written opinion, or (3) by the shareholders.

17 e. Expenses incurred in defending a civil or criminal action,
18 suit, or proceeding may be paid by the corporation in advance
19 of the final disposition of such action, suit, or proceeding as
20 authorized in the manner provided in paragraph "d" upon receipt
21 of an undertaking by or on behalf of the director, officer, em-
22 ployee, or agent to repay such amount unless it shall ultimately
23 be determined that he is entitled to be indemnified by the cor-
24 poration as authorized in this section.

25 f. The indemnification provided by this section shall not
26 be deemed exclusive of any other rights to which those indemni-
27 fied may be entitled under any bylaw, agreement, vote of share-
28 holders or disinterested directors, or otherwise, both as to
29 action in his official capacity and as to action in another
30 capacity while holding such office, and shall continue as to
31 a person who has ceased to be a director, officer, employee, or
32 agent and shall inure to the benefit of the heirs, executors,
33 and administrators of such a person.

34 g. A corporation shall have power to purchase and maintain
35 insurance on behalf of any person who is or was a director,

- 1 officer, employee, or agent of the corporation, or is or was
- 2 serving at the request of the corporation as a director,
- 3 officer, employee, or agent of another corporation, partner-
- 4 ship, joint venture, trust, or other enterprise against any
- 5 liability asserted against him and incurred by him in any such
- 6 capacity or arising out of his status as such, whether or not
- 7 the corporation would have the power to indemnify him against
- 8 such liability under the provisions of this section.

EXPLANATION OF SENATE FILE 292

The Iowa Business Corporation Act was enacted in 1959 based on the Model Business Corporation Act which was prepared by a committee of the American Bar Association. In 1966 the American Bar Committee recommended changes to that part of the Model Act which correspond to Sec. 496A.4(15) of the Iowa Business Corporation Act. House File 563 enacted as Chapter 363, Acts of the 62nd General Assembly, was originally intended to make the Iowa law correspond more closely to the Model Act on this subject, but as finally enacted, it contains several amendments which caused it to depart in some important details from the provisions of the Model Act. This bill would make this part of the Iowa Business Corporation Act relating to indemnification identical with the latest version of the Model Act.

These provisions are entirely optional with each corporation. A corporation which did not care to take advantage of them and to authorize indemnification would not be required to do so.

A corporation which desires the benefit of this indemnification statute can organize under the laws of one of the many states where the statute is in force. It can then transact business in Iowa as a foreign corporation. Enactment of this bill would remove one reason why Iowa business might wish to incorporate under the laws of another state.