

February 28, 1969

SENATE FILE 364

Passed on File

Judiciary 3-26
See " 4-30, Pass 1-12-70, adopted 1-14 By STANLEY and SHIRLEY

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

Vote: Ayes *44* Nays *0* Vote: Ayes *107* Nays *0*

Approved *Jan. 26, 1970*

Passed as amended 1-20
61-0

A BILL FOR

- 1 An Act relating to nonprofit corporations.
- 2 *Be It Enacted by the General Assembly of the State of Iowa:*
- 3 Section 1. Section three hundred seventy-five point one
- 4 (375.1), Code 1966, is amended by inserting in line ten (10)
- 5 after the word and figure "chapter 504" the words "or
- 6 chapter five hundred four A (504A)".
- 7 Sec. 2. Section five hundred four A point ten (504A.10),
- 8 Code 1966, is amended by striking from line sixteen (16) the
- 9 words "or with any clerk" and inserting in lieu thereof, the
- 10 words "his deputy, or with any person".
- 11 Sec. 3. Section five hundred four A point seventy-four
- 12 (504A.74), Code 1966, is amended as follows:
- 13 1. By striking from line twenty-one (21) the words "or with
- 14 any clerk" and inserting in lieu thereof the words "his deputy,
- 15 or with any person".
- 16 2. By adding after the third sentence in the second para-
- 17 graph the following sentence:
- 18 "Process, notice or demand served on the secretary of state
- 19 upon a foreign corporation which has withdrawn from this state
- 20 shall be mailed in the manner provided by this section to the
- 21 corporation at the address set forth in its application for
- 22 withdrawal."
- 23 Sec. 4. Section five hundred four A point eighty (504A.80),
- 24 Code 1966, is amended by striking from lines thirty-two (32)
- 25 and thirty-three (33) the words "its registered office in this

1 state" and inserting in lieu thereof the words "the principal
2 office of the corporation in the state or country under the
3 laws of which it is incorporated".

4 Sec. 5. Section five hundred four A point eighty-one
5 (504A.81), Code 1966, is amended by striking from lines six
6 (6) and seven (7) the words "its registered office in this
7 state" and inserting in lieu thereof the words "the principal
8 office of the corporation in the state or country under the
9 laws of which it is incorporated".

10 Sec. 6. Section five hundred four A point eighty-four
11 (504A.84), Code 1966, is amended as follows:

12 1. By striking from line five (5), the word "first"
13 and inserting in lieu thereof the word "thirty-first".

14 2. By striking from line eight (8), the second word "first"
15 and inserting in lieu thereof the word "thirty-first".

16 3. By striking the second sentence and inserting in lieu
17 thereof the following:

18 "Such report shall be deemed filed within the required time
19 if deposited in the United States mail with postage prepaid
20 in a sealed envelope, properly addressed and postmarked on or
21 prior to the thirty-first day of March.

22 4. By inserting after the word "state" in line twelve (12)
23 the following:

24 ", and except that if the existence of such domestic
25 corporation or the authority of such foreign corporation to
26 conduct affairs in this state began in December of any year,
27 its first annual report shall be filed between the first day
28 of January and the thirty-first day of March of the second year
29 succeeding the calendar year in which such corporate existence
30 or authority to conduct affairs began".

31 Sec. 7. Section five hundred four A point eighty-five
32 (504A.85), Code 1966, is amended by adding to subsection eight
33 (8) the following sentence:

34 "If a single statement of change changes the address of
35 the registered office of more than one corporation, the fee

1 shall be one dollar for each corporation the address of whose
2 registered office is changed thereby.”

3 Sec. 8. Section five hundred four A point eighty-seven
4 (504A.87), Code 1966, is amended by adding thereto the following:

5 “The secretary of state may cancel the certificate of incorpo-
6 ration of any corporation that fails or refuses to file its
7 annual report for any year prior to the first day of June of
8 the year in which it is due by issuing a certificate of such
9 cancellation at any time after the expiration of thirty days
10 following the mailing to the corporation of notice of the
11 certification to the attorney general of the failure of the
12 corporation to file such annual report as required by section
13 five hundred four A point fifty-four (504A.54) of the Code,
14 provided the corporation has not filed such annual report prior
15 to the issuance of the certificate of cancellation. Upon
16 the issuance of the certificate of cancellation, the secretary
17 of state shall send the certificate to the corporation at
18 its registered office and shall retain a copy thereof in
19 the permanent records of his office.

20 Upon the issuance of the certificate of cancellation, the
21 corporate existence of the corporation shall terminate, subject
22 to right of reinstatement as herein provided, and the corpo-
23 ration shall cease to conduct its affairs, except insofar
24 as may be necessary for the ‘winding up’ thereof or for se-
25 curing reinstatement and the right of the corporation to
26 the use of its name shall cease and such name shall thereupon
27 be available to any other corporation or foreign corporation
28 or for reservation as provided in this chapter. The
29 cancellation of the certificate of incorporation of a corpora-
30 tion shall not take away or impair any remedy available to or
31 against such corporation, its directors, officers or members
32 for any right or claim existing or any liability incurred
33 prior to such cancellation, but no action or proceeding
34 thereon may be prosecuted by such corporation until it shall
35 have been reinstated. Any such action or proceeding against

1 such corporation may be defended by the corporation, if
2 it has not been reinstated, in its corporate name to which
3 there shall be appended the word "canceled" followed by the
4 date of the issuance of the certificate of cancellation. Unless
5 the corporation is reinstated, the corporation, upon the
6 issuance of the certificate of cancellation, shall proceed to
7 liquidate its affairs as provided by this chapter in cases
8 of voluntary dissolution. However, the district court in a
9 suit in equity shall have full power to liquidate the assets
10 and affairs of such a corporation upon application by such
11 corporation or in a suit by a member or directors or creditor
12 of such corporation when such corporation fails to proceed
13 promptly with such liquidation or to make application to the
14 court therefor. A copy of the certificate of cancellation,
15 certified by the secretary of state, shall be taken and
16 received in all courts as prima-facie evidence of the cancel-
17 lation of the certificate of incorporation as stated therein.

18 If the certificate of incorporation of a corporation has
19 been canceled by the secretary of state as provided in this
20 section for failure to file an annual report, such corpora-
21 tion shall be reinstated by the secretary of state at any
22 time within five years following the date of the issuance by
23 the secretary of state of the certificate of cancellation
24 upon:

25 1. The delivery by the corporation to the secretary of
26 state for filing in his office of an application for
27 reinstatement, executed by its president or vice-president
28 and by its secretary or an assistant secretary and verified
29 by one of the officers signing such application, which shall
30 set forth:

31 a. The date of the issuance by the secretary of state
32 of the certificate of cancellation;

33 b. The name of the corporation at the time of the issuance
34 of the certificate of cancellation and, if, at the time of the
35 filing of the application for reinstatement, another corporation

1 or foreign corporation is entitled to use such name or such
2 name is then reserved or registered as provided in this
3 chapter, the name of the corporation as changed, which shall
4 be a name then available under the laws of this state; and

5 c. The address, including street and number, if any, of
6 the registered office of the corporation upon the reinstatement
7 thereof, which shall be located in the same county as the
8 county in which the registered office of the corporation
9 was located at the time of the issuance of the certificate
10 of cancellation, and the name of its registered agent or
11 agents at such address upon the reinstatement of the
12 corporation;

13 2. The filing with the secretary of state by the corporation
14 of all annual reports then due and theretofore becoming
15 due;

16 3. The payment to the secretary of state by the corporation
17 of all annual license fees and penalties then due and
18 theretofore becoming due and an additional penalty of twenty-
19 five dollars.

20 The secretary of state, upon filing the application for
21 reinstatement, shall issue a certificate of reinstatement
22 and file and record the same in his office and, if the application
23 for reinstatement shall set forth a change in the
24 name of the corporation, as required by this section, the
25 same shall constitute an amendment to the articles of incorporation
26 of the corporation and the certificate of reinstatement shall set forth
27 such fact and shall be filed and recorded in the office of the county
28 recorder. Upon the issuance of the certificate of reinstatement, the
29 corporation shall be entitled to continue to act as a
30 corporation for the unexpired portion of its corporate
31 period as fixed by its articles of incorporation, except,
32 that the corporation shall not be entitled to use the name of
33 the corporation at the time of the issuance of the certificate
34 of cancellation if another corporation or foreign
35

- 1 corporation is entitled to use such name or such name is
- 2 then reserved as provided in this chapter."

EXPLANATION OF SENATE FILE 364

This bill was prepared by the same Iowa State Bar Association Committee on Corporation and Business Law that prepared the Iowa Non-profit Corporation Act which was enacted by the 1965 Iowa legislature. This bill aims to make changes which approximately four years of experience have indicated are advisable. The bill contains suggestions recommended by the Secretary of State as well as suggestions from the committee which prepared the bill enacted in 1965. The changes which it would make are of a technical nature and the chief result would be smoother and more efficient administration of the law in the office of the Secretary of State.

FISCAL NOTE

SENATE FILE 364

Date prepared April 1, 1969

Requested by Senator Stanley.

Prepared in regard to a bill for an act relating to nonprofit corporations. Senate File 364.

Following is the fiscal effect in dollars of the legislative proposal as required by Rule 47: No cost estimate available.

Filed
April 3, 1969

GERRY D. RANKIN
Legislative Fiscal Director

HOUSE AMENDMENT TO SENATE FILE 364

- 1 Amend Senate File 364, page 3, by adding at the end of
- 2 Sec. 7 the following paragraph:
- 3 "Section five hundred four A point eighty-five (504A.85),
- 4 Code 1966, is hereby further amended by striking from line
- 5 one (1) of subsection seven (7) the word 'or' and inserting
- 6 in lieu thereof the word 'of'."

Filed - *House concurred 1-20*
January 19, 1970

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- 1 Amend Senate File 364, page 3, by adding at the end of Sec. 7
 - 2 the following paragraph:
 - 3 Section five hundred four A point eighty-five (504A.85),
 - 4 Code 1966, is hereby further amended by striking from line one (1)
 - 5 of subsection seven (7) the word "or" and inserting in lieu
 - 6 thereof the word "of".

Filed - *Adopted 1-15*
January 14, 1970

KREAMER of Polk