

FILED MAR 1 1972

SENATE FILE 1191

BY COMMITTEE ON JUDICIARY

Passed Senate, Date 3-13-72 Passed House, Date 3-23-72
Vote: Ayes 36 Nays 0 Vote: Ayes 80 Nays 0

Approved _____

Motion to recommit filed 3-14 (373) w.d. 3-17 (1017)

Passed Senate also House amendments

3-24-72

aye 43 nays 0

A BILL FOR

1 An Act relating to business corporations.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section four hundred ninety-six A point four
2 (496A.4), subsection six (6), Code 1971, is amended to read
3 as follows:

4 6. To lend money ~~to,~~ and ~~otherwise~~ use its credit to
5 assist its employees, ~~officers and directors.~~

6 Sec. 2. Section four hundred ninety-six A point seven
7 (496A.7), subsection three (3), Code 1971, is amended to read
8 as follows:

9 3. Shall not be the same as, or deceptively similar to,
10 the name of any domestic corporation existing under the laws
11 of this state or any foreign corporation authorized to trans-
12 act business in this state, or a name the exclusive right
13 to which is, at the time, reserved in the manner provided
14 in this chapter, or the name of a corporation which has in
15 effect a registration of its corporate name as provided in
16 this chapter, or an assumed name which has been adopted by
17 a domestic or a foreign corporation for use in this state
18 in the manner provided by this chapter except that this pro-
19 vision shall not apply if the applicant files with the sec-
20 retary of state either of the following:

21 a. The written consent of such other corporation or holder
22 of a reserved or registered name to use the same or deceptively
23 similar name and one or more words are added to make such
24 name distinguishable from the other name.

25 b. A certified copy of final decree of a court of compe-
26 tent jurisdiction establishing the prior right of the appli-
27 cant to the use of such name in this state. A corporation
28 with which another domestic or foreign corporation is merged,
29 or which is formed by the reorganization or consolidation
30 of one or more domestic or foreign corporations or upon a
31 sale, lease or other disposition to or exchange with a do-
32 mestic corporation of all or substantially all the assets
33 of another domestic or foreign corporation, including its
34 name or assumed name, may have the same name as that used
35 in this state by any of such corporations if such other cor-

1 poration was organized under the laws of or is authorized
2 to transact business in this state.

3 Sec. 3. Section four hundred ninety-six A point thirteen
4 (496A.13), unnumbered paragraph one (1), Code 1971, is amended
5 to read as follows:

6 The registered agent so appointed by a corporation, or
7 if more than one registered agent has been appointed by the
8 corporation then any one of such agents, shall be an agent
9 of such corporation upon whom any process, notice or demand
10 required or permitted by law to be served upon the corpora-
11 tion may be served.

12 Sec. 4. Section four hundred ninety-six A point fourteen
13 (496A.14), subsection five (5), Code 1971, is amended to read
14 as follows:

15 5. Convertible into shares of any other class or into
16 shares of any series of the same or any other class, except
17 a class having prior or superior rights and preferences as
18 to dividends or distribution of assets upon liquidation, but
19 shares without par value shall not be converted into shares
20 with par value unless that part of the stated capital of the
21 corporation represented by such shares without par value is,
22 at the time of conversion, at least equal to the aggregate
23 par value of the shares into which the shares without par
24 value are to be converted or the amount of any such defi-
25 ciency is transferred from surplus to stated capital.

26 Sec. 5. Section four hundred ninety-six A point twenty-
27 two (496A.22), unnumbered paragraph one (1), Code 1971, is
28 amended to read as follows:

29 The shares of a corporation shall be represented by cer-
30 tificates signed by such officers, employees or agents as
31 are authorized by the articles of incorporation or bylaws
32 to sign. If no contrary provision is made in the articles
33 or bylaws, such certificates shall be signed by the presi-
34 dent or a vice-president and the secretary or an assistant
35 secretary of the corporation, and may be sealed with the seal

1 of the corporation or a facsimile thereof. The signatures
2 of the president or vice-president and the secretary or
3 assistant secretary or other persons signing for the
4 corporation upon a certificate may be facsimiles ~~if~~ if
5 the certificate is countersigned by a transfer agent, or
6 registered by a registrar, ~~other-than-the-corporation-itself~~
7 ~~or-an-employee-of-the-corporation~~ the signatures of the persons
8 signing for such transfer agent or registrar also may be
9 facsimiles. In case any officer or other authorized person
10 who has signed or whose facsimile signature has been placed
11 upon such certificate for the corporation shall have ceased
12 to be such officer or employee or agent before such certificate
13 is issued, it may be issued by the corporation with the same
14 effect as if he were such officer or employee or agent at
15 the date of its issue.

16 Sec. 6. Section four hundred ninety-six A point twenty-
17 five (496A.25), Code 1971, is amended by striking the section
18 and inserting in lieu thereof the following:

19 490A.25 SHAREHOLDER'S PREEMPTIVE RIGHTS. Except to the
20 extent limited or denied by this section or by the articles
21 of incorporation, shareholders shall have a preemptive right
22 to acquire unissued or treasury shares of securities conver-
23 tible into such shares or carrying a right to subscribe to
24 or acquire shares.

25 Unless otherwise provided in the articles of incorpora-
26 tion:

27 1. No preemptive right shall exist:

28 a. To acquire any shares issued to directors, officers
29 or employees pursuant to approval by the affirmative vote
30 of the holders of a majority of the shares entitled to vote
31 thereon or when authorized by and consistent with a plan ap-
32 proved by such a vote of shareholders.

33 b. To acquire any shares sold otherwise than for cash.

34 2. Holders of shares of any class that is preferred or
35 limited as to dividends or assets shall not be entitled to

1 any preemptive right.

2 3. Holders of shares of common stock shall not be entitled
3 to any preemptive right to shares of any class that is pre-
4 ferred or limited as to dividends or assets or to any obliga-
5 tions, unless convertible into shares of common stock or car-
6 rying a right to subscribe to or acquire shares of common
7 stock.

8 4. Holders of common stock without voting power shall
9 have no preemptive right to shares of common stock with vot-
10 ing power.

11 5. The preemptive right shall be only an opportunity to
12 acquire shares or other securities under such terms and con-
13 ditions as the board of directors may fix for the purpose
14 of providing a fair and reasonable opportunity for the exer-
15 cise of such right.

16 Sec. 7. Section four hundred ninety-six A point twenty-
17 seven (496A.27), Code 1971, is amended by striking the section
18 and inserting in lieu thereof the following:

19 496A.27 MEETINGS OF SHAREHOLDERS. Meetings of share-
20 holders may be held at such place within or without this state
21 as may be stated in or fixed in accordance with the bylaws.
22 If no other place is stated or fixed, meetings shall be held
23 at the registered office of the corporation.

24 An annual meeting of the shareholders shall be held at
25 such time as may be stated in or fixed in accordance with
26 the bylaws. If the annual meeting is not held within any
27 eighteen-month period the district court of the county where-
28 in the registered office of the corporation is located may,
29 upon the written application of any shareholder, order an
30 annual meeting to be held.

31 Sec. 8. Section four hundred ninety-six A point forty
32 (496A.40), Code 1971, is amended by adding the following new
33 paragraph:

34 "Unless otherwise restricted by the articles of incorpo-
35 ration or bylaws, members of the board of directors of any

1 corporation, or any committee designated by such board, may
2 participate in a meeting of such board or committee by con-
3 ference telephone or similar communications equipment by means
4 of which all persons participating in the meeting can hear
5 each other, and participation in a meeting pursuant to this
6 provision shall constitute presence in person at such meeting."

7 Sec. 9. Section four hundred ninety-six A point forty-
8 three (496A.43), Code 1971, is amended by adding the following
9 new paragraph:

10 "A corporation shall not lend money to or use its credit
11 to assist its directors without authorization in the particu-
12 lar case by its shareholders, but may lend money to and use
13 its credit to assist any employee of the corporation or of
14 a subsidiary including any such employee who is a director
15 of the corporation, if the board of directors decides that
16 such loan or assistance may benefit the corporation."

17 Sec. 10. Section four hundred ninety-six A point forty-
18 five (496A.45), Code 1971, is amended by adding the following
19 new paragraph:

20 "Subject to any restrictions contained in its articles
21 of incorporation or bylaws, the signatures of the officers
22 of any corporation organized under this chapter, on the bonds,
23 notes, debentures or other evidences of indebtedness of any
24 such corporation may be facsimiles and such facsimiles on
25 such instruments shall be deemed the equivalent of and con-
26 stitute the written signatures of such officers for all pur-
27 poses including, but not limited to, the full satisfaction
28 of any signature requirements of the laws of this state on
29 the bonds, notes, debentures and other evidence of indebted-
30 ness of any such corporation."

31 Sec. 11. Section four hundred ninety-six A point fifty-
32 six (496A.56), subsection one (1), Code 1971, is amended by
33 striking the subsection and inserting in lieu thereof the
34 following:

35 1. The board of directors shall adopt a resolution set-

1 ting forth the proposed amendment and, if shares have been
2 issued, directing that it be submitted to a vote of a meet-
3 ing of shareholders, which may be either the annual or a spe-
4 cial meeting. If no shares have been issued, the amendment
5 shall be adopted by resolution of the board of directors and
6 the provisions for adoption by shareholders shall not apply.
7 The resolution may incorporate the proposed amendment in re-
8 stated articles of incorporation which contain a statement
9 that except for the designated amendment the restated arti-
10 cles of incorporation correctly set forth without change the
11 corresponding provisions of the articles of incorporation
12 as amended, and that the restated articles of incorporation
13 together with the designated amendment supersede the original
14 articles of incorporation and all prior amendments. Unless
15 otherwise provided in the articles of incorporation, upon
16 the written request of the holders of at least five percent
17 of the shares entitled to vote on amendments to articles of
18 incorporation, the board of directors shall adopt a resolution
19 setting forth the amendment proposed by such shareholders
20 and directing that it be submitted to the next meeting of
21 the shareholders held not less than ninety days after the
22 date of the filing of the request of the shareholders with
23 the secretary of the corporation.

24 Sec. 12. Section four hundred ninety-six A point fifty-
25 eight (496A.58), subsections three (3) and five (5), Code
26 1971, are amended to read as follows:

27 3. The date of the adoption of the amendment by the share-
28 holders or by the board of directors where no shares have
29 been issued.

30 5. The number of shares voted for and against such amend-
31 ment, respectively, and, if the shares of any class are en-
32 titled to vote thereon as a class, the number of shares of
33 each such class voted for and against such amendment, re-
34 spectively or if no shares have been issued, a statement to
35 that effect.

1 Sec. 13. Section four hundred ninety-six A point sixty-
2 one (496A.61), subsection three (3), paragraph "c", Code 1971,
3 is amended by striking the paragraph and inserting in lieu
4 thereof the following:

5 c. The purpose which the corporation is authorized to
6 pursue, or that the purpose which the corporation is autho-
7 rized to pursue is, or include, the transaction of any or
8 all lawful business for which the corporation may be incor-
9 porated under this chapter.

10 Sec. 14. Section four hundred ninety-six A point seventy-
11 two (496A.72), subsection one (1), Code 1971, is amended to
12 read as follows:

13 1. Any corporation owning at least ~~ninety-five~~ ninety
14 percent of the outstanding shares of each class of another
15 corporation may merge such other corporation into itself with-
16 out approval by a vote of the shareholders of either corpora-
17 tion. Its board of directors shall, by resolution, approve
18 a plan of merger setting forth:

19 a. The name of the subsidiary corporation and the name
20 of the corporation owning at least ~~ninety-five~~ ninety per-
21 cent of its shares, which is hereinafter designated as the
22 surviving corporation.

23 b. The manner and basis of converting the shares of the
24 subsidiary corporation into shares, obligations or other se-
25 curities ~~or obligations~~ of the surviving corporation ~~or the~~
26 ~~cash or other consideration to be paid or delivered upon sur-~~
27 ~~render of each share of the subsidiary corporation~~ or of any
28 other corporation, or in whole or in part, into cash or other
29 property. A copy of such plan of merger shall be mailed to
30 each shareholder of record of the subsidiary corporation other
31 than the surviving corporation.

32 ~~A copy of such plan of merger shall be mailed to each~~
33 ~~shareholder of record of the subsidiary corporation other~~
34 ~~than the surviving corporation.~~

35 Sec. 15. Section four hundred ninety-six A point ninety-

1 four (496A.94), subsection one (1), Code 1971, is amended
2 to read as follows:

3 1. In a suit by a shareholder when it is established:

4 a. That the directors are deadlocked in the management
5 of the corporate affairs and the shareholders are unable to
6 break the deadlock, and that irreparable injury to the cor-
7 poration is being suffered or is threatened by reason thereof;
8 or

9 b. That the shareholders are deadlocked in voting power,
10 and have failed, for a period which includes at least two
11 consecutive annual meeting dates, to elect successors to
12 directors whose term has expired or would have expired upon
13 the election of their successors; or

14 b c. That the acts of the directors or those in control
15 of the corporation are illegal, oppressive or fraudulent;
16 or

17 e d. That as shown by the proceedings at any meeting of
18 the shareholders the shareholders are deadlocked in voting
19 power and that irreparable injury to the corporation is being
20 suffered or is threatened by reason thereof; or

21 & e. That the corporate assets are being misapplied or
22 wasted.

23 Sec. 16. Section four hundred ninety-six A point one hun-
24 dred five (496A.105), subsection three (3), unnumbered para-
25 graph one (1), Code 1971, is amended to read as follows:

26 Shall not be the same as, or deceptively similar to, the
27 name of any domestic corporation existing under the laws of
28 this state or any foreign corporation authorized to trans-
29 act business in this state, or a name the exclusive right
30 to which is, at the time, reserved in the manner provided
31 in this chapter, or the name of a corporation which has in
32 effect a registration of its name as provided in this chap-
33 ter, or an assumed name which has been adopted by a domestic
34 or a foreign corporation for use in this state in the man-
35 ner provided by this chapter: except that this provision shall

1 not apply if the foreign corporation applying for a certificate
2 of authority files with the secretary of state any one of
3 the following:

4 a. A resolution of its board of directors adopting a fic-
5 titious name for use in transacting business in this state
6 which fictitious name is not deceptively similar to the name
7 of any domestic corporation or of any foreign corporation
8 authorized to transact business in this state or to any name
9 reserved or registered as provided in this chapter.

10 b. The written consent of such other corporation or holder
11 of a reserved or registered name to use the same or deceptively
12 similar name and one or more words are added to make such
13 name distinguishable from such other name.

14 c. A certified copy of a final decree of a court of com-
15 petent jurisdiction establishing the prior right of such
16 foreign corporation to the use of such name in this state.

17 EXPLANATION

18 This bill updates the business corporations law with amend-
19 ments allowing the use of names of corporations similar to
20 those already in use under certain circumstances, allowing
21 the use of facsimiles for countersignatures on shareholder's
22 certificates, changing shareholder's preemptive rights, re-
23 defining the requirements for shareholder's meetings, allowing
24 participation in boards of directors' meetings by telephone,
25 allowing facsimiles for signatures on bonds of indebtedness,
26 and allowing mergers with corporations ninety percent of whose
27 stock is owned by the merging corporation.

28 The Iowa Business Corporation Act follows closely the Model
29 Business Corporation Act prepared by a committee of the Amer-
30 ican Bar Association. The Model Act has been revised and
31 improved in several sections in the last three years. None
32 of these changes has yet been considered in Iowa. It is be-
33 lieved the Iowa law will be improved by the adoption of some
34 of these amendments to the Model Act and most of the sections
35 of this bill are derived from the recent amendments to the

1 Model Act, although there are a considerable number of changes
2 to the Model Act which are not contained in this bill. This
3 bill contains also several sections recently enacted in other
4 states which sections also are felt to be desirable in Iowa.
5 The general plan and framework of the Iowa Business Corpora-
6 tion Act remains unchanged. This bill is designed only to
7 refine and improve the Iowa law, in line with the latest
8 thinking and experience on these matters.

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LSB 3507
jb/jw/3

Senate

HOUSE AMENDMENT TO SENATE FILE 1191

1 Amend Senate File 1191, as amended and passed
 2 by the Senate, as follows:
 3 1. Page 5, by inserting after line 30 the following
 4 paragraph:
 5 "Special meetings of the shareholders may be
 6 called by the president, the board of directors, the
 7 holders of not less than one-tenth of all the shares
 8 entitled to vote at the meeting, or such other
 9 officers or persons as may be provided in the
 10 articles of incorporation or the bylaws."
 11 2. Page 6, by striking lines 7 through 16 and
 12 inserting in lieu thereof the following:
 13 "Sec. 9. Chapter four hundred ninety-six A
 14 (496A), Code 1971, is amended by adding the
 15 following new section:
 16 LOANS TO EMPLOYEES AND DIRECTORS. A
 17 corporation shall not lend money to or use its
 18 credit to assist its directors without authorization
 19 in the particular case by its shareholders, but may
 20 lend money to and use its credit to assist any
 21 employee of the corporation or of a subsidiary
 22 including any such employee who is a director of
 23 the corporation, if the board of directors decides
 24 that such loan or assistance may benefit the
 25 corporation."

Received from the House
March 24, 1972

Senate consumed 3/24/72 (1161)

1 Amend Senate File 1191 as follows:
 2 1. Page 10, by striking from lines four and five the word
 3 "fictitious" and inserting in lieu thereof the word "assumed".
 4 2. Page 10, by striking from line six the word "fictitious"
 5 and inserting in lieu thereof the word "assumed".

Filed
March 8, 1972 *201-1-3* By DE KOSTER

SENATE FILE 1191

- 1 Amend Senate File 1191, as amended and passed
2 by the Senate, as follows:
3 1. Page 5, by inserting after line 30 the following
4 paragraph:
5 "Special meetings of the shareholders may be
6 called by the president, the board of directors, the
7 holders of not less than one-tenth of all the shares
8 entitled to vote at the meeting, or such other
9 officers or persons as may be provided in the
10 articles of incorporation or the bylaws."
11 2. Page 6, by striking lines 7 through 16 and
12 inserting in lieu thereof the following:
13 Sec. 9. Chapter four hundred ninety-six A,
14 (496A), Code 1971, is amended by adding the
15 following new section:
16 LOANS TO EMPLOYEES AND DIRECTORS. A
17 corporation shall not lend money to or use its
18 credit to assist its directors without authorization
19 in the particular case by its shareholders, but may
20 lend money to and use its credit to assist any
21 employee of the corporation or of a subsidiary
22 including any such employee who is a director of
23 the corporation, if the board of directors decides
24 that such loan or assistance may benefit the
25 corporation."
26 3. Page 6, by striking lines 17 through 30.
27 4. By renumbering the subsequent sections.

Adopted
3/23

} w. d. 3/23 1972

Filed
March 14, 1972

By HILL of Polk