

Senate File 524
Judiciary and Law
Enforcement
Hennessey, Chair
Evans
Woods

1/12/76, Pass per H-5129

FILED MAY 14 1975

SENATE FILE 524

BY COMMITTEE ON JUDICIARY

Passed Senate, Date 6-10-75 (1855) Passed House, Date 2-23-76 (p.612)

Vote: Ayes 47 Nays 0 Vote: Ayes 90 Nays 0

Approved 3-12-76

*Re-passed Senate as amended by House
3-4-76 (p. 737)
44-0*

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 two
2 (496A.2), Code 1975, is amended by adding the following new
3 subsection:

4 NEW SUBSECTION. "Non-admitted organization" means any
5 corporation, bank, trust company, mutual savings bank, savings
6 and loan association, national banking association or insurance
7 company which is organized under the laws of another state
8 and which is not entitled under this chapter to procure a
9 certificate of authority to transact business in this state.

10 Sec. 2. Section four hundred ninety-six A point twenty-
11 five (496A.25), Code 1975, is amended to read as follows:

12 496A.25 SHAREHOLDERS' PRE-EMPTIVE RIGHTS. Except to the
13 extent limited or denied by this section or by the articles
14 of incorporation, shareholders shall have a pre-emptive right
15 to acquire unissued ~~or-treasury~~ shares ~~of~~ or securities
16 convertible into such shares or carrying a right to subscribe
17 to or acquire shares.

18 Unless otherwise provided in the articles of incorporation:

19 1. No pre-emptive right shall exist:

20 a. To acquire any shares issued to directors, officers
21 or employees pursuant to approval by the affirmative vote
22 of the holders of a majority of the shares entitled to vote
23 thereon or when authorized by and consistent with a plan
24 approved by such a vote of shareholders.

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

26 c. To acquire treasury shares of the corporation.

27 2. Holders of shares of any class that is preferred or
28 limited as to dividends or assets shall not be entitled to
29 any pre-emptive right.

30 3. Holders of shares of common stock shall not be entitled
31 to any pre-emptive right to shares of any class that is
32 preferred or limited as to dividends or assets or to any
33 obligations, unless convertible into shares of common stock
34 or carrying a right to subscribe to or acquire shares of
35 common stock.

1 4. Holders of common stock without voting power shall
2 have no pre-emptive right to shares of common stock with
3 voting power.

4 5. The pre-emptive right shall be only an opportunity
5 to acquire shares or other securities under such terms and
6 conditions as the board of directors may fix for the purpose
7 of providing a fair and reasonable opportunity for the exercise
8 of such right.

9 Sec. 3. Section four hundred ninety-six A point thirty-
10 five (496A.35), unnumbered paragraph one (1), Code 1975, is
11 amended to read as follows:

12 The number of directors shall be fixed by or in the manner
13 provided in the articles of incorporation or the bylaws,
14 except as to the number constituting the initial board of
15 directors, which number shall be fixed by the articles of
16 incorporation. The number of directors may be increased or
17 decreased from time to time by amendment to or in the manner
18 provided in the articles of incorporation or the bylaws, but
19 no decrease shall have the effect of shortening the term of
20 any incumbent director. In the absence of a bylaw ~~fixing~~
21 providing for the number of directors and in the absence of
22 a provision adopted in the manner provided in the articles
23 of incorporation or the bylaws, the number shall be the same
24 as that ~~stated~~ provided for in the articles of incorporation.
25 The names and addresses of the members of the first board
26 of directors shall be stated in the articles of incorporation.
27 Such persons shall hold office until the first annual meeting
28 of shareholders, and until their successors shall have been
29 elected and qualify. At the first annual meeting of
30 shareholders and at each annual meeting thereafter the
31 shareholders shall elect directors to hold office until the
32 next succeeding annual meeting, except in case of the
33 classification of directors as permitted by this chapter.
34 Each director shall hold office for the term for which he
35 is elected and until his successor shall have been elected

1 and qualifies, unless removed in accordance with provisions
2 of this chapter.

3 Sec. 4. Section four hundred ninety-six A point forty
4 (496A.40), unnumbered paragraph two (2), Code 1975, is amended
5 to read as follows:

6 Regular meetings of the board of directors or any committee
7 designated by the board may be held with or without notice
8 as prescribed in the bylaws. Special meetings of the board
9 of directors or any committee designated by the board shall
10 be held upon such notice as is prescribed in the bylaws.
11 Attendance of a director at a meeting shall constitute a
12 waiver of notice of such meeting, except where a director
13 attends a meeting for the express purpose of objecting to
14 the transaction of any business because the meeting is not
15 lawfully called or convened. Neither the business to be
16 transacted at, nor the purpose of, any regular or special
17 meeting of the board of directors or any committee designated
18 by the board need be specified in the notice or waiver of
19 notice of such meeting unless required by the bylaws.

20 Sec. 5. Section four hundred ninety-six A point one hundred
21 three (496A.103), Code 1975, is amended to read as follows:

22 496A.103 ADMISSION OF FOREIGN CORPORATION--NONADMITTED
23 ORGANIZATION.

24 1. No foreign corporation shall have the right to transact
25 business in this state until it shall have procured a
26 certificate of authority so to do from the secretary of state.
27 No foreign corporation shall be entitled to procure a
28 certificate of authority under this chapter to transact in
29 this state any business which a corporation organized under
30 this chapter is not permitted to transact. A foreign
31 corporation shall not be denied a certificate of authority
32 by reason of the fact that the laws of the state or country
33 under which such corporation is organized governing its
34 organization and internal affairs differ from the laws of
35 this state, and nothing in this chapter contained shall be

1 construed to authorize this state to regulate the organization
2 or the internal affairs of such corporation.

3 2. Without excluding other activities which may not
4 constitute transacting business in this state, a foreign
5 corporation or nonadmitted organization shall not be
6 considered to be transacting business in this state, for the
7 purposes of this chapter, by reason of carrying on in this
8 state any one or more of the following activities:

9 1 a. Maintaining or defending any action or suit or any
10 administrative or arbitration proceeding, or effecting the
11 settlement thereof or the settlement of claims or disputes.

12 2 b. Holding meetings of its directors or shareholders
13 or carrying on other activities concerning its internal af-
14 fairs.

15 3 c. Maintaining bank accounts.

16 4 d. Maintaining offices or agencies for the transfer,
17 exchange and registration of its securities, or appointing
18 and maintaining trustees or depositaries with relation to
19 its securities.

20 5 e. Effecting sales through independent contractors.

21 6 f. Soliciting or procuring orders, whether by mail or
22 through employees or agents or otherwise, where such orders
23 require acceptance without this state before becoming binding
24 contracts.

25 7 g. Creating as borrower or lender, or acquiring, in-
26 debtedness or mortgages or other security interests in real
27 or personal property.

28 8 h. Securing or collecting debts due it or enforcing
29 any rights in property securing the same.

30 9 i. Transacting any business in interstate commerce.

31 10 j. Conducting an isolated transaction completed within
32 a period of thirty days and not in the course of a number
33 of repeated transactions of like nature.

34 Sec. 6. Section four hundred ninety-six A point one hundred
35 eleven (496A.111), Code 1975, is amended by adding the

1 following new unnumbered paragraph:

2 NEW UNNUMBERED PARAGRAPH. If a registered agent of a
3 corporation subject to this section changes its business
4 address to another address within this state, this agent may
5 change the address of the registered office of the agent's
6 corporation by filing a statement for each corporation as
7 required by this section or by filing a single statement
8 covering all corporations named in such statement. However,
9 such statement may be signed by the registered agent alone,
10 must recite that a copy of the statement has been mailed to
11 each corporation, and shall not be subject to the provisions
12 of subsections five (5) and seven (7) of this section.

13 Sec. 7. Section four hundred ninety-six A point one hundred
14 twenty-two (496A.122), Code 1975, is amended to read as fol-
15 lows:

16 496A.122 FILING OF ANNUAL REPORT OF DOMESTIC AND FOREIGN
17 CORPORATIONS. Such annual report of a domestic or foreign
18 corporation shall be delivered to the secretary of state for
19 filing in his office between the first day of January and
20 the thirty-first day of March of each year, except as otherwise
21 provided in this section. The first annual report of a
22 domestic corporation shall be filed between the first day
23 of January and the thirty-first day of March of the year next
24 succeeding the calendar year in which its corporate existence
25 began, or in which, by voluntary election to adopt the
26 provisions of this chapter, it first became subject to the
27 provisions of this chapter, except that if such existence
28 began in December of any year, or by such adoption it first
29 became subject to the provisions of this chapter in December
30 of any year, its first annual report shall be filed between
31 the first day of January and the thirty-first day of March
32 of the second year succeeding the calendar year in which its
33 corporate existence began, or in which, by such adoption,
34 it first became subject to the provisions of this chapter.
35 The first annual report of a foreign corporation shall be

1 filed between the first day of January and the thirty-first
2 day of March of the year next succeeding the calendar year
3 in which its certificate of authority was issued by the
4 secretary of state except that if such certificate was issued
5 in December of any year, its first annual report shall be
6 filed between the first day of January and the ~~first~~ thirty-
7 first day of March of the second year succeeding the calendar
8 year in which such certificate was issued by the secretary
9 of state. Such report shall be deemed filed within the
10 required time if deposited in the United States mail with
11 postage prepaid in a sealed envelope, properly addressed and
12 postmarked on or prior to the thirty-first day of March.
13 If the secretary of state finds that such report conforms
14 to the requirements of this chapter, and that all prior annual
15 reports required by this chapter to be filed by such
16 corporation or foreign corporation have been filed and that
17 all annual license fees and penalties, if any, required by
18 this chapter to have been theretofore paid by such corporation
19 or foreign corporation have been paid he shall file the same.
20 If he finds that it does not so conform, he shall promptly
21 return the same to the corporation for any necessary
22 corrections, in which event the penalties hereinafter pre-
23 scribed for failure to file such report within the time herein-
24 above provided shall not apply, if such report is corrected
25 to conform to the requirements of this chapter, and is
26 resubmitted to the secretary of state within thirty days from
27 the date on which it was mailed to the corporation by the
28 secretary of state, but not later than July 4 first of the
29 year in which it is due.

30 Sec. 8. Section four hundred ninety-six A point one hundred
31 forty-two (496A.142), subsection one (1), Code 1975, is amended
32 to read as follows:

33 1. Except ~~for~~ as provided in subsection two (2) of sec-
34 tion four hundred ninety-six A point one hundred three
35 (496A.103) of the Code and in this subsection, this chapter

1 shall not apply to or affect corporations subject to the
2 provisions of chapters 174, 176, 482, 497, 498, 499, 499A,
3 504, 506, 508, 510, 512, 514, 515, 518A, 519, 533, 534 of
4 the Code and state banks organized under chapter 524. Such
5 corporations shall continue to be governed by all laws of
6 this state heretofore applicable thereto and as the same may
7 hereafter be amended. This chapter shall not be construed
8 as in derogation of or as a limitation on the powers to which
9 such corporations may be entitled.

10 Sec. 9. Section four hundred ninety-six A point one hun-
11 dred forty-two (496A.142), subsection twelve (12), Code 1975,
12 is amended by striking the subsection and inserting in lieu
13 thereof the following:

14 12. Any domestic corporation which elects to adopt the
15 provisions of this chapter by complying with the provisions
16 of subsection three (3) of this section may, at the same time:

17 a. Amend or restate its articles of incorporation by
18 complying with the provisions of this chapter with respect
19 to amending articles of incorporation or restating articles
20 of incorporation, as the case may be.

21 b. Take action to enter into a merger or consolidation
22 or to dissolve by complying with the provisions of this chap-
23 ter with respect to merger, consolidation or dissolution,
24 as the case may be.

25 Sec. 10. Section four hundred ninety-six A point fifty-
26 two (496A.52), Code 1975, is repealed.

27 EXPLANATION

28 This bill contains eight amendments to Chapter 496A of
29 the Code.

30 Sections 1, 5, and 8 comprise parts of a single amend-
31 ment designed to eliminate any possible barrier under the
32 Iowa Business Corporation Act to so-called "nonadmitted or-
33 ganizations" effecting the transactions listed in section
34 496A.103 which foreign corporations are permitted to carry
35 on without prior qualification in this state.

1 Section 2 amends section 496A.25 to eliminate the incon-
2 sistency in the treatment of pre-emptive rights in treasury
3 shares now existing in sections 496A.25, 496A.49(7) and
4 496A.61(3)(g). At present, section 496A.25 grants such rights
5 unless limited by the articles of incorporation, while the
6 latter sections consider such rights withheld unless specifi-
7 cally granted by amended or restated articles of incorporation.
8 To harmonize with the latter two sections, section 496A.25
9 as amended will deny such rights unless specifically provided
10 for in the articles of incorporation. An additional amendment
11 corrects a typographical error by changing "of" to "or" in
12 the first paragraph.

13 Section 3 amends section 496A.35 to conform to revised
14 section 36 of the Model Act. This would allow the provision
15 in the original articles of incorporation which fixes the
16 number of directors to be changed in a manner authorized in
17 the articles or bylaws by action which does not in form amount
18 to an amendment to the articles or bylaws.

19 Section 4 amends section 496A.40 to conform to a change
20 now under consideration by the American Bar Association Com-
21 mittee to section 43 of the Model Act. The amendment makes
22 the notice requirements for meetings of the directors also
23 applicable to committees designated pursuant to section
24 496A.39.

25 Section 6 amends section 496A.111 relating to change of
26 registered office or registered agent of foreign corpora-
27 tion to make it consistent with the last paragraph of sec-
28 tion 496A.12 relating to change of registered office or regis-
29 tered agent of domestic corporations. By the latter provi-
30 sion, if a person who is a registered agent for several do-
31 mestic corporations changes his business address he can change
32 the address of the registered office of any such domestic
33 corporation of which he is registered agent by filing a single
34 statement for all corporations named therein.

35 Section 7 amends section 496A.122 to correct an obvious

1 oversight. Acts of the Sixty-third General Assembly, 1970
2 Session, chapter 1239 contained a provision in section 34
3 which extended the time for filing of domestic and foreign
4 annual corporation reports from March 1 to March 31.

5 Section 9 is designed to allow corporations existing under
6 chapter 491 which vote to adopt the Iowa Business Corpora-
7 tion Act to take action on a merger, consolidation or state-
8 ment of intent to dissolve at the same time and in the same
9 meeting at which it votes to adopt the Iowa Business Corpora-
10 tion Act.

11 Section 10 repeals the requirements of publication of
12 notice of incorporation.

13

S-4074

1 Amend Senate File 524, page 7, by striking lines
2 25 and 26.

S-4074 FILED - *Adopted 6/10 (1855)* BY RICHARD RAMSEY
JUNE 5, 1975 CALVIN HULTMAN

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S-5213

1 Amend Senate File 524, as amended and passed by
2 the Senate, as follows:

3 1. Page 2, by inserting after line 8 the following:
4 "Sec. _____. Section four hundred ninety-six A point
5 thirty-four (496A.34), unnumbered paragraph one (1),
6 Code 1975, is amended by striking the paragraph and
7 inserting in lieu thereof the following:

8 All corporate powers shall be exercised by or under
9 the authority of, and the business and affairs of
10 a corporation shall be managed under the direction
11 of, a board of directors consisting of one or more
12 members, except as may be otherwise provided in this
13 chapter or in the articles of incorporation. If any
14 such provision is made in the articles of
15 incorporation, the powers and duties conferred or
16 imposed upon the board of directors by this chapter
17 shall be exercised or performed to such extent and
18 by such person or persons as shall be provided in
19 the articles of incorporation. Directors need not
20 be residents of this state or shareholders of the
21 corporation unless the articles of incorporation
22 or bylaws so require. The articles of incorporation
23 or bylaws may prescribe other qualifications for
24 directors. The board of directors shall have authority
25 to fix the compensation of directors unless otherwise
26 provided in the articles of incorporation.

27 A director shall perform the duties of a director,
28 including the duties as a member of any committee
29 of the board upon which such director may serve, in
30 good faith, in a manner such director reasonably
31 believes to be in the best interests of the
32 corporation, and with such care as an ordinarily
33 prudent person in a like position would use under
34 similar circumstances. In performing such duties,
35 a director shall be entitled to rely on information,
36 opinions, reports or statements, including financial
37 statements and other financial data, in each case
38 prepared or presented by: (1) One or more officers
39 or employees of the corporation whom the director
40 reasonably believes to be reliable and competent in
41 the matters presented; (2) Counsel, public accountants
42 or other persons as to matters which the director
43 reasonably believes to be within such person's
44 professional or expert competence; or, (3) A committee
45 of the board upon which such director does not serve,
46 duly designated in accordance with a provision of
47 the articles of incorporation or the bylaws, as to
48 matters within its designated authority, which
49 committee the director reasonably believes to merit
50 confidence. However such director shall not be

1 considered to be acting in good faith if such director
2 has knowledge concerning the matter in question that
3 would cause such reliance to be unwarranted. A person
4 who so performs such duties shall not have liability
5 by reason of being or having been a director of the
6 corporation.

7 A director of a corporation who is present at a
8 meeting of its board of directors at which action
9 on any corporate matter is taken shall be presumed
10 to have assented to the action taken, unless the
11 dissent of such director is entered in the minutes
12 of the meeting, such director files a written dissent
13 to such action with the secretary of the meeting
14 before the meeting's adjournment, or such director
15 forwards such dissent by registered or certified mail
16 to the secretary of the corporation immediately after
17 the adjournment of the meeting. Such right to dissent
18 shall not apply to a director who voted in favor of
19 such action."

20 2. Page 3, by inserting after line 2 the following:

21 "Sec. ____ . Section four hundred ninety-six A point
22 thirty-nine (496A.39), Code 1975, is amended to read
23 as follows:

24 496A.39 EXECUTIVE AND OTHER COMMITTEES. If the
25 articles of incorporation or the bylaws so provide, the
26 board of directors, by resolution adopted by a majority
27 of the full board of directors, may designate from
28 among its members an executive committee and one or
29 more other committees each of which, to the extent
30 provided in such resolution or in the articles of
31 incorporation or the bylaws of the corporation, shall
32 have and may exercise all the authority of the board
33 of directors, but except that no such committee shall
34 have the authority of the board of directors in
35 reference to amending the articles of incorporation,
36 adopting a plan of merger or consolidation, recom-
37 menting to the shareholders the sale, lease, exchange
38 or other disposition of all or substantially all the
39 property and assets of the corporation otherwise than
40 in the usual and regular course of its business,
41 recommending to the shareholders a voluntary
42 dissolution of the corporation or a revocation thereof,
43 or amending the bylaws of the corporation. The
44 designation of any such committee and the delegation
45 thereto of authority shall not operate to relieve
46 the board of directors, or any member thereof, of
47 any responsibility imposed by law to: (1) declare
48 dividends or distributions; (2) approve or recommend
49 to shareholders actions or proposals required by this
50 chapter to be approved by shareholders; (3) designate

1 candidates for the office of director, for purposes
2 of proxy solicitation or otherwise, or fill vacancies
3 on the board of directors or any committee thereof;
4 (4) amend the bylaws; (5) approve a plan of merger
5 not requiring shareholder approval; (6) reduce surplus;
6 (7) authorize or approve the reacquisition of shares
7 unless pursuant to a general formula or method
8 specified by the board of directors; or, (8) authorize
9 or approve the issuance or sale of, or any contract
10 to issue or sell, shares or designate the terms of
11 a series of a class of shares; however, the board
12 of directors, having acted regarding general
13 authorization for the issuance or sale of shares,
14 or any contract for issuance or sale, and, in the
15 case of a series, the designation of the series,
16 may, pursuant to a general formula or method
17 specified by the board by resolution or by adoption
18 of a stock option or other plan, authorize a committee
19 to fix the terms of any contract for the sale of the
20 shares and to fix the terms upon which such shares
21 may be issued or sold, including, without limitation,
22 the price, the dividend rate, provisions for
23 redemption, sinking fund, conversion, voting or
24 preferential rights, and provisions for other features
25 of a class of shares, or a series of a class of shares,
26 with full power in such committee to adopt any final
27 resolution setting forth all the terms and to authorize
28 the statement of the terms of a series for filing
29 with the secretary of state under this chapter.

30 Neither the designation of any such committee,
31 the delegation to it of authority, nor action by such
32 committee pursuant to such authority shall alone
33 constitute compliance by any member of the board of
34 directors, not a member of the committee in question,
35 with such director's responsibility to act in good
36 faith, in a manner such director reasonably believes
37 to be in the best interests of the corporation, and
38 with such care as an ordinarily prudent person in
39 a like position would use under similar circumstances."

40 3. Page 3, by inserting after line 19 the
41 following:

42 "Sec. ____ . Section four hundred ninety-six A point
43 forty-four (496A.44), Code 1975, is amended to read
44 as follows:

45 496A.44 LIABILITY OF DIRECTORS AND OFFICERS IN
46 CERTAIN CASES. In addition to any other liabilities
47 imposed by law upon directors and officers of a
48 corporation, a director shall be liable in the
49 following circumstances, unless the director complies
50 with the standard provided in this chapter for

1 performance of the duties of directors:

2 1. Directors-of-a-corporation A director who vote
3 votes for or assent assents to the declaration of
4 any dividend or other distribution of the assets of
5 a corporation to its shareholders in-willful-or
6 negligent-violation-of contrary to the provisions
7 of this chapter or of to any restrictions contained
8 in the articles of incorporation, shall be jointly
9 and-severally liable to the corporation jointly and
10 severally with all other directors so voting or
11 assenting for the amount of such dividend which is
12 paid or the value of such assets which are distributed
13 in excess of the amount of such dividend or
14 distribution which could have been paid or distributed
15 without a violation of the provisions of this chapter
16 or of the restrictions in the articles of
17 incorporation.

18 2. Directors-of-a-corporation A director who vote
19 votes for or assent assents to the purchase of its
20 the corporation's own shares in-willful-or-negligent
21 violation-of contrary to the provisions of this chapter
22 or of to any restrictions contained in the articles
23 of incorporation, shall be jointly-and-severally
24 liable to the corporation jointly and severally with
25 all other directors so voting or assenting for the
26 amount of consideration paid for such shares which
27 is in excess of the maximum amount which could have
28 been paid therefor without a violation of the pro-
29 visions of this chapter or of the restrictions in
30 the articles of incorporation.

31 3. The-directors-of-a-corporation A director who
32 vote votes for or assent assents to any distribution
33 of assets of a corporation to its shareholders during
34 the liquidation of the corporation without the payment
35 and discharge of, or making adequate provision for,
36 all known debts, obligations, and liabilities of
37 the corporation shall be jointly-and-severally liable
38 to the corporation jointly and severally with all
39 other directors so voting or assenting for the value
40 of such assets which are distributed, to the extent
41 that such debts, obligations and liabilities of the
42 corporation are not thereafter paid and discharged.

43 A-director-of-a-corporation-who-is-present-at-a
44 meeting-of-its-board-of-directors-at-which-action
45 on-any-corporate-matter-is-taken-shall-be-presumed
46 to-have-assented-to-the-action-taken-unless-his-dissent
47 shall-be-entered-in-the-minutes-of-the-meeting-or
48 unless-he-shall-file-his-written-dissent-to-such
49 action-with-the-person-acting-as-the-secretary-of
50 the-meeting-before-the-adjournment-thereof-or-shall

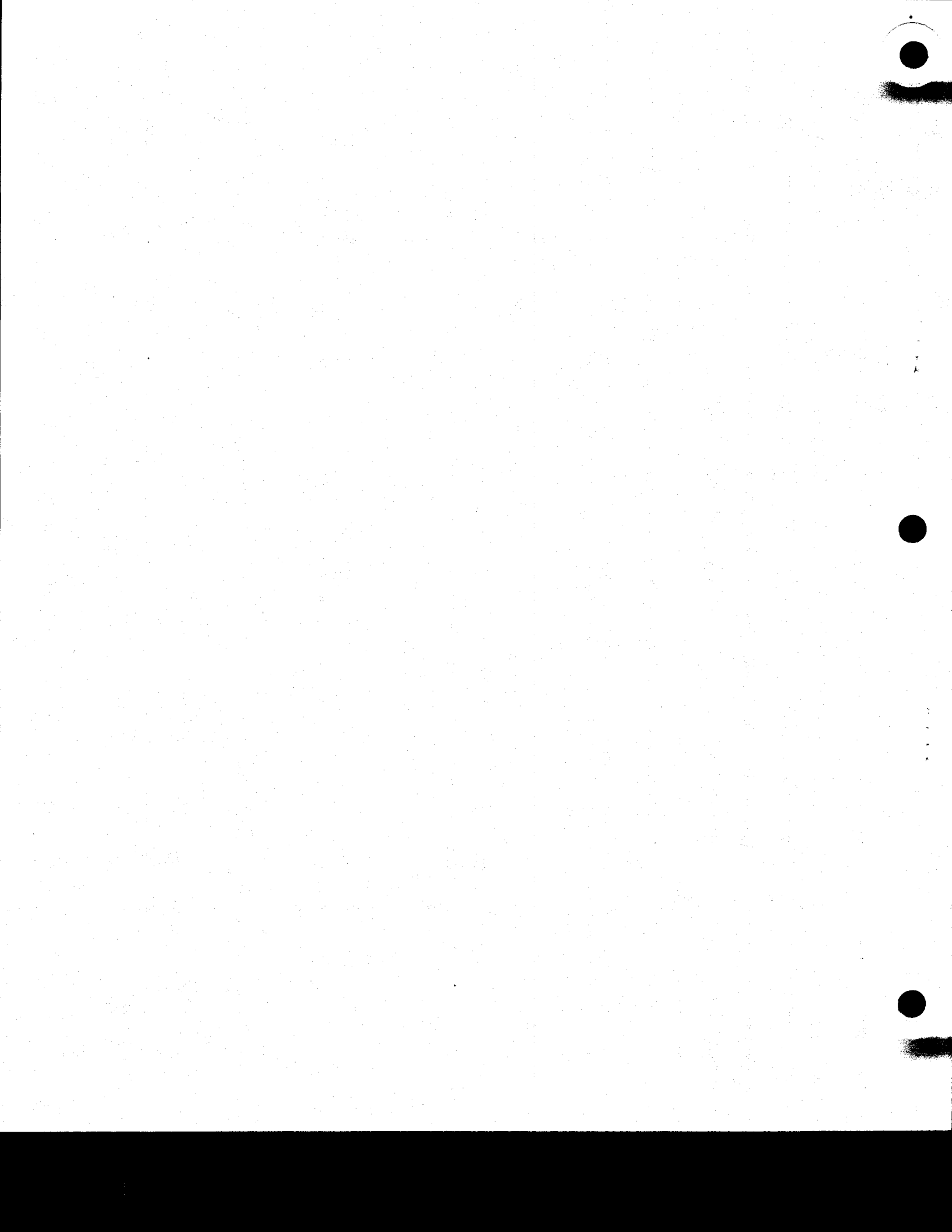
1 forward-such-dissent-by-registered-or-certified-mail
2 to-the-secretary-of-the-corporation-immediately-after
3 the-adjournment-of-the-meeting---Such-right-to-dissent
4 shall-not-apply-to-a-director-who-voted-in-favor-of
5 such-action-

6 A-director-shall-not-be-liable-under-subsections
7 4, 7, 2, or 3-of-this-section-if-the-director-relied
8 and-acted-in-good-faith-upon-financial-statements
9 of-the-corporation, represented-to-the-director-to
10 be-correct-by-the-president-or-the-officer-of-such
11 corporation-having-charge-of-its-books-of-account,
12 or-stated-in-a-written-report-by-an-independent-public
13 or-certified-public-accountant-or-firm-of-such
14 accountants-fairly-to-reflect-the-financial-condition
15 of-such-corporation, nor-shall-the-director-be-so
16 liable-if-in-good-faith-in-determining-the-amount
17 available-for-any-such-dividend-or-distribution-the
18 director-considered-the-assets-to-be-of-their-book
19 value. If an officer willfully or negligently submits
20 an incorrect financial statement to a director or
21 directors, and board of directors action, contrary
22 to the provisions of this chapter or of any
23 restrictions in the articles of incorporation, is
24 taken in reliance thereon, the officer shall be liable
25 to the same extent as if the officer were a director
26 voting for or assenting to such action. No director
27 or officer shall be deemed to be negligent within
28 the meaning of this section if the director or officer
29 exercised that diligence, care and skill which an
30 ordinarily prudent person in a like position would
31 exercise use under similar circumstances.

32 Any director against whom a claim shall be asserted
33 under or pursuant to this section for the payment
34 of a dividend or other distribution of assets of a
35 corporation and who shall be held liable thereon,
36 shall be entitled to contribution from the shareholders
37 who accepted or received any such dividend or assets,
38 knowing such dividend or distribution to have been
39 made in violation of the provisions of this chapter
40 or of any restrictions in the articles of
41 incorporation, in proportion to the amounts received
42 by them respectively, and to contribution from any
43 other director found to be similarly liable.

44 Any action seeking to impose liability under this
45 section, other than liability for contribution, shall
46 be commenced only within five years of the action
47 complained of and not thereafter."

48 4. Page 6, line 33, by inserting after the word
49 "in" the words "section four hundred ninety-six A point
50 two (496A.2) of the Code, in".



H-5129

1 Amend Senate File 524, as amended and passed by
2 the Senate, as follows:
3 1. Page 2, by inserting after line 8 the following:
4 "Sec. _____. Section four hundred ninety-six A point
5 thirty-four (496A.34), unnumbered paragraph one (1),
6 Code 1975, is amended by striking the paragraph and
7 inserting in lieu thereof the following:

8 All corporate powers shall be exercised by or under
9 the authority of, and the business and affairs of
10 a corporation shall be managed under the direction
11 of, a board of directors consisting of one or more
12 members, except as may be otherwise provided in this
13 chapter or in the articles of incorporation. If any
14 such provision is made in the articles of
15 incorporation, the powers and duties conferred or
16 imposed upon the board of directors by this chapter
17 shall be exercised or performed to such extent and
18 by such person or persons as shall be provided in
19 the articles of incorporation. Directors need not
20 be residents of this state or shareholders of the
21 corporation unless the articles of incorporation
22 or bylaws so require. The articles of incorporation
23 or bylaws may prescribe other qualifications for
24 directors. The board of directors shall have authority
25 to fix the compensation of directors unless otherwise
26 provided in the articles of incorporation.

27 A director shall perform the duties of a director,
28 including the duties as a member of any committee
29 of the board upon which such director may serve, in
30 good faith, in a manner such director reasonably
31 believes to be in the best interests of the
32 corporation, and with such care as an ordinarily
33 prudent person in a like position would use under
34 similar circumstances. In performing such duties,
35 a director shall be entitled to rely on information,
36 opinions, reports or statements, including financial
37 statements and other financial data, in each case
38 prepared or presented by: (1) One or more officers
39 or employees of the corporation whom the director
40 reasonably believes to be reliable and competent in
41 the matters presented; (2) Counsel, public accountants
42 or other persons as to matters which the director
43 reasonably believes to be within such person's
44 professional or expert competence; or, (3) A committee
45 of the board upon which such director does not serve,
46 duly designated in accordance with the provision of
47 the articles of incorporation or the bylaws, as to
48 matters within its designated authority, which
49 committee the director reasonably believes to merit
50 confidence. However such director shall not be

1 considered to be acting in good faith if such director
2 has knowledge concerning the matter in question that
3 would cause such reliance to be unwarranted. A person
4 who so performs such duties shall not have liability
5 by reason of being or having been a director of the
6 corporation.

7 A director of a corporation who is present at a
8 meeting of its board of directors at which action
9 on any corporate matter is taken shall be presumed
10 to have assented to the action taken, unless the
11 dissent of such director is entered in the minutes
12 of the meeting, such director files a written dissent
13 to such action with the secretary of the meeting
14 before the meeting's adjournment, or such director
15 forwards such dissent by registered or certified mail
16 to the secretary of the corporation immediately after
17 the adjournment of the meeting. Such right to dissent
18 shall not apply to a director who voted in favor of
19 such action."

20 2. Page 3, by inserting after line 2 the following:

21 "Sec. _____. Section four hundred ninety-six A point
22 thirty-nine (496A.39), Code 1975, is amended to read
23 as follows:

24 496A.39 EXECUTIVE COMMITTEE. If the articles
25 of incorporation or the bylaws so provide, the board
26 of directors, by resolution adopted by a majority
27 of the full board of directors, may designate from
28 among its members an executive committee and one or
29 more other committees each of which, to the extent
30 provided in such resolution or in the articles of
31 incorporation or the bylaws of the corporation, shall
32 have and may exercise all the authority of the board
33 of directors, but except that no such committee shall
34 have the authority of the board of directors in
35 revising or amending the articles of incorporation,
36 adopting or changing the name of the corporation, recom-
37 ending to the shareholders the sale, lease, exchange
38 or other disposition of all or substantially all the
39 property and assets of the corporation, otherwise than
40 in the usual and regular course of the business,
41 recommending to the shareholders a voluntary
42 dissolution of the corporation or a revocation thereof,
43 or amending the bylaws of the corporation. -- The
44 designation of any such committee and the delegation
45 thereof of authority shall not operate to relieve
46 the board of directors, or any member thereof, of
47 any responsibility imposed by law to: (1) declare
48 dividends or distributions; (2) approve or recommend
49 to shareholders actions or proposals required by this
50 chapter to be approved by shareholders; (3) designate

1 candidates for the office of director, for purposes
2 of proxy solicitation or otherwise, or fill vacancies
3 on the board of directors or any committee thereof;
4 (4) amend the bylaws; (5) approve a plan of merger
5 not requiring shareholder approval; (6) reduce surplus;
6 (7) authorize or approve the reacquisition of shares
7 unless pursuant to a general formula or method
8 specified by the board of directors; or, (8) authorize
9 or approve the issuance or sale of, or any contract
10 to issue or sell, shares or designate the terms of
11 a series of a class of shares. However, the board
12 of directors, having acted regarding general
13 authorization for the issuance or sale of shares,
14 or any contract for issuance or sale, and, in the
15 case of a series, the designation for issuance or
16 sale, may, pursuant to a general formula or method
17 specified by the board by resolution or by adoption
18 of a stock option or other plan, authorize a committee
19 to fix the terms of any contract for the sale of the
20 shares and to fix the terms upon which such shares
21 may be issued or sold, including, without limitation,
22 the price, the dividend rate, provisions for
23 redemption, sinking fund, conversion, voting or
24 preferential rights, and provisions for other features
25 of a class of shares, or a series of a class of shares,
26 with full power in such committee to adopt any final
27 resolution setting forth all the terms and to authorize
28 the statement of the terms of a series for filing
29 with the secretary of state under this chapter.

30 Neither the designation of any such committee,
31 the delegation to it of authority, nor action by such
32 committee pursuant to such authority shall alone
33 constitute compliance by any member of the board of
34 directors, not a member of the committee in question,
35 with such director's responsibility to act in good
36 faith, in a manner such director reasonably believes
37 to be in the best interests of the corporation, and
38 with such care as an ordinarily prudent person in
39 a like position would use under similar circumstances."

40 3. Page 3, by inserting after line 19 the
41 following:

42 "Sec. ____ . Section four hundred ninety-six A point
43 forty-four (496.44), Code 1975, is amended to read
44 as follows:

45 496A.44 LIABILITY OF DIRECTORS AND OFFICERS IN
46 CERTAIN CASES. In addition to any other liabilities
47 imposed by law upon directors and officers of a
48 corporation, a director shall be liable in the
49 following circumstances, unless the director complies
50 with the standard provided in this chapter for

1 performance of the duties of directors:

2 ~~1. Directors-of-a-corporation~~ A director who vote
3 votes for or assent assents to the declaration of
4 any dividend or other distribution of the assets of
5 a corporation to its shareholders ~~in-willful-or~~
6 ~~negligent-violation-of~~ contrary to the provisions
7 of this chapter or ~~of~~ to any restrictions contained
8 in the articles of incorporation, shall be jointly
9 ~~and-severally~~ liable to the corporation jointly and
10 severally with all other directors so voting or
11 assenting for the amount of such dividend which is
12 paid or the value of such assets which are distributed
13 in excess of the amount of such dividend or
14 distribution which could have been paid or distributed
15 without a violation of the provisions of this chapter
16 or of the restrictions in the articles of
17 incorporation.

18 ~~2. Directors-of-a-corporation~~ A director who vote
19 votes for or assent assents to the purchase of its
20 the corporation's own shares ~~in-willful-or-negligent~~
21 ~~violation-of~~ contrary to the provisions of this chapter
22 or ~~of~~ to any restrictions contained in the articles
23 of incorporation, shall be jointly-and-severally
24 liable to the corporation jointly and severally with
25 all other directors so voting or assenting for the
26 amount of consideration paid for such shares which
is in excess of the maximum amount which could have
28 been paid therefor without a violation of the pro-
29 visions of this chapter or of the restrictions in
the articles of incorporation.

31 ~~3. The-directors-of-a-corporation~~ A director who
32 vote votes for or assent assents to any distribution
33 of assets of a corporation to its shareholders during
34 the liquidation of the corporation without the payment
35 and discharge of, or making adequate provision for,
36 all unknown debts, obligations, and liabilities of
37 the corporation shall be jointly-and-severally liable
38 to the corporation jointly and severally with all
39 other directors so voting or assenting for the value
40 of such assets which are distributed, to the extent
41 that such debts, obligations and liabilities of the
42 corporation are not thereafter paid and discharged.

43 ~~A-director-of-a-corporation-who-is-present-at-a~~
44 ~~meeting-of-its-board-of-directors-at-which-action~~
45 ~~on-any-corporate-matter-is-taken-shall-be-presumed~~
46 ~~to-have-assented-to-the-action-taken-unless-his-dissent~~
47 ~~shall-be-entered-in-the-minutes-of-the-meeting-or~~
48 ~~unless-he-shall-file-his-written-dissent-to-such~~
49 ~~action-with-the-person-acting-as-the-secretary-of~~
50 ~~the-meeting-before-the-adjournment-thereof-or-shall~~

H-5129
Page 5

1 ~~forward such dissent by registered or certified mail~~
2 ~~to the secretary of the corporation immediately after~~
3 ~~the adjournment of the meeting. -- Such right to dissent~~
4 ~~shall not apply to a director who voted in favor of~~
5 ~~such action.~~

6 A director shall not be liable under subsections
7 47-27 or 3 of this section if the director relied
8 and acted in good faith upon financial statements
9 of the corporation, represented to the director to
10 be correct by the president or the officer of such
11 corporation having charge of its books of account,
12 or stated in a written report by an independent public
13 or certified public accountant or firm of such
14 accountants fairly to reflect the financial condition
15 of such corporation, nor shall the director be so
16 liable if in good faith in determining the amount
17 available for any such dividend or distribution the
18 director considered the assets to be of their book
19 value. If an officer willfully or negligently submits
20 an incorrect financial statement to a director or
21 directors, and board of directors action, contrary
22 to the provisions of this chapter or of any
23 restrictions in the articles of incorporation, is
24 taken in reliance thereon, the officer shall be liable
25 to the same extent as if the officer were a director
26 voting for or assenting to such action. No director
27 or officer shall be deemed to be negligent within
28 the meaning of this section if the director or officer
29 exercised that diligence, care and skill which an
30 ordinarily prudent person in a like position would
31 exercise use under similar circumstances.

32 Any director against whom a claim shall be asserted
33 under or pursuant to this section for the payment
34 of a dividend or other distribution of assets of a
35 corporation and who shall be held liable thereon,
36 shall be entitled to contribution from the shareholders
37 who accepted or received any such dividend or assets,
38 knowing such dividend or distribution to have been
39 made in violation of the provisions of this chapter
40 or of any restrictions in the articles of
41 incorporation, in proportion to the amounts received
42 by them respectively, and to contribution from any
43 other director found to be similarly liable.

44 Any action seeking to impose liability under this
45 section, other than liability for contribution, shall
46 be commenced only within five years of the action
47 complained of and not thereafter."

SENATE FILE 524

H-5153

- 1 Amend the Committee on Judiciary and Law
- 2 Enforcement amendment H-5129 to Senate File 524,
- 3 as amended and passed by the Senate, as follows:
- 4 1. Page 3, line 43, by striking "(496.44)" and
- 5 inserting in lieu thereof "(496A.44)".
- 6 2. Page 4, line 36, by striking the word
- 7 "unknown" and inserting in lieu thereof the word
- 8 "known".

H-5153 FILED - *Adopted 2/23* BY JESSE of Polk
FEBRUARY 9, 1976 (*p 611*)

SENATE FILE 524

H-5160

- 1 Amend the Committee on Judiciary and Law
- 2 Enforcement amendment H-5129, to Senate File 524
- 3 as passed by the Senate, as follows:
- 4 1. Page 1, line 46, by striking the word "the"
- 5 and inserting in lieu thereof the word "a".

H-5160 FILED - *Adopted 2/23* BY OAKLEY of Clinton
FEBRUARY 9, 1976 (*p 610*)

H-5169

- 1 Amend Senate File 524, as amended and passed by
- 2 the Senate, as follows:
- 3 1. Page 6, line 35, by inserting after the
- 4 figures "(496A.103)" the words ", subsection two (2)"
- 5 of section four hundred ninety-six A point one
- 6 hundred forty-two (496A.142)".

H-5169 FILED - *Withdrawn 2/23* BY OAKLEY of Clinton
FEBRUARY 9, 1976

SENATE FILE 524

H-5189

1 Amend the Committee on Judiciary and Law Enforce-
2 ment amendment H-5129, to Senate File 524, as amended
3 and passed by the Senate, as follows:

4 1. Page 2, line 24, by striking the word "COMMIT-
5 TEE" and inserting in lieu thereof the words "AND
6 OTHER COMMITTEES".

7 2. Page 3, line 11, by striking the word ". How-
8 ever" and inserting in lieu thereof the word "; how-
9 ever".

10 3. Page 3, line 15, by striking the words "for
11 issuance or" and inserting in lieu thereof the words
12 "of the series".

13 4. Page 3, line 16, by striking the word "sale".

H-5189 FILED - *Adopted 2/23* BY OAKLEY of Clinton
FEBRUARY 11, 1976 (p. 610)

SENATE FILE 524

H-5193

1 Amend Senate File 524, as amended and passed by
2 the Senate, page 6, line 33, by inserting after the
3 word "in" the words "section four hundred ninety-six
4 A point two (496A.2) of the Code, in".

H-5193 FILED - *Adopted 2/23* BY OAKLEY of Clinton
FEBRUARY 11, 1976 (p. 611)

SENATE FILE 524

AN ACT
RELATING TO BUSINESS CORPORATIONS.

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

Section 1. Section four hundred ninety-six A point two (496A.2), Code 1975, is amended by adding the following new subsection:

NEW SUBSECTION. "Nonadmitted organization" means any corporation, bank, trust company, mutual savings bank, savings and loan association, national banking association or insurance company which is organized under the laws of another state and which is not entitled under this chapter to procure a certificate of authority to transact business in this state.

Sec. 2. Section four hundred ninety-six A point twenty-five (496A.25), Code 1975, is amended to read as follows:

496A.25 SHAREHOLDERS' PRE-EMPTIVE RIGHTS. Except to the extent limited or denied by this section or by the articles of incorporation, shareholders shall have a pre-emptive right to acquire unissued ~~or-treasury~~ shares ~~of~~ or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

Unless otherwise provided in the articles of incorporation:

1. No pre-emptive right shall exist:
 - a. To acquire any shares issued to directors, officers or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan approved by such a vote of shareholders.
 - b. To acquire any shares sold otherwise than for cash.
 - c. To acquire treasury shares of the corporation.
2. Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to

any pre-emptive right.

3. Holders of shares of common stock shall not be entitled to any pre-emptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

4. Holders of common stock without voting power shall have no pre-emptive right to shares of common stock with voting power.

5. The pre-emptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

Sec. 3. Section four hundred ninety-six A point thirty-four (496A.34), unnumbered paragraph one (1), Code 1975, is amended by striking the paragraph and inserting in lieu thereof the following:

All corporate powers shall be exercised by or under the authority of, and the business and affairs of a corporation shall be managed under the direction of, a board of directors consisting of one or more members, except as may be otherwise provided in this chapter or in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of

incorporation.

A director shall perform the duties of a director, including the duties as a member of any committee of the board upon which such director may serve, in good faith, in a manner such director reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing such duties, a director shall be entitled to rely on such information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by: (1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented; (2) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or, (3) A committee of the board upon which such director does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence. However, such director shall not be considered to be acting in good faith if such director has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs such duties shall not have liability by reason of being or having been a director of the corporation.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken, unless the dissent of such director is entered in the minutes of the meeting, such director files a written dissent to such action with the secretary of the meeting before the meeting's adjournment, or such director forwards such dissent by registered or certified mail to the secretary

of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

Sec. 4. Section four hundred ninety-six A point thirty-five (496A.35), unnumbered paragraph one (1), Code 1975, is amended to read as follows:

The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing providing for the number of directors and in the absence of a provision adopted in the manner provided in the articles of incorporation or the bylaws, the number shall be the same as that stated provided for in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualify. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualifies, unless removed in accordance with provisions of this chapter.

Sec. 5. Section four hundred ninety-six A point thirty-nine (496A.39), Code 1975, is amended to read as follows:
496A.39 EXECUTIVE AND OTHER COMMITTEES. If the articles

of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, ~~but except that no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the bylaws of the corporation. -- The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law to:~~ (1) declare dividends or distributions; (2) approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders; (3) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof; (4) amend the bylaws; (5) approve a plan of merger not requiring shareholder approval; (6) reduce surplus; (7) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or, (8) authorize or approve the issuance or sale of, or any contract to issue or sell, shares or designate the terms of a series of a class of shares; however, the board of directors, having acted regarding general authorization for the issuance or sale of shares, or any contract for issuance or sale, and, in the

case of a series, the designation of the series, may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including, without limitation, the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares, or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms and to authorize the statement of the terms of a series for filing with the secretary of state under this chapter.

Neither the designation of any such committee, the delegation to it of authority, nor action by such committee pursuant to such authority shall alone constitute compliance by any member of the board of directors, not a member of the committee in question, with such director's responsibility to act in good faith, in a manner such director reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

Sec. 6. Section four hundred ninety-six A point forty (496A.40), unnumbered paragraph two (2), Code 1975, is amended to read as follows:

Regular meetings of the board of directors or any committee designated by the board may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors or any committee designated by the board shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be

transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated by the board need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

Sec. 7. Section four hundred ninety-six A point forty-four (496A.44), Code 1975, is amended to read as follows:

496A.44 LIABILITY OF DIRECTORS AND OFFICERS IN CERTAIN CASES. In addition to any other liabilities imposed by law upon directors and officers of a corporation, a director shall be liable in the following circumstances, unless the director complies with the standard provided in this chapter for performance of the duties of directors:

1. ~~Directors-of-a-corporation~~ A director who ~~vote~~ votes for or ~~assent~~ assents to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders ~~in-willful-or-negligent-violation-of~~ contrary to the provisions of this chapter or ~~of~~ to any restrictions contained in the articles of incorporation, shall be ~~jointly and-severally~~ jointly and severally liable to the corporation jointly and severally with all other directors so voting or assenting for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or of the restrictions in the articles of incorporation.

2. ~~Directors-of-a-corporation~~ A director who ~~vote~~ votes for or ~~assent~~ assents to the purchase of ~~its~~ the corporation's own shares ~~in-willful-or-negligent-violation-of~~ contrary to the provisions of this chapter or ~~of~~ to any restrictions contained in the articles of incorporation, shall be ~~jointly and-severally~~ jointly and severally liable to the corporation jointly and severally with all other directors so voting or assenting for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this chapter or of the

restrictions in the articles of incorporation.

3. ~~The-directors-of-a-corporation~~ A director who ~~vote~~ votes for or ~~assent~~ assents to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be ~~jointly-and severally~~ jointly and severally liable to the corporation jointly and severally with all other directors so voting or assenting for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid and discharged.

~~A-director-of-a-corporation-who-is-present-at-a-meeting of-its-board-of-directors-at-which-action-on-any-corporate matter-is-taken-shall-be-presumed-to-have-assented-to-the action-taken-unless-his-dissent-shall-be-entered-in-the-minutes of-the-meeting-or-unless-he-shall-file-his-written-dissent to-such-action-with-the-person-acting-as-the-secretary-of the-meeting-before-the-adjournment-thereof-or-shall-forward such-dissent-by-registered-or-certified-mail-to-the-secretary of-the-corporation-immediately-after-the-adjournment-of-the meeting.--Such-right-to-dissent-shall-not-apply-to-a-director who-voted-in-favor-of-such-action.~~

~~A-director-shall-not-be-liable-under-subsections-47-27 or-3-of-this-section-if-the-director-relied-and-acted-in-good faith-upon-financial-statements-of-the-corporation,-represented to-the-director-to-be-correct-by-the-president-or-the-officer of-such-corporation-having-charge-of-its-books-of-accounty or-stated-in-a-written-report-by-an-independent-public-or certified-public-accountant-or-firm-of-such-accountants-fairly to-reflect-the-financial-condition-of-such-corporation,-nor shall-the-director-be-so-liable-if-in-good-faith-in-determining the-amount-available-for-any-such-dividend-or-distribution the-director-considered-the-assets-to-be-of-their-book-value.~~
If an officer willfully or negligently submits an incorrect

financial statement to a director or directors, and board of directors action, contrary to the provisions of this chapter or of any restrictions in the articles of incorporation, is taken in reliance thereon, the officer shall be liable to the same extent as if the officer were a director voting for or assenting to such action. No ~~director-or~~ officer shall be deemed to be negligent within the meaning of this section if the ~~director-or~~ officer exercised that diligence, care and skill which an ordinarily prudent person in a like position would exercise use under similar circumstances.

Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of the provisions of this chapter or of any restrictions in the articles of incorporation, in proportion to the amounts received by them respectively, and to contribution from any other director found to be similarly liable.

Any action seeking to impose liability under this section, other than liability for contribution, shall be commenced only within five years of the action complained of and not thereafter.

Sec. 8. Section four hundred ninety-six A point one hundred three (496A.103), Code 1975, is amended to read as follows:

496A.103 ADMISSION OF FOREIGN CORPORATION--NONADMITTED ORGANIZATION.

1. No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this state any business which a corporation organized under

this chapter is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

2. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation or nonadmitted organization shall not be considered to be transacting business in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

4 a. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

2 b. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

3 c. Maintaining bank accounts.

4 d. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

5 e. Effecting sales through independent contractors.

6 f. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

7 g. Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.

8 h. Securing or collecting debts due it or enforcing any rights in property securing the same.

9 i. Transacting any business in interstate commerce.

40 j. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

Sec. 9. Section four hundred ninety-six A point one hundred eleven (496A.111), Code 1975, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If a registered agent of a corporation subject to this section changes its business address to another address within this state, this agent may change the address of the registered office of the agent's corporation by filing a statement for each corporation as required by this section or by filing a single statement covering all corporations named in such statement. However, such statement may be signed by the registered agent alone, must recite that a copy of the statement has been mailed to each corporation, and shall not be subject to the provisions of subsections five (5) and seven (7) of this section.

Sec. 10. Section four hundred ninety-six A point one hundred twenty-two (496A.122), Code 1975, is amended to read as follows:

496A.122 FILING OF ANNUAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS. Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state for filing in his office between the first day of January and the thirty-first day of March of each year, except as otherwise provided in this section. The first annual report of a domestic corporation shall be filed between the first day of January and the thirty-first day of March of the year next succeeding the calendar year in which its corporate existence began, or in which, by voluntary election to adopt the provisions of this chapter, it first became subject to the provisions of this chapter, except that if such existence began in December of any year, or by such adoption it first became subject to the provisions of this chapter in December

of any year, its first annual report shall be filed between the first day of January and the thirty-first day of March of the second year succeeding the calendar year in which its corporate existence began, or in which, by such adoption, it first became subject to the provisions of this chapter. The first annual report of a foreign corporation shall be filed between the first day of January and the thirty-first day of March of the year next succeeding the calendar year in which its certificate of authority was issued by the secretary of state except that if such certificate was issued in December of any year, its first annual report shall be filed between the first day of January and the ~~first~~ thirty-first day of March of the second year succeeding the calendar year in which such certificate was issued by the secretary of state. Such report shall be deemed filed within the required time if deposited in the United States mail with postage prepaid in a sealed envelope, properly addressed and postmarked on or prior to the thirty-first day of March. If the secretary of state finds that such report conforms to the requirements of this chapter, and that all prior annual reports required by this chapter to be filed by such corporation or foreign corporation have been filed and that all annual license fees and penalties, if any, required by this chapter to have been theretofore paid by such corporation or foreign corporation have been paid he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter, and is resubmitted to the secretary of state within thirty days from the date on which it was mailed to the corporation by the secretary of state, but not later than July + first of the year in which it is due.

Sec. 11. Section four hundred ninety-six A point one hundred forty-two (496A.142), subsection one (1), Code 1975, is amended to read as follows:

1. Except ~~for~~ as provided in section four hundred ninety-six A point two (496A.2) of the Code, in subsection two (2) of section four hundred ninety-six A point one hundred three (496A.103) of the Code and in this subsection, this chapter shall not apply to or affect corporations subject to the provisions of chapters 174, 176, 482, 497, 498, 499, 499A, 504, 506, 508, 510, 512, 514, 515, 518A, 519, 533, 534 of the Code and state banks organized under chapter 524. Such corporations shall continue to be governed by all laws of this state heretofore applicable thereto and as the same may hereafter be amended. This chapter shall not be construed as in derogation of or as a limitation on the powers to which such corporations may be entitled.

Sec. 12. Section four hundred ninety-six A point one hundred forty-two (496A.142), subsection twelve (12), Code 1975, is amended by striking the subsection and inserting in lieu thereof the following:

12. Any domestic corporation which elects to adopt the provisions of this chapter by complying with the provisions of subsection three (3) of this section may, at the same time:

a. Amend or restate its articles of incorporation by complying with the provisions of this chapter with respect to amending articles of incorporation or restating articles of incorporation, as the case may be.

b. Take action to enter into a merger or consolidation or to dissolve by complying with the provisions of this chap-

ter with respect to merger, consolidation or dissolution, as the case may be.

ARTHUR A. NEU
President of the Senate

DALE M. COCHRAN
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 524, Sixty-sixth General Assembly.

STEVEN C. CROSS
Secretary of the Senate

Approved  1976

ROBERT D. RAY
Governor