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FILED MAY 3 1977

Reprinted 5/77

SENATE FILE 376

By COMMITTEE ON JUDICIARY  
*Do Pass 4/2 (p.1350)*

Passed Senate, Date 5-6-77 (p.1386) Passed House, Date \_\_\_\_\_

Vote: Ayes 39 Nays 1 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved April 27, 1978

*Motion to reconsider p. 1386 w.D. 5/13*

## A BILL FOR

1 An Act relating to the protection of the rights of owners  
2 of enterprises, and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
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S.F. 376

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DIVISION I

1  
2 Section 1. Chapter one thousand two hundred forty-five  
3 (1245), Acts of the Sixty-sixth General Assembly, 1976 Session,  
4 chapter one (1), division twenty-two (XXII), is amended by  
5 adding the following new section:

6 NEW SECTION. COMMERCIAL BRIBERY.

7 1. As used in subsection two (2) of this section, the  
8 following definitions shall apply unless the context otherwise  
9 requires:

10 a. "Employer" means any sole proprietor, partnership,  
11 corporation, association, or other entity or organization.

12 b. "Employee" includes every officer, employee, agent  
13 or representative.

14 c. "Gratuity" means consideration in any form, including  
15 but not limited to a gift, commission, discount and bonus.

16 2. It is unlawful for a person to offer or deliver directly  
17 or indirectly for the personal benefit of an employee acting  
18 on behalf of his or her employer in a business transaction  
19 or course of transactions with the person a gratuity in  
20 consideration of an act or omission which the person has  
21 reason to know is in conflict with the employment relation  
22 and duties of the employee to the employer. It is unlawful  
23 for an employee acting on behalf of his or her employer in  
24 a business transaction or course of transactions with a person  
25 to solicit or receive from the person a gratuity directly  
26 or indirectly for the personal benefit of the employee in  
27 consideration of an act or omission which the employee has  
28 reason to know is in conflict with the employment relation  
29 and duties of the employee to the employer.

30 3. A violation of subsection two (2) of this section is  
31 a class "D" felony.

DIVISION II

32 Sec. 2. Section four hundred ninety-six A point two  
33 (496A.2), subsection fourteen (14), Code 1977, is amended  
34 to read as follows:

1 14. "Nonadmitted organization" means any corporation,  
2 bank, trust company, mutual savings bank, savings and loan  
3 association, national banking association or insurance company  
4 which is organized under ~~the laws of another state~~ laws other  
5 than the laws of this state and which is not entitled under  
6 this chapter to procure a certificate of authority to transact  
7 business in this state.

8 Sec. 3. Section four hundred ninety-six A point thirty-  
9 one (496A.31), Code 1977, is amended to read as follows:

10 496A.31 QUORUM OF SHAREHOLDERS. Unless otherwise provided  
11 in the articles of incorporation, a majority of the shares  
12 entitled to vote, represented in person or by proxy, shall  
13 constitute a quorum at a meeting of shareholders, but in no  
14 event shall a quorum consist of less than one-fourth of the  
15 shares entitled to vote at the meeting. If a quorum is  
16 present, the affirmative vote of the majority of the shares  
17 represented at the meeting and entitled to vote on the subject  
18 matter shall be the act of the shareholders, unless the vote  
19 of a greater number or voting by classes is required by this  
20 chapter or the articles of incorporation or bylaws.

21 Sec. 4. Section four hundred ninety-six A point thirty-  
22 two (496A.32), unnumbered paragraph three (3), Code 1977,  
23 is amended to read as follows:

24 Neither treasury shares nor ~~unless the articles of~~  
25 ~~incorporation otherwise provide,~~ shares held by another  
26 corporation if a majority of the shares entitled to vote for  
27 the election of directors of such other corporation is held  
28 by the corporation, shall be voted at any meeting or counted  
29 in determining the total number of outstanding shares at any  
30 given time.

31 Sec. 5. Section four hundred ninety-six A point thirty-  
32 seven (496A.37), Code 1977, is amended by striking the sec-  
33 tion and inserting in lieu thereof the following:

34 496A.37 VACANCIES. Any vacancy occurring in the board  
35 of directors may be filled by the affirmative vote of a

1 majority of the remaining directors though less than a quorum  
2 of the board of directors. A director elected to fill a  
3 vacancy shall be elected for the unexpired term of his  
4 predecessor in office. Any directorship to be filled by  
5 reason of an increase in the number of directors may be filled  
6 by the board of directors for a term of office continuing  
7 only until the next election of directors by the shareholders.

8 Sec. 6. Section four hundred ninety-six A point one hun-  
9 dred thirty-eight (496A.138), Code 1977, is amended to read  
10 as follows:

11 496A.138 VOTING REQUIREMENTS. Whenever, with respect  
12 to any action to be taken by the shareholders of a corporation,  
13 the articles of incorporation require the vote or concurrence  
14 of the holders of a greater ~~or lesser~~ proportion of the shares,  
15 or of any class or series thereof, than required by this  
16 chapter with respect to such action, the provisions of the  
17 articles of incorporation shall control.

18 Sec. 7. Section four hundred ninety-six A point thirty-  
19 two (496A.32), unnumbered paragraph eleven (11), Code 1977,  
20 is amended by striking the paragraph.

21 DIVISION III

22 Sec. 8. Section five hundred two point one hundred two  
23 (502.102), Code 1977, is amended by adding as subsection  
24 fourteen (14) the following new subsection:

25 14. NEW SUBSECTION. "Equity security", for the purposes  
26 of sections nine (9) through fifteen (15) of this Act, means  
27 any stock, bond or other obligation the holder of which has  
28 the right to vote, or any share of stock or similar security  
29 representing an equity interest in the target company, or  
30 any security convertible into, or any right, option or warrant  
31 to purchase, any such stock, bond, obligation or security.

32 Sec. 9. Section five hundred two point one hundred two  
33 (502.102), Code 1977, is amended by adding as subsection fif-  
34 teen (15) the following new subsection:

35 15. NEW SUBSECTION.

1 a. "Target company" means a person whose securities are  
2 or are to be the subject of an offer to acquire, pursuant  
3 to a tender offer or request or invitation for tenders, any  
4 equity securities of such person provided that such person  
5 is either:

6 (1) A person which is a Williams Act registrant and is  
7 either (i) organized under the laws of the state of Iowa or  
8 (ii) has its principal place of business within the state  
9 of Iowa; or

10 (2) A person which (i) is not a Williams Act registrant  
11 and (ii) has registered any equity security at any time sub-  
12 sequent to December 31, 1959 under either this Act or under  
13 chapter five hundred two (502) of the Code as it existed prior  
14 to the effective date of this Act.

15 b. For purposes of this subsection, a "Williams Act reg-  
16 istrant" means a person which (i) has any equity security  
17 which is registered pursuant to section twelve (12) of the  
18 Securities Exchange Act of 1934; or (ii) is an insurance  
19 company which would have been required to register any equity  
20 security pursuant to section twelve (12) of the Securities  
21 Exchange Act of 1934 except for the exemption provided in  
22 subparagraph G of paragraph two (2) of subsection g of sec-  
23 tion twelve (12) of the Securities Exchange Act of 1934; or  
24 (iii) is a closed-end investment company registered under  
25 the Investment Company Act of 1940.

26 c. For purposes of this subsection, the term "principal  
27 place of the business" shall have the same meaning as that  
28 term when used in title twenty-eight (28), United States Code,  
29 section one thousand three hundred thirty-two (1332),  
30 subsection c.

31 Sec. 10. Section five hundred two point one hundred two  
32 (502.102), Code 1977, is amended by adding as subsection  
33 sixteen (16) the following new subsection:

34 16. NEW SUBSECTION. "Tender offer" shall not include  
35 (i) an offer to purchase equity securities to be effected

1 by a registered broker-dealer on a stock exchange or in the  
2 over-the-counter market if the broker performs only the  
3 customary broker's function, and receives no more than the  
4 customary broker's commission, and neither the principal nor  
5 the broker solicits or arranges for the solicitation of orders  
6 to sell such equity securities; or (ii) any offer if the  
7 acquisition of all equity securities for which the offer is  
8 made, together with all other acquisitions by the offeror  
9 of securities of the same class during the preceding twelve  
10 months, would not exceed two percent of that class; or (iii)  
11 offers made by a broker-dealer for its own account in the  
12 ordinary course of its business of buying and selling such  
13 security.

14 Sec. 11. Chapter five hundred two (502), Code 1977, is  
15 amended by adding as section five hundred two point two hun-  
16 dred eleven (502.211) the following new section:

17 502.211 NEW SECTION. REGISTRATION REQUIREMENT. It is  
18 unlawful for any person to purchase an equity security of  
19 a target company pursuant to a cash tender offer for such  
20 security unless the offeror's tender offer registration  
21 statement pertaining to such security is in effect under  
22 section twelve (12) or section thirteen (13) of this Act if  
23 (i) after the consummation of the cash tender offer, the offeror  
24 and the affiliates of the offeror would own beneficially,  
25 directly or indirectly, more than five percent of any class  
26 of the outstanding equity securities of the target company;  
27 or (ii) the offer is for five percent or more of any class  
28 of outstanding equity securities of the target company and  
29 the offer is made by the target company itself.

30 Sec. 12. Chapter five hundred two (502), Code 1977, is  
31 amended by adding as section five hundred two point two hundred  
32 twelve (502.212) the following new section:

33 502.212 NEW SECTION. TENDER OFFER REGISTRATION BY CO-  
34 ORDINATION.

35 1. Tender offer registration by coordination may be used

1 for any tender offer for which a tender offer statement has  
2 been filed under section fourteen (14), paragraph one (1)  
3 of subsection d of the Securities Exchange Act of 1934.

4 2. A tender offer registration statement under this sec-  
5 tion shall contain the following information and shall be  
6 accompanied by the following documents in addition to the  
7 consent to service of process required by section five hun-  
8 dred two point six hundred nine (502.609) of the Code.

9 a. Two copies of the tender offer statement, including  
10 all exhibits thereto, filed under the Securities Exchange  
11 Act of 1934.

12 b. An undertaking to forward to the administrator two  
13 copies of all future amendments to such tender offer state-  
14 ment (including exhibits thereto) and of all additional  
15 material soliciting or requesting tender offers, not later  
16 than the first business day after they are forwarded to or  
17 filed with the securities and exchange commission.

18 3. A copy of the tender offer statement, filed under the  
19 Securities Exchange Act of 1934, including all exhibits  
20 thereto, shall be sent by registered or certified mail, or  
21 delivered to the target company at its principal executive  
22 office.

23 4. On the tenth day after both (i) the tender offer reg-  
24 istration statement required by subsection two (2) of this  
25 section has been filed and (ii) the documents required by  
26 subsection three (3) of this section have been sent, the ten-  
27 der offer registration statement shall become effective if  
28 no stop order is in effect in this state and no proceeding  
29 is pending under section fifteen (15) of this Act; except  
30 that while a tender offer registration statement is effective,  
31 a subsequent tender offer made by any other person with re-  
32 spect to the same securities shall become effective on the  
33 fourth business day after both (i) the filing of the tender  
34 offer registration statement required by subsection two (2)  
35 of this section and (ii) the sending of the documents re-

1 quired by subsection three (3) of this section, if no stop  
2 order is in effect in this state and no proceeding is pend-  
3 ing under section fifteen (15) of this Act.

4 5. After a tender offer registration statement has be-  
5 come effective pursuant to subsection four (4) of this sec-  
6 tion, an amendment thereto shall become effective upon (i)  
7 the filing of said amendment and (ii) the sending of said  
8 amendment, by registered or certified mail, to the target  
9 company at its principal office.

10 6. Prior to a tender offer registration statement having  
11 become effective pursuant to subsection four (4) of this sec-  
12 tion, an amendment thereto may be filed, but such amendment  
13 shall not be deemed to be filed until a copy of said amend-  
14 ment has been sent by registered or certified mail to the  
15 target company at its principal office. The filing of such  
16 an amendment shall not extend the time periods specified in  
17 subsection four (4) of this section.

18 7. All additional materials, other than the tender of-  
19 fer statement itself, soliciting or requesting tender offers  
20 shall be sent, by registered or certified mail, to the tar-  
21 get company at its principal executive office at the same  
22 time they are sent to the administrator.

23 8. A tender offer shall remain open for not less than  
24 the longer of the following periods:

- 25 a. Twenty-one days after it becomes effective;
- 26 b. Fourteen days after any amendment which changes the  
27 amount or type of consideration offered or the number of  
28 equity securities for which the offer is made;
- 29 c. The period of time during which the offer is required,  
30 by the Securities Exchange Act of 1934 or the rules promul-  
31 gated thereunder, to remain open.

32 9. Every tender offer registration statement shall re-  
33 main effective until ninety days after it has become effec-  
34 tive, unless it has earlier expired by its terms or has been  
35 withdrawn, suspended, or revoked, but the effectiveness of

1 any such registration statement may be extended by order of  
2 the administrator upon application by the offeror.

3 Sec. 13. Chapter five hundred two (502), Code 1977, is  
4 amended by adding as section five hundred two point two hun-  
5 dred thirteen (502.213) the following new section:

6 502.213 NEW SECTION. TENDER OFFER REGISTRATION BY QUALI-  
7 FICATION.

8 1. Any tender offer may be registered by qualification.

9 2. A tender offer registration statement under this sec-  
10 tion shall contain the following information and shall be  
11 accompanied by the consent to service of process required  
12 by section five hundred two point six hundred nine (502.609)  
13 of the Code:

14 a. The name and address of the offeror and of any person  
15 controlling the offeror and of each director and each execu-  
16 tive officer (or person occupying a similar status or per-  
17 forming similar functions) of the offeror and of any person  
18 controlling the offeror; a description of the business of  
19 the offeror (including a description of any material pend-  
20 ing legal or administrative proceeding) and of its affili-  
21 ates; as to each director or officer, such person's princi-  
22 pal occupation for the past five years and any criminal con-  
23 victions (excluding traffic violations or similar misde-  
24 meanors) or any securities law, antitrust, labor law, en-  
25 vironmental law, or fair employment practices injunction or  
26 judgment entered against such person or against the offeror  
27 or any person in control of the offeror during the past five  
28 years;

29 b. A description of the equity securities to be purchased  
30 and the consideration to be offered;

31 c. The duration of the offer;

32 d. The date on which the offeror may first purchase ten-  
33 dered securities;

34 e. The amount or number of equity securities to be pur-  
35 chased or the manner in which such number or amount will be

1 determined;

2 f. Whether the offeror will unconditionally accept all  
3 or any part of the equity securities tendered and, if not,  
4 upon what conditions acceptance will be made;

5 g. The number or amount of any equity securities of the  
6 target company owned beneficially by the offeror and all af-  
7 filiates of the offeror as of the date of the filing of the  
8 registration statement and a description of all transactions  
9 within one year of the filing of the registration statement  
10 in which the offeror or any of its affiliates acquired or  
11 disposed of any such securities;

12 h. A description of any present and proposed contract,  
13 agreement or understanding to which the offeror or any af-  
14 filiate of the offeror is a party with respect to the  
15 ownership, voting rights or any other interest in any equity  
16 security of the target company;

17 i. The source and amount of funds to be used in making  
18 the purchases, including a description of all borrowing  
19 transactions and the parties thereto;

20 j. The purposes of the proposed purchase and if any such  
21 purpose is to acquire control of the target company, any plans  
22 to make any major change in the business, assets, location  
23 of facilities, employment levels, corporate structure,  
24 capitalization or dividend policies of the target company;

25 k. The exact dates prior to which or subsequent to which  
26 the security holders who deposit their securities will have  
27 the right to withdraw their securities;

28 l. A description of any material transactions, negotia-  
29 tions or business relationships between the offeror or its  
30 affiliates and the target company or its affiliates during  
31 the past three years;

32 m. A description of any plans to make any changes in the  
33 present board of directors or management of the target company;

34 n. Any present or proposed contract, arrangement or un-  
35 derstanding between the offeror or any of its affiliates and

1 the target company, or any of its executive officers, directors  
2 or affiliates; and,

3 o. Copies of (i) a balance sheet of the offeror (and of  
4 any person, other than any individual, controlling the of-  
5 feror) as of the close of its most recent fiscal year; (ii)  
6 the income statement of the offeror (and of any person, other  
7 than any individual, controlling the offeror) for the three  
8 years ended with the balance sheet required by (i) hereof;  
9 (iii) the statements of sources and application of funds of  
10 the offeror (and of any person, other than any individual,  
11 controlling the offeror) for the three years ended with the  
12 balance sheet required by (i) hereof; and (iv) a balance sheet  
13 of the offeror (or of said person controlling the offeror,  
14 as the case may be) and statements of income and of sources  
15 and application of funds for such person for the period from  
16 the close of its most recent fiscal year to a date within  
17 one hundred twenty days of the filing;

18 p. A description of any material transaction between the  
19 offeror and its affiliates during the past three years.

20 3. A copy of the tender offer registration statement,  
21 including all exhibits thereto, shall be sent, by registered  
22 or certified mail, to the target company at its principal  
23 executive office.

24 4. On the tenth day after both (i) the tender offer  
25 registration statement required by subsection two (2) of this  
26 section has been filed and (ii) the documents required by  
27 subsection three (3) of this section have been sent, the  
28 tender offer registration statement shall become effective  
29 if no stop order is in effect in this state and no proceed-  
30 ing is pending under section fifteen (15) of this Act; except  
31 that while a tender offer registration statement is effec-  
32 tive, a subsequent tender offer made by any other person with  
33 respect to the same securities shall become effective on the  
34 fourth business day after both (i) the filing of the tender  
35 offer registration statement required by subsection two (2)

1 of this section and (ii) the sending of the documents required  
2 by subsection three (3) of this section, if no stop order  
3 is in effect in this state and no proceeding is pending under  
4 section fifteen (15) of this Act.

5 5. After a tender offer registration statement has be-  
6 come effective pursuant to subsection four (4) of this sec-  
7 tion, an amendment thereto shall become effective upon (i)  
8 the filing of said amendment and (ii) the sending of said  
9 amendment, by registered or certified mail, to the target  
10 company at its principal office.

11 6. Prior to a tender offer registration statement having  
12 become effective pursuant to subsection four (4) of this sec-  
13 tion, an amendment thereto may be filed, but such amendment  
14 shall not be deemed to be filed until a copy of said amend-  
15 ment has been sent by registered or certified mail to the  
16 target company at its principal office. The filing of such  
17 an amendment shall not extend the time periods specified in  
18 subsection four (4) of this section.

19 7. All additional materials, other than the tender offer  
20 registration statement itself, soliciting or requesting ten-  
21 der offers, shall, not later than two days after its first  
22 use, be (i) sent by registered or certified mail to the target  
23 company at its principal executive office and (ii) filed with  
24 the administrator.

25 8. If any material change occurs in the facts set forth  
26 in the tender offer registration statement, the offeror shall  
27 promptly file with the administrator and mail to the target  
28 company, an amendment to said registration statement disclosing  
29 such change.

30 9. A tender offer shall remain open for not less than  
31 the longer of the following periods:

32 a. Twenty-one days after it becomes effective; or

33 b. Fourteen days after any amendment which changes the  
34 amount or type of consideration offered or the number of  
35 equity securities for which the offer is made.

1     10. Securities deposited pursuant to a tender offer may  
2 be withdrawn by or on behalf of the depositor:

3     a. At any time until the expiration of fifteen days af-  
4 ter the registration statement becomes effective; or

5     b. If the offeror has not previously accepted them, at  
6 any time after sixty days from the date the registration  
7 statement becomes effective; or

8     c. If the offeror has not previously accepted them, at  
9 any time during the fifteen days following the date on which  
10 a competing tender offer registration statement has been filed  
11 with the administrator; or

12     d. If the offeror has not previously accepted them, at  
13 any time during the ten days immediately after the effec-  
14 tiveness of any amendment filed by a competing tender offeror  
15 which changes the amount or type of consideration offered.

16     11. If, during the period the tender offer must remain  
17 open pursuant to paragraph a of subsection ten (10) of this  
18 section, a greater number of equity securities is tendered  
19 than the offeror is bound or willing to purchase, the equity  
20 securities shall be purchased pro rata, as nearly as may be,  
21 according to the number of shares tendered during such period  
22 by each equity security holder.

23     12. Whenever any offeror varies the terms of a tender  
24 offer by increasing the consideration offered to holders of  
25 such securities, the offeror shall pay the increased con-  
26 sideration to each security holder whose securities are taken  
27 up and paid for pursuant to the tender offer whether or not  
28 such securities have been taken up by the offeror prior to  
29 the variation of the tender offer.

30     13. Every tender offer registration statement shall remain  
31 effective until ninety days after it has become effective,  
32 unless it has earlier expired by its terms or has been with-  
33 drawn, suspended, or revoked, but the effectiveness of any  
34 such registration statement may be extended by order of the  
35 administrator upon application by the offeror.

1     Sec. 14. Chapter five hundred two (502), Code 1977, is  
2 amended by adding as section five hundred two point two hundred  
3 fourteen (502.214) the following new section:

4     502.214 NEW SECTION. PROVISIONS APPLICABLE TO TENDER  
5 OFFER REGISTRATION GENERALLY.

6     1. Every person filing a tender offer registration state-  
7 ment shall pay a nonrefundable filing fee of one hundred  
8 dollars.

9     2. The administrator may by rule or otherwise permit the  
10 omission of any item of information or document from any  
11 tender offer registration statement.

12     3. The administrator may by rule or order require as a  
13 condition of registration under this Act that all or a part  
14 of the information contained in the tender offer registration  
15 statement be made publicly available, either prior or  
16 subsequent to the registration statement becoming effective,  
17 by publication in one or more newspapers of appropriate  
18 circulation or be made available to stockholders via a mailing  
19 to stockholders.

20     4. The offeror shall not, during any period during which  
21 it is making a tender offer, purchase any equity security  
22 of the target company for a consideration other than that  
23 stated in its tender offer.

24     5. The offeror shall not, in connection with any tender  
25 offer, purchase any equity security of the target company  
26 from any officer, director or affiliate of the target com-  
27 pany for a consideration in excess of that to be paid to other  
28 stockholders pursuant to the tender offer, unless such purchase  
29 is made at the then existing market price.

30     6. a. The target company shall, not later than the end  
31 of the next business day following the receipt of a written  
32 request from any offeror who has filed a tender offer  
33 registration statement, disclose to such offeror the number  
34 of holders of record of the class of securities for which  
35 the tender offer will be made. The target company shall,

1 not later than five business days after the receipt from the  
2 offeror of a number of sets of the tender offer materials  
3 equal to the number of holders of record as disclosed by the  
4 target company under this paragraph and the receipt of payment  
5 in advance of an amount representing the first class postage  
6 required to mail those materials, cause a set of those  
7 materials to be mailed, first class postage prepaid, to each  
8 holder of record of the class of securities for which the  
9 tender offer will be made, provided that the offeror undertakes  
10 in writing to the target company that: (i) it will promptly  
11 reimburse the target company for any reasonable costs incurred  
12 by the target company in causing such mailing; and (ii) it  
13 will promptly furnish at its own expense the number of  
14 additional sets of the tender offer materials which may be  
15 requested by the target company. The target company shall  
16 not cause any materials to be removed from, added to, or  
17 incorporated with materials submitted by the offeror for  
18 mailing.

19 b. The target company may, at its option, elect to furnish  
20 shareholder lists to the offeror as provided in this paragraph  
21 in lieu of complying with paragraph a of this subsection.  
22 If the target company elected to furnish such lists, it shall,  
23 not later than the end of the next business day following  
24 the receipt of a written request from the offeror, give notice  
25 in writing to the offeror of such election, and shall, within  
26 four business days after receipt of the request, furnish to  
27 such offeror the most recent list, in whatsoever form is  
28 reasonably requested by the offeror, in its possession or  
29 under its control, of the names and addresses of the holders  
30 of record of the class of securities for which the tender  
31 offer will be made, together with the number of shares so  
32 held, and together with the security position listings, if  
33 any, from the depository trust company and similar clearing  
34 agencies, provided that the offeror undertakes in writing  
35 to the target company that: (i) such lists will be used

1 exclusively in connection with the tender offer; (ii) it will  
2 promptly reimburse the target company for the reasonable  
3 costs incurred by it in furnishing such lists; and (iii) it  
4 undertakes in writing to mail, at its own expense, a copy  
5 of the tender offer material to each person whose name ap-  
6 pears on the list of stockholders and to furnish, at its own  
7 expense, the number of sets of the tender offer materials  
8 requested by participants whose names appear on the clearing  
9 agency's security position listings.

10 c. The target company shall, within two business days  
11 after the receipt of a written request from an offeror which  
12 has previously received a shareholder list pursuant to para-  
13 graph b of this subsection furnish to such offeror a supple-  
14 mentary list showing all transfers since the date of the fur-  
15 nished list or, if one or more supplemental lists have al-  
16 ready been furnished, from the date of the last such  
17 supplemental list so furnished.

18 7. All materials disseminated in connection with the ten-  
19 der offer, by the target company, or by persons acting in  
20 concert with it, shall within two days after its first use,  
21 (i) be sent, by registered or certified mail, to the offeror  
22 at its principal executive office and (ii) be filed with the  
23 administrator.

24 Sec. 15. Chapter five hundred two (502), Code 1977, is  
25 amended by adding as section five hundred two point two hun-  
26 dred fifteen (502.215) the following new section:

27 502.215 NEW SECTION. DENIAL, SUSPENSION AND REVOCATION  
28 OF TENDER OFFER REGISTRATION.

29 1. The administrator may issue a stop order denying ef-  
30 fectiveness to, or suspending or revoking the effectiveness  
31 of, any tender offer registration statement if the administra-  
32 tor finds that the order is in the public interest and that  
33 at least one of the following conditions exists:

34 a. The tender offer registration statement is incomplete  
35 in any material respect or contains any statement which was,

1 in light of the circumstances under which it was made, false  
2 or misleading with respect to any material fact.

3 b. Any provision of this Act or any rule, order or condi-  
4 tion lawfully imposed under this Act has been willfully  
5 violated, in connection with the tender offer, by (i) the  
6 person filing the tender offer registration statement; (ii)  
7 any partner, officer or director of the offeror, or any per-  
8 son occupying a similar status or performing similar func-  
9 tions; (iii) any affiliate of the offeror; or (iv) any broker-  
10 dealer acting on behalf of the offeror.

11 c. The offer registered or sought to be registered is  
12 the subject of an administrative stop order or similar order  
13 or a permanent or temporary injunction of any court of compe-  
14 tent jurisdiction entered under any other federal or state  
15 act applicable to the offer, but the administrator may not  
16 enter an order under this section on the basis of an order  
17 or injunction entered under any other state act unless that  
18 order or injunction was based on facts which would currently  
19 constitute a ground for a stop order under this section.

20 d. The applicant or registrant has failed to pay the  
21 proper filing fee; but the administrator may enter only a  
22 denial order under this subsection, and shall vacate any such  
23 order when the deficiency has been corrected.

24 2. The administrator may not institute a stop order  
25 proceeding against an effective tender offer registration  
26 statement on the basis of a fact known to the administra-  
27 tor when the tender offer registration statement became ef-  
28 fective unless the proceeding is instituted within thirty  
29 days after effectiveness.

30 3. The administrator may issue a summary order postpon-  
31 ing, suspending or denying the effectiveness of a tender of-  
32 fer registration statement pending final determination of  
33 any proceeding under this section. Upon the entry of the  
34 order, the administrator shall promptly notify the offeror  
35 that the order has been entered and of the reasons therefor

1 and that within fifteen days after the receipt of a written  
2 request the matter will be set down for hearing. If no hearing  
3 is requested and none is ordered by the administrator, the  
4 order will remain in effect until it is modified or vacated  
5 by the administrator. If a hearing is requested or ordered,  
6 the administrator, after notice of an opportunity for hearing  
7 to the offeror, may modify or vacate the order or extend it  
8 until final determination.

9 4. A stop order shall not be entered under any part of  
10 this section without compliance with the Iowa Administrative  
11 Procedure Act, except that a summary order may be issued un-  
12 der subsection three (3) of this section prior to notice and  
13 hearing as may be required by that Act.

14 5. The administrator may vacate or modify a stop order  
15 upon a finding that the conditions which prompted its en-  
16 try have changed or that it is otherwise in the public in-  
17 terest to do so.

18 Sec. 16. Section five hundred two point four hundred seven  
19 (502.407), Code 1977, is amended to read as follows:

20 502.407 MISSTATEMENTS IN PUBLICITY. It is unlawful for  
21 any person to make or cause to be made, in any public re-  
22 port or press release, or in other information which is either  
23 made generally available to the public or used in opposition  
24 to a tender offer, any statement of a material fact relating  
25 to an issuer or made in connection with a tender offer which  
26 is, at the time and in the light of the circumstances under  
27 which it is made, false or misleading, if it is reasonably  
28 foreseeable that such statement will induce other persons  
29 to buy, sell or hold securities of the issuer.

30 Sec. 17. Section five hundred two point five hundred one  
31 (502.501), Code 1977, is amended to read as follows:

32 502.501 VIOLATION OF REGISTRATION AND RELATED REQUIRE-  
33 MENTS.

34 1. Any person who:

35 4 a. Violates section 502.201, section 502.208, subsection

1 12 or section 502.406, subsection 2, paragraph "b", or  
2 2 b. Violates any material condition imposed under section  
3 502.208, or

4 3 c. Offers or sells a security at any time when such  
5 person has committed a material violation of section 502.301,  
6 or

7 4 d. Commits a material violation of any order issued  
8 by the administrator under this chapter, shall be liable to  
9 the person purchasing the security offered or sold in con-  
10 nection with such violation, who may sue either at law or  
11 in equity to recover the consideration paid for the security,  
12 together with interest at the legal rate from the date of  
13 payment, costs and reasonable attorneys' fees, less the amount  
14 of any income or distributions, in cash or in kind, received  
15 on the security, upon the tender of the security, or for  
16 damages if the purchaser no longer owns the security. Dam-  
17 ages shall be the amount that would be recoverable upon a  
18 tender less

19 a- (1) The value of the security when the purchaser dis-  
20 posed of it and

21 b- (2) Interest on said value at the legal rate from the  
22 date of disposition. Any person on whose behalf an offer-  
23 ing is made and any underwriter of the offering, whether on  
24 a best efforts or a firm commitment basis, shall be jointly  
25 and severally liable under this section, but in no event shall  
26 any underwriter be liable in any suit or suits authorized  
27 under this section for damages in excess of the total price  
28 at which the securities underwritten by it and distributed  
29 to the public were offered to the public. Tender requires  
30 only notice of willingness to exchange the security for the  
31 amount specified. Any notice may be given by service as in  
32 civil actions or by certified mail addressed to the last known  
33 address of the person liable.

34 2. Any person who violates section eleven (11) of this  
35 Act shall be liable to the person selling the security to

1 such violator, which seller may sue either at law or in equity  
2 to recover the security, costs and reasonable attorney's fees,  
3 plus any income or distributions, in cash or in kind, received  
4 by the purchaser thereon, upon tender of the consideration  
5 received, or for damages if the purchaser no longer owns the  
6 security. Damages shall be the excess of the value of the  
7 security when the purchaser disposed of it, plus interest  
8 at the legal rate from the date of disposition, over the con-  
9 sideration paid for the security. Tender requires only notice  
10 of willingness to pay the amount specified in exchange for  
11 the security. Any notice may be given by service as in civil  
12 actions or by certified mail to the last known address of  
13 the person liable.

14 Sec. 18. Section five hundred two point five hundred two  
15 (502.502), subsection two (2), Code 1977, is amended to read  
16 as follows:

17 2. Any person who offers to purchase or purchases a se-  
18 curity in violation of sections 502.401 or 502.404, the seller  
19 not knowing of the violation, and who fails to sustain the  
20 burden of proof that he, she or it did not know and in the  
21 exercise of reasonable care could not have known of the  
22 violation, shall be liable to the seller, who may sue either  
23 at law or in equity to recover the security, costs, and  
24 reasonable attorney's fees, plus any income or distributions,  
25 in cash or in kind, received by the purchaser thereon, upon  
26 tender of the consideration received, or for damages if the  
27 purchaser no longer owns the security. Damages shall be the  
28 excess of the value of the security when the purchaser dis-  
29 posed of it, plus interest at the legal rate from the date  
30 of disposition, over the consideration paid for the security.  
31 Tender requires only notice of willingness to pay the amount  
32 specified in exchange for the security. Any notice may be  
33 given by service as in civil actions or by certified mail  
34 to the last known address of the person liable.

35 Sec. 19. Section five hundred two point five hundred two

1 (502.502), Code 1977, is amended by adding the following new  
2 subsection:

3 NEW SUBSECTION. Any person who is aggrieved by a viola-  
4 tion of section five hundred two point four hundred seven  
5 (502.407) of the Code may bring an action in the district  
6 court to enjoin the acts complained of and, upon proper  
7 showing, to require that correcting material be disseminated,  
8 and such person may be awarded costs and reasonable attorney's  
9 fees.

10 Sec. 20. Section five hundred two point six hundred ten  
11 (502.610), subsection four (4), unnumbered paragraph one (1),  
12 Code 1977, is amended to read as follows:

13 4. An Except when made in connection with a tender of-  
14 fer, an offer to sell or to purchase is not made in this state  
15 when made by means of either of the following:

16 DIVISION IV

17 Sec. 21. Section five hundred two point one hundred two  
18 (502.102), subsection ten (10), paragraph f, subparagraph  
19 two (2), Code 1977, is amended to read as follows:

20 (2) Any stock split, ~~reverse stock split~~, other than a  
21 reverse stock split or security dividend payable with respect  
22 to the securities of a corporation in the same or any other  
23 class of securities of such corporation, provided nothing  
24 of value, including the surrender of a right or an option  
25 to receive a cash or property dividend, is given by security  
26 holders for the security dividend.

27 Sec. 22. Section five hundred two point two hundred three  
28 (502.203), subsection thirteen (13), Code 1977, is amended  
29 to read as follows:

30 13. Any transaction incident to a vote by security hold-  
31 ers of ~~an issuer~~ a person or incident to a written consent  
32 or resolution of some or all security holders of ~~an issuer~~  
33 a person, pursuant to the articles of incorporation of such  
34 ~~issuer~~ person, or pursuant to the applicable corporate statute  
35 or other statute governing such ~~issuer~~ person, or pursuant

1 to such ~~issuer's~~ person's partnership agreement, declaration  
2 of trust, or trust indenture, or pursuant to any agreement  
3 among security holders of such ~~issuer~~ person, on a  
4 reclassification of securities, reverse stock split, re-  
5 organization involving the exchange of securities, merger,  
6 consolidation, or sale of assets, in consideration, in whole  
7 or in part, of the issuance of securities of ~~the-issuer~~ such  
8 person or of any other person, if:

DIVISION V

9 Sec. 23. Section five hundred two point one hundred two  
10 (502.102), subsection two (2), paragraph a, Code 1977, is  
11 amended to read as follows:

12 a. Effecting transactions in a security exempted by sec-  
13 tion 502.202, subsections 1, 2, 3, four (4), six (6), 10 or  
14 11;

15 Sec. 24. Section five hundred two point two hundred two  
16 (502.202), subsection one (1), Code 1977, is amended to read  
17 as follows:

18 1. Any security, including a revenue obligation, issued  
19 or guaranteed by the United States, any state, any political  
20 subdivision of a state, or any agency or corporate or other  
21 instrumentality of one or more of the foregoing; or any  
22 certificate of deposit for any of the foregoing; but this  
23 exemption shall not include any revenue obligation payable  
24 from payments to be made in respect of property or money used  
25 under a lease, sale or loan arrangement by or for a  
26 nongovernmental industrial or commercial enterprise, unless  
27 such payments are or will be made or unconditionally guaran-  
28 teed by a person whose securities are exempt from registra-  
29 tion under this chapter by (a) section 502.202, subsection  
30 7 or subsection 8, or (b) subsection nine (9) of section  
31 five hundred two point two hundred two (502.202) of the Code,  
32 provided the issuer first files with the administrator a  
33 written notice specifying the terms of the offer and the  
34 administrator does not by order disallow the exemption with-  
35

1 in fifteen days thereafter.

2 Sec. 25. Section five hundred two point two hundred three  
3 (502.203), subsection two (2), paragraph c, Code 1977, is  
4 amended to read as follows:

5 c. The security was issued by an issuer which has a class  
6 of securities ~~currently~~ registered under ~~section-502-204~~ this  
7 chapter, or under chapter five hundred two (502) of the Code  
8 as it existed prior to January 1, 1976.

9 Sec. 26. Section five hundred two point two hundred three  
10 (502.203), subsection twelve (12), Code 1977, is amended to  
11 read as follows:

12 12. Any offer, but not a sale, of a security for which  
13 a registration statements-have statement has been filed under  
14 ~~both this chapter and the Securities Act of 1933~~ if no stop  
15 order or denial order is in effect and no proceeding is pend-  
16 ing under ~~either law~~ this chapter.

17 Sec. 27. Section five hundred two point two hundred ten  
18 (502.210), subsection one (1), unnumbered paragraph one (1),  
19 Code 1977, is amended to read as follows:

20 ~~The aggregate offering price of all securities of the~~  
21 ~~issuer which may be registered for sale in this state under~~  
22 ~~section-502-207, as part of a single issue of equity~~  
23 ~~securities, shall not exceed~~ Notwithstanding the provisions  
24 of section five hundred two point two hundred seven (502.207)  
25 of the Code, no securities may be registered under that sec-  
26 tion if the aggregate offering price of all securities of  
27 the issuer which will be offered or sold in this state, as  
28 part of a single issue of equity securities, in reliance upon  
29 the exemption from federal registration requirements provided  
30 by paragraph eleven (11) of subsection a of section three  
31 (3) of the federal Securities Act of 1933, as amended, exceeds  
32 the following amounts:

33 Sec. 23. This Act shall take effect January 1, 1978.

34 EXPLANATION

35 This bill contains amendments to various statutes which

1 protect the owners of enterprises, principally sharehold-  
2 ers of corporations. The bill is divided into five divi-  
3 sions. The proposals contained in each were recommended by  
4 the Rights of Minority Shareholders joint interim sub-  
5 committee.

6 DIVISION I

7 Section 1 was prepared and recommended by the interim Joint  
8 Subcommittee. Senate File 85 repeals Chapter 741 of the Code  
9 which prohibits an employee from receiving a gratuity for  
10 or commensurate with the performance by that employee of the  
11 duties of his or her employment. This section inserts a  
12 similar type of prohibition into Senate File 85, and becomes  
13 effective on the effective date of that Act. A violation  
14 is a class D felony.

15 DIVISION II

16 Sections 2 through 7 of the bill amend Chapter 496A of  
17 the Code, relating to business corporations.

18 Section 2 makes a technical correction to recognize entities  
19 created under federal or foreign law.

20 Section 3 adds language to preclude any action at a share-  
21 holders meeting unless at least one-fourth of the shares  
22 entitled to be voted are represented at the meeting.

23 Section 4 prohibits shares of a corporation from being  
24 voted or counted for quorum purposes when the shareholder  
25 is a corporation controlled by the issuing corporation, by  
26 deleting the provision which allows the articles to permit  
27 the voting of such shares.

28 Section 5 deletes the Iowa section relating to the filling  
29 of vacancies and substitutes the Model Business Corporation  
30 Act provision. It deletes language which enables an exist-  
31 ing board of directors to fill vacancies on the board by  
32 appointing persons to hold office for the remainder of the  
33 term of predecessors. Under the new language, the share-  
34 holders would have the right to ratify or disapprove appoint-  
35 ments not later than one year after the appointments.

1 Section 6 deletes the provision which permits the arti-  
2 cles of incorporation to reduce any statutorily prescribed  
3 percentage of votes required to accomplish various sharehold-  
4 er actions.

5 Section 7 deletes the provision allowing a corporation  
6 to deny or limit shareholder voting by proxy.

7 Generally, these amendments eliminate Iowa variations from  
8 the Model Business Corporation Act, except that the Model  
9 Act contains a one-third minimum quorum requirement whereas  
10 section 3 of this bill requires one-fourth of the shares for  
11 quorum purposes.

12 DIVISION III

13 Division III of the bill contains amendments to the Iowa  
14 securities laws (Code Chapter 502) which are recommended by  
15 the superintendent of securities. These amendments add pro-  
16 visions to the law which would regulate tender offers, i.e.,  
17 attempts to obtain control of a corporation through the pur-  
18 chase of shares for cash, and also make other changes which  
19 protect the rights of shareholders.

20 Sections 8, 9 and 10 add new definitions required if ten-  
21 der offers are to be regulated.

22 Section 11 requires registration with the superintendent  
23 of a tender offer if the offer involves the purchase of five  
24 percent or more of any class of equity securities.

25 Section 12 permits use for state registration purposes  
26 of any tender offer registration filed with the Securities  
27 and Exchange Commission under federal law.

28 Section 13 provides the conditions which must be met for  
29 original registration of a tender offer in this state.

30 Section 14 contains provisions applicable to tender of-  
31 fer situations, including publication of the offer, prohi-  
32 biting the purchase of equity securities at other than the  
33 price stated in the registration, and requiring the target  
34 corporation to provide the offeror with shareholder lists,  
35 and prohibiting the offeror from purchasing shares owned by

1 officers of the target company for a price higher than that  
2 being paid to other shareholders for their shares.

3 Section 15 specifies conditions under which the superin-  
4 tendent has authority to deny, suspend or revoke a tender  
5 offer registration.

6 Sections 16 and 20 are correlating amendments to reflect  
7 the new tender offer provisions.

8 Section 17 adds a civil remedy provision to be used by  
9 persons sustaining damages as a result of violations of the  
10 tender offer provisions.

11 Section 18 adds a provision entitling a shareholder to  
12 costs and attorney fees when the shareholder prevails in an  
13 action based upon a violation of part IV of Chapter 502  
14 relating to fraudulent practices.

15 Section 19 adds language permitting an aggrieved person  
16 to obtain an injunction, plus costs and attorney fees, when  
17 misleading publicity is generated with respect to an issuer  
18 whose securities are being offered for sale.

19 DIVISION IV

20 Division IV of the bill also contains securities law  
21 amendments. The two sections in that division (sections 21  
22 and 22) would protect the shareholder in the event of a reverse  
23 stock split, e.g., issuance of one new share for each five  
24 shares owned. Under present law, if the corporate articles  
25 prohibit fractional shares, a person who owned four shares  
26 in the example could lose rights since he does not own enough  
27 shares to trade in for the new issue. The amendments would  
28 treat a reverse stock split as a sale for purposes of the  
29 anti-fraud and purchaser remedy provisions.

30 DIVISION V

31 Division V contains amendments to the securities laws which  
32 are stated to be technical.

33 Section 23 would exempt from the provisions of the chap-  
34 ter any person acting as an agent within the meaning of the  
35 chapter when that person is representing a federal or state

1 savings and loan association or credit union. Securities  
2 of those institutions presently are exempt from the reg-  
3 istration and other filing requirements of the chapter.

4 Section 24 adds to the types of securities which are exempt  
5 from state registration requirements, any security issued  
6 by a not-for-profit organization, as defined, if the issuer  
7 files with the superintendent a written notice describing  
8 the offer.

9 Section 25 clarifies the applicability of Chapter 502 with  
10 respect to transactions occurring before and after January  
11 1, 1976, the effective date of the Act which completely revised  
12 Chapter 502.

13 Section 26 eliminates a requirement which prohibits offers  
14 of securities pending state registration unless a registration  
15 statement also has been filed with the S.E.C.

16 Section 27 relates to sales of securities which are exempt  
17 from federal registration as an intrastate offering. The  
18 purpose of section 502.210 is to limit the amount of equity  
19 securities which may be sold in Iowa pursuant to such an  
20 intrastate offering. As presently written, however, the  
21 section does at times place limits on offerings which are  
22 interstate in nature. For instance, if an issue already has  
23 become effective with the S.E.C., then registration in Iowa  
24 must be made pursuant to section 502.207. This would, for  
25 example, limit a mutual fund whose registration arrived in  
26 Iowa subsequent to S.E.C. effectiveness to \$2,000,000 in  
27 sales to Iowans. It is the opinion of the superintendent  
28 that this was not the intention of the statute, and the above  
29 change is recommended. A reference to federal law is added,  
30 which section contains the instrastate exemption from federal  
31 registration. Thus, only the issuers utilizing that federal  
32 exemption, and registering in Iowa pursuant to section 502.207,  
33 will be subject to the \$2,000,000 limitation.

34 The bill has an effective date of January 1, 1978.

35

LSB 741S  
lb/rh/8A

SENATE FILE 376

S-3516

Amend Senate File 376 as follows:

1. Page 3, by inserting after line 20 the following new division:

"DIVISION

Sec. \_\_\_\_ Chapter four hundred ninety-six A (496A), Code 1977, is amended by adding the following new section:

NEW SECTION. OFFER TO PURCHASE STOCK--CONDITIONS --PENALTY.

1. A person shall not offer to purchase or acquire, directly or indirectly, equity securities as defined in section seven (7) of this Act of a corporation organized under this chapter for consideration which exceeds the aggregate market values of those securities with the intent to acquire control of the corporation unless the person extends the same offer to all owners of such securities not owned or controlled by the person making the offer. The person making the offer shall do so in a writing which complies with subsection three (3) of this section.

2. A person who is required by subsection one (1) of this section to give notice of an offer to purchase equity securities shall purchase at the price stated in the offer the shares of any shareholder who accepts the offer in writing within sixty days after receipt by the shareholder of the offer; provided, however that the person making the offer shall not be required to purchase a greater number of shares than the number which the written offer states will be purchased. In the event the number of shares tendered for sale in acceptance of the offer exceeds the number which the person offered to purchase, the person making the offer shall purchase from each shareholder who makes timely acceptance a number of shares which bears the same ratio to the total number of shares tendered for purchase by the shareholder as the number of shares the person offered to purchase or acquire bears to the total number of shares tendered in acceptance by all shareholders to whom the written offer was made. For purposes of this subsection "tendered in acceptance" means stated in writing by the shareholder as the number of shares which the shareholder agrees to sell in response to the offer, and does not require actual delivery of the shares.

3. The written offer required by subsection one (1) of this section must state the price which will be paid for each share and the maximum number of shares which the person making the offer will purchase in the aggregate, and must state that (a) the offer must be accepted in a writing which states the number of shares the shareholder agrees to sell and (b) the acceptance must be received by

1 the person making the offer not later than sixty days  
2 after delivery to the shareholder of the written offer.  
3 4. For purposes of this section, a written offer  
4 to a shareholder shall be deemed delivered on the date  
5 when the written offer is mailed by first class mail,  
6 postage paid, to the shareholder at the address as shown  
7 in the records of the corporation whose shares are the  
8 subject of the offer.  
9 5. A person who fails to comply with subsections  
10 one (1) or two (2) of this section commits an aggravated  
11 misdemeanor."

S-3516 FILED  
MAY 6, 1977  
RULED OUT OF ORDER  
(p. 1385)

BY EARL M. WILLITS  
JAMES M. REDMOND

SENATE FILE 376

S-3517

1 Amend Senate File 376 as follows:  
2 1. Page 21, by striking lines 13 through 15, and  
3 inserting in lieu thereof the following:  
4 "a. Effecting transactions in a security exempted  
5 by section 502.202, subsections 1, 2, 3, four (4),  
6 six (6), 10, or 11 or 13;"  
7 2. Page 22, by inserting after line 1, the  
8 following:  
9 "Sec. \_\_\_\_\_. Section five hundred two point two  
10 hundred two (502.202) is amended by adding the  
11 following new subsection:  
12 \_\_\_\_\_. Any security issued by and representing  
13 any interest in or a debt of any industrial loan  
14 company organized and supervised under the laws  
15 of this state."

S-3517 FILED & W/D  
MAY 6, 1977

BY E. KEVIN KELLY  
JAMES M. REDMOND

SENATE FILE 376

S-3520

1 Amend Senate File 376 as follows:  
2 1. Page 21, by striking lines 13 through 15, and  
3 inserting in lieu thereof the following:  
4 "a. Effecting transactions in a security exempted  
5 by section 502.202, subsections 1, 2, 3, four (4),  
6 six (6), 10, or 11, or a security issued by an  
7 industrial loan company licensed under chapter five  
8 hundred thirty-six A (536A), Code 1977;"

S-3520 FILED & ADOPTED (p. 1386)  
MAY 6, 1977

BY E. KEVIN KELLY



DIVISION I

1  
2 Section 1. Chapter one thousand two hundred forty-five  
3 (1245), Acts of the Sixty-sixth General Assembly, 1976 Session,  
4 chapter one (1), division twenty-two (XXII), is amended by  
5 adding the following new section:

6 NEW SECTION. COMMERCIAL BRIBERY.

7 1. As used in subsection two (2) of this section, the  
8 following definitions shall apply unless the context otherwise  
9 requires:

10 a. "Employer" means any sole proprietor, partnership,  
11 corporation, association, or other entity or organization.

12 b. "Employee" includes every officer, employee, agent  
13 or representative.

14 c. "Gratuity" means consideration in any form, including  
15 but not limited to a gift, commission, discount and bonus.

16 2. It is unlawful for a person to offer or deliver directly  
17 or indirectly for the personal benefit of an employee acting  
18 on behalf of his or her employer in a business transaction  
19 or course of transactions with the person a gratuity in  
20 consideration of an act or omission which the person has  
21 reason to know is in conflict with the employment relation  
22 and duties of the employee to the employer. It is unlawful  
23 for an employee acting on behalf of his or her employer in  
24 a business transaction or course of transactions with a person  
25 to solicit or receive from the person a gratuity directly  
26 or indirectly for the personal benefit of the employee in  
27 consideration of an act or omission which the employee has  
28 reason to know is in conflict with the employment relation  
29 and duties of the employee to the employer.

30 3. A violation of subsection two (2) of this section is  
31 a class "D" felony.

32 DIVISION II

33 Sec. 2. Section four hundred ninety-six A point two  
34 (496A.2), subsection fourteen (14), Code 1977, is amended  
35 to read as follows:

1 14. "Nonadmitted organization" means any corporation,  
2 bank, trust company, mutual savings bank, savings and loan  
3 association, national banking association or insurance company  
4 which is organized under ~~the laws of another state~~ laws other  
5 than the laws of this state and which is not entitled under  
6 this chapter to procure a certificate of authority to transact  
7 business in this state.

8 Sec. 3. Section four hundred ninety-six A point thirty-  
9 one (496A.31), Code 1977, is amended to read as follows:

10 496A.31 QUORUM OF SHAREHOLDERS. Unless otherwise provided  
11 in the articles of incorporation, a majority of the shares  
12 entitled to vote, represented in person or by proxy, shall  
13 constitute a quorum at a meeting of shareholders, but in no  
14 event shall a quorum consist of less than one-fourth of the  
15 shares entitled to vote at the meeting. If a quorum is  
16 present, the affirmative vote of the majority of the shares  
17 represented at the meeting and entitled to vote on the subject  
18 matter shall be the act of the shareholders, unless the vote  
19 of a greater number or voting by classes is required by this  
20 chapter or the articles of incorporation or bylaws.

21 Sec. 4. Section four hundred ninety-six A point thirty-  
22 two (496A.32), unnumbered paragraph three (3), Code 1977,  
23 is amended to read as follows:

24 Neither treasury shares nor ~~unless the articles of~~  
25 ~~incorporation otherwise provide,~~ shares held by another  
26 corporation if a majority of the shares entitled to vote for  
27 the election of directors of such other corporation is held  
28 by the corporation, shall be voted at any meeting or counted  
29 in determining the total number of outstanding shares at any  
30 given time.

31 Sec. 5. Section four hundred ninety-six A point thirty-  
32 seven (496A.37), Code 1977, is amended by striking the sec-  
33 tion and inserting in lieu thereof the following:

34 496A.37 VACANCIES. Any vacancy occurring in the board  
35 of directors may be filled by the affirmative vote of a

1 majority of the remaining directors though less than a quorum  
2 of the board of directors. A director elected to fill a  
3 vacancy shall be elected for the unexpired term of his  
4 predecessor in office. Any directorship to be filled by  
5 reason of an increase in the number of directors may be filled  
6 by the board of directors for a term of office continuing  
7 only until the next election of directors by the shareholders.

8 Sec. 6. Section four hundred ninety-six A point one hun-  
9 dred thirty-eight (496A.138), Code 1977, is amended to read  
10 as follows:

11 496A.138 VOTING REQUIREMENTS. Whenever, with respect  
12 to any action to be taken by the shareholders of a corporation,  
13 the articles of incorporation require the vote or concurrence  
14 of the holders of a greater ~~or lesser~~ proportion of the shares,  
15 or of any class or series thereof, than required by this  
16 chapter with respect to such action, the provisions of the  
17 articles of incorporation shall control.

18 Sec. 7. Section four hundred ninety-six A point thirty-  
19 two (496A.32), unnumbered paragraph eleven (11), Code 1977,  
20 is amended by striking the paragraph.

21 DIVISION III

22 Sec. 8. Section five hundred two point one hundred two  
23 (502.102), Code 1977, is amended by adding as subsection  
24 fourteen (14) the following new subsection:

25 14. NEW SUBSECTION. "Equity security", for the purposes  
26 of sections nine (9) through fifteen (15) of this Act, means  
27 any stock, bond or other obligation the holder of which has  
28 the right to vote, or any share of stock or similar security  
29 representing an equity interest in the target company, or  
30 any security convertible into, or any right, option or warrant  
31 to purchase, any such stock, bond, obligation or security.

32 Sec. 9. Section five hundred two point one hundred two  
33 (502.102), Code 1977, is amended by adding as subsection fif-  
34 teen (15) the following new subsection:

35 15. NEW SUBSECTION.

1 a. "Target company" means a person whose securities are  
2 or are to be the subject of an offer to acquire, pursuant  
3 to a tender offer or request or invitation for tenders, any  
4 equity securities of such person provided that such person  
5 is either:

6 (1) A person which is a Williams Act registrant and is  
7 either (i) organized under the laws of the state of Iowa or  
8 (ii) has its principal place of business within the state  
9 of Iowa; or

10 (2) A person which (i) is not a Williams Act registrant  
11 and (ii) has registered any equity security at any time sub-  
12 sequent to December 31, 1959 under either this Act or under  
13 chapter five hundred two (502) of the Code as it existed prior  
14 to the effective date of this Act.

15 b. For purposes of this subsection, a "Williams Act reg-  
16 istrant" means a person which (i) has any equity security  
17 which is registered pursuant to section twelve (12) of the  
18 Securities Exchange Act of 1934; or (ii) is an insurance  
19 company which would have been required to register any equity  
20 security pursuant to section twelve (12) of the Securities  
21 Exchange Act of 1934 except for the exemption provided in  
22 subparagraph G of paragraph two (2) of subsection g of sec-  
23 tion twelve (12) of the Securities Exchange Act of 1934; or  
24 (iii) is a closed-end investment company registered under  
25 the Investment Company Act of 1940.

26 c. For purposes of this subsection, the term "principal  
27 place of the business" shall have the same meaning as that  
28 term when used in title twenty-eight (28), United States Code,  
29 section one thousand three hundred thirty-two (1332),  
30 subsection c.

31 Sec. 10. Section five hundred two point one hundred two  
32 (502.102), Code 1977, is amended by adding as subsection  
33 sixteen (16) the following new subsection:

34 16. NEW SUBSECTION. "Tender offer" shall not include  
35 (i) an offer to purchase equity securities to be effected

1 by a registered broker-dealer on a stock exchange or in the  
2 over-the-counter market if the broker performs only the  
3 customary broker's function, and receives no more than the  
4 customary broker's commission, and neither the principal nor  
5 the broker solicits or arranges for the solicitation of orders  
6 to sell such equity securities; or (ii) any offer if the  
7 acquisition of all equity securities for which the offer is  
8 made, together with all other acquisitions by the offeror  
9 of securities of the same class during the preceding twelve  
10 months, would not exceed two percent of that class; or (iii)  
11 offers made by a broker-dealer for its own account in the  
12 ordinary course of its business of buying and selling such  
13 security.

14 Sec. 11. Chapter five hundred two (502), Code 1977, is  
15 amended by adding as section five hundred two point two hun-  
16 dred eleven (502.211) the following new section:

17 502.211 NEW SECTION. REGISTRATION REQUIREMENT. It is  
18 unlawful for any person to purchase an equity security of  
19 a target company pursuant to a cash tender offer for such  
20 security unless the offeror's tender offer registration  
21 statement pertaining to such security is in effect under  
22 section twelve (12) or section thirteen (13) of this Act if  
23 (i) after the consummation of the cash tender offer, the offeror  
24 and the affiliates of the offeror would own beneficially,  
25 directly or indirectly, more than five percent of any class  
26 of the outstanding equity securities of the target company;  
27 or (ii) the offer is for five percent or more of any class  
28 of outstanding equity securities of the target company and  
29 the offer is made by the target company itself.

30 Sec. 12. Chapter five hundred two (502), Code 1977, is  
31 amended by adding as section five hundred two point two hundred  
32 twelve (502.212) the following new section:

33 502.212 NEW SECTION. TENDER OFFER REGISTRATION BY CO-  
34 ORDINATION.

35 1. Tender offer registration by coordination may be used

1 for any tender offer for which a tender offer statement has  
2 been filed under section fourteen (14), paragraph one (1)  
3 of subsection d of the Securities Exchange Act of 1934.

4 2. A tender offer registration statement under this sec-  
5 tion shall contain the following information and shall be  
6 accompanied by the following documents in addition to the  
7 consent to service of process required by section five hun-  
8 dred two point six hundred nine (502.609) of the Code.

9 a. Two copies of the tender offer statement, including  
10 all exhibits thereto, filed under the Securities Exchange  
11 Act of 1934.

12 b. An undertaking to forward to the administrator two  
13 copies of all future amendments to such tender offer state-  
14 ment (including exhibits thereto) and of all additional  
15 material soliciting or requesting tender offers, not later  
16 than the first business day after they are forwarded to or  
17 filed with the securities and exchange commission.

18 3. A copy of the tender offer statement, filed under the  
19 Securities Exchange Act of 1934, including all exhibits  
20 thereto, shall be sent by registered or certified mail, or  
21 delivered to the target company at its principal executive  
22 office.

23 4. On the tenth day after both (i) the tender offer reg-  
24 istration statement required by subsection two (2) of this  
25 section has been filed and (ii) the documents required by  
26 subsection three (3) of this section have been sent, the ten-  
27 der offer registration statement shall become effective if  
28 no stop order is in effect in this state and no proceeding  
29 is pending under section fifteen (15) of this Act; except  
30 that while a tender offer registration statement is effective,  
31 a subsequent tender offer made by any other person with re-  
32 spect to the same securities shall become effective on the  
33 fourth business day after both (i) the filing of the tender  
34 offer registration statement required by subsection two (2)  
35 of this section and (ii) the sending of the documents re-

1 quired by subsection three (3) of this section, if no stop  
2 order is in effect in this state and no proceeding is pend-  
3 ing under section fifteen (15) of this Act.

4 5. After a tender offer registration statement has be-  
5 come effective pursuant to subsection four (4) of this sec-  
6 tion, an amendment thereto shall become effective upon (i)  
7 the filing of said amendment and (ii) the sending of said  
8 amendment, by registered or certified mail, to the target  
9 company at its principal office.

10 6. Prior to a tender offer registration statement having  
11 become effective pursuant to subsection four (4) of this sec-  
12 tion, an amendment thereto may be filed, but such amendment  
13 shall not be deemed to be filed until a copy of said amend-  
14 ment has been sent by registered or certified mail to the  
15 target company at its principal office. The filing of such  
16 an amendment shall not extend the time periods specified in  
17 subsection four (4) of this section.

18 7. All additional materials, other than the tender of-  
19 fer statement itself, soliciting or requesting tender offers  
20 shall be sent, by registered or certified mail, to the tar-  
21 get company at its principal executive office at the same  
22 time they are sent to the administrator.

23 8. A tender offer shall remain open for not less than  
24 the longer of the following periods:

25 a. Twenty-one days after it becomes effective;

26 b. Fourteen days after any amendment which changes the  
27 amount or type of consideration offered or the number of  
28 equity securities for which the offer is made;

29 c. The period of time during which the offer is required,  
30 by the Securities Exchange Act of 1934 or the rules promul-  
31 gated thereunder, to remain open.

32 9. Every tender offer registration statement shall re-  
33 main effective until ninety days after it has become effec-  
34 tive, unless it has earlier expired by its terms or has been  
35 withdrawn, suspended, or revoked, but the effectiveness of

1 any such registration statement may be extended by order of  
2 the administrator upon application by the offeror.

3 Sec. 13. Chapter five hundred two (502), Code 1977, is  
4 amended by adding as section five hundred two point two hun-  
5 dred thirteen (502.213) the following new section:

6 502.213 NEW SECTION. TENDER OFFER REGISTRATION BY QUALI-  
7 FICATION.

8 1. Any tender offer may be registered by qualification.

9 2. A tender offer registration statement under this sec-  
10 tion shall contain the following information and shall be  
11 accompanied by the consent to service of process required  
12 by section five hundred two point six hundred nine (502.609)  
13 of the Code:

14 a. The name and address of the offeror and of any person  
15 controlling the offeror and of each director and each execu-  
16 tive officer (or person occupying a similar status or per-  
17 forming similar functions) of the offeror and of any person  
18 controlling the offeror; a description of the business of  
19 the offeror (including a description of any material pend-  
20 ing legal or administrative proceeding) and of its affili-  
21 ates; as to each director or officer, such person's princi-  
22 pal occupation for the past five years and any criminal con-  
23 victions (excluding traffic violations or similar misde-  
24 meanors) or any securities law, antitrust, labor law, en-  
25 vironmental law, or fair employment practices injunction or  
26 judgment entered against such person or against the offeror  
27 or any person in control of the offeror during the past five  
28 years;

29 b. A description of the equity securities to be purchased  
30 and the consideration to be offered;

31 c. The duration of the offer;

32 d. The date on which the offeror may first purchase ten-  
33 dered securities;

34 e. The amount or number of equity securities to be pur-  
35 chased or the manner in which such number or amount will be

1 determined;

2 f. Whether the offeror will unconditionally accept all  
3 or any part of the equity securities tendered and, if not,  
4 upon what conditions acceptance will be made;

5 g. The number or amount of any equity securities of the  
6 target company owned beneficially by the offeror and all af-  
7 filiates of the offeror as of the date of the filing of the  
8 registration statement and a description of all transactions  
9 within one year of the filing of the registration statement  
10 in which the offeror or any of its affiliates acquired or  
11 disposed of any such securities;

12 h. A description of any present and proposed contract,  
13 agreement or understanding to which the offeror or any af-  
14 filiate of the offeror is a party with respect to the  
15 ownership, voting rights or any other interest in any equity  
16 security of the target company;

17 i. The source and amount of funds to be used in making  
18 the purchases, including a description of all borrowing  
19 transactions and the parties thereto;

20 j. The purposes of the proposed purchase and if any such  
21 purpose is to acquire control of the target company, any plans  
22 to make any major change in the business, assets, location  
23 of facilities, employment levels, corporate structure,  
24 capitalization or dividend policies of the target company;

25 k. The exact dates prior to which or subsequent to which  
26 the security holders who deposit their securities will have  
27 the right to withdraw their securities;

28 l. A description of any material transactions, negotia-  
29 tions or business relationships between the offeror or its  
30 affiliates and the target company or its affiliates during  
31 the past three years;

32 m. A description of any plans to make any changes in the  
33 present board of directors or management of the target company;

34 n. Any present or proposed contract, arrangement or un-  
35 derstanding between the offeror or any of its affiliates and

1 the target company, or any of its executive officers, directors  
2 or affiliates; and,

3 o. Copies of (i) a balance sheet of the offeror (and of  
4 any person, other than any individual, controlling the of-  
5 feror) as of the close of its most recent fiscal year; (ii)  
6 the income statement of the offeror (and of any person, other  
7 than any individual, controlling the offeror) for the three  
8 years ended with the balance sheet required by (i) hereof;  
9 (iii) the statements of sources and application of funds of  
10 the offeror (and of any person, other than any individual,  
11 controlling the offeror) for the three years ended with the  
12 balance sheet required by (i) hereof; and (iv) a balance sheet  
13 of the offeror (or of said person controlling the offeror,  
14 as the case may be) and statements of income and of sources  
15 and application of funds for such person for the period from  
16 the close of its most recent fiscal year to a date within  
17 one hundred twenty days of the filing;

18 p. A description of any material transaction between the  
19 offeror and its affiliates during the past three years.

20 3. A copy of the tender offer registration statement,  
21 including all exhibits thereto, shall be sent, by registered  
22 or certified mail, to the target company at its principal  
23 executive office.

24 4. On the tenth day after both (i) the tender offer  
25 registration statement required by subsection two (2) of this  
26 section has been filed and (ii) the documents required by  
27 subsection three (3) of this section have been sent, the  
28 tender offer registration statement shall become effective  
29 if no stop order is in effect in this state and no proceed-  
30 ing is pending under section fifteen (15) of this Act; except  
31 that while a tender offer registration statement is effec-  
32 tive, a subsequent tender offer made by any other person with  
33 respect to the same securities shall become effective on the  
34 fourth business day after both (i) the filing of the tender  
35 offer registration statement required by subsection two (2)

1 of this section and (ii) the sending of the documents required  
2 by subsection three (3) of this section, if no stop order  
3 is in effect in this state and no proceeding is pending under  
4 section fifteen (15) of this Act.

5 5. After a tender offer registration statement has be-  
6 come effective pursuant to subsection four (4) of this sec-  
7 tion, an amendment thereto shall become effective upon (i)  
8 the filing of said amendment and (ii) the sending of said  
9 amendment, by registered or certified mail, to the target  
10 company at its principal office.

11 6. Prior to a tender offer registration statement having  
12 become effective pursuant to subsection four (4) of this sec-  
13 tion, an amendment thereto may be filed, but such amendment  
14 shall not be deemed to be filed until a copy of said amend-  
15 ment has been sent by registered or certified mail to the  
16 target company at its principal office. The filing of such  
17 an amendment shall not extend the time periods specified in  
18 subsection four (4) of this section.

19 7. All additional materials, other than the tender offer  
20 registration statement itself, soliciting or requesting ten-  
21 der offers, shall, not later than two days after its first  
22 use, be (i) sent by registered or certified mail to the target  
23 company at its principal executive office and (ii) filed with  
24 the administrator.

25 8. If any material change occurs in the facts set forth  
26 in the tender offer registration statement, the offeror shall  
27 promptly file with the administrator and mail to the target  
28 company, an amendment to said registration statement disclosing  
29 such change.

30 9. A tender offer shall remain open for not less than  
31 the longer of the following periods:

- 32 a. Twenty-one days after it becomes effective; or
- 33 b. Fourteen days after any amendment which changes the  
34 amount or type of consideration offered or the number of  
35 equity securities for which the offer is made.

1 10. Securities deposited pursuant to a tender offer may  
2 be withdrawn by or on behalf of the depositor:

3 a. At any time until the expiration of fifteen days af-  
4 ter the registration statement becomes effective; or

5 b. If the offeror has not previously accepted them, at  
6 any time after sixty days from the date the registration  
7 statement becomes effective; or

8 c. If the offeror has not previously accepted them, at  
9 any time during the fifteen days following the date on which  
10 a competing tender offer registration statement has been filed  
11 with the administrator; or

12 d. If the offeror has not previously accepted them, at  
13 any time during the ten days immediately after the effec-  
14 tiveness of any amendment filed by a competing tender offeror  
15 which changes the amount or type of consideration offered.

16 11. If, during the period the tender offer must remain  
17 open pursuant to paragraph a of subsection ten (10) of this  
18 section, a greater number of equity securities is tendered  
19 than the offeror is bound or willing to purchase, the equity  
20 securities shall be purchased pro rata, as nearly as may be,  
21 according to the number of shares tendered during such period  
22 by each equity security holder.

23 12. Whenever any offeror varies the terms of a tender  
24 offer by increasing the consideration offered to holders of  
25 such securities, the offeror shall pay the increased con-  
26 sideration to each security holder whose securities are taken  
27 up and paid for pursuant to the tender offer whether or not  
28 such securities have been taken up by the offeror prior to  
29 the variation of the tender offer.

30 13. Every tender offer registration statement shall remain  
31 effective until ninety days after it has become effective,  
32 unless it has earlier expired by its terms or has been with-  
33 drawn, suspended, or revoked, but the effectiveness of any  
34 such registration statement may be extended by order of the  
35 administrator upon application by the offeror.

1 Sec. 14. Chapter five hundred two (502), Code 1977, is  
2 amended by adding as section five hundred two point two hundred  
3 fourteen (502.214) the following new section:

4 502.214 NEW SECTION. PROVISIONS APPLICABLE TO TENDER  
5 OFFER REGISTRATION GENERALLY.

6 1. Every person filing a tender offer registration state-  
7 ment shall pay a nonrefundable filing fee of one hundred  
8 dollars.

9 2. The administrator may by rule or otherwise permit the  
10 omission of any item of information or document from any  
11 tender offer registration statement.

12 3. The administrator may by rule or order require as a  
13 condition of registration under this Act that all or a part  
14 of the information contained in the tender offer registration  
15 statement be made publicly available, either prior or  
16 subsequent to the registration statement becoming effective,  
17 by publication in one or more newspapers of appropriate  
18 circulation or be made available to stockholders via a mailing  
19 to stockholders.

20 4. The offeror shall not, during any period during which  
21 it is making a tender offer, purchase any equity security  
22 of the target company for a consideration other than that  
23 stated in its tender offer.

24 5. The offeror shall not, in connection with any tender  
25 offer, purchase any equity security of the target company  
26 from any officer, director or affiliate of the target com-  
27 pany for a consideration in excess of that to be paid to other  
28 stockholders pursuant to the tender offer, unless such purchase  
29 is made at the then existing market price.

30 6. a. The target company shall, not later than the end  
31 of the next business day following the receipt of a written  
32 request from any offeror who has filed a tender offer  
33 registration statement, disclose to such offeror the number  
34 of holders of record of the class of securities for which  
35 the tender offer will be made. The target company shall,

1 not later than five business days after the receipt from the  
2 offeror of a number of sets of the tender offer materials  
3 equal to the number of holders of record as disclosed by the  
4 target company under this paragraph and the receipt of payment  
5 in advance of an amount representing the first class postage  
6 required to mail those materials, cause a set of those  
7 materials to be mailed, first class postage prepaid, to each  
8 holder of record of the class of securities for which the  
9 tender offer will be made, provided that the offeror undertakes  
10 in writing to the target company that: (i) it will promptly  
11 reimburse the target company for any reasonable costs incurred  
12 by the target company in causing such mailing; and (ii) it  
13 will promptly furnish at its own expense the number of  
14 additional sets of the tender offer materials which may be  
15 requested by the target company. The target company shall  
16 not cause any materials to be removed from, added to, or  
17 incorporated with materials submitted by the offeror for  
18 mailing.

19 b. The target company may, at its option, elect to furnish  
20 shareholder lists to the offeror as provided in this paragraph  
21 in lieu of complying with paragraph a of this subsection.  
22 If the target company elected to furnish such lists, it shall,  
23 not later than the end of the next business day following  
24 the receipt of a written request from the offeror, give notice  
25 in writing to the offeror of such election, and shall, within  
26 four business days after receipt of the request, furnish to  
27 such offeror the most recent list, in whatsoever form is  
28 reasonably requested by the offeror, in its possession or  
29 under its control, of the names and addresses of the holders  
30 of record of the class of securities for which the tender  
31 offer will be made, together with the number of shares so  
32 held, and together with the security position listings, if  
33 any, from the depository trust company and similar clearing  
34 agencies, provided that the offeror undertakes in writing  
35 to the target company that: (i) such lists will be used

1 exclusively in connection with the tender offer; (ii) it will  
2 promptly reimburse the target company for the reasonable  
3 costs incurred by it in furnishing such lists; and (iii) it  
4 undertakes in writing to mail, at its own expense, a copy  
5 of the tender offer material to each person whose name ap-  
6 pears on the list of stockholders and to furnish, at its own  
7 expense, the number of sets of the tender offer materials  
8 requested by participants whose names appear on the clearing  
9 agency's security position listings.

10 c. The target company shall, within two business days  
11 after the receipt of a written request from an offeror which  
12 has previously received a shareholder list pursuant to para-  
13 graph b of this subsection furnish to such offeror a supple-  
14 mentary list showing all transfers since the date of the fur-  
15 nished list or, if one or more supplemental lists have al-  
16 ready been furnished, from the date of the last such  
17 supplemental list so furnished.

18 7. All materials disseminated in connection with the ten-  
19 der offer, by the target company, or by persons acting in  
20 concert with it, shall within two days after its first use,  
21 (i) be sent, by registered or certified mail, to the offeror  
22 at its principal executive office and (ii) be filed with the  
23 administrator.

24 Sec. 15. Chapter five hundred two (502), Code 1977, is  
25 amended by adding as section five hundred two point two hun-  
26 dred fifteen (502.215) the following new section:

27 502.215 NEW SECTION. DENIAL, SUSPENSION AND REVOCATION  
28 OF TENDER OFFER REGISTRATION.

29 1. The administrator may issue a stop order denying ef-  
30 fectiveness to, or suspending or revoking the effectiveness  
31 of, any tender offer registration statement if the administra-  
32 tor finds that the order is in the public interest and that  
33 at least one of the following conditions exists:

34 a. The tender offer registration statement is incomplete  
35 in any material respect or contains any statement which was,

1 in light of the circumstances under which it was made, false  
2 or misleading with respect to any material fact.

3 b. Any provision of this Act or any rule, order or condi-  
4 tion lawfully imposed under this Act has been willfully  
5 violated, in connection with the tender offer, by (i) the  
6 person filing the tender offer registration statement; (ii)  
7 any partner, officer or director of the offeror, or any per-  
8 son occupying a similar status or performing similar func-  
9 tions; (iii) any affiliate of the offeror; or (iv) any broker-  
10 dealer acting on behalf of the offeror.

11 c. The offer registered or sought to be registered is  
12 the subject of an administrative stop order or similar order  
13 or a permanent or temporary injunction of any court of compe-  
14 tent jurisdiction entered under any other federal or state  
15 act applicable to the offer, but the administrator may not  
16 enter an order under this section on the basis of an order  
17 or injunction entered under any other state act unless that  
18 order or injunction was based on facts which would currently  
19 constitute a ground for a stop order under this section.

20 d. The applicant or registrant has failed to pay the  
21 proper filing fee; but the administrator may enter only a  
22 denial order under this subsection, and shall vacate any such  
23 order when the deficiency has been corrected.

24 2. The administrator may not institute a stop order  
25 proceeding against an effective tender offer registration  
26 statement on the basis of a fact known to the administra-  
27 tor when the tender offer registration statement became ef-  
28 fective unless the proceeding is instituted within thirty  
29 days after effectiveness.

30 3. The administrator may issue a summary order postpon-  
31 ing, suspending or denying the effectiveness of a tender of-  
32 fer registration statement pending final determination of  
33 any proceeding under this section. Upon the entry of the  
34 order, the administrator shall promptly notify the offeror  
35 that the order has been entered and of the reasons therefor

1 and that within fifteen days after the receipt of a written  
2 request the matter will be set down for hearing. If no hearing  
3 is requested and none is ordered by the administrator, the  
4 order will remain in effect until it is modified or vacated  
5 by the administrator. If a hearing is requested or ordered,  
6 the administrator, after notice of an opportunity for hearing  
7 to the offeror, may modify or vacate the order or extend it  
8 until final determination.

9 4. A stop order shall not be entered under any part of  
10 this section without compliance with the Iowa Administrative  
11 Procedure Act, except that a summary order may be issued un-  
12 der subsection three (3) of this section prior to notice and  
13 hearing as may be required by that Act.

14 5. The administrator may vacate or modify a stop order  
15 upon a finding that the conditions which prompted its en-  
16 try have changed or that it is otherwise in the public in-  
17 terest to do so.

18 Sec. 16. Section five hundred two point four hundred seven  
19 (502.407), Code 1977, is amended to read as follows:

20 502.407 MISSTATEMENTS IN PUBLICITY. It is unlawful for  
21 any person to make or cause to be made, in any public re-  
22 port or press release, or in other information which is either  
23 made generally available to the public or used in opposition  
24 to a tender offer, any statement of a material fact relating  
25 to an issuer or made in connection with a tender offer which  
26 is, at the time and in the light of the circumstances under  
27 which it is made, false or misleading, if it is reasonably  
28 foreseeable that such statement will induce other persons  
29 to buy, sell or hold securities of the issuer.

30 Sec. 17. Section five hundred two point five hundred one  
31 (502.501), Code 1977, is amended to read as follows:

32 502.501 VIOLATION OF REGISTRATION AND RELATED REQUIRE-  
33 MENTS.

34 1. Any person who:

35 4 a. Violates section 502.201, section 502.208, subsection

1 12 or section 502.406, subsection 2, paragraph "b", or

2 2 b. Violates any material condition imposed under section  
3 502.208, or

4 3 c. Offers or sells a security at any time when such  
5 person has committed a material violation of section 502.301,  
6 or

7 4 d. Commits a material violation of any order issued  
8 by the administrator under this chapter, shall be liable to  
9 the person purchasing the security offered or sold in con-  
10 nection with such violation, who may sue either at law or  
11 in equity to recover the consideration paid for the security,  
12 together with interest at the legal rate from the date of  
13 payment, costs and reasonable attorneys' fees, less the amount  
14 of any income or distributions, in cash or in kind, received  
15 on the security, upon the tender of the security, or for  
16 damages if the purchaser no longer owns the security. Dam-  
17 ages shall be the amount that would be recoverable upon a  
18 tender less

19 a- (1) The value of the security when the purchaser dis-  
20 posed of it and

21 b- (2) Interest on said value at the legal rate from the  
22 date of disposition. Any person on whose behalf an offer-  
23 ing is made and any underwriter of the offering, whether on  
24 a best efforts or a firm commitment basis, shall be jointly  
25 and severally liable under this section, but in no event shall  
26 any underwriter be liable in any suit or suits authorized  
27 under this section for damages in excess of the total price  
28 at which the securities underwritten by it and distributed  
29 to the public were offered to the public. Tender requires  
30 only notice of willingness to exchange the security for the  
31 amount specified. Any notice may be given by service as in  
32 civil actions or by certified mail addressed to the last known  
33 address of the person liable.

34 2. Any person who violates section eleven (11) of this  
35 Act shall be liable to the person selling the security to

1 such violator, which seller may sue either at law or in equity  
2 to recover the security, costs and reasonable attorney's fees,  
3 plus any income or distributions, in cash or in kind, received  
4 by the purchaser thereon, upon tender of the consideration  
5 received, or for damages if the purchaser no longer owns the  
6 security. Damages shall be the excess of the value of the  
7 security when the purchaser disposed of it, plus interest  
8 at the legal rate from the date of disposition, over the con-  
9 sideration paid for the security. Tender requires only notice  
10 of willingness to pay the amount specified in exchange for  
11 the security. Any notice may be given by service as in civil  
12 actions or by certified mail to the last known address of  
13 the person liable.

14 Sec. 18. Section five hundred two point five hundred two  
15 (502.502), subsection two (2), Code 1977, is amended to read  
16 as follows:

17 2. Any person who offers to purchase or purchases a se-  
18 curity in violation of sections 502.401 or 502.404, the seller  
19 not knowing of the violation, and who fails to sustain the  
20 burden of proof that he, she or it did not know and in the  
21 exercise of reasonable care could not have known of the  
22 violation, shall be liable to the seller, who may sue either  
23 at law or in equity to recover the security, costs, and  
24 reasonable attorney's fees, plus any income or distributions,  
25 in cash or in kind, received by the purchaser thereon, upon  
26 tender of the consideration received, or for damages if the  
27 purchaser no longer owns the security. Damages shall be the  
28 excess of the value of the security when the purchaser dis-  
29 posed of it, plus interest at the legal rate from the date  
30 of disposition, over the consideration paid for the security.  
31 Tender requires only notice of willingness to pay the amount  
32 specified in exchange for the security. Any notice may be  
33 given by service as in civil actions or by certified mail  
34 to the last known address of the person liable.

35 Sec. 19. Section five hundred two point five hundred two

1 (502.502), Code 1977, is amended by adding the following new  
2 subsection:

3 NEW SUBSECTION. Any person who is aggrieved by a viola-  
4 tion of section five hundred two point four hundred seven  
5 (502.407) of the Code may bring an action in the district  
6 court to enjoin the acts complained of and, upon proper  
7 showing, to require that correcting material be disseminated,  
8 and such person may be awarded costs and reasonable attorney's  
9 fees.

10 Sec. 20. Section five hundred two point six hundred ten  
11 (502.610), subsection four (4), unnumbered paragraph one (1),  
12 Code 1977, is amended to read as follows:

13 4. An Except when made in connection with a tender of-  
14 fer, an offer to sell or to purchase is not made in this state  
15 when made by means of either of the following:

16 DIVISION IV

17 Sec. 21. Section five hundred two point one hundred two  
18 (502.102), subsection ten (10), paragraph f, subparagraph  
19 two (2), Code 1977, is amended to read as follows:

20 (2) Any stock split, ~~reverse stock split,~~ other than a  
21 reverse stock split or security dividend payable with respect  
22 to the securities of a corporation in the same or any other  
23 class of securities of such corporation, provided nothing  
24 of value, including the surrender of a right or an option  
25 to receive a cash or property dividend, is given by security  
26 holders for the security dividend.

27 Sec. 22. Section five hundred two point two hundred three  
28 (502.203), subsection thirteen (13), Code 1977, is amended  
29 to read as follows:

30 13. Any transaction incident to a vote by security hold-  
31 ers of ~~an issuer~~ a person or incident to a written consent  
32 or resolution of some or all security holders of ~~an issuer~~  
33 a person, pursuant to the articles of incorporation of such  
34 ~~issuer~~ person, or pursuant to the applicable corporate statute  
35 or other statute governing such ~~issuer~~ person, or pursuant

1 to such issuer's person's partnership agreement, declaration  
2 of trust, or trust indenture, or pursuant to any agreement  
3 among security holders of such issuer person, on a  
4 reclassification of securities, reverse stock split, re-  
5 organization involving the exchange of securities, merger,  
6 consolidation, or sale of assets, in consideration, in whole  
7 or in part, of the issuance of securities of ~~the-issuer~~ such  
8 person or of any other person, if:

9 DIVISION V

10 Sec. 23. Section five hundred two point one hundred two  
11 (502.102), subsection two (2), paragraph a, Code 1977, is  
12 amended to read as follows:

13 a. Effecting transactions in a security exempted by sec-  
14 tion 502.202, subsections 1, 2, 3, four (4), six (6), 10,  
15 or 11, or a security issued by an industrial loan company  
16 licensed under chapter five hundred thirty-six A (536A), Code  
17 1977;

18 Sec. 24. Section five hundred two point two hundred two  
19 (502.202), subsection one (1), Code 1977, is amended to read  
20 as follows:

21 1. Any security, including a revenue obligation, issued  
22 or guaranteed by the United States, any state, any political  
23 subdivision of a state, or any agency or corporate or other  
24 instrumentality of one or more of the foregoing; or any  
25 certificate of deposit for any of the foregoing; but this  
26 exemption shall not include any revenue obligation payable  
27 from payments to be made in respect of property or money used  
28 under a lease, sale or loan arrangement by or for a  
29 nongovernmental industrial or commercial enterprise, unless  
30 such payments are or will be made or unconditionally guaran-  
31 teed by a person whose securities are exempt from registra-  
32 tion under this chapter by (a) section 502.202, subsection  
33 7 or subsection 8, or (b) subsection nine (9) of section five  
34 hundred two point two hundred two (502.202) of the Code,  
35 provided the issuer first files with the administrator a

1 written notice specifying the terms of the offer and the  
2 administrator does not by order disallow the exemption with-  
3 in fifteen days thereafter.

4 Sec. 25. Section five hundred two point two hundred three  
5 (502.203), subsection two (2), paragraph c, Code 1977, is  
6 amended to read as follows:

7 c. The security was issued by an issuer which has a class  
8 of securities ~~currently~~ registered under ~~section-502-204~~ this  
9 chapter, or under chapter five hundred two (502) of the Code  
10 as it existed prior to January 1, 1976.

11 Sec. 26. Section five hundred two point two hundred three  
12 (502.203), subsection twelve (12), Code 1977, is amended to  
13 read as follows:

14 12. Any offer, but not a sale, of a security for which  
15 a registration statements-have statement has been filed under  
16 ~~both this chapter and the Securities Act of 1933~~ if no stop  
17 order or denial order is in effect and no proceeding is pend-  
18 ing under ~~either-law~~ this chapter.

19 Sec. 27. Section five hundred two point two hundred ten  
20 (502.210), subsection one (1), unnumbered paragraph one (1),  
21 Code 1977, is amended to read as follows:

22 ~~The aggregate offering price of all securities of the~~  
23 ~~issuer which may be registered for sale in this state under~~  
24 ~~section 502.207, as part of a single issue of equity~~  
25 ~~securities, shall not exceed~~ Notwithstanding the provisions  
26 of section five hundred two point two hundred seven (502.207)  
27 of the Code, no securities may be registered under that sec-  
28 tion if the aggregate offering price of all securities of  
29 the issuer which will be offered or sold in this state, as  
30 part of a single issue of equity securities, in reliance upon  
31 the exemption from federal registration requirements provided  
32 by paragraph eleven (11) of subsection a of section three  
33 (3) of the federal Securities Act of 1933, as amended, exceeds  
34 the following amounts:

35 Sec. 28. This Act shall take effect January 1, 1978.

1 EXPLANATION

2 This bill contains amendments to various statutes which  
3 protect the owners of enterprises, principally sharehold-  
4 ers of corporations. The bill is divided into five divi-  
5 sions. The proposals contained in each were recommended by  
6 the Rights of Minority Shareholders joint interim sub-  
7 committee.

8 DIVISION I

9 Section 1 was prepared and recommended by the interim Joint  
10 Subcommittee. Senate File 85 repeals Chapter 741 of the Code  
11 which prohibits an employee from receiving a gratuity for  
12 or commensurate with the performance by that employee of the  
13 duties of his or her employment. This section inserts a  
14 similar type of prohibition into Senate File 85, and becomes  
15 effective on the effective date of that Act. A violation  
16 is a class D felony.

17 DIVISION II

18 Sections 2 through 7 of the bill amend Chapter 496A of  
19 the Code, relating to business corporations.

20 Section 2 makes a technical correction to recognize entities  
21 created under federal or foreign law.

22 Section 3 adds language to preclude any action at a share-  
23 holders meeting unless at least one-fourth of the shares  
24 entitled to be voted are represented at the meeting.

25 Section 4 prohibits shares of a corporation from being  
26 voted or counted for quorum purposes when the shareholder  
27 is a corporation controlled by the issuing corporation, by  
28 deleting the provision which allows the articles to permit  
29 the voting of such shares.

30 Section 5 deletes the Iowa section relating to the filling  
31 of vacancies and substitutes the Model Business Corporation  
32 Act provision. It deletes language which enables an exist-  
33 ing board of directors to fill vacancies on the board by  
34 appointing persons to hold office for the remainder of the  
35 term of predecessors. Under the new language, the share-

1 holders would have the right to ratify or disapprove appoint-  
2 ments not later than one year after the appointments.

3 Section 6 deletes the provision which permits the arti-  
4 cles of incorporation to reduce any statutorily prescribed  
5 percentage of votes required to accomplish various sharehold-  
6 er actions.

7 Section 7 deletes the provision allowing a corporation  
8 to deny or limit shareholder voting by proxy.

9 Generally, these amendments eliminate Iowa variations from  
10 the Model Business Corporation Act, except that the Model  
11 Act contains a one-third minimum quorum requirement whereas  
12 section 3 of this bill requires one-fourth of the shares for  
13 quorum purposes.

#### 14 DIVISION III

15 Division III of the bill contains amendments to the Iowa  
16 securities laws (Code Chapter 502) which are recommended by  
17 the superintendent of securities. These amendments add pro-  
18 visions to the law which would regulate tender offers, i.e.,  
19 attempts to obtain control of a corporation through the pur-  
20 chase of shares for cash, and also make other changes which  
21 protect the rights of shareholders.

22 Sections 8, 9 and 10 add new definitions required if ten-  
23 der offers are to be regulated.

24 Section 11 requires registration with the superintendent  
25 of a tender offer if the offer involves the purchase of five  
26 percent or more of any class of equity securities.

27 Section 12 permits use for state registration purposes  
28 of any tender offer registration filed with the Securities  
29 and Exchange Commission under federal law.

30 Section 13 provides the conditions which must be met for  
31 original registration of a tender offer in this state.

32 Section 14 contains provisions applicable to tender of-  
33 fer situations, including publication of the offer, prohi-  
34 biting the purchase of equity securities at other than the  
35 price stated in the registration, and requiring the target

1 corporation to provide the offeror with shareholder lists,  
2 and prohibiting the offeror from purchasing shares owned by  
3 officers of the target company for a price higher than that  
4 being paid to other shareholders for their shares.

5 Section 15 specifies conditions under which the superin-  
6 tendent has authority to deny, suspend or revoke a tender  
7 offer registration.

8 Sections 16 and 20 are correlating amendments to reflect  
9 the new tender offer provisions.

10 Section 17 adds a civil remedy provision to be used by  
11 persons sustaining damages as a result of violations of the  
12 tender offer provisions.

13 Section 18 adds a provision entitling a shareholder to  
14 costs and attorney fees when the shareholder prevails in an  
15 action based upon a violation of part IV of Chapter 502  
16 relating to fraudulent practices.

17 Section 19 adds language permitting an aggrieved person  
18 to obtain an injunction, plus costs and attorney fees, when  
19 misleading publicity is generated with respect to an issuer  
20 whose securities are being offered for sale.

21 DIVISION IV

22 Division IV of the bill also contains securities law  
23 amendments. The two sections in that division (sections 21  
24 and 22) would protect the shareholder in the event of a reverse  
25 stock split, e.g., issuance of one new share for each five  
26 shares owned. Under present law, if the corporate articles  
27 prohibit fractional shares, a person who owned four shares  
28 in the example could lose rights since he does not own enough  
29 shares to trade in for the new issue. The amendments would  
30 treat a reverse stock split as a sale for purposes of the  
31 anti-fraud and purchaser remedy provisions.

32 DIVISION V

33 Division V contains amendments to the securities laws which  
34 are stated to be technical.

35 Section 23 would exempt from the provisions of the chap-

1 ter any person acting as an agent within the meaning of the  
2 chapter when that person is representing a federal or state  
3 savings and loan association or credit union. Securities  
4 of those institutions presently are exempt from the reg-  
5 istration and other filing requirements of the chapter.

6 Section 24 adds to the types of securities which are exempt  
7 from state registration requirements, any security issued  
8 by a not-for-profit organization, as defined, if the issuer  
9 files with the superintendent a written notice describing  
10 the offer.

11 Section 25 clarifies the applicability of Chapter 502 with  
12 respect to transactions occurring before and after January  
13 1, 1976, the effective date of the Act which completely revised  
14 Chapter 502.

15 Section 26 eliminates a requirement which prohibits offers  
16 of securities pending state registration unless a registration  
17 statement also has been filed with the S.E.C.

18 Section 27 relates to sales of securities which are exempt  
19 from federal registration as an intrastate offering. The  
20 purpose of section 502.210 is to limit the amount of equity  
21 securities which may be sold in Iowa pursuant to such an  
22 intrastate offering. As presently written, however, the  
23 section does at times place limits on offerings which are  
24 interstate in nature. For instance, if an issue already has  
25 become effective with the S.E.C., then registration in Iowa  
26 must be made pursuant to section 502.207. This would, for  
27 example, limit a mutual fund whose registration arrived in  
28 Iowa subsequent to S.E.C. effectiveness to \$2,000,000 in  
29 sales to Iowans. It is the opinion of the superintendent  
30 that this was not the intention of the statute, and the above  
31 change is recommended. A reference to federal law is added,  
32 which section contains the instrastate exemption from federal  
33 registration. Thus, only the issuers utilizing that federal  
34 exemption, and registering in Iowa pursuant to section 502.207,  
35 will be subject to the \$2,000,000 limitation.

1 The bill has an effective date of January 1, 1978.

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SF 376  
slc/26B

S-3513

SENATE FILE 376

- 1 Amend Senate File 376 as follows:  
2 1. Page 3, by striking lines 21 through 35.  
3 2. By striking pages 4 through 18.  
4 3. Page 19, by striking lines 1 through 13.  
5 4. Page 20, by striking lines 10 through 15.  
6 5. By renumbering sections of the bill as  
7 necessary.

S-3513 FILED & LOST (p. 1385) BY PHILIP B. HILL  
MAY 6, 1977

SENATE FILE 376

S-3519

- 1 Amend Senate File 376 as follows:  
2 1. Page 22, by inserting after line 16 the  
3 following:  
4 "Sec.           . Section five hundred two point two  
5 hundred three (502.203), subsection thirteen (13),  
6 unnumbered paragraph one (1), Code 1977, is amended  
7 to read as follows:  
8 Any transaction incident to a vote by security  
9 holders of ~~an issuer~~ a person or incident to a  
10 written consent or resolution of some or all  
11 security holders of ~~an issuer~~ a person, pursuant  
12 to the articles of incorporation of such ~~issuer~~  
13 person, or pursuant to the applicable corporate  
14 statute or other statute governing such ~~issuer~~  
15 person, or pursuant to such ~~issuer's~~ person's  
16 partnership agreement, declaration of trust, or  
17 trust indenture, or pursuant to any agreement  
18 among security holders of such ~~issuer~~ person, on  
19 a reclassification of securities, reorganization  
20 involving the exchange of securities, merger,  
21 consolidation, or sale of assets, in consideration,  
22 in whole or in part, of the issuance of securities  
23 of ~~the issuer~~ such person or of any other person,  
24 if:".

S-3519 FILED & W/D  
MAY 6, 1977

BY E. KEVIN KELLY

HOUSE AMENDMENT TO SENATE FILE 376

S-5465

- 1 Amend Senate File 376, as amended, passed and  
2 reprinted by the Senate, as follows:  
3 1. Page 1, by striking lines 33 through 35.  
4 2. Page 2, by striking lines 1 through 7.  
5 3. Page 2, by striking lines 21 through 35.  
6 4. Page 3, by striking lines 1 through 7.  
7 5. Page 3, by striking lines 18 through 20.  
8 6. Page 22, line 35, by striking the number "1978"  
9 and inserting in lieu thereof the number "1979".

S-5465 FILED  
APRIL 3, 1978

RECEIVED FROM THE HOUSE

*Senate concurred 7/10 (p. 800)*

1 Amend Senate File 376 as passed by the Senate as  
2 follows:

3 1. Page 3, by inserting after line 20 the following  
4 new division:

5 "DIVISION

6 Sec. \_\_\_\_ Chapter four hundred ninety-six A (496A),  
7 Code 1977, is amended by adding the following new  
8 section:

9 NEW SECTION. OFFER TO PURCHASE STOCK--CONDITIONS-  
10 PENALTY.

11 1. A person shall not offer to purchase or acquire,  
12 directly or indirectly, equity securities as defined  
13 in section eight (8) of this Act of any corporation  
14 organized under Iowa law for consideration which  
15 exceeds by ten percent the aggregate market values  
16 of those securities with the intent to acquire control  
17 of the corporation unless the person extends the same  
18 offer to all owners of such securities not owned or  
19 controlled by the person making the offer. The person  
20 making the offer shall do so in a writing which  
21 complies with subsection three (3) of this section.

22 2. A person who is required by subsection one  
23 (1) of this section to give notice of an offer to  
24 purchase equity securities shall purchase at the price  
25 stated in the offer the shares of any shareholder  
26 who accepts the offer in writing within sixty days  
27 after receipt by the shareholder of the offer;  
28 provided, however that the person making the offer  
29 shall not be required to purchase a greater number  
30 of shares than the number which the written offer  
31 states will be purchased. In the event the number  
32 of shares tendered for sale in acceptance of the offer  
33 exceeds the number which the person offered to  
34 purchase, the person making the offer shall purchase  
35 from each shareholder who makes timely acceptance  
36 a number of shares which bears the same ratio to the  
37 total number of shares tendered for purchase by the  
38 shareholder as the number of shares the person offered  
39 to purchase or acquire bears to the total number of  
40 shares tendered in acceptance by all shareholders  
41 to whom the written offer was made. For purposes  
42 of this subsection "tendered in acceptance" means  
43 stated in writing by the shareholder as the number  
44 of shares which the shareholder agrees to sell in  
45 response to the offer, and does not require the actual  
46 delivery of the shares.

47 3. The written offer required by subsection one  
48 (1) of this section must state the price which will  
49 be paid for each share and the maximum number of  
50 shares which the person making the offer will purchase

1 in the aggregate, and must state that (a) the offer  
 2 must be accepted in a writing which states the number  
 3 of shares the shareholder agrees to sell and (b) the  
 4 acceptance must be received by the person making the  
 5 offer no later than sixty days after delivery to the  
 6 shareholder of the written offer.

7 4. For purposes of this section, a written offer  
 8 to a shareholder shall be deemed delivered on the  
 9 date when the written offer is mailed by first class  
 10 mail, postage paid, to the shareholder at the address  
 11 as shown in the records of the corporation whose  
 12 shares are the subject of the offer.

13 5. A person who fails to comply with subsections  
 14 one (1) or two (2) of this section commits an  
 15 aggravated misdemeanor."

16 2. By correcting division and section numbers  
 17 of the bill, and by correcting internal references  
 18 as necessary.

H-4305 FILED *H/S 2/30* BY HIGGINS of Scott  
 MAY 19, 1977 *(p. 1262)*

SENATE FILE 376

H-4267

1 Amend the Higgins amendment, H-4160, to Senate  
 2 File 376 as amended, passed and reprinted by the  
 3 Senate as follows:

4 1. Page 1, line 13, by striking the words "organ-  
 5 ized under this chapter" and inserting in lieu thereof  
 6 the words "which is organized under this chapter and  
 7 which has one hundred or more voting shareholders".

H-4267 FILED *Dist. of order* BY LIPSKY of Linn  
 MAY 18, 1977 *2/30 (p. 1262)* HIGGINS of Scott

H-4160

1 Amend Senate File 376 as follows:

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

4 "DIVISION \_\_\_\_\_.

5 Sec. \_\_\_\_\_. Chapter four hundred ninety-six A  
6 (496A), Code 1977, is amended by adding the follow-  
7 ing new section:

8 NEW SECTION. OFFER TO PURCHASE STOCK-- COND-  
9 ITIONS--PENALTY.

10 1. A person shall not offer to purchase or  
11 acquire, directly or indirectly, equity securities  
12 as defined in section seven (7) of this Act of a  
13 corporation organized under this chapter for consid-  
14 eration which exceeds by ten (10) per-cent the  
15 aggregate market values of those securities with  
16 the intent to acquire control of the corporation  
17 unless the person extends the same offer to all  
18 owners of such securities not owned or controlled  
19 by the person making the offer. The person making  
20 the offer shall do so in a writing which complies  
21 with subsection three (3) of this section.

22 2. A person who is required by subsection one  
23 (1) of this section to give notice of an offer to  
24 purchase equity securities shall purchase at the  
25 price stated in the offer the shares of any share-  
26 holder who accepts the offer in writing within six-  
27 ty days after receipt by the shareholder of the  
28 offer; provided, however that the person making the  
29 offer shall not be required to purchase a greater  
30 number of shares than the number which the written  
31 offer states will be purchased. In the event the  
32 number of shares tendered for sale in acceptance of  
33 the offer exceeds the number which the person offer-  
34 ed to purchase, the person making the offer shall  
35 purchase from each shareholder who makes timely  
36 acceptance a number of shares which bears the same  
37 ratio to the total number of shares tendered for  
38 purchase by the shareholder as the number of shares  
39 the person offered to purchase or acquire bears to  
40 the total number of shares tendered in acceptance  
41 by all shareholders to whom the written offer was  
42 made. For purposes of this subsection "tendered  
43 in acceptance" means stated in writing by the share-  
44 holder as the number of shares which the share-  
45 holder agrees to sell in response to the offer, and  
46 does not require the actual delivery of the shares.

47 3. The written offer required by subsection one  
48 (1) of this section must state the price which will  
49 be paid for each share and the maximum number of  
50 shares which the person making the offer will purchase

H-4160  
Page 2

1 in the aggregate, and must state that (a) the  
2 offer must be accepted in a writing which states the  
3 number of shares the shareholder agrees to sell and  
4 (b) the acceptance must be received by the person mak-  
5 ing the offer no later than sixty days after delivery  
6 to the shareholder of the written offer.  
7 4. For purposes of this section, a written offer  
8 to a shareholder shall be deemed delivered on the  
9 date when the written offer is mailed by first class  
10 mail, postage paid, to the shareholder at the address  
11 as shown in the records of the corporation whose  
12 shares are the subject of the offer.  
13 5. A person who fails to comply with subsections  
14 one (1) or two (2) of this section commits an  
15 aggravated misdemeanor."

H-4160 FILED *H/D 3/30 (1262)* BY HIGGINS of Scott  
MAY 12, 1977

SENATE FILE 376

H-4255

1 Amend Senate File 376, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 4, line 8, by inserting after the word  
4 "business" the words "or substantial assets".

H-4255 FILED *H/D 3/30* BY STROMER of Hancock  
MAY 18, 1977 (*p. 1263*)

SENATE FILE 376

H-4260

1 Amend Senate File 376 as amended, passed and  
2 reprinted by the Senate as follows:  
3 1. Page 2, by striking lines 21 through 30.  
4 2. By renumbering sections and correcting internal  
5 references as necessary.

H-4260 FILED *Out of order 3/30* BY JUNKER of Woodbury  
MAY 18, 1977 (*p. 1263*) LIPSKY of Linn

SENATE FILE 376

H-4266

1 Amend Senate File 376 as amended, passed and  
2 reprinted by the Senate as follows:  
3 1. Page 5, line 13, by inserting after the word  
4 "security" the words "; or (iv) any offer to pur-  
5 chase equity securities of a corporation which has  
6 less than one hundred voting shareholders".

H-4266 FILED *H/D 3/30* BY LIPSKY of Linn  
MAY 18, 1977 (*p. 1262*) HIGGINS of Scott

SENATE FILE 376

H-5761

- 1 Amend Senate File 376, as amended, passed and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 27, line 1, by striking the number "1978"
- 4 and inserting in lieu thereof the number "1979".

H-5761 FILED *Adopted* BY COMMITTEE ON JUDICIARY AND  
MARCH 23, 1978 <sup>3/30</sup> LAW ENFORCEMENT, JESSE of Polk  
(p. 1262) Chair

SENATE FILE 376

H-5821

- 1 Amend Senate File 376 as follows:
- 2 1. Page 1, by striking lines 33 through 35.
- 3 2. Page 2, by striking lines 1 through 7.
- 4 3. Page 2, by striking lines 21 through 35.
- 5 4. Page 3, by striking lines 1 through 7.
- 6 5. By renumbering the remaining sections as
- 7 necessary.

H-5821 FILED *Adopted* BY JESSE of Polk  
MARCH 29, 1978 <sup>amended by</sup> <sub>5828 3/30 (1263)</sub>

SENATE FILE 376

H-5828

- 1 Amend amendment H-5821, to Senate File 376 as
- 2 passed by the Senate and reprinted, as follows:
- 3 1. Page 1, by striking lines 6 and 7 and insert-
- 4 ing in lieu thereof the following:
- 5 "5. Page 3, by striking lines 18 through 20."

H-5828 FILED *Adopted* <sup>3/30</sup> BY JESSE of Polk  
MARCH 29, 1978 (p. 1263)

SENATE FILE 376

H-5835

- 1 Amend Senate File 376, as amended, passed and
- 2 reprinted by the Senate, as follows:
- 3 1. Page 4, line 8, by inserting after the word
- 4 "business" the words "or has more than one half of
- 5 its tangible assets".

H-5835 FILED *Lost* <sup>3/30</sup> BY STROMER of Hancock  
MARCH 30, 1978 (p. 1263)

SENATE FILE 376

AN ACT

RELATING TO THE PROTECTION OF THE RIGHTS OF OWNERS OF ENTERPRISES, AND PROVIDING PENALTIES.

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

DIVISION I

Section 1. Chapter one thousand two hundred forty-five (1245), Acts of the Sixty-sixth General Assembly, 1976 Session, chapter one (1), division twenty-two (XXII), is amended by adding the following new section:

NEW SECTION. COMMERCIAL BRIBERY.

1. As used in subsection two (2) of this section, the following definitions shall apply unless the context otherwise requires:

a. "Employer" means any sole proprietor, partnership, corporation, association, or other entity or organization.

b. "Employee" includes every officer, employee, agent or representative.

c. "Gratuity" means consideration in any form, including but not limited to a gift, commission, discount and bonus.

2. It is unlawful for a person to offer or deliver directly or indirectly for the personal benefit of an employee acting on behalf of his or her employer in a business transaction or course of transactions with the person a gratuity in consideration of an act or omission which the person has reason to know is in conflict with the employment relation and duties of the employee to the employer. It is unlawful for an employee acting on behalf of his or her employer in a business transaction or course of transactions with a person to solicit or receive from the person a gratuity directly or indirectly for the personal benefit of the employee in consideration of an act or omission which the employee has reason to know is in conflict with the employment relation and duties of the employee to the employer.

3. A violation of subsection two (2) of this section is a class "D" felony.

DIVISION II

Sec. 2. Section four hundred ninety-six A point thirty-one (496A.31), Code 1977, is amended to read as follows:

496A.31 QUORUM OF SHAREHOLDERS. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-fourth of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter or the articles of incorporation or bylaws.

Sec. 3. Section four hundred ninety-six A point one hundred thirty-eight (496A.138), Code 1977, is amended to read as follows:

496A.138 VOTING REQUIREMENTS. Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater ~~or lesser~~ proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

DIVISION III

Sec. 4. Section five hundred two point one hundred two (502.102), Code 1977, is amended by adding as subsection fourteen (14) the following new subsection:

14. NEW SUBSECTION. "Equity security", for the purposes of sections five (5) through eleven (11) of this Act, means any stock, bond or other obligation the holder of which has the right to vote, or any share of stock or similar security representing an equity interest in the target company, or any security convertible into, or any right, option or warrant to purchase, any such stock, bond, obligation or security.

Sec. 5. Section five hundred two point one hundred two (502.102), Code 1977, is amended by adding as subsection fifteen (15) the following new subsection:

15. NEW SUBSECTION.

a. "Target company" means a person whose securities are or are to be the subject of an offer to acquire, pursuant to a tender offer or request or invitation for tenders, any equity securities of such person provided that such person is either:

(1) A person which is a Williams Act registrant and is either (i) organized under the laws of the state of Iowa or (ii) has its principal place of business within the state of Iowa; or

(2) A person which (i) is not a Williams Act registrant and (ii) has registered any equity security at any time subsequent to December 31, 1959 under either this Act or under chapter five hundred two (502) of the Code as it existed prior to the effective date of this Act.

b. For purposes of this subsection, a "Williams Act registrant" means a person which (i) has any equity security which is registered pursuant to section twelve (12) of the Securities Exchange Act of 1934; or (ii) is an insurance company which would have been required to register any equity security pursuant to section twelve (12) of the Securities Exchange Act of 1934 except for the exemption provided in subparagraph G of paragraph two (2) of subsection g of section twelve (12) of the Securities Exchange Act of 1934; or (iii) is a closed-end investment company registered under the Investment Company Act of 1940.

c. For purposes of this subsection, the term "principal place of the business" shall have the same meaning as that term when used in title twenty-eight (28), United States Code, section one thousand three hundred thirty-two (1332), subsection c.

Sec. 6. Section five hundred two point one hundred two (502.102), Code 1977, is amended by adding as subsection sixteen (16) the following new subsection:

16. NEW SUBSECTION. "Tender offer" shall not include (i) an offer to purchase equity securities to be effected by a registered broker-dealer on a stock exchange or in the over-the-counter market if the broker performs only the customary broker's function, and receives no more than the customary broker's commission, and neither the principal nor the broker solicits or arranges for the solicitation of orders to sell such equity securities; or (ii) any offer if the acquisition of all equity securities for which the offer is made, together with all other acquisitions by the offeror of securities of the same class during the preceding twelve months, would not exceed two percent of that class; or (iii) offers made by a broker-dealer for its own account in the ordinary course of its business of buying and selling such security.

Sec. 7. Chapter five hundred two (502), Code 1977, is amended by adding as section five hundred two point two hundred eleven (502.211) the following new section:

502.211 NEW SECTION. REGISTRATION REQUIREMENT. It is unlawful for any person to purchase an equity security of a target company pursuant to a cash tender offer for such security unless the offeror's tender offer registration statement pertaining to such security is in effect under section eight (8) or section nine (9) of this Act if (i) after the consummation of the cash tender offer, the offeror and the affiliates of the offeror would own beneficially, directly or indirectly, more than five percent of any class of the outstanding equity securities of the target company; or (ii) the offer is for five percent or more of any class of outstanding equity securities of the target company and the offer is made by the target company itself.

Sec. 8. Chapter five hundred two (502), Code 1977, is amended by adding as section five hundred two point two hundred twelve (502.212) the following new section:

502.212 NEW SECTION. TENDER OFFER REGISTRATION BY CO-ORDINATION.

1. Tender offer registration by coordination may be used

for any tender offer for which a tender offer statement has been filed under section fourteen (14), paragraph one (1) of subsection d of the Securities Exchange Act of 1934.

2. A tender offer registration statement under this section shall contain the following information and shall be accompanied by the following documents in addition to the consent to service of process required by section five hundred two point six hundred nine (502.609) of the Code.

a. Two copies of the tender offer statement, including all exhibits thereto, filed under the Securities Exchange Act of 1934.

b. An undertaking to forward to the administrator two copies of all future amendments to such tender offer statement (including exhibits thereto) and of all additional material soliciting or requesting tender offers, not later than the first business day after they are forwarded to or filed with the securities and exchange commission.

3. A copy of the tender offer statement, filed under the Securities Exchange Act of 1934, including all exhibits thereto, shall be sent by registered or certified mail, or delivered to the target company at its principal executive office.

4. On the tenth day after both (i) the tender offer registration statement required by subsection two (2) of this section has been filed and (ii) the documents required by subsection three (3) of this section have been sent, the tender offer registration statement shall become effective if no stop order is in effect in this state and no proceeding is pending under section eleven (11) of this Act; except that while a tender offer registration statement is effective, a subsequent tender offer made by any other person with respect to the same securities shall become effective on the fourth business day after both (i) the filing of the tender offer registration statement required by subsection two (2) of this section and (ii) the sending of the documents required by subsection three (3) of this section, if no stop order is in effect in this state and no proceeding is pend-

ing under section eleven (11) of this Act.

5. After a tender offer registration statement has become effective pursuant to subsection four (4) of this section, an amendment thereto shall become effective upon (i) the filing of said amendment and (ii) the sending of said amendment, by registered or certified mail, to the target company at its principal office.

6. Prior to a tender offer registration statement having become effective pursuant to subsection four (4) of this section, an amendment thereto may be filed, but such amendment shall not be deemed to be filed until a copy of said amendment has been sent by registered or certified mail to the target company at its principal office. The filing of such an amendment shall not extend the time periods specified in subsection four (4) of this section.

7. All additional materials, other than the tender offer statement itself, soliciting or requesting tender offers shall be sent, by registered or certified mail, to the target company at its principal executive office at the same time they are sent to the administrator.

8. A tender offer shall remain open for not less than the longer of the following periods:

a. Twenty-one days after it becomes effective;

b. Fourteen days after any amendment which changes the amount or type of consideration offered or the number of equity securities for which the offer is made;

c. The period of time during which the offer is required, by the Securities Exchange Act of 1934 or the rules promulgated thereunder, to remain open.

9. Every tender offer registration statement shall remain effective until ninety days after it has become effective, unless it has earlier expired by its terms or has been withdrawn, suspended, or revoked, but the effectiveness of any such registration statement may be extended by order of the administrator upon application by the offeror.

Sec. 9. Chapter five hundred two (502), Code 1977, is amended by adding as section five hundred two point two hun-

dred thirteen (502.213) the following new section:

502.213 NEW SECTION. TENDER OFFER REGISTRATION BY QUALIFICATION.

1. Any tender offer may be registered by qualification.
2. A tender offer registration statement under this section shall contain the following information and shall be accompanied by the consent to service of process required by section five hundred two point six hundred nine (502.609) of the Code:
  - a. The name and address of the offeror and of any person controlling the offeror and of each director and each executive officer (or person occupying a similar status or performing similar functions) of the offeror and of any person controlling the offeror; a description of the business of the offeror (including a description of any material pending legal or administrative proceeding) and of its affiliates; as to each director or officer, such person's principal occupation for the past five years and any criminal convictions (excluding traffic violations or similar misdemeanors) or any securities law, antitrust, labor law, environmental law, or fair employment practices injunction or judgment entered against such person or against the offeror or any person in control of the offeror during the past five years;
  - b. A description of the equity securities to be purchased and the consideration to be offered;
  - c. The duration of the offer;
  - d. The date on which the offeror may first purchase tendered securities;
  - e. The amount or number of equity securities to be purchased or the manner in which such number or amount will be determined;
  - f. Whether the offeror will unconditionally accept all or any part of the equity securities tendered and, if not, upon what conditions acceptance will be made;
  - g. The number or amount of any equity securities of the target company owned beneficially by the offeror and all af-

filiates of the offeror as of the date of the filing of the registration statement and a description of all transactions within one year of the filing of the registration statement in which the offeror or any of its affiliates acquired or disposed of any such securities;

h. A description of any present and proposed contract, agreement or understanding to which the offeror or any affiliate of the offeror is a party with respect to the ownership, voting rights or any other interest in any equity security of the target company;

i. The source and amount of funds to be used in making the purchases, including a description of all borrowing transactions and the parties thereto;

j. The purposes of the proposed purchase and if any such purpose is to acquire control of the target company, any plans to make any major change in the business, assets, location of facilities, employment levels, corporate structure, capitalization or dividend policies of the target company;

k. The exact dates prior to which or subsequent to which the security holders who deposit their securities will have the right to withdraw their securities;

l. A description of any material transactions, negotiations or business relationships between the offeror or its affiliates and the target company or its affiliates during the past three years;

m. A description of any plans to make any changes in the present board of directors or management of the target company;

n. Any present or proposed contract, arrangement or understanding between the offeror or any of its affiliates and the target company, or any of its executive officers, directors or affiliates; and,

o. Copies of (i) a balance sheet of the offeror (and of any person, other than any individual, controlling the offeror) as of the close of its most recent fiscal year; (ii) the income statement of the offeror (and of any person, other than any individual, controlling the offeror) for the three years ended with the balance sheet required by (i) hereof;

(iii) the statements of sources and application of funds of the offeror (and of any person, other than any individual, controlling the offeror) for the three years ended with the balance sheet required by (i) hereof; and (iv) a balance sheet of the offeror (or of said person controlling the offeror, as the case may be) and statements of income and of sources and application of funds for such person for the period from the close of its most recent fiscal year to a date within one hundred twenty days of the filing;

p. A description of any material transaction between the offeror and its affiliates during the past three years.

3. A copy of the tender offer registration statement, including all exhibits thereto, shall be sent, by registered or certified mail, to the target company at its principal executive office.

4. On the tenth day after both (i) the tender offer registration statement required by subsection two (2) of this section has been filed and (ii) the documents required by subsection three (3) of this section have been sent, the tender offer registration statement shall become effective if no stop order is in effect in this state and no proceeding is pending under section eleven (11) of this Act; except that while a tender offer registration statement is effective, a subsequent tender offer made by any other person with respect to the same securities shall become effective on the fourth business day after both (i) the filing of the tender offer registration statement required by subsection two (2) of this section and (ii) the sending of the documents required by subsection three (3) of this section, if no stop order is in effect in this state and no proceeding is pending under section eleven (11) of this Act.

5. After a tender offer registration statement has become effective pursuant to subsection four (4) of this section, an amendment thereto shall become effective upon (i) the filing of said amendment and (ii) the sending of said amendment, by registered or certified mail, to the target company at its principal office.

6. Prior to a tender offer registration statement having become effective pursuant to subsection four (4) of this section, an amendment thereto may be filed, but such amendment shall not be deemed to be filed until a copy of said amendment has been sent by registered or certified mail to the target company at its principal office. The filing of such an amendment shall not extend the time periods specified in subsection four (4) of this section.

7. All additional materials, other than the tender offer registration statement itself, soliciting or requesting tender offers, shall, not later than two days after its first use, be (i) sent by registered or certified mail to the target company at its principal executive office and (ii) filed with the administrator.

8. If any material change occurs in the facts set forth in the tender offer registration statement, the offeror shall promptly file with the administrator and mail to the target company, an amendment to said registration statement disclosing such change.

9. A tender offer shall remain open for not less than the longer of the following periods:

- a. Twenty-one days after it becomes effective; or
- b. Fourteen days after any amendment which changes the amount or type of consideration offered or the number of equity securities for which the offer is made.

10. Securities deposited pursuant to a tender offer may be withdrawn by or on behalf of the depositor:

- a. At any time until the expiration of fifteen days after the registration statement becomes effective; or
- b. If the offeror has not previously accepted them, at any time after sixty days from the date the registration statement becomes effective; or
- c. If the offeror has not previously accepted them, at any time during the fifteen days following the date on which a competing tender offer registration statement has been filed with the administrator; or
- d. If the offeror has not previously accepted them, at

any time during the ten days immediately after the effectiveness of any amendment filed by a competing tender offeror which changes the amount or type of consideration offered.

11. If, during the period the tender offer must remain open pursuant to paragraph a of subsection ten (10) of this section, a greater number of equity securities is tendered than the offeror is bound or willing to purchase, the equity securities shall be purchased pro rata, as nearly as may be, according to the number of shares tendered during such period by each equity security holder.

12. Whenever any offeror varies the terms of a tender offer by increasing the consideration offered to holders of such securities, the offeror shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the tender offer whether or not such securities have been taken up by the offeror prior to the variation of the tender offer.

13. Every tender offer registration statement shall remain effective until ninety days after it has become effective, unless it has earlier expired by its terms or has been withdrawn, suspended, or revoked, but the effectiveness of any such registration statement may be extended by order of the administrator upon application by the offeror.

Sec. 10. Chapter five hundred two (502), Code 1977, is amended by adding as section five hundred two point two hundred fourteen (502.214) the following new section:

502.214 NEW SECTION. PROVISIONS APPLICABLE TO TENDER OFFER REGISTRATION GENERALLY.

1. Every person filing a tender offer registration statement shall pay a nonrefundable filing fee of one hundred dollars.

2. The administrator may by rule or otherwise permit the omission of any item of information or document from any tender offer registration statement.

3. The administrator may by rule or order require as a condition of registration under this Act that all or a part of the information contained in the tender offer registration

statement be made publicly available, either prior or subsequent to the registration statement becoming effective, by publication in one or more newspapers of appropriate circulation or be made available to stockholders via a mailing to stockholders.

4. The offeror shall not, during any period during which it is making a tender offer, purchase any equity security of the target company for a consideration other than that stated in its tender offer.

5. The offeror shall not, in connection with any tender offer, purchase any equity security of the target company from any officer, director or affiliate of the target company for a consideration in excess of that to be paid to other stockholders pursuant to the tender offer, unless such purchase is made at the then existing market price.

6. a. The target company shall, not later than the end of the next business day following the receipt of a written request from any offeror who has filed a tender offer registration statement, disclose to such offeror the number of holders of record of the class of securities for which the tender offer will be made. The target company shall, not later than five business days after the receipt from the offeror of a number of sets of the tender offer materials equal to the number of holders of record as disclosed by the target company under this paragraph and the receipt of payment in advance of an amount representing the first class postage required to mail those materials, cause a set of those materials to be mailed, first class postage prepaid, to each holder of record of the class of securities for which the tender offer will be made, provided that the offeror undertakes in writing to the target company that: (i) it will promptly reimburse the target company for any reasonable costs incurred by the target company in causing such mailing; and (ii) it will promptly furnish at its own expense the number of additional sets of the tender offer materials which may be requested by the target company. The target company shall not cause any materials to be removed from, added to, or

incorporated with materials submitted by the offeror for mailing.

b. The target company may, at its option, elect to furnish shareholder lists to the offeror as provided in this paragraph in lieu of complying with paragraph a of this subsection. If the target company elected to furnish such lists, it shall, not later than the end of the next business day following the receipt of a written request from the offeror, give notice in writing to the offeror of such election, and shall, within four business days after receipt of the request, furnish to such offeror the most recent list, in whatsoever form is reasonably requested by the offeror, in its possession or under its control, of the names and addresses of the holders of record of the class of securities for which the tender offer will be made, together with the number of shares so held, and together with the security position listings, if any, from the depository trust company and similar clearing agencies, provided that the offeror undertakes in writing to the target company that: (i) such lists will be used exclusively in connection with the tender offer; (ii) it will promptly reimburse the target company for the reasonable costs incurred by it in furnishing such lists; and (iii) it undertakes in writing to mail, at its own expense, a copy of the tender offer material to each person whose name appears on the list of stockholders and to furnish, at its own expense, the number of sets of the tender offer materials requested by participants whose names appear on the clearing agency's security position listings.

c. The target company shall, within two business days after the receipt of a written request from an offeror which has previously received a shareholder list pursuant to paragraph b of this subsection furnish to such offeror a supplementary list showing all transfers since the date of the furnished list or, if one or more supplemental lists have already been furnished, from the date of the last such supplemental list so furnished.

7. All materials disseminated in connection with the ten-

der offer, by the target company, or by persons acting in concert with it, shall within two days after its first use, (i) be sent, by registered or certified mail, to the offeror at its principal executive office and (ii) be filed with the administrator.

Sec. 11. Chapter five hundred two (502), Code 1977, is amended by adding as section five hundred two point two hundred fifteen (502.215) the following new section:

502.215 NEW SECTION. DENIAL, SUSPENSION AND REVOCATION OF TENDER OFFER REGISTRATION.

1. The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any tender offer registration statement if the administrator finds that the order is in the public interest and that at least one of the following conditions exists:

a. The tender offer registration statement is incomplete in any material respect or contains any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

b. Any provision of this Act or any rule, order or condition lawfully imposed under this Act has been willfully violated, in connection with the tender offer, by (i) the person filing the tender offer registration statement; (ii) any partner, officer or director of the offeror, or any person occupying a similar status or performing similar functions; (iii) any affiliate of the offeror; or (iv) any broker-dealer acting on behalf of the offeror.

c. The offer registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offer, but the administrator may not enter an order under this section on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section.

d. The applicant or registrant has failed to pay the

proper filing fee; but the administrator may enter only a denial order under this subsection, and shall vacate any such order when the deficiency has been corrected.

2. The administrator may not institute a stop order proceeding against an effective tender offer registration statement on the basis of a fact known to the administrator when the tender offer registration statement became effective unless the proceeding is instituted within thirty days after effectiveness.

3. The administrator may issue a summary order postponing, suspending or denying the effectiveness of a tender offer registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the offeror that the order has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of an opportunity for hearing to the offeror, may modify or vacate the order or extend it until final determination.

4. A stop order shall not be entered under any part of this section without compliance with the Iowa Administrative Procedure Act, except that a summary order may be issued under subsection three (3) of this section prior to notice and hearing as may be required by that Act.

5. The administrator may vacate or modify a stop order upon a finding that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

Sec. 12. Section five hundred two point four hundred seven (502.407), Code 1977, is amended to read as follows:

502.407 MISSTATEMENTS IN PUBLICITY. It is unlawful for any person to make or cause to be made, in any public report or press release, or in other information which is either

made generally available to the public or used in opposition to a tender offer, any statement of a material fact relating to an issuer or made in connection with a tender offer which is, at the time and in the light of the circumstances under which it is made, false or misleading, if it is reasonably foreseeable that such statement will induce other persons to buy, sell or hold securities of the issuer.

Sec. 13. Section five hundred two point five hundred one (502.501), Code 1977, is amended to read as follows:

502.501 VIOLATION OF REGISTRATION AND RELATED REQUIREMENTS.

1. Any person who:

† a. Violates section 502.201, section 502.208, subsection 12 or section 502.406, subsection 2, paragraph "b", or

‡ b. Violates any material condition imposed under section 502.208, or

§ c. Offers or sells a security at any time when such person has committed a material violation of section 502.301, or

¶ d. Commits a material violation of any order issued by the administrator under this chapter, shall be liable to the person purchasing the security offered or sold in connection with such violation, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs and reasonable attorneys' fees, less the amount of any income or distributions, in cash or in kind, received on the security, upon the tender of the security, or for damages if the purchaser no longer owns the security. Damages shall be the amount that would be recoverable upon a tender less

a- (1) The value of the security when the purchaser disposed of it and

b- (2) Interest on said value at the legal rate from the date of disposition. Any person on whose behalf an offering is made and any underwriter of the offering, whether on a best efforts or a firm commitment basis, shall be jointly

and severally liable under this section, but in no event shall any underwriter be liable in any suit or suits authorized under this section for damages in excess of the total price at which the securities underwritten by it and distributed to the public were offered to the public. Tender requires only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

2. Any person who violates section seven (7) of this Act shall be liable to the person selling the security to such violator, which seller may sue either at law or in equity to recover the security, costs and reasonable attorney's fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

Sec. 14. Section five hundred two point five hundred two (502.502), subsection two (2), Code 1977, is amended to read as follows:

2. Any person who offers to purchase or purchases a security in violation of sections 502.401 or 502.404, the seller not knowing of the violation, and who fails to sustain the burden of proof that he, she or it did not know and in the exercise of reasonable care could not have known of the violation, shall be liable to the seller, who may sue either at law or in equity to recover the security, costs, and reasonable attorney's fees, plus any income or distributions, in cash or in kind, received by the purchaser thereon, upon tender of the consideration received, or for damages if the

purchaser no longer owns the security. Damages shall be the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

Sec. 15. Section five hundred two point five hundred two (502.502), Code 1977, is amended by adding the following new subsection:

NEW SUBSECTION. Any person who is aggrieved by a violation of section five hundred two point four hundred seven (502.407) of the Code may bring an action in the district court to enjoin the acts complained of and, upon proper showing, to require that correcting material be disseminated, and such person may be awarded costs and reasonable attorney's fees.

Sec. 16. Section five hundred two point six hundred ten (502.610), subsection four (4), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

4. An Except when made in connection with a tender of-fer, an offer to sell or to purchase is not made in this state when made by means of either of the following:

DIVISION IV

Sec. 17. Section five hundred two point one hundred two (502.102), subsection ten (10), paragraph f, subparagraph two (2), Code 1977, is amended to read as follows:

(2) Any stock split, ~~reverse-stock-split~~, other than a reverse stock split or security dividend payable with respect to the securities of a corporation in the same or any other class of securities of such corporation, provided nothing of value, including the surrender of a right or an option to receive a cash or property dividend, is given by security holders for the security dividend.

Sec. 18. Section five hundred two point two hundred three (502.203), subsection thirteen (13), Code 1977, is amended

to read as follows:

13. Any transaction incident to a vote by security holders of ~~an issuer~~ a person or incident to a written consent or resolution of some or all security holders of ~~an issuer~~ a person, pursuant to the articles of incorporation of such ~~issuer~~ person, or pursuant to the applicable corporate statute or other statute governing such ~~issuer~~ person, or pursuant to such ~~issuer's~~ person's partnership agreement, declaration of trust, or trust indenture, or pursuant to any agreement among security holders of such ~~issuer~~ person, on a reclassification of securities, reverse stock split, reorganization involving the exchange of securities, merger, consolidation, or sale of assets, in consideration, in whole or in part, of the issuance of securities of ~~the issuer~~ such person or of any other person, if:

DIVISION V

Sec. 19. Section five hundred two point one hundred two (502.102), subsection two (2), paragraph a, Code 1977, is amended to read as follows:

a. Effecting transactions in a security exempted by section 502.202, subsections 1, 2, 3, four (4), six (6), 10, or 11, or a security issued by an industrial loan company licensed under chapter five hundred thirty-six A (536A), Code 1977;

Sec. 20. Section five hundred two point two hundred two (502.202), subsection one (1), Code 1977, is amended to read as follows:

1. Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption shall not include any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, unless such payments are or will be made or unconditionally guaran-

teed by a person whose securities are exempt from registration under this chapter by (a) section 502.202, subsection 7 or subsection 8, or (b) subsection nine (9) of section five hundred two point two hundred two (502.202) of the Code, provided the issuer first files with the administrator a written notice specifying the terms of the offer and the administrator does not by order disallow the exemption within fifteen days thereafter.

Sec. 21. Section five hundred two point two hundred three (502.203), subsection two (2), paragraph c, Code 1977, is amended to read as follows:

c. The security was issued by an issuer which has a class of securities ~~currently~~ registered under ~~section-502.204~~ this chapter, or under chapter five hundred two (502) of the Code as it existed prior to January 1, 1976.

Sec. 22. Section five hundred two point two hundred three (502.203), subsection twelve (12), Code 1977, is amended to read as follows:

12. Any offer, but not a sale, of a security for which a registration statements-have statement has been filed under both this chapter and the Securities Act of 1933 if no stop order or denial order is in effect and no proceeding is pending under ~~either law~~ this chapter.

Sec. 23. Section five hundred two point two hundred ten (502.210), subsection one (1), unnumbered paragraph one (1), Code 1977, is amended to read as follows:

~~The aggregate offering price of all securities of the issuer which may be registered for sale in this state under section-502.207, as part of a single issue of equity securities, shall not exceed~~ Notwithstanding the provisions of section five hundred two point two hundred seven (502.207) of the Code, no securities may be registered under that section if the aggregate offering price of all securities of the issuer which will be offered or sold in this state, as part of a single issue of equity securities, in reliance upon the exemption from federal registration requirements provided by paragraph eleven (11) of subsection a of section three

(3) of the federal Securities Act of 1933, as amended, exceeds the following amounts:

Sec. 24. This Act shall take effect January 1, 1979.

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 376, Sixty-seventh General Assembly.

KEVIN P. LIGHT  
Acting Secretary of the Senate

Approved April 27, 1978

ROBERT D. RAY  
Governor