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FILED MAR 20 1987

SENATE FILE

471

BY COMMITTEE ON JUDICIARY

(formerly SSB 230)  
*Approved 2 (p. 827)*

Passed Senate, Date 4-3-87 (p. 1092)

Passed House, Date 4/23/87 (p. 1610)

Vote: Ayes 39 Nays 1

Vote: Ayes 79 Nays 15

Approved June 5, 1987

## A BILL FOR

1 An Act relating to indemnification and limitation on liability of  
2 directors and officers and to liability of persons who  
3 volunteer services to the state or a municipality or a  
4 nonprofit organization.

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

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SF 471

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1 Section 1. NEW SECTION. 25A.24 STATE VOLUNTEERS.

2 A person who performs services for the state government or  
3 any agency or subdivision of state government and who does not  
4 receive compensation is not personally liable for a claim  
5 based upon an act or omission of the person performed in the  
6 discharge of the person's duties, except for acts or omissions  
7 which involve intentional misconduct, gross negligence, or  
8 knowing violation of the law, or for a transaction from which  
9 the person derives an improper personal benefit. For purposes  
10 of this section, "compensation" does not include payments to  
11 reimburse a person for expenses.

12 Sec. 2. Section 491.5, Code 1987, is amended by adding the  
13 following new subsection:

14 NEW SUBSECTION. 8. A provision which eliminates or limits  
15 the personal liability of a director to the corporation or its  
16 shareholders for monetary damages for breach of fiduciary duty  
17 as a director, provided that the provision does not eliminate  
18 or limit the liability of a director for a breach of the  
19 director's duty of loyalty to the corporation or its  
20 stockholders, for acts or omissions not in good faith or which  
21 involve intentional misconduct or knowing violation of the  
22 law, or for a transaction from which the director derives an  
23 improper personal benefit. A provision in the articles of  
24 incorporation shall not eliminate or limit the liability of a  
25 director for an act or omission occurring prior to the date  
26 when the provision becomes effective.

27 Sec. 3. Section 496A.4A, subsection 1, paragraph a, Code  
28 1987, is amended to read as follows:

29 a. "Director" means any a person who is or was a director  
30 of the corporation and any a person who, while a director of  
31 the corporation, is or was serving at the request of the  
32 corporation as a director, officer, partner, trustee,  
33 employee, or agent of another foreign or domestic corporation,  
34 partnership, joint venture, trust, other enterprise, or  
35 employee benefit plan. Heirs, executors, personal

1 representatives, and administrators of the person are  
2 included.

3 Sec. 4. Section 496A.4A, subsection 7, Code 1987, is  
4 amended by striking the subsection and inserting in lieu  
5 thereof the following:

6 7. Except as limited in subsection 2 with respect to  
7 proceedings by or in the right of the corporation, the  
8 indemnification and advancement of expenses provided by, or  
9 granted pursuant to, the other subsections of this section are  
10 not exclusive of any other rights to which those seeking  
11 indemnification or advancement of expenses are entitled under  
12 a provision in the articles of incorporation or bylaws,  
13 agreements, vote of shareholders or disinterested directors,  
14 or otherwise, both as to action in a person's official  
15 capacity and as to action in another capacity while holding  
16 the office. However, the provisions or agreements shall not  
17 provide indemnification nor advancement of expenses for a  
18 breach of the director's duty of loyalty to the corporation or  
19 its stockholders, for acts or omissions not in good faith or  
20 which involve intentional misconduct or knowing violation of  
21 the law, for a transaction from which the director derives an  
22 improper personal benefit, or under section 496A.44.

23 Sec. 5. Section 496A.49, Code 1987, is amended by adding  
24 the following new subsection as subsection 13 and renumbering  
25 the existing subsection 13:

26 NEW SUBSECTION. 13. A provision which eliminates or  
27 limits the personal liability of a director to the corporation  
28 or its shareholders for monetary damages for breach of  
29 fiduciary duty as a director, provided that the provision  
30 shall not eliminate or limit the liability of a director for a  
31 breach of the director's duty of loyalty to the corporation or  
32 its stockholders, for acts or omissions not in good faith or  
33 which involve intentional misconduct or knowing violation of  
34 the law, for a transaction from which the director derives an  
35 improper personal benefit, or under section 496A.44. A

1 provision shall not eliminate or limit the liability of a  
2 director for an act or omission occurring prior to the date  
3 when the provision in the articles of incorporation becomes  
4 effective.

5 Sec. 6. NEW SECTION. 497.33 PERSONAL LIABILITY.

6 Except as otherwise provided in this chapter, a director,  
7 officer, employee, or member of the corporation is not liable  
8 on the corporation's debts or obligations and a director,  
9 officer, member, or other volunteer is not personally liable  
10 in that capacity, for a claim based upon an act or omission of  
11 the person performed in the discharge of the person's duties,  
12 except for a breach of the duty of loyalty to the corporation,  
13 for acts or omissions not in good faith or which involve  
14 intentional misconduct, gross negligence, or knowing violation  
15 of the law, or for a transaction from which the person derives  
16 an improper personal benefit.

17 Sec. 7. NEW SECTION. 498.35 PERSONAL LIABILITY.

18 Except as otherwise provided in this chapter, a director,  
19 officer, employee, or member of the association is not liable  
20 on the association's debts or obligations and a director,  
21 officer, member, or other volunteer is not personally liable  
22 in that capacity, for a claim based upon an act or omission of  
23 the person performed in the discharge of the person's duties,  
24 except for a breach of the duty of loyalty to the association,  
25 for acts or omissions not in good faith or which involve  
26 intentional misconduct or gross negligence or knowing  
27 violation of the law, or for a transaction from which the  
28 person derives an improper personal benefit.

29 Sec. 8. NEW SECTION. 499.72 PERSONAL LIABILITY.

30 Except as otherwise provided in this chapter, a director,  
31 officer, employee, or member of the association is not liable  
32 on the debts or obligations, and a director, officer, member,  
33 or other volunteer is not personally liable in that capacity,  
34 for a claim based upon an act or omission of the person  
35 performed in the discharge of the person's duties, except for

1 a breach of the duty of loyalty to the association, for acts  
2 or omissions not in good faith or which involve intentional  
3 misconduct or gross negligence or knowing violation of the  
4 law, or for a transaction from which the person derives an  
5 improper personal benefit.

6 Sec. 9. NEW SECTION. 504.17 PERSONAL LIABILITY.

7 Except as otherwise provided in this chapter, a director,  
8 officer, employee, or member of the corporation is not liable  
9 on the corporation's debts or obligations and a director,  
10 officer, member, or other volunteer is not personally liable  
11 in that capacity, for a claim based upon an act or omission of  
12 the person performed in the discharge of the person's duties,  
13 except for a breach of the duty of loyalty to the corporation,  
14 for acts or omissions not in good faith or which involve  
15 intentional misconduct or gross negligence or knowing  
16 violation of the law, or for a transaction from which the  
17 person derives an improper personal benefit.

18 Sec. 10. Section 504A.101, Code 1987, is amended by  
19 striking the section and inserting in lieu thereof the  
20 following:

21 504A.101 PERSONAL LIABILITY.

22 Except as otherwise provided in this chapter, a director,  
23 officer, employee, or member of the corporation is not liable  
24 on the corporation's debts nor obligations and a director,  
25 officer, member, or other volunteer is not personally liable  
26 in that capacity, for a claim based upon an act or omission of  
27 the person performed in the discharge of the person's duties,  
28 except for a breach of the duty of loyalty to the corporation,  
29 for acts or omissions not in good faith or which involve  
30 intentional misconduct or gross negligence or knowing  
31 violation of the law, or for a transaction from which the  
32 person derives an improper personal benefit.

33 Sec. 11. Section 524.302, Code 1987, is amended by adding  
34 the following new subsection as subsection 10 and renumbering  
35 the existing subsection 10:

1 NEW SUBSECTION. 10. A provision which eliminates or  
2 limits the personal liability of a director to the corporation  
3 or its shareholders for monetary damages for breach of  
4 fiduciary duty as a director, provided that the provision does  
5 not eliminate or limit the liability of a director for a  
6 breach of the director's duty of loyalty to the corporation or  
7 its stockholders, for acts or omissions not in good faith or  
8 which involve intentional misconduct or knowing violation of  
9 the law, for a transaction from which the director derives an  
10 improper personal benefit, or under subsections 1 and 2 of  
11 section 524.605. A provision shall not eliminate or limit the  
12 liability of a director for an act or omission occurring prior  
13 to the date when the provision in the articles of  
14 incorporation becomes effective.

15 Sec. 12. Section 533.1, Code 1987, is amended by adding  
16 the following new subsection:

17 NEW SUBSECTION. 8. The original articles or amended  
18 articles may contain a provision which eliminates or limits  
19 the personal liability of a director to the corporation or its  
20 shareholders for monetary damages for breach of fiduciary duty  
21 as a director, provided that the provision does not eliminate  
22 or limit the liability of a director for a breach of the  
23 director's duty of loyalty to the corporation or its  
24 stockholders, for acts or omissions not in good faith or which  
25 involve intentional misconduct or knowing violation of the  
26 law, or for a transaction from which the director derives an  
27 improper personal benefit. A provision shall not eliminate or  
28 limit the liability of a director for an act or omission  
29 occurring prior to the date when the provision in the articles  
30 of incorporation becomes effective.

31 Sec. 13. Section 533.4, Code 1987, is amended by adding  
32 the following new subsection:

33 NEW SUBSECTION. 27. To provide indemnity in the same  
34 fashion that a corporation organized under chapter 496A could  
35 under section 496A.4A; provided that where section 496A.4A

1 provides for action by shareholders the section is applicable  
2 to action by members of the credit union and where the section  
3 has reference to the corporation organized under chapter 496A,  
4 it is applicable to the association organized under this  
5 chapter.

6 Sec. 14. Section 534.501, subsection 1, Code 1987, is  
7 amended by adding the following new lettered paragraph:

8 NEW LETTER PARAGRAPH. m. A provision which eliminates or  
9 limits the personal liability of a director to the corporation  
10 or its shareholders or members, for monetary damages for  
11 breach of fiduciary duty as a director, provided that the  
12 provision does not eliminate or limit the liability of a  
13 director for a breach of the director's duty of loyalty to the  
14 association or its stockholders or members, for an act or  
15 omission not in good faith or which involves intentional  
16 misconduct or knowing violation of the law, or for a  
17 transaction from which the director derives an improper  
18 personal benefit. A provision shall not eliminate or limit  
19 the liability of a director for an act or omission occurring  
20 prior to the date when the provision in the articles of  
21 incorporation becomes effective.

22 Sec. 15. Section 534.501, subsection 3, Code 1987, is  
23 amended to read as follows:

24 3. Restated articles. Restated articles of incorporation  
25 shall set forth the information specified in paragraphs "a",  
26 "b", "c", "d", "e", "f", "g", "h", "i", and "j", and "m" of  
27 subsection 1.

28 Sec. 16. NEW SECTION. 534.607 INDEMNIFICATION.

29 Except as otherwise provided in section 534.502, section  
30 496A.4A applies to associations incorporated under this  
31 chapter.

32 Sec. 17. NEW SECTION. 613.19 PERSONAL LIABILITY.

33 A director, officer, employee, member, trustee, or  
34 volunteer, of a nonprofit organization is not liable on the  
35 debts or obligations of the nonprofit organization and a

1 director, officer, employee, member, trustee, or volunteer is  
2 not personally liable for a claim based upon an act or  
3 omission of the person performed in the discharge of the  
4 person's duties, except for acts or omissions which involve  
5 intentional misconduct, gross negligence, or knowing violation  
6 of the law, or for a transaction from which the person derives  
7 an improper personal benefit. For purposes of this section,  
8 "nonprofit organization" includes an unincorporated club,  
9 association, or other similar entity, however named, if no  
10 part of its income or profit is distributed to its members,  
11 directors, or officers.

12 Sec. 18. Section 613A.2, Code 1987, is amended by adding  
13 the following new unnumbered paragraph:

14 NEW UNNUMBERED PARAGRAPH. A person who performs services  
15 for a municipality or an agency or subdivision of a  
16 municipality and who does not receive compensation is not  
17 personally liable for a claim based upon an act or omission of  
18 the person performed in the discharge of the person's duties,  
19 except for acts or omissions which involve intentional  
20 misconduct, gross negligence, or knowing violation of the law,  
21 or for a transaction from which the person derives an improper  
22 personal benefit. For purposes of this section,  
23 "compensation" does not include payments to reimburse a person  
24 for expenses.

25 EXPLANATION

26 This bill limits the liability of certain directors and  
27 officers. The bill enables a corporation in its original  
28 articles of incorporation or in an amendment to the articles,  
29 to eliminate or limit personal liability of members of its  
30 board of directors for violations of a director's fiduciary  
31 duty of care. However, a provision shall not eliminate or  
32 limit the liability of a director for breaching the director's  
33 duty of loyalty, failing to act in good faith, engaging in  
34 intentional misconduct or knowing violation of the law, paying  
35 a dividend, approving a stock repurchase, or distributing



1 assets of a corporation which was illegal under section  
2 496A.44, or obtaining an improper personal benefit.

3 The bill further provides that directors, officers,  
4 employees, members, trustees, and volunteers of nonprofit  
5 corporations are not liable for negligent acts or omissions.  
6 It provides similar standards for the conduct of persons who  
7 do volunteer services for governmental entities of the state  
8 and for unincorporated nonprofit organizations.

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1 Section 1. NEW SECTION. 25A.24 STATE VOLUNTEERS.

2 A person who performs services for the state government or  
3 any agency or subdivision of state government and who does not  
4 receive compensation is not personally liable for a claim  
5 based upon an act or omission of the person performed in the  
6 discharge of the person's duties, except for acts or omissions  
7 which involve intentional misconduct, gross negligence, or  
8 knowing violation of the law, or for a transaction from which  
9 the person derives an improper personal benefit. For purposes  
10 of this section, "compensation" does not include payments to  
11 reimburse a person for expenses.

12 Sec. 2. Section 491.5, Code 1987, is amended by adding the  
13 following new subsection:

14 NEW SUBSECTION. 8. A provision which eliminates or limits  
15 the personal liability of a director to the corporation or its  
16 shareholders or members for monetary damages for breach of  
17 fiduciary duty as a director, provided that the provision does  
18 not eliminate or limit the liability of a director for a  
19 breach of the director's duty of loyalty to the corporation or  
20 its shareholders or members, for acts or omissions not in good  
21 faith or which involve intentional misconduct or knowing  
22 violation of the law, or for a transaction from which the  
23 director derives an improper personal benefit. A provision in  
24 the articles of incorporation shall not eliminate or limit the  
25 liability of a director for an act or omission occurring prior  
26 to the date when the provision becomes effective.

27 Sec. 3. Section 496A.4A, subsection 1, paragraph a, Code  
28 1987, is amended to read as follows:

29 a. "Director" means any a person who is or was a director  
30 of the corporation and any a person who, while a director of  
31 the corporation, is or was serving at the request of the  
32 corporation as a director, officer, partner, trustee,  
33 employee, or agent of another foreign or domestic corporation,  
34 partnership, joint venture, trust, other enterprise, or  
35 employee benefit plan. Heirs, executors, personal

1 representatives, and administrators of the person are  
2 included.

3 Sec. 4. Section 496A.4A, subsection 7, Code 1987, is  
4 amended by striking the subsection and inserting in lieu  
5 thereof the following:

6 7. Except as limited in subsection 2 with respect to  
7 proceedings by or in the right of the corporation, the  
8 indemnification and advancement of expenses provided by, or  
9 granted pursuant to, the other subsections of this section are  
10 not exclusive of any other rights to which those seeking  
11 indemnification or advancement of expenses are entitled under  
12 a provision in the articles of incorporation or bylaws,  
13 agreements, vote of shareholders or disinterested directors,  
14 or otherwise, both as to action in a person's official  
15 capacity and as to action in another capacity while holding  
16 the office. However, the provisions or agreements shall not  
17 provide indemnification for a breach of the director's duty of  
18 loyalty to the corporation or its stockholders, for acts or  
19 omissions not in good faith or which involve intentional  
20 misconduct or knowing violation of the law, for a transaction  
21 from which the director derives an improper personal benefit,  
22 or under section 496A.44.

23 Sec. 5. Section 496A.49, Code 1987, is amended by adding  
24 the following new subsection as subsection 13 and renumbering  
25 the existing subsection 13:

26 NEW SUBSECTION. 13. A provision which eliminates or  
27 limits the personal liability of a director to the corporation  
28 or its shareholders for monetary damages for breach of  
29 fiduciary duty as a director, provided that the provision  
30 shall not eliminate or limit the liability of a director for a  
31 breach of the director's duty of loyalty to the corporation or  
32 its stockholders, for acts or omissions not in good faith or  
33 which involve intentional misconduct or knowing violation of  
34 the law, for a transaction from which the director derives an  
35 improper personal benefit, or under section 496A.44. A

1 provision shall not eliminate or limit the liability of a  
2 director for an act or omission occurring prior to the date  
3 when the provision in the articles of incorporation becomes  
4 effective.

5 Sec. 6. NEW SECTION. 497.33 PERSONAL LIABILITY.

6 Except as otherwise provided in this chapter, a director,  
7 officer, employee, or member of the corporation is not liable  
8 on the corporation's debts or obligations and a director,  
9 officer, member, or other volunteer is not personally liable  
10 in that capacity, for a claim based upon an act or omission of  
11 the person performed in the discharge of the person's duties,  
12 except for a breach of the duty of loyalty to the corporation,  
13 for acts or omissions not in good faith or which involve  
14 intentional misconduct, gross negligence, or knowing violation  
15 of the law, or for a transaction from which the person derives  
16 an improper personal benefit.

17 Sec. 7. NEW SECTION. 498.35 PERSONAL LIABILITY.

18 Except as otherwise provided in this chapter, a director,  
19 officer, employee, or member of the association is not liable  
20 on the association's debts or obligations and a director,  
21 officer, member, or other volunteer is not personally liable  
22 in that capacity, for a claim based upon an act or omission of  
23 the person performed in the discharge of the person's duties,  
24 except for a breach of the duty of loyalty to the association,  
25 for acts or omissions not in good faith or which involve  
26 intentional misconduct or gross negligence or knowing  
27 violation of the law, or for a transaction from which the  
28 person derives an improper personal benefit.

29 Sec. 8. NEW SECTION. 499.72 PERSONAL LIABILITY.

30 Except as otherwise provided in this chapter, a director,  
31 officer, employee, or member of the association is not liable  
32 on the debts or obligations, and a director, officer, member,  
33 or other volunteer is not personally liable in that capacity,  
34 for a claim based upon an act or omission of the person  
35 performed in the discharge of the person's duties, except for

1 a breach of the duty of loyalty to the association, for acts  
2 or omissions not in good faith or which involve intentional  
3 misconduct or gross negligence or knowing violation of the  
4 law, or for a transaction from which the person derives an  
5 improper personal benefit.

6 Sec. 9. NEW SECTION. 504.17 PERSONAL LIABILITY.

7 Except as otherwise provided in this chapter, a director,  
8 officer, employee, or member of the corporation is not liable  
9 on the corporation's debts or obligations and a director,  
10 officer, member, or other volunteer is not personally liable  
11 in that capacity, for a claim based upon an act or omission of  
12 the person performed in the discharge of the person's duties,  
13 except for a breach of the duty of loyalty to the corporation,  
14 for acts or omissions not in good faith or which involve  
15 intentional misconduct or gross negligence or knowing  
16 violation of the law, or for a transaction from which the  
17 person derives an improper personal benefit.

18 Sec. 10. Section 504A.101, Code 1987, is amended by  
19 striking the section and inserting in lieu thereof the  
20 following:

21 504A.101 PERSONAL LIABILITY.

22 Except as otherwise provided in this chapter, a director,  
23 officer, employee, or member of the corporation is not liable  
24 on the corporation's debts nor obligations and a director,  
25 officer, member, or other volunteer is not personally liable  
26 in that capacity, for a claim based upon an act or omission of  
27 the person performed in the discharge of the person's duties,  
28 except for a breach of the duty of loyalty to the corporation,  
29 for acts or omissions not in good faith or which involve  
30 intentional misconduct or gross negligence or knowing  
31 violation of the law, or for a transaction from which the  
32 person derives an improper personal benefit.

33 Sec. 11. Section 524.302, Code 1987, is amended by adding  
34 the following new subsection as subsection 10 and renumbering  
35 the existing subsection 10:

1 NEW SUBSECTION. 10. A provision which eliminates or  
2 limits the personal liability of a director to the corporation  
3 or its shareholders for monetary damages for breach of  
4 fiduciary duty as a director, provided that the provision does  
5 not eliminate or limit the liability of a director for a  
6 breach of the director's duty of loyalty to the corporation or  
7 its stockholders, for acts or omissions not in good faith or  
8 which involve intentional misconduct or knowing violation of  
9 the law, for a transaction from which the director derives an  
10 improper personal benefit, or under subsections 1 and 2 of  
11 section 524.605. A provision shall not eliminate or limit the  
12 liability of a director for an act or omission occurring prior  
13 to the date when the provision in the articles of  
14 incorporation becomes effective.

15 Sec. 12. Section 533.1, Code 1987, is amended by adding  
16 the following new subsection:

17 NEW SUBSECTION. 8. The original articles or amended  
18 articles may contain a provision which eliminates or limits  
19 the personal liability of a director, officer, or employee of  
20 the corporation or its shareholders for monetary damages for  
21 breach of fiduciary duty as a director, officer, or employee,  
22 provided that the provision does not eliminate or limit the  
23 liability of a director, officer, or employee for a breach of  
24 the director's, officer's, or employee's duty of loyalty to  
25 the corporation or its stockholders, for acts or omissions not  
26 in good faith or which involve intentional misconduct or  
27 knowing violation of the law, or for a transaction from which  
28 the director, officer, or employee derives an improper  
29 personal benefit. A provision shall not eliminate or limit  
30 the liability of a director, officer, or employee for an act  
31 or omission occurring prior to the date when the provision in  
32 the articles of incorporation becomes effective.

33 Sec. 13. Section 533.4, Code 1987, is amended by adding  
34 the following new subsection:

35 NEW SUBSECTION. 27. To provide indemnity for the

1 director, officer, or employee in the same fashion that a  
2 corporation organized under chapter 496A could under section  
3 496A.4A, provided that where section 496A.4A provides for  
4 action by shareholders the section is applicable to action by  
5 members of the credit union and where the section has  
6 reference to the corporation organized under chapter 496A, it  
7 is applicable to the association organized under this chapter.

8 Sec. 14. Section 534.501, subsection 1, Code 1987, is  
9 amended by adding the following new lettered paragraph:

10 NEW LETTER PARAGRAPH. m. A provision which eliminates or  
11 limits the personal liability of a director to the corporation  
12 or its shareholders or members, for monetary damages for  
13 breach of fiduciary duty as a director, provided that the  
14 provision does not eliminate or limit the liability of a  
15 director for a breach of the director's duty of loyalty to the  
16 association or its stockholders or members, for an act or  
17 omission not in good faith or which involves intentional  
18 misconduct or knowing violation of the law, or for a  
19 transaction from which the director derives an improper  
20 personal benefit. A provision shall not eliminate or limit  
21 the liability of a director for an act or omission occurring  
22 prior to the date when the provision in the articles of  
23 incorporation becomes effective.

24 Sec. 15. Section 534.501, subsection 3, Code 1987, is  
25 amended to read as follows:

26 3. Restated articles. Restated articles of incorporation  
27 shall set forth the information specified in paragraphs "a",  
28 "b", "c", "d", "e", "f", "g", "h", "i", and "j", and "m" of  
29 subsection 1.

30 Sec. 16. Section 534.605, subsection 4, Code 1987, is  
31 amended to read as follows:

32 4. Any association operating under this chapter shall have  
33 the power to indemnify any present or former director, officer  
34 or employee in the manner and in the instances authorized in  
35 section 496A.4A. If the association is a mutual association,



1 the references in section 496A.4A to stockholder shall be  
2 deemed to be references to members.

3 Sec. 17. NEW SECTION. 534.607 INDEMNIFICATION.

4 Except as otherwise provided in section 534.602, section  
5 496A.4A applies to associations incorporated under this  
6 chapter.

7 Sec. 18. NEW SECTION. 613.19 PERSONAL LIABILITY.

8 A director, officer, employee, member, trustee, or  
9 volunteer, of a nonprofit organization is not liable on the  
10 debts or obligations of the nonprofit organization and a  
11 director, officer, employee, member, trustee, or volunteer is  
12 not personally liable for a claim based upon an act or  
13 omission of the person performed in the discharge of the  
14 person's duties, except for acts or omissions which involve  
15 intentional misconduct, gross negligence, or knowing violation  
16 of the law, or for a transaction from which the person derives  
17 an improper personal benefit. For purposes of this section,  
18 "nonprofit organization" includes an unincorporated club,  
19 association, or other similar entity, however named, if no  
20 part of its income or profit is distributed to its members,  
21 directors, or officers.

22 Sec. 19. Section 613A.2, Code 1987, is amended by adding  
23 the following new unnumbered paragraph:

24 NEW UNNUMBERED PARAGRAPH. A person who performs services  
25 for a municipality or an agency or subdivision of a  
26 municipality and who does not receive compensation is not  
27 personally liable for a claim based upon an act or omission of  
28 the person performed in the discharge of the person's duties,  
29 except for acts or omissions which involve intentional  
30 misconduct, gross negligence, or knowing violation of the law,  
31 or for a transaction from which the person derives an improper  
32 personal benefit. For purposes of this section,  
33 "compensation" does not include payments to reimburse a person  
34 for expenses.

35 The municipality, or agency or subdivision of the

1 municipality, or official representing the municipality, or  
2 agency or subdivision of the municipality, having authority  
3 over the person providing the services shall provide notice to  
4 an individual receiving or benefiting from the services  
5 provided of this limitation prior to the delivery of the  
6 services, except when an emergency exists which does not  
7 afford a reasonable opportunity for this notice to be given.  
8 Reasonable notice pursuant to this section may include, but is  
9 not limited to, notice by mail, notice which is posted on a  
10 bulletin board or other prominent place at a site where the  
11 services are to be provided, or notice prominently contained  
12 in registration material distributed to individuals receiving  
13 or benefiting from the service.

14 Sec. 20. A corporation may adopt a provision pursuant to  
15 section 2, 5, 11, 12, or 14 of this Act prior to the effective  
16 date of this Act which shall become effective upon the  
17 effective date of this Act.

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HOUSE AMENDMENT TO  
SENATE FILE 471

3798

- 1 Amend Senate File 471 as amended, passed and
- 2 reprinted by the Senate as follows:
- 3 1. Page 1, line 7, by striking the words ", gross
- 4 negligence,".
- 5 2. Page 3, line 14, by striking the words ",
- 6 gross negligence,".
- 7 3. Page 3, line 26, by striking the words "gross
- 8 negligence or".
- 9 4. Page 4, line 3, by striking the words "gross
- 10 negligence or".
- 11 5. Page 4, line 15, by striking the words "gross
- 12 negligence or".
- 13 6. Page 4, by inserting after line 17 the
- 14 following:
- 15 "Sec. \_\_\_\_ . Section 504A.4, subsection 14, is
- 16 amended by striking the subsection and inserting in
- 17 lieu thereof the following:
- 18 14. A corporation operating under this chapter may
- 19 indemnify any present or former director, officer,
- 20 employee, member, or volunteer in the manner and in
- 21 the instances authorized in section 496A.4A."
- 22 7. Page 4, line 30, by striking the words "gross
- 23 negligence or".
- 24 8. Page 7, line 15, by striking the words ",
- 25 gross negligence,".
- 26 9. Page 7, line 30, by striking the words ",
- 27 gross negligence,".
- 28 10. By striking page 7, line 35 through page 8,
- 29 line 13.
- 30 11. By renumbering, relettering, or redesignating
- 31 and correcting internal references as necessary.

S-3798

Filed April 24, 1987  
*Senate Journal 5/9/87 (p. 1848)*

RECEIVED FROM THE HOUSE

SENATE FILE 471

S-3967

- 1 Amend the House amendment, S-3798, to Senate File
- 2 471, as amended, passed, and reprinted by the Senate,
- 3 as follows:
- 4 1. Page 1, by inserting after line 2 the
- 5 following:
- 6 "\_\_\_\_ . Page 1, line 4, by inserting after the word
- 7 "compensation" the following: "or a person who is an
- 8 elected or appointed official of state government or
- 9 an elected or appointed official of an agency or
- 10 subdivision of state government"."
- 11 2. Page 1, by inserting after line 25 the
- 12 following:
- 13 "\_\_\_\_ . Page 7, line 26, by inserting after the
- 14 word "compensation" the following: "or a person who
- 15 is an elected or appointed official of a municipality
- 16 or an elected or appointed official of an agency or
- 17 subdivision of a municipality"."

S-3967

Filed May 4, 1987  
*Senate Journal 5/9/87 (p. 1848)*

BY WILLIAM D. PALMER

SENATE FILE 471

S-3916

1 Amend the House amendment, S-3798, to Senate File  
2 471 as amended, passed and reprinted by the Senate as  
3 follows:

4 1. Page 1, line 4, by inserting after the word  
5 "negligence," the following: "and inserting in lieu  
6 thereof the words ", willful and wanton disregard of  
7 another's rights,",""

8 2. Page 1, line 6, by inserting after the word  
9 "negligence," the following: "and inserting in lieu  
10 thereof the words ", willful and wanton disregard of  
11 another's rights,",""

12 3. Page 1, line 8, by inserting after the word  
13 "or" the following: "and inserting in lieu thereof  
14 the words "willful and wanton disregard of another's  
15 rights or",""

16 4. Page 1, line 10, by inserting after the word  
17 "or" the following: "and inserting in lieu thereof  
18 the words "willful and wanton disregard of another's  
19 rights or",""

20 5. Page 1, line 12, by inserting after the word  
21 "or" the following: "and inserting in lieu thereof  
22 the words "willful and wanton disregard of another's  
23 rights or",""

24 6. Page 1, line 23, by inserting after the word  
25 "or" the following: "and inserting in lieu thereof  
26 the words "willful and wanton disregard of another's  
27 rights or",""

28 7. Page 1, line 25, by inserting after the word  
29 "negligence," the following: "and inserting in lieu  
30 thereof the words ", willful and wanton disregard of  
31 another's rights,",""

32 8. Page 1, line 27, by inserting after the word  
33 "negligence," the following: "and inserting in lieu  
34 thereof the words ", willful and wanton disregard of  
35 another's rights,",""

S-3916

Filed April 30, 1987

BY TOM MANN, JR.

*Law 5/9/87 (p. 1248)*

S-3352

1 Amend Senate File 471 as follows:

2 1. Page 2, line 17, by striking the words "nor  
3 advancement of expenses".

4 2. By striking page 5, line 15 through page 6,  
5 line 5 and inserting the following:

6 "Sec. \_\_\_\_ . Section 533.1, Code 1987, is amended by  
7 adding the following new subsection:

8 NEW SUBSECTION. 8. The original articles or  
9 amended articles may contain a provision which  
10 eliminates or limits the personal liability of a  
11 director, officer, or employee of the corporation or  
12 its shareholders for monetary damages for breach of  
13 fiduciary duty as a director, officer, or employee,  
14 provided that the provision does not eliminate or  
15 limit the liability of a director, officer, or  
16 employee for a breach of the director's, officer's, or  
17 employee's duty of loyalty to the corporation or its  
18 stockholders, for acts or omissions not in good faith  
19 or which involve intentional misconduct or knowing  
20 violation of the law, or for a transaction from which  
21 the director, officer, or employee derives an improper  
22 personal benefit. A provision shall not eliminate or  
23 limit the liability of a director, officer, or  
24 employee for an act or omission occurring prior to the  
25 date when the provision in the articles of  
26 incorporation becomes effective.

27 Sec. \_\_\_\_ . Section 533.4, Code 1987, is amended by  
28 adding the following new subsection:

29 NEW SUBSECTION. 27. To provide indemnity for the  
30 director, officer, or employee in the same fashion  
31 that a corporation organized under chapter 496A could  
32 under section 496A.4A, provided that where section  
33 496A.4A provides for action by shareholders the  
34 section is applicable to action by members of the  
35 credit union and where the section has reference to  
36 the corporation organized under chapter 496A, it is  
37 applicable to the association organized under this  
38 chapter."

39 3. Page 6, by inserting after line 27 the  
40 following:

41 "Sec. \_\_\_\_ . Section 534.605, subsection 4, Code  
42 1987, is amended to read as follows:

43 "4. Any association operating under this chapter  
44 shall have the power to indemnify any present or  
45 former director, officer or employee in the manner and  
46 in the instances authorized in section 496A.4A. If  
47 the association is a mutual association, the  
48 references in section 496A.4A to stockholder shall be  
49 deemed to be references to members."

50 4. Page 7, by inserting after line 24 the  
Page 2

1 following:

2 "Sec. \_\_\_\_ . A corporation may adopt a provision  
3 pursuant to section 2, 5, 11, 12, or 14 of this Act  
4 prior to the effective date of this Act which shall  
5 become effective upon the effective date of this Act."

6 5. Renumber as necessary.

S-3352

Filed April 1, 1987

*Adopted 4/3 (p. 1089)*

BY COMMITTEE ON COMMERCE

WILLIAM D. PALMER, Chairperson

SENATE FILE 471

S-3259

1 Amend Senate File 471 as follows:

2 1. Page 7, by inserting after line 24 the  
3 following:

4 "The municipality, or agency or subdivision of the  
5 municipality, or official representing the  
6 municipality, or agency or subdivision of the  
7 municipality, having authority over the person  
8 providing the services shall provide notice to an  
9 individual receiving or benefiting from the services  
10 provided of this limitation prior to the delivery of  
11 the services, except when an emergency exists which  
12 does not afford a reasonable opportunity for this  
13 notice to be given. Reasonable notice pursuant to  
14 this section may include, but is not limited to,  
15 notice by mail, notice which is posted on a bulletin  
16 board or other prominent place at a site where the  
17 services are to be provided, or notice prominently  
18 contained in registration material distributed to  
19 individuals receiving or benefiting from the service."

S-3259

Filed March 24, 1987

BY RICHARD VARN

*Adopted 4/3 (p 1090)*

SENATE FILE 471

413

1 Amend Senate File 471 as follows:

2 1. Page 1, by inserting after line 26 the  
3 following:

4 ""Acts or omissions in good faith" means that the  
5 director's acts or omissions from which a claim for  
6 damages has arisen were objectively reasonable and  
7 that the acts or omissions did not violate clearly  
8 established statutory rights or other rights of a  
9 person of which a reasonable person would know or  
10 should have known.

11 Sec. \_\_\_\_ . Section 496A.2, Code 1987, is amended by  
12 adding the following new subsection:

13 NEW SUBSECTION. 15. "Acts or omissions in good  
14 faith" means that the director's acts or omissions  
15 from which a claim for damages has arisen were  
16 objectively reasonable and that the acts or omissions  
17 did not violate clearly established statutory rights  
18 or other rights of a person of which a reasonable  
19 person would know or should have known."

20 2. Page 3, by inserting after line 16 the  
21 following:

22 ""Acts or omissions in good faith" means that the  
23 director's acts or omissions from which a claim for  
24 damages has arisen were objectively reasonable and  
25 that the acts or omissions did not violate clearly  
26 established statutory rights or other rights of a  
27 person of which a reasonable person would know or  
28 should have known."

29 3. Page 3, by inserting after line 28 the  
30 following:

31 ""Acts or omissions in good faith" means that the  
32 director's acts or omissions from which a claim for  
33 damages has arisen were objectively reasonable and  
34 that the acts or omissions did not violate clearly  
35 established statutory rights or other rights of a  
36 person of which a reasonable person would know or  
37 should have known."

38 4. Page 4, by inserting after line 5 the  
39 following:

40 ""Acts or omissions in good faith" means that the  
41 director's acts or omissions from which a claim for  
42 damages has arisen were objectively reasonable and  
43 that the acts or omissions did not violate clearly  
44 established statutory rights or other rights of a  
45 person of which a reasonable person would know or  
46 should have known."

47 5. Page 4, by inserting after line 17 the  
48 following:

49 ""Acts or omissions in good faith" means that the  
50 director's acts or omissions from which a claim for

S-3413 pg. 2

1 damages has arisen were objectively reasonable and  
2 that the acts or omissions did not violate clearly  
3 established statutory rights or other rights of a  
4 person of which a reasonable person would know or  
5 should have known."

6 5. Page 4, by inserting after line 32 the  
7 following:

8 ""Acts or omissions in good faith" means that the  
9 director's acts or omissions from which a claim for  
10 damages has arisen were objectively reasonable and  
11 that the acts or omissions did not violate clearly  
12 established statutory rights or other rights of a  
13 person of which a reasonable person would know or  
14 should have known."

15 6. Page 5, by inserting after line 14 the  
16 following:

17 ""Acts or omissions in good faith" means that the  
18 director's acts or omissions from which a claim for  
19 damages has arisen were objectively reasonable and  
20 that the acts or omissions did not violate clearly  
21 established statutory rights or other rights of a  
22 person of which a reasonable person would know or  
23 should have known."

24 7. Page 5, by inserting after line 30 the  
25 following:

26 ""Acts or omissions in good faith" means that the  
27 director's acts or omissions from which a claim for  
28 damages has arisen were objectively reasonable and  
29 that the acts or omissions did not violate clearly  
30 established statutory rights or other rights of a  
31 person of which a reasonable person would know or  
32 should have known."

33 8. Page 6, by inserting after line 21 the  
34 following:

35 ""Acts or omissions in good faith" means that the  
36 director's acts or omissions from which a claim for  
37 damages has arisen were objectively reasonable and  
38 that the acts or omissions did not violate clearly  
39 established statutory rights or other rights of a  
40 person of which a reasonable person would know or  
41 should have known."

42 9. Renumber as necessary.

S-3413

Filed April 3, 1987

BY TOM MANN, JR.

WITHDRAWN (p. 1092)

SENATE FILE 471

S-3394

1 Amend Senate File 471 as follows:

2 1. Page 1, line 16, by inserting after the word  
3 "shareholders" the following: "or members".

4 2. Page 1, line 20, by striking the word  
5 "stockholders" and inserting the following:  
6 "shareholders or members".

S-3394

Filed April 3, 1987

BY DAVID M. READINGER

ADOPTED (p. 1089)



SENATE FILE 471

H-3907

1 Amend Senate File 471 as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, line 11, by inserting after the word  
4 "expenses" the following: "or payments of two  
5 thousand dollars or less in the aggregate in the  
6 calendar year for services as an elected or appointed  
7 official".

8 2. Page 7, line 34, by inserting after the word  
9 "expenses" the following: "or payments of two  
10 thousand dollars or less in the aggregate in the  
11 calendar year for services as an elected or appointed  
12 official".

H-3907 FILED APRIL 23, 1987 BY DVORSKY of Johnson  
LOST (p. 1608)

SENATE FILE 471

H-3908

1 Amend Senate File 471 as amended, passed and  
2 reprinted by the Senate as follows:

3 1. Page 1, line 7, by striking the words ", gross  
4 negligence,".

5 2. Page 3, line 14, by striking the words ",  
6 gross negligence,".

7 3. Page 3, line 26, by striking the words "gross  
8 negligence or".

9 4. Page 4, line 3, by striking the words "gross  
10 negligence or".

11 5. Page 4, line 15, by striking the words "gross  
12 negligence or".

13 6. Page 4, line 30, by striking the words "gross  
14 negligence or".

15 7. Page 7, line 15, by striking the words ",  
16 gross negligence,".

17 8. Page 7, line 30, by striking the words ",  
18 gross negligence,".

BY JAY of Appanoose

H-3908 FILED APRIL 23, 1987 HALVORSON of Clayton  
ADOPTED (p. 1607)

SENATE FILE 471

H-3910

1 Amend Senate File 471 as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 4, by inserting after line 17 the  
4 following:

5 "Sec. \_\_\_\_ . Section 504A.4, subsection 14, is  
6 amended by striking the subsection and inserting in  
7 lieu thereof the following:

8 14. A corporation operating under this chapter may  
9 indemnify any present or former director, officer,  
10 employee, member, or volunteer in the manner and in  
the instances authorized in section 496A.4A."

2. By renumbering as necessary.

BY JAY of Appanoose

H-3910 FILED APRIL 23, 1987 HALVORSON of Clayton  
ADOPTED (p. 1609)

DAILY  
**HOUSE CLIP SHEET**

FRIDAY, APRIL 24, 1987

SENATE FILE 471

H-3909

1 Amend Senate File 471 as amended, passed, and  
2 reprinted by the Senate as follows:

- 3 1. Page 1, line 7, by inserting after the word  
4 "involve" the following: "negligence,".  
5 2. Page 1, line 20, by inserting after the word  
6 "for" the following: "negligent acts or".  
7 3. Page 2, line 18, by inserting after the word  
8 "for" the following: "negligent acts or".  
9 4. Page 2, line 32, by inserting after the word  
10 "for" the following: "negligent acts or".  
11 5. Page 3, line 13, by inserting after the word  
12 "for" the following: "negligent acts or".  
13 6. Page 3, line 25, by inserting after the word  
14 "for" the following: "negligent acts or".  
15 7. Page 4, line 1, by inserting after the word  
16 "for" the following: "negligent acts or".  
17 8. Page 4, line 14, by inserting after the word  
18 "for" the following: "negligent acts or".  
19 9. Page 4, line 29, by inserting after the word  
20 "for" the following: "negligent acts or".  
21 10. Page 5, line 7, by inserting after the word  
22 "for" the following: "negligent acts or".  
23 11. Page 5, line 25, by inserting after the word  
24 "for" the following: "negligent acts or".  
25 12. Page 6, line 16, by inserting after the word  
26 "for" the following: "a negligent act or".  
27 13. Page 7, line 14, by inserting after the word  
28 "for" the following: "negligent acts or".  
29 14. Page 7, line 29, by inserting after the word  
30 "for" the following: "negligent acts or".  
31 15. Page 8, by inserting after line 17 the  
32 following:  
33 "Sec. 21. For the purpose of this Act,  
34 "negligence" means the omission to do something which  
35 a reasonable person, guided by those ordinary  
36 considerations which ordinarily regulate human  
37 affairs, would do, or the doing of something which a  
38 reasonable and prudent person would not do."

H-3909 FILED APRIL 23, 1987 BY ROSENBERG of Story  
WITHDRAWN (p 1601)

SENATE FILE 471

H-3701

1 Amend Senate File 471, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. By striking page 7, line 35 through page 8,  
4 line 13.

BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

H-3701 FILED APRIL 10, 1987

*Adopted 4/23/87 (p. 1607)*

SENATE FILE 471

H-3738

1 Amend Senate File 471, as amended, passed, and re-  
2 printed by the Senate, as follows:  
3 1. Page 7, by inserting after line 6 the  
4 following:  
5 "Sec. \_\_\_\_ . NEW SECTION. 540.5 NONPROFIT  
6 ORGANIZATIONS.  
7 A nonprofit corporation organized or authorized  
8 under chapter 504 or 504A, including the directors,  
9 officers, employees, or members of the nonprofit  
10 corporation, is not liable for debts or obligations  
11 that arise when the corporation serves as an  
12 intermediary between persons contracting for a loan,  
13 including but not limited to, an agricultural loan.  
14 However, this section does not reduce a debt or  
15 obligation created by a corporation that contracts as  
16 a principal, surety, or guarantor of a loan."  
17 2. Renumber as necessary.

H-3738 FILED APRIL 14, 1987 BY STUELAND of Clinton

*4/15 4/23 (p. 1609)*

SENATE FILE 471

H-3785

1 Amend Senate File 471 as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 1, line 21, by inserting after the word  
4 "misconduct" the following: "or gross negligence".  
5 2. Page 2, by striking lines 12 through 14 and  
6 inserting the following: "a provision in the articles  
7 of incorporation, both as to action in a person's  
8 official".  
9 3. Page 2, line 20, by inserting after the word  
10 "misconduct" the following: "or gross negligence".  
11 4. Page 2, line 33, by inserting after the word  
12 "misconduct" the following: "or gross negligence".

H-3785 FILED APRIL 15, 1987 BY NEUHAUSER of Johnson

*Lost 4/23 (p. 1608)*

SSB #230  
Judiciary

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to indemnification and limitation on liability of  
2 directors and officers and to liability of persons who  
3 volunteer services to the state or a municipality or a  
4 nonprofit organization.

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

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SUB COMMITTEE ASSIGNMENTS

CHAIR: Doyle  
COMMITTEE: Judiciary  
3/19/87

1 Section 1. NEW SECTION. 25A.24 STATE VOLUNTEERS.

2 A person who performs services for the state government or  
3 any agency or subdivision of state government and who does not  
4 receive compensation is not personally liable for a claim  
5 based upon an act or omission of the person performed in the  
6 discharge of the person's duties, except for acts or omissions  
7 which involve intentional misconduct, gross negligence, or  
8 knowing violation of the law, or for a transaction from which  
9 the person derives an improper personal benefit. For purposes  
10 of this section, "compensation" does not include payments to  
11 reimburse a person for expenses.

12 Sec. 2. Section 491.5, Code 1987, is amended by adding the  
13 following new subsection:

14 NEW SUBSECTION. 8. A provision which eliminates or limits  
15 the personal liability of a director to the corporation or its  
16 shareholders for monetary damages for breach of fiduciary duty  
17 as a director, provided that the provision does not eliminate  
18 or limit the liability of a director for a breach of the  
19 director's duty of loyalty to the corporation or its  
20 stockholders, for acts or omissions not in good faith or which  
21 involve intentional misconduct or knowing violation of the  
22 law, or for a transaction from which the director derives an  
23 improper personal benefit. A provision in the articles of  
24 incorporation shall not eliminate or limit the liability of a  
25 director for an act or omission occurring prior to the date  
26 when the provision becomes effective.

27 Sec. 3. Section 496A.4A, subsection 1, paragraph a, Code  
28 1987, is amended to read as follows:

29 a. "Director" means any a person who is or was a director  
30 of the corporation and any a person who, while a director of  
31 the corporation, is or was serving at the request of the  
32 corporation as a director, officer, partner, trustee,  
33 employee, or agent of another foreign or domestic corporation,  
34 partnership, joint venture, trust, other enterprise, or  
35 employee benefit plan. Heirs, executors, personal

1 representatives, and administrators of the person are  
2 included.

3 Sec. 4. Section 496A.4A, subsection 7, Code 1987, is  
4 amended by striking the subsection and inserting in lieu  
5 thereof the following:

6 7. Except as limited in subsection 2 with respect to  
7 proceedings by or in the right of the corporation, the  
8 indemnification and advancement of expenses provided by, or  
9 granted pursuant to, the other subsections of this section are  
10 not exclusive of any other rights to which those seeking  
11 indemnification or advancement of expenses are entitled under  
12 a provision in the articles of incorporation or bylaws,  
13 agreements, vote of shareholders or disinterested directors,  
14 or otherwise, both as to action in a person's official  
15 capacity and as to action in another capacity while holding  
16 the office. However, the provisions or agreements shall not  
17 provide indemnification nor advancement of expenses for a  
18 breach of the director's duty of loyalty to the corporation or  
19 its stockholders, for acts or omissions not in good faith or  
20 which involve intentional misconduct or knowing violation of  
21 the law, for a transaction from which the director derives an  
22 improper personal benefit, or under section 496A.44.

23 Sec. 5. Section 496A.49, Code 1987, is amended by adding  
24 the following new subsection as subsection 13 and renumbering  
25 the existing subsection 13:

26 NEW SUBSECTION. 13. A provision which eliminates or  
27 limits the personal liability of a director to the corporation  
28 or its shareholders for monetary damages for breach of  
29 fiduciary duty as a director, provided that the provision  
30 shall not eliminate or limit the liability of a director for a  
31 breach of the director's duty of loyalty to the corporation or  
32 its stockholders, for acts or omissions not in good faith or  
33 which involve intentional misconduct or knowing violation of  
34 the law, for a transaction from which the director derives an  
35 improper personal benefit, or under section 496A.44. A

1 provision shall not eliminate or limit the liability of a  
2 director for an act or omission occurring prior to the date  
3 when the provision in the articles of incorporation becomes  
4 effective.

5 Sec. 6. NEW SECTION. 497.33 PERSONAL LIABILITY.

6 Except as otherwise provided in this chapter, a director,  
7 officer, employee, or member of the corporation is not liable  
8 on the corporation's debts or obligations and a director,  
9 officer, member, or other volunteer is not personally liable  
10 in that capacity, for a claim based upon an act or omission of  
11 the person performed in the discharge of the person's duties,  
12 except for a breach of the duty of loyalty to the corporation,  
13 for acts or omissions not in good faith or which involve  
14 intentional misconduct, gross negligence, or knowing violation  
15 of the law, or for a transaction from which the person derives  
16 an improper personal benefit.

17 Sec. 7. NEW SECTION. 498.35 PERSONAL LIABILITY.

18 Except as otherwise provided in this chapter, a director,  
19 officer, employee, or member of the association is not liable  
20 on the association's debts or obligations and a director,  
21 officer, member, or other volunteer is not personally liable  
22 in that capacity, for a claim based upon an act or omission of  
23 the person performed in the discharge of the person's duties,  
24 except for a breach of the duty of loyalty to the association,  
25 for acts or omissions not in good faith or which involve  
26 intentional misconduct or gross negligence or knowing  
27 violation of the law, or for a transaction from which the  
28 person derives an improper personal benefit.

29 Sec. 8. NEW SECTION. 499.72 PERSONAL LIABILITY.

30 Except as otherwise provided in this chapter, a director,  
31 officer, employee, or member of the association is not liable  
32 on the debts or obligations, and a director, officer, member,  
33 or other volunteer is not personally liable in that capacity,  
34 for a claim based upon an act or omission of the person  
35 performed in the discharge of the person's duties, except for

1 a breach of the duty of loyalty to the association, for acts  
2 or omissions not in good faith or which involve intentional  
3 misconduct or gross negligence or knowing violation of the  
4 law, or for a transaction from which the person derives an  
5 improper personal benefit.

6 Sec. 9. NEW SECTION. 504.17 PERSONAL LIABILITY.

7 Except as otherwise provided in this chapter, a director,  
8 officer, employee, or member of the corporation is not liable  
9 on the corporation's debts or obligations and a director,  
10 officer, member, or other volunteer is not personally liable  
11 in that capacity, for a claim based upon an act or omission of  
12 the person performed in the discharge of the person's duties,  
13 except for a breach of the duty of loyalty to the corporation,  
14 for acts or omissions not in good faith or which involve  
15 intentional misconduct or gross negligence or knowing  
16 violation of the law, or for a transaction from which the  
17 person derives an improper personal benefit.

18 Sec. 10. Section 504A.101, Code 1987, is amended by  
19 striking the section and inserting in lieu thereof the  
20 following:

21 504A.101 PERSONAL LIABILITY.

22 Except as otherwise provided in this chapter, a director,  
23 officer, employee, or member of the corporation is not liable  
24 on the corporation's debts nor obligations and a director,  
25 officer, member, or other volunteer is not personally liable  
26 in that capacity, for a claim based upon an act or omission of  
27 the person performed in the discharge of the person's duties,  
28 except for a breach of the duty of loyalty to the corporation,  
29 for acts or omissions not in good faith or which involve  
30 intentional misconduct or gross negligence or knowing  
31 violation of the law, or for a transaction from which the  
32 person derives an improper personal benefit.

33 Sec. 11. Section 524.302, Code 1987, is amended by adding  
34 the following new subsection as subsection 10 and renumbering  
35 the existing subsection 10:



1     NEW SUBSECTION. 10. A provision which eliminates or  
2 limits the personal liability of a director to the corporation  
3 or its shareholders for monetary damages for breach of  
4 fiduciary duty as a director, provided that the provision does  
5 not eliminate or limit the liability of a director for a  
6 breach of the director's duty of loyalty to the corporation or  
7 its stockholders, for acts or omissions not in good faith or  
8 which involve intentional misconduct or knowing violation of  
9 the law, for a transaction from which the director derives an  
10 improper personal benefit, or under subsections 1 and 2 of  
11 section 524.605. A provision shall not eliminate or limit the  
12 liability of a director for an act or omission occurring prior  
13 to the date when the provision in the articles of  
14 incorporation becomes effective.

15     Sec. 12. Section 533.1, Code 1987, is amended by adding  
16 the following new subsection:

17     NEW SUBSECTION. 8. The original articles or amended  
18 articles may contain a provision which eliminates or limits  
19 the personal liability of a director to the corporation or its  
20 shareholders for monetary damages for breach of fiduciary duty  
21 as a director, provided that the provision does not eliminate  
22 or limit the liability of a director for a breach of the  
23 director's duty of loyalty to the corporation or its  
24 stockholders, for acts or omissions not in good faith or which  
25 involve intentional misconduct or knowing violation of the  
26 law, or for a transaction from which the director derives an  
27 improper personal benefit. A provision shall not eliminate or  
28 limit the liability of a director for an act or omission  
29 occurring prior to the date when the provision in the articles  
30 of incorporation becomes effective.

31     Sec. 13. Section 533.4, Code 1987, is amended by adding  
32 the following new subsection:

33     NEW SUBSECTION. 27. To provide indemnity in the same  
34 fashion that a corporation organized under chapter 496A could  
35 under section 296A.4A; provided that where section 496A.4A

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1 provides for action by shareholders the section is applicable  
2 to action by members of the credit union and where the section  
3 has reference to the corporation organized under chapter 496A,  
4 it is applicable to the association organized under this  
5 chapter.

6 Sec. 14. Section 534.501, subsection 1, Code 1987, is  
7 amended by adding the following new lettered paragraph:

8 NEW LETTER PARAGRAPH. m. A provision which eliminates or  
9 limits the personal liability of a director to the corporation  
10 or its shareholders or members, for monetary damages for  
11 breach of fiduciary duty as a director, provided that the  
12 provision does not eliminate or limit the liability of a  
13 director for a breach of the director's duty of loyalty to the  
14 association or its stockholders or members, for an act or  
15 omission not in good faith or which involves intentional  
16 misconduct or knowing violation of the law, or for a  
17 transaction from which the director derives an improper  
18 personal benefit. A provision shall not eliminate or limit  
19 the liability of a director for an act or omission occurring  
20 prior to the date when the provision in the articles of  
21 incorporation becomes effective.

22 Sec. 15. Section 534.501, subsection 3, Code 1987, is  
23 amended to read as follows:

24 3. Restated articles. Restated articles of incorporation  
25 shall set forth the information specified in paragraphs "a",  
26 "b", "c", "d", "e", "f", "g", "h", "i", and "j", and "m" of  
27 subsection 1.

28 Sec. 16. NEW SECTION. 534.607 INDEMNIFICATION.

29 Except as otherwise provided in section 534.602, section  
30 496A.4A applies to associations incorporated under this  
31 chapter.

32 Sec. 17. NEW SECTION. 613.19 PERSONAL LIABILITY.

33 A director, officer, employee, member, trustee, or  
34 volunteer, of a nonprofit organization is not liable on the  
35 debts or obligations of the nonprofit organization and a

1 director, officer, employee, member, trustee, or volunteer is  
2 not personally liable for a claim based upon an act or  
3 omission of the person performed in the discharge or the  
4 person's duties, except for acts or omissions which involve  
5 intentional misconduct, gross negligence, or knowing violation  
6 of the law, or for a transaction from which the person derives  
7 an improper personal benefit. For purposes of this section,  
8 "nonprofit organization" includes an unincorporated club,  
9 association, or other similar entity, however named, if no  
10 part of its income or profit is distributed to its members,  
11 directors, or officers.

12 Sec. 18. Section 613A.2, Code 1987, is amended by adding  
13 the following new unnumbered paragraph:

14 NEW UNNUMBERED PARAGRAPH. A person who performs services  
15 for a municipality or an agency or subdivision of a  
16 municipality and who does not receive compensation is not  
17 personally liable for a claim based upon an act or omission of  
18 the person performed in the discharge of the person's duties,  
19 except for acts or omissions which involve intentional  
20 misconduct, gross negligence, or knowing violation of the law,  
21 or for a transaction from which the person derives an improper  
22 personal benefit. For purposes of this section,  
23 "compensation" does not include payments to reimburse a person  
24 for expenses.

25 EXPLANATION

26 This bill limits the liability of certain directors and  
27 officers. The bill enables a corporation in its original  
28 articles of incorporation or in an amendment to the articles,  
29 to eliminate or limit personal liability of members of its  
30 board of directors for violations of a director's fiduciary  
31 duty of care. However, a provision shall not eliminate or  
32 limit the liability of a director for breaching the director's  
33 duty of loyalty, failing to act in good faith, engaging in  
34 intentional misconduct or knowing violation of the law, paying  
35 a dividend, approving a stock repurchase, or distributing

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1 assets of a corporation which was illegal under section  
2 496A.44, or obtaining an improper personal benefit.

3 The bill further provides that directors, officers,  
4 employees, members, trustees, and volunteers of nonprofit  
5 corporations are not liable for negligent acts or omissions.  
6 It provides similar standards for the conduct of persons who  
7 do volunteer services for governmental entities of the state  
8 and for unincorporated nonprofit organizations.

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SENATE FILE 471

AN ACT

RELATING TO INDEMNIFICATION AND LIMITATION OF LIABILITY OF DIRECTORS AND OFFICERS AND TO LIABILITY OF PERSONS WHO VOLUNTEER SERVICES TO THE STATE OR A MUNICIPALITY OR A NONPROFIT ORGANIZATION.

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

Section 1. NEW SECTION. 25A.24 STATE VOLUNTEERS.

A person who performs services for the state government or any agency or subdivision of state government and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, "compensation" does not include payments to reimburse a person for expenses.

Sec. 2. Section 491.5, Code 1987, is amended by adding the following new subsection:

NEW SUBSECTION. 8. A provision which eliminates or limits the personal liability of a director to the corporation or its shareholders or members for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the corporation or its shareholders or members, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the director derives an improper personal benefit. A provision in the articles of incorporation shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision becomes effective.

Sec. 3. Section 496A.4A, subsection 1, paragraph a, Code 1987, is amended to read as follows:

a. "Director" means any a person who is or was a director of the corporation and any a person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan. Heirs, executors, personal representatives, and administrators of the person are included.

Sec. 4. Section 496A.4A, subsection 7, Code 1987, is amended by striking the subsection and inserting in lieu thereof the following:

7. Except as limited in subsection 2 with respect to proceedings by or in the right of the corporation, the indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section are not exclusive of any other rights to which those seeking indemnification or advancement of expenses are entitled under a provision in the articles of incorporation or bylaws, agreements, vote of shareholders or disinterested directors, or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding the office. However, the provisions or agreements shall not provide indemnification for a breach of the director's duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, for a transaction from which the director derives an improper personal benefit, or under section 496A.44.

Sec. 5. Section 496A.49, Code 1987, is amended by adding the following new subsection as subsection 13 and renumbering the existing subsection 13:

NEW SUBSECTION. 13. A provision which eliminates or limits the personal liability of a director to the corporation or its shareholders for monetary damages for breach of

fiduciary duty as a director, provided that the provision shall not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, for a transaction from which the director derives an improper personal benefit, or under section 496A.44. A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

Sec. 6. NEW SECTION. 497.33 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

Sec. 7. NEW SECTION. 498.35 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the association's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the association, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

Sec. 8. NEW SECTION. 499.72 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the association is not liable on the debts or obligations, and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the association, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

Sec. 9. NEW SECTION. 504.17 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts or obligations and a director, officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

Sec. 10. Section 504A.4, subsection 14, is amended by striking the subsection and inserting in lieu thereof the following:

14. A corporation operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in section 496A.4A.

Sec. 11. Section 504A.101, Code 1987, is amended by striking the section and inserting in lieu thereof the following:

504A.101 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or member of the corporation is not liable on the corporation's debts nor obligations and a director,

officer, member, or other volunteer is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for a breach of the duty of loyalty to the corporation, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit.

Sec. 12. Section 524.302, Code 1987, is amended by adding the following new subsection as subsection 10 and renumbering the existing subsection 10:

NEW SUBSECTION. 10. A provision which eliminates or limits the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law, for a transaction from which the director derives an improper personal benefit, or under subsections 1 and 2 of section 524.605. A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

Sec. 13. Section 533.1, Code 1987, is amended by adding the following new subsection:

NEW SUBSECTION. 8. The original articles or amended articles may contain a provision which eliminates or limits the personal liability of a director, officer, or employee of the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, officer, or employee, provided that the provision does not eliminate or limit the liability of a director, officer, or employee for a breach of the director's, officer's, or employee's duty of loyalty to the corporation or its stockholders, for acts or omissions not in good faith or which involve intentional misconduct or

knowing violation of the law, or for a transaction from which the director, officer, or employee derives an improper personal benefit. A provision shall not eliminate or limit the liability of a director, officer, or employee for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

Sec. 14. Section 533.4, Code 1987, is amended by adding the following new subsection:

NEW SUBSECTION. 27. To provide indemnity for the director, officer, or employee in the same fashion that a corporation organized under chapter 496A could under section 496A.4A, provided that where section 496A.4A provides for action by shareholders the section is applicable to action by members of the credit union and where the section has reference to the corporation organized under chapter 496A, it is applicable to the association organized under this chapter.

Sec. 15. Section 534.501, subsection 1, Code 1987, is amended by adding the following new lettered paragraph:

NEW LETTER PARAGRAPH. m. A provision which eliminates or limits the personal liability of a director to the corporation or its shareholders or members, for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a breach of the director's duty of loyalty to the association or its stockholders or members, for an act or omission not in good faith or which involves intentional misconduct or knowing violation of the law, or for a transaction from which the director derives an improper personal benefit. A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

Sec. 16. Section 534.501, subsection 3, Code 1987, is amended to read as follows:

3. RESTATED ARTICLES. Restated articles of incorporation shall set forth the information specified in paragraphs "a", "b", "c", "d", "e", "f", "g", "h", "i", and "j", and "m" of subsection 1.

Sec. 17. Section 534.605, subsection 4, Code 1987, is amended to read as follows:

4. Any association operating under this chapter shall have the power to indemnify any present or former director, officer or employee in the manner and in the instances authorized in section 496A.4A. If the association is a mutual association, the references in section 496A.4A to stockholder shall be deemed to be references to members.

Sec. 18. NEW SECTION. 534.607 INDEMNIFICATION.

Except as otherwise provided in section 534.602, section 496A.4A applies to associations incorporated under this chapter.

Sec. 19. NEW SECTION. 613.19 PERSONAL LIABILITY.

A director, officer, employee, member, trustee, or volunteer, of a nonprofit organization is not liable on the debts or obligations of the nonprofit organization and a director, officer, employee, member, trustee, or volunteer is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal benefit. For purposes of this section, "nonprofit organization" includes an unincorporated club, association, or other similar entity, however named, if no part of its income or profit is distributed to its members, directors, or officers.

Sec. 20. Section 613A.2, Code 1987, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A person who performs services for a municipality or an agency or subdivision of a municipality and who does not receive compensation is not personally liable for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for acts or omissions which involve intentional misconduct or knowing violation of the law, or for a transaction from which the person derives an improper personal

benefit. For purposes of this section, "compensation" does not include payments to reimburse a person for expenses.

Sec. 21. A corporation may adopt a provision pursuant to section 2, 5, 12, 13, or 15 of this Act prior to the effective date of this Act which shall become effective upon the effective date of this Act.

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JO ANN ZIMMERNAN  
President of the Senate

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DONALD D. AVENSON  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 471, Seventy-second General Assembly.

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JOHN F. DWYER  
Secretary of the Senate

Approved June 5, 1987

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TERRY E. BRANSTAD  
Governor