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Place On Calendar

Substituted for SF 418 4/22/97 (P. 1330)

HOUSE FILE 628
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 158)

Passed House, Date (P.707) 3-20-97 Passed Senate, Date (P.1331) 4/22/97
Vote: Ayes 97 Nays 1 Vote: Ayes 49 Nays 0
Approved May 2, 1997

A BILL FOR

1 An Act relating to corporations by providing for the call of
2 special meetings of shareholders, for the combination of a
3 corporation and certain shareholders, and for certain merger
4 and share acquisitions.

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

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HF 628

1 Section 1. Section 490.702, subsection 1, unnumbered
2 paragraph 1, Code 1997, is amended to read as follows:

3 A Except as provided in subsection 5, a corporation shall
4 hold a special meeting of shareholders upon the occurrence of
5 either of the following:

6 Sec. 2. Section 490.702, Code 1997, is amended by adding
7 the following new subsection:

8 NEW SUBSECTION. 5. Notwithstanding subsections 1 through
9 4, a corporation which has a class of voting stock that is
10 listed on a national securities exchange, authorized for
11 quotation on the national association of securities dealers
12 automated quotations-national market system, or held of record
13 by more than two thousand shareholders, is required to hold a
14 special meeting only upon the occurrence of either of the
15 following:

16 a. On call of its board of directors or the person or
17 persons authorized to call a special meeting by the articles
18 of incorporation or bylaws.

19 b. If the holders of at least fifty percent of all the
20 votes entitled to be cast on any issue proposed to be
21 considered at the proposed special meeting sign, date, and
22 deliver to the corporation's secretary one or more written
23 demands for the meeting describing the purpose or purposes for
24 which it is to be held.

25 Sec. 3. Section 490.1101, Code 1997, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 4. One or more business entities
28 organized under Title XII or XIII may merge with or into a
29 corporation organized under this chapter, and a corporation
30 organized under this chapter may merge with or into such
31 business entity or entities, if the entity or entities are
32 authorized to merge with such corporation pursuant to the
33 chapter under which the entity or entities are organized.
34 Except as otherwise provided, this division applies to such
35 mergers.

1 Sec. 4. Section 490.1102, Code 1997, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 5. One or more business entities
4 organized under Title XII or XIII may acquire all of the
5 outstanding shares of one or more classes or series of a
6 corporation organized under this chapter, and a corporation
7 organized under this chapter may acquire all of the
8 outstanding ownership interests in such business entity or
9 entities, if the entity or entities are authorized to enter
10 into such share exchange with such corporation pursuant to the
11 chapter under which the entity or entities are organized.
12 Except as otherwise provided, this division applies to such
13 exchange.

14 Sec. 5. NEW SECTION. 490.1109 BUSINESS COMBINATIONS WITH
15 INTERESTED SHAREHOLDERS.

16 1. Notwithstanding any other provision of this chapter, a
17 corporation shall not engage in any business combination with
18 an interested shareholder for a period of three years
19 following the time that the shareholder became an interested
20 shareholder, unless any of the following apply:

21 a. Prior to the time the shareholder became an interested
22 shareholder, the board of directors of the corporation
23 approved either the business combination or the transaction
24 which resulted in the shareholder becoming an interested
25 shareholder.

26 b. Upon consummation of the transaction which resulted in
27 the shareholder becoming an interested shareholder, the
28 interested shareholder owned at least eighty-five percent of
29 the voting stock of the corporation outstanding at the time
30 the transaction commenced, excluding, for purposes of
31 determining the number of shares outstanding, those shares
32 owned by persons who are directors and officers, and by
33 employee stock plans in which employee participants do not
34 have the right to determine confidentially whether shares held
35 subject to the plan will be tendered in a tender or exchange

1 offer.

2 c. At or subsequent to the time the shareholder became an
3 interested shareholder, the business combination is approved
4 by the board of directors and authorized at an annual or
5 special meeting of shareholders by the affirmative vote of at
6 least sixty-six and two-thirds percent of the outstanding
7 voting stock which is not owned by the interested shareholder.
8 Such approval shall not be by written consent.

9 2. This section does not apply in any of the following
10 circumstances:

11 a. The corporation does not have a class of voting stock
12 that is listed on a national securities exchange, authorized
13 for quotation on the national association of securities
14 dealers automated quotations-national market system, or held
15 of record by more than two thousand shareholders, unless any
16 of the foregoing results from action taken, directly or
17 indirectly, by an interested shareholder or from a transaction
18 in which a person becomes an interested shareholder.

19 b. The corporation's original articles of incorporation
20 contain a provision expressly electing not to be governed by
21 this section.

22 c. The corporation, by action of its board of directors,
23 adopts an amendment to its bylaws by no later than September
24 29, 1997, expressly electing not to be governed by this
25 section, which amendment shall not be further amended by the
26 board of directors.

27 d. The corporation, by action of its shareholders, adopts
28 an amendment to its articles of incorporation or bylaws
29 expressly electing not to be governed by this section,
30 provided that, in addition to any other vote required by law,
31 such amendment to the articles of incorporation or bylaws must
32 be approved by the affirmative vote of a majority of the
33 shares entitled to vote. An amendment adopted pursuant to
34 this paragraph is effective immediately in the case of a
35 corporation that has never had a class of voting stock that

1 falls within any of the three categories set out in paragraph
2 "a" and has not elected by a provision in its original
3 articles of incorporation or any amendment to such articles to
4 be governed by this section. In all other cases, an amendment
5 adopted pursuant to this paragraph is not effective until
6 twelve months after the adoption of the amendment and does not
7 apply to any business combination between the corporation and
8 any person who became an interested shareholder of the
9 corporation on or prior to such adoption.

10 An amendment to the bylaws adopted pursuant to this
11 paragraph shall not be further amended by the board of
12 directors.

13 e. A shareholder becomes an interested shareholder
14 inadvertently and both of the following apply:

15 (1) As soon as practicable the shareholder divests itself
16 of ownership of sufficient shares so that the shareholder
17 ceases to be an interested shareholder.

18 (2) The shareholder would not, at any time within the
19 three-year period immediately prior to a business combination
20 between the corporation and such shareholder, have been an
21 interested shareholder but for the inadvertent acquisition of
22 ownership.

23 f. (1) The business combination is proposed prior to the
24 consummation or abandonment of and subsequent to the earlier
25 of the public announcement or the notice required in this
26 paragraph of a proposed transaction which satisfies all of the
27 following:

28 (a) Constitutes a transaction described in subparagraph
29 (2).

30 (b) Is with or by a person who either was not an
31 interested shareholder during the previous three years or who
32 became an interested shareholder with the approval of the
33 corporation's board of directors or who became an interested
34 shareholder during the time period described in paragraph "g".

35 (c) Is approved or not opposed by a majority of the

1 members of the board of directors then in office who were
2 directors prior to any person becoming an interested
3 shareholder during the previous three years, or who were
4 recommended for election or elected to succeed such directors
5 by a majority of such directors.

6 (2) A proposed transaction under subparagraph (1) is
7 limited to the following:

8 (a) A merger of the corporation, other than a merger
9 pursuant to section 490.1104.

10 (b) A sale, lease, exchange, mortgage, pledge, transfer,
11 or other disposition, in one or more transactions and whether
12 as part of a dissolution or otherwise, of assets of the
13 corporation or of any direct or indirect majority-owned
14 subsidiary of the corporation, other than to a direct or
15 indirect wholly owned subsidiary of the corporation or to the
16 corporation itself, which has an aggregate market value equal
17 to fifty percent or more of either the aggregate market value
18 of all of the assets of the corporation determined on a
19 consolidated basis, or the aggregate market value of all the
20 outstanding stock of the corporation.

21 (c) A proposed tender or exchange offer for fifty percent
22 or more of the outstanding voting stock of the corporation.

23 (3) The corporation shall give no less than twenty days'
24 notice to all interested shareholders prior to the
25 consummation of any of the transactions described in
26 subparagraph (2), subparagraph subdivision (a) or (b).

27 g. The business combination is with an interested
28 shareholder who becomes an interested shareholder of the
29 corporation at a time when the corporation is not subject to
30 this section pursuant to paragraphs "a" through "d".

31 Notwithstanding paragraphs "a" through "d", a corporation
32 may elect under its original articles of incorporation or any
33 amendment to such articles to be subject to this section.
34 However, such amendment shall not apply to restrict a business
35 combination between the corporation and an interested

1 shareholder of the corporation if the interested shareholder
2 became such prior to the effective date of the amendment.

3 3. As used in this section, unless the context otherwise
4 requires:

5 a. "Affiliate" means a person that directly, or
6 indirectly, through one or more intermediaries, controls, or
7 is controlled by, or is under common control with, another
8 person.

9 b. "Associate", when used to indicate a relationship with
10 a person, means any of the following:

11 (1) A corporation, partnership, unincorporated
12 association, or other entity of which the person is a
13 director, officer, or partner or is, directly or indirectly,
14 the owner of twenty percent or more of any class of voting
15 stock.

16 (2) A trust or other estate in which the person has at
17 least a twenty percent beneficial interest or as to which such
18 person serves as trustee or in a similar fiduciary capacity.

19 (3) A relative or spouse of the person, or any relative of
20 the spouse, who has the same residence as the person.

21 c. "Business combination", with respect to a corporation
22 and an interested shareholder of such corporation, means any
23 of the following:

24 (1) A merger or consolidation of the corporation or any
25 direct or indirect majority-owned subsidiary of the
26 corporation with the interested shareholder, or with any other
27 corporation, partnership, unincorporated association, or other
28 entity if the merger or consolidation is caused by the
29 interested shareholder and as a result of such merger the
30 surviving entity is not subject to subsection 1.

31 (2) A sales, lease, exchange, mortgage, pledge, transfer,
32 or other disposition, in one transaction or a series of
33 transactions, except proportionately as a shareholder of such
34 corporation, to or with the interested shareholder, whether as
35 part of a dissolution or otherwise, of assets of the

1 corporation or of any direct or indirect majority-owned
2 subsidiary of the corporation which assets have an aggregate
3 market value equal to ten percent or more of either the
4 aggregate market value of all the assets of the corporation
5 determined on a consolidated basis or the aggregate market
6 value of all the outstanding stock of the corporation.

7 (3) A transaction which results in the issuance or
8 transfer by the corporation or by any direct or indirect
9 majority-owned subsidiary of the corporation of any stock of
10 the corporation or of such subsidiary to the interested
11 shareholder, except for the following:

12 (a) Pursuant to the exercise, exchange, or conversion of
13 securities exercisable for, exchangeable for, or convertible
14 into stock of the corporation or such subsidiary which
15 securities were outstanding prior to the time that the
16 interested shareholder became an interested shareholder.

17 (b) Pursuant to a merger under section 490.1104.

18 (c) Pursuant to a distribution paid or made, or the
19 exercise, exchange, or conversion of securities exercisable
20 for, exchangeable for, or convertible into stock of such
21 corporation or any such subsidiary, which stock is distributed
22 pro rata to all holders of a class or series of stock of the
23 corporation subsequent to the time the interested shareholder
24 became an interested shareholder.

25 (d) Pursuant to an exchange offer by the corporation to
26 purchase stock made on the same terms to all holders of the
27 stock.

28 (e) Any issuance or transfer of stock by the corporation,
29 provided, however, that in no case under subparagraph
30 subdivisions (c) and (d) and this subparagraph subdivision
31 shall there be an increase in the interested shareholder's
32 proportionate share of the stock of any class or series of the
33 corporation or of the voting stock of the corporation.

34 (4) A transaction involving the corporation or any direct
35 or indirect majority-owned subsidiary of the corporation which

1 has the effect, directly or indirectly, of increasing the
2 proportionate share of the stock of any class or series, or
3 securities convertible into the stock of any class or series,
4 of the corporation or of any such subsidiary which is owned by
5 the interested shareholder, except as a result of immaterial
6 changes due to fractional share adjustments or as a result of
7 any purchase or redemption of any shares of stock not caused,
8 directly or indirectly, by the interested shareholder.

9 (5) The receipt by the interested shareholder of the
10 benefit, directly or indirectly, except proportionately as a
11 shareholder of such corporation, of any loans, advances,
12 guarantees, pledges, or other financial benefits, other than
13 those expressly permitted in subparagraphs (1) through (4),
14 provided by or through the corporation or any direct or
15 indirect majority-owned subsidiary.

16 d. "Control", including the terms "controlling",
17 "controlled by", and "under common control with", means the
18 ability, directly or indirectly, to direct or cause the
19 direction of the management and policies of a person, whether
20 through the ownership of voting stock, by contract, or
21 otherwise. A person who is the owner of twenty percent or
22 more of the outstanding voting stock of any corporation,
23 partnership, unincorporated association, or other entity is
24 presumed to have control of such entity, in the absence of
25 proof by a preponderance of the evidence to the contrary.
26 Notwithstanding this paragraph, a presumption of control shall
27 not apply where a person holds voting stock, in good faith and
28 not for the purpose of circumventing this section, as an
29 agent, bank, broker, nominee, custodian, or trustee for one or
30 more owners who do not individually or as a group have control
31 of such entity.

32 e. "Interested shareholder" means any person, other than
33 the corporation and any direct or indirect majority-owned
34 subsidiary of the corporation, that is the owner of fifteen
35 percent or more of the outstanding voting stock of the

1 corporation, or is an affiliate or associate of the
2 corporation and was the owner of fifteen percent or more of
3 the outstanding voting stock of the corporation at any time
4 within the three-year period immediately prior to the date on
5 which it is sought to be determined whether such person is an
6 interested shareholder, and the affiliates and associates of
7 such person. "Interested shareholder" does not include either
8 of the following:

9 (1) A person who owns shares in excess of the fifteen
10 percent limitation and who acquired such shares as follows:

11 (a) Pursuant to a tender offer commenced prior to January
12 1, 1998, or pursuant to an exchange offer announced prior to
13 January 1, 1998, and commenced within ninety days after such
14 date, if such person satisfies either of the following:

15 (i) Continues to own shares in excess of the fifteen
16 percent limitation or would continue to own such shares but
17 for action taken by the corporation.

18 (ii) Is an affiliate or associate of the corporation and
19 continues, or would continue but for action taken by the
20 corporation, to be the owner of fifteen percent or more of the
21 outstanding voting stock of the corporation at any time within
22 the three-year period immediately prior to the date on which
23 it is sought to be determined whether such person is an
24 interested shareholder.

25 (b) From a person subject to subparagraph subdivision (a)
26 by gift, devise, or in a transaction in which no consideration
27 for the shares was exchanged.

28 (2) A person whose ownership of shares in excess of the
29 fifteen percent limitation is the result of action taken
30 solely by the corporation, provided that such person is an
31 interested shareholder if, after such action by the
32 corporation, the person acquires additional shares of voting
33 stock of the corporation, other than as a result of further
34 corporate action not caused, directly or indirectly, by such
35 person.

1 For purposes of determining whether a person is an
2 interested shareholder, the outstanding voting stock of the
3 corporation does not include any other unissued stock of the
4 corporation which may be issuable pursuant to any agreement,
5 arrangement, or understanding, or upon exercise of conversion
6 rights, warrants, or options, or otherwise.

7 f. "Owner", including the terms "own" and "owned" when
8 used with respect to any stock, means a person that
9 individually or with or through any of such person's
10 affiliates or associates satisfies any of the following:

11 (1) Beneficially owns such stock, directly or indirectly.

12 (2) Has the right to do either of the following:

13 (a) Acquire such stock, whether such right is exercisable
14 immediately or only after the passage of time, pursuant to any
15 agreement, arrangement, or understanding, or upon the exercise
16 of conversion rights, exchange rights, warrants, or options,
17 or otherwise. However, a person is not deemed the owner of
18 stock tendered pursuant to a tender or exchange offer made by
19 such person or any of such person's affiliates or associates
20 until such tendered stock is accepted for purchase or
21 exchange.

22 (b) Vote such stock pursuant to any agreement,
23 arrangement, or understanding. However, a person is not
24 deemed the owner of any stock because of such person's right
25 to vote such stock if the agreement, arrangement, or
26 understanding to vote such stock arises solely from the
27 revocable proxy or consent given in response to a proxy or
28 consent solicitation made to ten or more persons.

29 (3) Has any agreement, arrangement, or understanding for
30 the purpose of acquiring, holding, voting, or disposing of
31 such stock with any other person who beneficially owns, or
32 whose affiliates or associates beneficially own, directly or
33 indirectly, such stock. However, an agreement, arrangement,
34 or understanding for the purpose of voting such stock does not
35 include voting pursuant to a revocable proxy or consent under

1 subparagraph (2), subparagraph subdivision (b).

2 g. "Person" means any individual, corporation,
3 partnership, unincorporated association, or other entity.

4 h. "Stock" means, with respect to any corporation, capital
5 stock and, with respect to any other entity, any equity
6 interest.

7 i. "Voting stock" means, with respect to any corporation,
8 stock of any class or series entitled to vote generally in the
9 election of directors and, with respect to any entity that is
10 not a corporation, any equity interest entitled to vote
11 generally in the election of the governing body of such
12 entity.

13 4. The articles of incorporation or bylaws shall not
14 require, for any vote of shareholders required by this
15 section, a greater vote of shareholders than that specified in
16 this section.

17 EXPLANATION

18 This bill amends provisions relating to special
19 shareholders' meetings, and merger and share acquisitions, and
20 creates a new Code section relating to the combination of a
21 corporation with certain shareholders.

22 Code section 490.702 is amended to provide that a
23 corporation with a class of voting stock listed on a national
24 market or held by more than 2,000 shareholders of record is
25 required to conduct a special meeting on the call of the board
26 or upon the written request of holders of 50 percent of all
27 votes entitled to be cast on an issue proposed at a special
28 meeting.

29 Code section 490.1101 is amended to authorize the merger of
30 a corporation incorporated under Code chapter 490 with or into
31 another business entity established or organized under another
32 chapter, and the merger of such other entity with or into such
33 corporation.

34 Code section 490.1102 is amended to authorize the
35 acquisition of all outstanding shares of a corporation

1 organized under Code chapter 490 by another business entity
2 established or organized under another chapter, and the
3 acquisition of all outstanding shares of such other business
4 entity by such corporation.

5 New Code section 490.1109 is created and governs the
6 business combination of a corporation organized under chapter
7 490 which has a class of voting stock listed on a national
8 securities exchange or the national association of securities
9 dealers automated quotations-national market system (NASDAQ),
10 or which is held by more than 2,000 shareholders, with certain
11 shareholders defined as "interested shareholders", for three
12 years after the shareholder becomes an interested shareholder,
13 unless certain requirements are met. The bill defines an
14 interested shareholder as one which owns 15 percent or more of
15 the outstanding voting stock of the corporation. Such
16 combination is not prohibited if: The board of directors,
17 prior to the shareholder becoming an interested shareholder,
18 approved the transaction which resulted in the shareholder
19 becoming an interested shareholder or approved the business
20 transaction prior to the shareholder becoming an interested
21 shareholder; after completion of the transaction which
22 resulted in the shareholder becoming an interested
23 shareholder, the interested shareholder owns at least 85
24 percent of the corporation's outstanding voting stock; or at
25 or after the time the shareholder becomes an interested
26 shareholder, the combination is approved by the board of
27 directors and authorized by 66 2/3 percent of the outstanding
28 voting stock not owned by the interested shareholder. The
29 bill also provides several circumstances when the exceptions
30 to prohibition of an interested shareholder business
31 combination do not apply.

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JUDICIARY

Succeeded By
SF/HF 628

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON LAMBERTI)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to corporations by providing for the call of
2 special meetings of shareholders, for the combination of a
3 corporation and certain shareholders, and for certain merger
4 and share acquisitions.

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

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1 Section 1. Section 490.702, subsection 1, unnumbered
2 paragraph 1, Code 1997, is amended to read as follows:

3 A Except as provided in subsection 5, a corporation shall
4 hold a special meeting of shareholders upon the occurrence of
5 either of the following:

6 Sec. 2. Section 490.702, Code 1997, is amended by adding
7 the following new subsection:

8 NEW SUBSECTION. 5. Notwithstanding subsections 1 through
9 4, a corporation which has a class of voting stock that is
10 listed on a national securities exchange, authorized for
11 quotation on the national association of securities dealers
12 automated quotations-national market system, or held of record
13 by more than two thousand shareholders, is required to hold a
14 special meeting only upon the occurrence of either of the
15 following:

16 a. On call of its board of directors or the person or
17 persons authorized to call a special meeting by the articles
18 of incorporation or bylaws.

19 b. If the holders of at least fifty percent of all the
20 votes entitled to be cast on any issue proposed to be
21 considered at the proposed special meeting sign, date, and
22 deliver to the corporation's secretary one or more written
23 demands for the meeting describing the purpose or purposes for
24 which it is to be held.

25 Sec. 3. Section 490.1101, Code 1997, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. 4. One or more business entities
28 organized under Title XII or XIII may merge with or into a
29 corporation organized under this chapter, and a corporation
30 organized under this chapter may merge with or into such
31 business entity or entities, if the entity or entities are
32 authorized to merge with such corporation pursuant to the
33 chapter under which the entity or entities are organized.
34 Except as otherwise provided, this division applies to such
35 mergers.

1 Sec. 4. Section 490.1102, Code 1997, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 5. One or more business entities
4 organized under Title XII or XIII may acquire all of the
5 outstanding shares of one or more classes or series of a
6 corporation organized under this chapter, and a corporation
7 organized under this chapter may acquire all of the
8 outstanding ownership interests in such business entity or
9 entities, if the entity or entities are authorized to enter
10 into such share exchange with such corporation pursuant to the
11 chapter under which the entity or entities are organized.
12 Except as otherwise provided, this division applies to such
13 exchange.

14 Sec. 5. NEW SECTION. 490.1109 BUSINESS COMBINATIONS WITH
15 INTERESTED SHAREHOLDERS.

16 1. Notwithstanding any other provision of this chapter, a
17 corporation shall not engage in any business combination with
18 an interested shareholder for a period of three years
19 following the time that the shareholder became an interested
20 shareholder, unless any of the following apply:

21 a. Prior to the time the shareholder became an interested
22 shareholder, the board of directors of the corporation
23 approved either the business combination or the transaction
24 which resulted in the shareholder becoming an interested
25 shareholder.

26 b. Upon consummation of the transaction which resulted in
27 the shareholder becoming an interested shareholder, the
28 interested shareholder owned at least eighty-five percent of
29 the voting stock of the corporation outstanding at the time
30 the transaction commenced, excluding, for purposes of
31 determining the number of shares outstanding, those shares
32 owned by persons who are directors and officers, and by
33 employee stock plans in which employee participants do not
34 have the right to determine confidentially whether shares held
35 subject to the plan will be tendered in a tender or exchange

1 offer.

2 c. At or subsequent to the time the shareholder became an
3 interested shareholder, the business combination is approved
4 by the board of directors and authorized at an annual or
5 special meeting of shareholders by the affirmative vote of at
6 least sixty-six and two-thirds percent of the outstanding
7 voting stock which is not owned by the interested shareholder.
8 Such approval shall not be by written consent.

9 2. This section does not apply in any of the following
10 circumstances:

11 a. The corporation does not have a class of voting stock
12 that is listed on a national securities exchange, authorized
13 for quotation on the national association of securities
14 dealers automated quotations-national market system, or held
15 of record by more than two thousand shareholders, unless any
16 of the occurrences in subsection 1 result from action taken,
17 directly or indirectly, by an interested shareholder or from a
18 transaction in which a person becomes an interested
19 shareholder.

20 b. The corporation's original articles of incorporation
21 contain a provision expressly electing not to be governed by
22 this section.

23 c. The corporation, by action of its board of directors,
24 adopts an amendment to its bylaws by no later than September
25 29, 1997, expressly electing not to be governed by this
26 section, which amendment shall not be further amended by the
27 board of directors.

28 d. The corporation, by action of its shareholders, adopts
29 an amendment to its articles of incorporation or bylaws
30 expressly electing not to be governed by this section,
31 provided that, in addition to any other vote required by law,
32 such amendment to the articles of incorporation or bylaws must
33 be approved by the affirmative vote of a majority of the
34 shares entitled to vote. An amendment adopted pursuant to
35 this paragraph is effective immediately in the case of a

1 corporation that has never had a class of voting stock that
2 falls within any of the three categories set out in paragraph
3 "a" and has not elected by a provision in its original
4 articles of incorporation or any amendment to such articles to
5 be governed by this section. In all other cases, an amendment
6 adopted pursuant to this paragraph is not effective until
7 twelve months after the adoption of the amendment and does not
8 apply to any business combination between the corporation and
9 any person who became an interested shareholder of the
10 corporation on or prior to such adoption. An amendment
11 adopted pursuant to this paragraph shall not be further
12 amended by the board of directors.

13 e. A shareholder becomes an interested shareholder
14 inadvertently and both of the following apply:

15 (1) As soon as practicable the shareholder divests itself
16 of ownership of sufficient shares so that the shareholder
17 ceases to be an interested shareholder.

18 (2) The shareholder would not, at any time within the
19 three-year period immediately prior to a business combination
20 between the corporation and such shareholder, have been an
21 interested shareholder but for the inadvertent acquisition of
22 ownership.

23 f. (1) The business combination is proposed prior to the
24 consummation of abandonment of and subsequent to the earlier
25 of the public announcement or the notice required in this
26 paragraph of a proposed transaction which satisfies all of the
27 following:

28 (a) Constitutes a transaction described in subparagraph
29 (2).

30 (b) Is with or by a person who either was not an
31 interested shareholder during the previous three years or who
32 became an interested shareholder with the approval of the
33 corporation's board of directors or who became an interested
34 shareholder during the time period described in paragraph "g".

35 (c) Is approved by a majority of the members of the board

1 of directors then in office who were directors prior to any
2 person becoming an interested shareholder during the previous
3 three years, or who were recommended for election or elected
4 to succeed such directors by a majority of such directors.

5 (2) A proposed transaction under subparagraph (1) is
6 limited to the following:

7 (a) A merger of the corporation, other than a merger
8 pursuant to section 490.1104.

9 (b) A sale, lease, exchange, mortgage, pledge, transfer,
10 or other disposition, in one or more transactions and whether
11 as part of a dissolution or otherwise, of assets of the
12 corporation or of any direct or indirect majority-owned
13 subsidiary of the corporation, other than to a direct or
14 indirect wholly owned subsidiary of the corporation or to the
15 corporation itself, which has an aggregate market value equal
16 to fifty percent or more of either the aggregate market value
17 of all of the assets of the corporation determined on a
18 consolidated basis, or the aggregate market value of all the
19 outstanding stock of the corporation.

20 (c) A proposed tender or exchange offer for fifty percent
21 or more of the outstanding voting stock of the corporation.

22 (3) The corporation shall give no less than twenty days'
23 notice to all interested shareholders prior to the
24 consummation of any of the transactions described in
25 subparagraph (2), subparagraph subdivision (a) or (b).

26 g. The business combination is with an interested
27 shareholder who becomes an interested shareholder of the
28 corporation at a time when the corporation is not subject to
29 this section pursuant to paragraphs "a" through "d".

30 Notwithstanding paragraphs "a" through "d", a corporation
31 may elect under its original articles of incorporation or any
32 amendment to such articles to be subject to this section.
33 However, such amendment shall not apply to restrict a business
34 combination between the corporation and an interested
35 shareholder of the corporation if the interested shareholder

1 became such prior to the effective date of the amendment.

2 3. As used in this section, unless the context otherwise
3 requires:

4 a. "Affiliate" means a person that directly, or
5 indirectly, through one or more intermediaries, controls, or
6 is controlled by, or is under common control with, another
7 person.

8 b. "Associate", when used to indicate a relationship with
9 a person, means any of the following:

10 (1) A corporation, partnership, unincorporated
11 association, or other entity of which the person is a
12 director, officer, or partner or is, directly or indirectly,
13 the owner of twenty percent or more of any class of voting
14 stock.

15 (2) A trust or other estate in which the person has at
16 least a twenty percent beneficial interest or as to which such
17 person serves as trustee or in a similar fiduciary capacity.

18 (3) A relative or spouse of the person, or any relative of
19 the spouse, who has the same residence as the person.

20 c. "Business combination", with respect to a corporation
21 and an interested shareholder of such corporation, means any
22 of the following:

23 (1) A merger or consolidation of the corporation or any
24 direct or indirect majority-owned subsidiary of the
25 corporation with the interested shareholder, or with any other
26 corporation, partnership, unincorporated association, or other
27 entity if the merger or consolidation is caused by the
28 interested shareholder and as a result of such merger the
29 surviving entity is not subject to subsection 1.

30 (2) A sales, lease, exchange, mortgage, pledge, transfer,
31 or other disposition, in one transaction or a series of
32 transactions, except proportionately as a shareholder of such
33 corporation, to or with the interested shareholder, whether as
34 part of a dissolution or otherwise, of assets of the
35 corporation or of any direct or indirect majority-owned

1 subsidiary of the corporation which assets have an aggregate
2 market value equal to ten percent or more of either the
3 aggregate market value of all the assets of the corporation
4 determined on a consolidated basis or the aggregate market
5 value of all the outstanding stock of the corporation.

6 (3) A transaction which results in the issuance or
7 transfer by the corporation or by any direct or indirect
8 majority-owned subsidiary of the corporation of any stock of
9 the corporation or of such subsidiary to the interested
10 shareholder, except for the following:

11 (a) Pursuant to the exercise, exchange, or conversion of
12 securities exercisable for, exchangeable for, or convertible
13 into stock of the corporation or such subsidiary which
14 securities were outstanding prior to the time that the
15 interested shareholder became an interested shareholder.

16 (b) Pursuant to a merger under section 490.1104.

17 (c) Pursuant to a distribution paid or made, or the
18 exercise, exchange, or conversion of securities exercisable
19 for, exchangeable for, or convertible into stock of such
20 corporation or any such subsidiary, which stock is distributed
21 pro rata to all holders of a class or series of stock of the
22 corporation subsequent to the time the interested shareholder
23 became an interested shareholder.

24 (d) Pursuant to an exchange offer by the corporation to
25 purchase stock made on the same terms to all holders of the
26 stock.

27 (e) Any issuance or transfer of stock by the corporation,
28 provided, however, that in no case under subparagraph
29 subdivisions (c) and (d) and this subparagraph subdivision
30 shall there be an increase in the interested shareholder's
31 proportionate share of the stock of any class or series of the
32 corporation or of the voting stock of the corporation.

33 (4) A transaction involving the corporation or any direct
34 or indirect majority-owned subsidiary of the corporation which
35 has the effect, directly or indirectly, of increasing the

1 proportionate share of the stock of any class or series, or
2 securities convertible into the stock of any class or series,
3 of the corporation or of any such subsidiary which is owned by
4 the interested shareholder, except as a result of immaterial
5 changes due to fractional share adjustments or as a result of
6 any purchase or redemption of any shares of stock not caused,
7 directly or indirectly, by the interested shareholder.

8 (5) The receipt by the interested shareholder of the
9 benefit, directly or indirectly, except proportionately as a
10 shareholder of such corporation, of any loans, advances,
11 guarantees, pledges, or other financial benefits, other than
12 those expressly permitted in subparagraphs (1) through (4),
13 provided by or through the corporation or any direct or
14 indirect majority-owned subsidiary.

15 d. "Control", including the terms "controlling",
16 "controlled by", and "under common control with", means the
17 ability, directly or indirectly, to direct or cause the
18 direction of the management and policies of a person, whether
19 through the ownership of voting stock, by contract, or
20 otherwise. A person who is the owner of twenty percent or
21 more of the outstanding voting stock of any corporation,
22 partnership, unincorporated association, or other entity is
23 presumed to have control of such entity, in the absence of
24 proof by a preponderance of the evidence to the contrary.
25 Notwithstanding this paragraph, a presumption of control shall
26 not apply where a person holds voting stock, in good faith and
27 not for the purpose of circumventing this section, as an
28 agent, bank, broker, nominee, custodian, or trustee for one or
29 more owners who do not individually or as a group have control
30 of such entity.

31 e. "Interested shareholder" means any person, other than
32 the corporation and any direct or indirect majority-owned
33 subsidiary of the corporation, that is the owner of fifteen
34 percent or more of the outstanding voting stock of the
35 corporation, or is an affiliate or associate of the

1 corporation and was the owner of fifteen percent or more of
2 the outstanding voting stock of the corporation at any time
3 within the three-year period immediately prior to the date on
4 which it is sought to be determined whether such person is an
5 interested shareholder, and the affiliates and associates of
6 such person. "Interested shareholder" does not include either
7 of the following:

8 (1) A person who owns shares in excess of the fifteen
9 percent limitation and who acquired such shares as follows:

10 (a) Pursuant to a tender offer commenced prior to January
11 1, 1998, or pursuant to an exchange offer announced prior to
12 January 1, 1998, and commenced within ninety days after such
13 date, if such person satisfies either of the following:

14 (i) Continues to own shares in excess of the fifteen
15 percent limitation or would continue to own such shares but
16 for action taken by the corporation.

17 (ii) Is an affiliate or associate of the corporation and
18 continues, or would continue but for action taken by the
19 corporation, to be the owner of fifteen percent or more of the
20 outstanding voting stock of the corporation at any time within
21 the three-year period immediately prior to the date on which
22 it is sought to be determined whether such person is an
23 interested shareholder.

24 (b) From a person subject to subparagraph subdivision (a)
25 by gift, devise, or in a transaction in which no consideration
26 for the shares was exchanged.

27 (2) A person whose ownership of shares in excess of the
28 fifteen percent limitation is the result of action taken
29 solely by the corporation, provided that such person is an
30 interested shareholder if, after such action by the
31 corporation, the person acquires additional shares of voting
32 stock of the corporation, other than as a result of further
33 corporate action not caused, directly or indirectly, by such
34 person.

35 For purposes of determining whether a person is an

1 interested shareholder, the outstanding voting stock of the
2 corporation does not include any other unissued stock of the
3 corporation which may be issuable pursuant to any agreement,
4 arrangement, or understanding, or upon exercise of conversion
5 rights, warrants, or options, or otherwise.

6 f. "Owner", including the terms "own" and "owned" when
7 used with respect to any stock, means a person that
8 individually or with or through any of such person's
9 affiliates or associates satisfies any of the following:

10 (1) Beneficially owns such stock, directly or indirectly.

11 (2) Has the right to do either of the following:

12 (a) Acquire such stock, whether such right is exercisable
13 immediately or only after the passage of time, pursuant to any
14 agreement, arrangement, or understanding, or upon the exercise
15 of conversion rights, exchange rights, warrants, or options,
16 or otherwise. However, a person is not deemed the owner of
17 stock tendered pursuant to a tender or exchange offer made by
18 such person or any of such person's affiliates or associates
19 until such tendered stock is accepted for purchase or
20 exchange.

21 (b) Vote such stock pursuant to any agreement,
22 arrangement, or understanding. However, a person is not
23 deemed the owner of any stock because of such person's right
24 to vote such stock if the agreement, arrangement, or
25 understanding to vote such stock arises solely from the
26 revocable proxy or consent given in response to a proxy or
27 consent solicitation made to ten or more persons.

28 (3) Has any agreement, arrangement, or understanding for
29 the purpose of acquiring, holding, voting, or disposing of
30 such stock with any other person who beneficially owns, or
31 whose affiliates or associates beneficially own, directly or
32 indirectly, such stock. However, an agreement, arrangement,
33 or understanding for the purpose of voting such stock does not
34 include voting pursuant to a revocable proxy or consent under
35 subparagraph (2), subparagraph subdivision (b).

1 g. "Person" means any individual, corporation,
2 partnership, unincorporated association, or other entity.

3 h. "Stock" means, with respect to any corporation, capital
4 stock and, with respect to any other entity, any equity
5 interest.

6 i. "Voting stock" means, with respect to any corporation,
7 stock of any class or series entitled to vote generally in the
8 election of directors and, with respect to any entity that is
9 not a corporation, any equity interest entitled to vote
10 generally in the election of the governing body of such
11 entity.

12 4. The articles of incorporation or bylaws shall not
13 require, for any vote of shareholders required by this
14 section, a greater vote of shareholders than that specified in
15 this section.

16 EXPLANATION

17 This bill amends provisions relating to special
18 shareholders' meetings, and merger and share acquisitions, and
19 creates a new Code section relating to the combination of a
20 corporation with certain shareholders.

21 Code section 490.702 is amended to provide that a
22 corporation with a class of voting stock listed on a national
23 market or held by more than 2,000 shareholders of record is
24 required to conduct a special meeting on the call of the board
25 or upon the written request of holders of 50 percent of all
26 votes entitled to be cast on an issue proposed at a special
27 meeting.

28 Code section 490.1101 is amended to authorize the merger of
29 a corporation incorporated under Code chapter 490 with or into
30 another business entity established or organized under another
31 chapter, and the merger of such other entity with or into such
32 corporation.

33 Code section 490.1102 is amended to authorize the
34 acquisition of all outstanding shares of a corporation
35 organized under Code chapter 490 by another business entity

1 established or organized under another chapter, and the
2 acquisition of all outstanding shares of such other business
3 entity by such corporation.

4 New Code section 490.1109 is created and governs the
5 business combination of a corporation organized under chapter
6 490 which has a class of voting stock listed on a national
7 securities exchange or the national association of securities
8 dealers automated quotations-national market system (NASDAQ),
9 or which is held by more than 2,000 shareholders, with certain
10 shareholders defined as "interested shareholders", for three
11 years after the shareholder becomes an interested shareholder,
12 unless certain requirements are met. The bill defines an
13 interested shareholder as one which owns 15 percent or more of
14 the outstanding voting stock of the corporation. Such
15 combination is not prohibited if: The board of directors,
16 prior to the shareholder becoming an interested shareholder,
17 approved the transaction which resulted in the shareholder
18 becoming an interested shareholder or approved the business
19 transaction prior to the shareholder becoming an interested
20 shareholder; after completion of the transaction which
21 resulted in the shareholder becoming an interested
22 shareholder, the interested shareholder owns at least 85
23 percent of the corporation's outstanding voting stock; or at
24 or after the time the shareholder becomes an interested
25 shareholder, the combination is approved by the board of
26 directors and authorized by 66 2/3 percent of the outstanding
27 voting stock not owned by the interested shareholder. The
28 bill also provides several circumstances when the exceptions
29 to prohibition of an interested shareholder business
30 combination do not apply.

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HOUSE FILE 628

AN ACT

RELATING TO CORPORATIONS BY PROVIDING FOR THE CALL OF SPECIAL MEETINGS OF SHAREHOLDERS, FOR THE COMBINATION OF A CORPORATION AND CERTAIN SHAREHOLDERS, AND FOR CERTAIN MERGER AND SHARE ACQUISITIONS.

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

Section 1. Section 490.702, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

A Except as provided in subsection 5, a corporation shall hold a special meeting of shareholders upon the occurrence of either of the following:

Sec. 2. Section 490.702, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. Notwithstanding subsections 1 through 4, a corporation which has a class of voting stock that is listed on a national securities exchange, authorized for quotation on the national association of securities dealers automated quotations-national market system, or held of record by more than two thousand shareholders, is required to hold a special meeting only upon the occurrence of either of the following:

a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the holders of at least fifty percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

Sec. 3. Section 490.1101, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 4. One or more business entities organized under Title XII or XIII may merge with or into a corporation organized under this chapter, and a corporation organized under this chapter may merge with or into such business entity or entities, if the entity or entities are authorized to merge with such corporation pursuant to the chapter under which the entity or entities are organized. Except as otherwise provided, this division applies to such mergers.

Sec. 4. Section 490.1102, Code 1997, is amended by adding the following new subsection:

NEW SUBSECTION. 5. One or more business entities organized under Title XII or XIII may acquire all of the outstanding shares of one or more classes or series of a corporation organized under this chapter, and a corporation organized under this chapter may acquire all of the outstanding ownership interests in such business entity or entities, if the entity or entities are authorized to enter into such share exchange with such corporation pursuant to the chapter under which the entity or entities are organized. Except as otherwise provided, this division applies to such exchange.

Sec. 5. NEW SECTION. 490.1109 BUSINESS COMBINATIONS WITH INTERESTED SHAREHOLDERS.

1. Notwithstanding any other provision of this chapter, a corporation shall not engage in any business combination with an interested shareholder for a period of three years following the time that the shareholder became an interested shareholder, unless any of the following apply:

a. Prior to the time the shareholder became an interested shareholder, the board of directors of the corporation approved either the business combination or the transaction which resulted in the shareholder becoming an interested shareholder.

b. Upon consummation of the transaction which resulted in the shareholder becoming an interested shareholder, the interested shareholder owned at least eighty-five percent of

the voting stock of the corporation outstanding at the time the transaction commenced, excluding, for purposes of determining the number of shares outstanding, those shares owned by persons who are directors and officers, and by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer.

c. At or subsequent to the time the shareholder became an interested shareholder, the business combination is approved by the board of directors and authorized at an annual or special meeting of shareholders by the affirmative vote of at least sixty-six and two-thirds percent of the outstanding voting stock which is not owned by the interested shareholder. Such approval shall not be by written consent.

2. This section does not apply in any of the following circumstances:

a. The corporation does not have a class of voting stock that is listed on a national securities exchange, authorized for quotation on the national association of securities dealers automated quotations-national market system, or held of record by more than two thousand shareholders, unless any of the foregoing results from action taken, directly or indirectly, by an interested shareholder or from a transaction in which a person becomes an interested shareholder.

b. The corporation's original articles of incorporation contain a provision expressly electing not to be governed by this section.

c. The corporation, by action of its board of directors, adopts an amendment to its bylaws by no later than September 29, 1997, expressly electing not to be governed by this section, which amendment shall not be further amended by the board of directors.

d. The corporation, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by this section, provided that, in addition to any other vote required by law,

such amendment to the articles of incorporation or bylaws must be approved by the affirmative vote of a majority of the shares entitled to vote. An amendment adopted pursuant to this paragraph is effective immediately in the case of a corporation that has never had a class of voting stock that falls within any of the three categories set out in paragraph "a" and has not elected by a provision in its original articles of incorporation or any amendment to such articles to be governed by this section. In all other cases, an amendment adopted pursuant to this paragraph is not effective until twelve months after the adoption of the amendment and does not apply to any business combination between the corporation and any person who became an interested shareholder of the corporation on or prior to such adoption.

An amendment to the bylaws adopted pursuant to this paragraph shall not be further amended by the board of directors.

e. A shareholder becomes an interested shareholder inadvertently and both of the following apply:

(1) As soon as practicable the shareholder divests itself of ownership of sufficient shares so that the shareholder ceases to be an interested shareholder.

(2) The shareholder would not, at any time within the three-year period immediately prior to a business combination between the corporation and such shareholder, have been an interested shareholder but for the inadvertent acquisition of ownership.

f. (1) The business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required in this paragraph of a proposed transaction which satisfies all of the following:

(a) Constitutes a transaction described in subparagraph (2).

(b) Is with or by a person who either was not an interested shareholder during the previous three years or who became an interested shareholder with the approval of the

corporation's board of directors or who became an interested shareholder during the time period described in paragraph "g".

(c) Is approved or not opposed by a majority of the members of the board of directors then in office who were directors prior to any person becoming an interested shareholder during the previous three years, or who were recommended for election or elected to succeed such directors by a majority of such directors.

(2) A proposed transaction under subparagraph (1) is limited to the following:

(a) A merger of the corporation, other than a merger pursuant to section 490.1104.

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one or more transactions and whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation, other than to a direct or indirect wholly owned subsidiary of the corporation or to the corporation itself, which has an aggregate market value equal to fifty percent or more of either the aggregate market value of all of the assets of the corporation determined on a consolidated basis, or the aggregate market value of all the outstanding stock of the corporation.

(c) A proposed tender or exchange offer for fifty percent or more of the outstanding voting stock of the corporation.

(3) The corporation shall give no less than twenty days' notice to all interested shareholders prior to the consummation of any of the transactions described in subparagraph (2), subparagraph subdivision (a) or (b).

g. The business combination is with an interested shareholder who becomes an interested shareholder of the corporation at a time when the corporation is not subject to this section pursuant to paragraphs "a" through "d".

Notwithstanding paragraphs "a" through "d", a corporation may elect under its original articles of incorporation or any amendment to such articles to be subject to this section. However, such amendment shall not apply to restrict a business

combination between the corporation and an interested shareholder of the corporation if the interested shareholder became such prior to the effective date of the amendment.

3. As used in this section, unless the context otherwise requires:

a. "Affiliate" means a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

b. "Associate", when used to indicate a relationship with a person, means any of the following:

(1) A corporation, partnership, unincorporated association, or other entity of which the person is a director, officer, or partner or is, directly or indirectly, the owner of twenty percent or more of any class of voting stock.

(2) A trust or other estate in which the person has at least a twenty percent beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity.

(3) A relative or spouse of the person, or any relative of the spouse, who has the same residence as the person.

c. "Business combination", with respect to a corporation and an interested shareholder of such corporation, means any of the following:

(1) A merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation with the interested shareholder, or with any other corporation, partnership, unincorporated association, or other entity if the merger or consolidation is caused by the interested shareholder and as a result of such merger the surviving entity is not subject to subsection 1.

(2) A sales, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, except proportionately as a shareholder of such corporation, to or with the interested shareholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned

subsidiary of the corporation which assets have an aggregate market value equal to ten percent or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation.

(3) A transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested shareholder, except for the following:

(a) Pursuant to the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of the corporation or such subsidiary which securities were outstanding prior to the time that the interested shareholder became an interested shareholder.

(b) Pursuant to a merger under section 490.1104.

(c) Pursuant to a distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into stock of such corporation or any such subsidiary, which stock is distributed pro rata to all holders of a class or series of stock of the corporation subsequent to the time the interested shareholder became an interested shareholder.

(d) Pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of the stock.

(e) Any issuance or transfer of stock by the corporation, provided, however, that in no case under subparagraph subdivisions (c) and (d) and this subparagraph subdivision shall there be an increase in the interested shareholder's proportionate share of the stock of any class or series of the corporation or of the voting stock of the corporation.

(4) A transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series,

of the corporation or of any such subsidiary which is owned by the interested shareholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested shareholder.

(5) The receipt by the interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of such corporation, of any loans, advances, guarantees, pledges, or other financial benefits, other than those expressly permitted in subparagraphs (1) through (4), provided by or through the corporation or any direct or indirect majority-owned subsidiary.

d. "Control", including the terms "controlling", "controlled by", and "under common control with", means the ability, directly or indirectly, to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of twenty percent or more of the outstanding voting stock of any corporation, partnership, unincorporated association, or other entity is presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding this paragraph, a presumption of control shall not apply where a person holds voting stock, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian, or trustee for one or more owners who do not individually or as a group have control of such entity.

e. "Interested shareholder" means any person, other than the corporation and any direct or indirect majority-owned subsidiary of the corporation, that is the owner of fifteen percent or more of the outstanding voting stock of the corporation, or is an affiliate or associate of the corporation and was the owner of fifteen percent or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an

interested shareholder, and the affiliates and associates of such person. "Interested shareholder" does not include either of the following:

- (1) A person who owns shares in excess of the fifteen percent limitation and who acquired such shares as follows:
 - (a) Pursuant to a tender offer commenced prior to January 1, 1998, or pursuant to an exchange offer announced prior to January 1, 1998, and commenced within ninety days after such date, if such person satisfies either of the following:
 - (i) Continues to own shares in excess of the fifteen percent limitation or would continue to own such shares but for action taken by the corporation.
 - (ii) Is an affiliate or associate of the corporation and continues, or would continue but for action taken by the corporation, to be the owner of fifteen percent or more of the outstanding voting stock of the corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested shareholder.
 - (b) From a person subject to subparagraph subdivision (a) by gift, devise, or in a transaction in which no consideration for the shares was exchanged.
- (2) A person whose ownership of shares in excess of the fifteen percent limitation is the result of action taken solely by the corporation, provided that such person is an interested shareholder if, after such action by the corporation, the person acquires additional shares of voting stock of the corporation, other than as a result of further corporate action not caused, directly or indirectly, by such person.

For purposes of determining whether a person is an interested shareholder, the outstanding voting stock of the corporation does not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

f. "Owner", including the terms "own" and "owned" when used with respect to any stock, means a person that individually or with or through any of such person's affiliates or associates satisfies any of the following:

- (1) Beneficially owns such stock, directly or indirectly.
 - (2) Has the right to do either of the following:
 - (a) Acquire such stock, whether such right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, or upon the exercise of conversion rights, exchange rights, warrants, or options, or otherwise. However, a person is not deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange.
 - (b) Vote such stock pursuant to any agreement, arrangement, or understanding. However, a person is not deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement, or understanding to vote such stock arises solely from the revocable proxy or consent given in response to a proxy or consent solicitation made to ten or more persons.
 - (3) Has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of such stock with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock. However, an agreement, arrangement, or understanding for the purpose of voting such stock does not include voting pursuant to a revocable proxy or consent under subparagraph (2), subparagraph subdivision (b).
- g. "Person" means any individual, corporation, partnership, unincorporated association, or other entity.
 - h. "Stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.
 - i. "Voting stock" means, with respect to any corporation, stock of any class or series entitled to vote generally in the

election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity.

4. The articles of incorporation or bylaws shall not require, for any vote of shareholders required by this section, a greater vote of shareholders than that specified in this section.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 628, Seventy-seventh General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved May 2, 1997

TERRY E. BRANSTAD
Governor