

FILED MAR 12 1997

*Substituted  
for H.F. 628  
4/22/97 (p. 1330)*

WITHDRAWN

SENATE FILE **418**

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 151)

Passed Senate, Date \_\_\_\_\_ Passed House, 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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**SENATE FILE 418**

**S-3278**

- 1 Amend Senate File 418 as follows:
- 2 1. Page 3, line 16, by striking the words
- 3 "occurrences in subsection 1 result" and inserting the
- 4 following: "foregoing results".
- 5 2. Page 4, by striking line 10 and inserting the
- 6 following: "corporation on or prior to such adoption.
- 7 An amendment to the bylaws".
- 8 3. Page 4, line 35, by inserting after the word
- 9 "approved" the following: "or not opposed".

By DONALD B. REDFERN

**S-3278 FILED MARCH 31, 1997**

*Adopted 4/22/97 (p. 1330)*

**S.F. 418**

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WITHDRAWN

TLSB 1733SV 77  
mj/cf/24

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).

Redfern, Chair  
Vilsack  
Tinsman

SSB 151

Judiciary  
Succeeded By  
COM 418

SENATE FILE  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON MCKEAN)

Passed Senate, Date \_\_\_\_\_ Passed House, 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

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 2 falls within any of the three categories set out in paragraph  
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 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  
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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  
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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.

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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  
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33 However, such amendment shall not apply to restrict a business  
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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

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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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