

Substitutes for SF 2345

4/19/00 FEB 9 2000

3/16/00 Unfinished Business Calendar

COMMERCE AND REGULATION

HOUSE FILE **2197**  
BY WISE and HOFFMAN

Passed House	(P. 883)	Date	<u>3/22/00</u>	Passed Senate	(P. 1239)	Date	<u>4/19/00</u>
Vote: Ayes	<u>86</u>	Nays	<u>14</u>	Vote: Ayes	<u>48</u>	Nays	<u>0</u>
Approved <u>5/26/00</u>							

A BILL FOR

1 An Act relating to the determination of fair value of the shares  
 2 of dissenting shareholders of a bank or bank holding company.  
 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2197

1 Section 1. Section 490.1330, Code 1999, is amended by  
2 adding the following new subsection:

3 NEW SUBSECTION. 6. Notwithstanding the provisions of this  
4 division, if the corporation is a bank holding company as  
5 defined in section 524.1801, fair value, at the election of  
6 the bank holding company, may be determined as provided in  
7 section 524.1406, subsection 3, prior to giving notice under  
8 section 490.1320 or 490.1322. The fair value as determined  
9 shall be included in any notice under section 490.1320 or  
10 490.1322, and section 490.1328 shall not apply.

11 Sec. 2. Section 490.1301, subsection 4, Code 1999, is  
12 amended to read as follows:

13 4. "Fair value", with respect to a dissenter's shares,  
14 means the value of the shares immediately before the  
15 effectuation of the corporate action to which the dissenter  
16 objects, excluding any appreciation or depreciation in  
17 anticipation of the corporate action unless exclusion would be  
18 inequitable. With respect to a dissenter's shares that are  
19 the shares of a corporation that is a bank holding company as  
20 defined in section 524.1801, the factors identified in section  
21 524.1406, subsection 3, paragraph "a", shall also be  
22 considered.

23 Sec. 3. Section 524.1406, subsection 3, Code Supplement  
24 1999, is amended to read as follows:

25 3. a. Notwithstanding any contrary provision in chapter  
26 490, division XIII, in determining the fair value of the  
27 shareholder's shares under this section of a bank organized  
28 under this chapter or a bank holding company as defined in  
29 section 524.1801 in a transaction or event in which the  
30 shareholder is entitled to the rights and remedies of a  
31 dissenting shareholder, due consideration shall be given to  
32 valuation issues-acknowledged-and-authorized-by-the-Internal  
33 Revenue-Code,-as-defined-in-section-422-3 factors recognized  
34 for federal and estate tax purposes, including discounts for  
35 minority interests and discounts for lack of marketability.

1 However, any payment made to dissenting shareholders under  
2 section 490.1325 shall be in an amount not less than the  
3 stockholders' equity in the bank disclosed in its last  
4 statement of condition filed under section 524.220 or the  
5 total equity capital of the bank holding company disclosed in  
6 the most recent report filed by the bank holding company with  
7 the board of governors of the federal reserve system, divided  
8 by the number of shares outstanding.

9     b. Prior to giving notice of a meeting at which a  
10 shareholder of a bank organized under this chapter or a bank  
11 holding company as defined in section 524.1801 would be  
12 entitled to ~~assert-dissenter's-rights,-a-bank~~ the rights and  
13 remedies of a dissenting shareholder, such bank or bank  
14 holding company may seek a declaratory judgment to establish  
15 the fair value for purposes of section 490.1301, subsection 4,  
16 of shares held by such shareholders ~~who-would-have-a-right-to~~  
17 ~~dissent~~. Another cause of action or a counterclaim shall not  
18 be joined with such a declaratory action. A declaratory  
19 judgment shall be filed in the county where the bank's  
20 principal place of business of the bank or bank holding  
21 company is located. The court shall appoint an attorney to  
22 represent minority shareholders. All shareholders of the bank  
23 or bank holding company shall be served with notice of the  
24 action and be advised of the name, address, and telephone  
25 number of the attorney appointed to represent minority  
26 ~~shareholder-interests~~ shareholders. The attorney appointed to  
27 represent minority shareholders shall select an appraiser to  
28 give an opinion of the fair value of such shares. The bank or  
29 bank holding company may select an appraiser to give an  
30 opinion on the fair value ~~and-the-attorney-shall-select-an~~  
31 ~~appraiser-to-give-an-opinion-on-fair-value~~ of the shares of  
32 the bank or bank holding company. Any shareholder may  
33 participate individually and present evidence of the fair  
34 value of such shareholder's shares. All court costs,  
35 appraiser's fees, and the fees and expenses of the attorney

1 appointed to represent the minority shareholders shall be  
2 assessed against the bank or the bank holding company. A  
3 judgment in the action shall not determine fair value for a  
4 share to be less than the stockholders' equity in the bank  
5 disclosed in its last statement of condition filed under  
6 section 524.220 or the total equity capital of the bank  
7 holding company disclosed in the most recent report filed by  
8 the bank holding company with the board of governors of the  
9 federal reserve system, divided by the number of shares  
10 outstanding. A final judgment in the action shall establish  
11 fair value for the purposes of chapter 490, division XIII and  
12 shall be disclosed to the shareholders in the notice to  
13 shareholders of the meeting to approve the transaction that  
14 gives rise to dissenters' rights. If the proposed transaction  
15 is approved by the shareholders, upon consummation of the  
16 proposed transaction the fair value so established shall be  
17 paid to ~~all~~-shareholders each shareholder entitled to payment  
18 for ~~their~~ the shareholder's shares upon receipt of such  
19 ~~shareholders'~~ shareholder's share certificates.

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## EXPLANATION

21 This bill provides for the determination of value of the  
22 shares of a dissenting shareholder of a bank holding company.  
23 The procedure for determining such fair value is similar to  
24 the procedure for the determination of the value of the shares  
25 of a dissenting shareholder of a bank organized under Code  
26 chapter 524.

27 The bill provides that any payment made to dissenting  
28 shareholders under Code section 490.1325 shall be in an amount  
29 not less than the stockholders' equity in the bank disclosed  
30 in its last statement of condition filed under Code section  
31 524.220 or the total equity capital of the bank holding  
32 company disclosed in the most recent report filed by the bank  
33 holding company with the board of governors of the federal  
34 reserve system, divided by the number of shares outstanding.

35 The bill provides in determining the fair value of the

1 shares of a bank holding company under Code chapter 490, the  
2 factors identified under Code section 524.1406 must be  
3 considered. The bill also provides that a corporation that is  
4 a bank holding company may elect to have the fair value of the  
5 bank holding company's shares determined under Code section  
6 524.1406, notwithstanding the provisions of Code chapter 490,  
7 relating to corporations.

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HOUSE FILE 2197

AN ACT  
RELATING TO THE DETERMINATION OF FAIR VALUE OF THE SHARES  
OF DISSENTING SHAREHOLDERS OF A BANK OR BANK HOLDING COMPANY.

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

Section 1. Section 490.1330, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 6. Notwithstanding the provisions of this division, if the corporation is a bank holding company as defined in section 524.1801, fair value, at the election of the bank holding company, may be determined as provided in section 524.1406, subsection 3, prior to giving notice under section 490.1320 or 490.1322. The fair value as determined shall be included in any notice under section 490.1320 or 490.1322, and section 490.1328 shall not apply.

Sec. 2. Section 490.1301, subsection 4, Code 1999, is amended to read as follows:

4. "Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be

inequitable. With respect to a dissenter's shares that are the shares of a corporation that is a bank holding company as defined in section 524.1801, the factors identified in section 524.1406, subsection 3, paragraph "a", shall also be considered.

Sec. 3. Section 524.1406, subsection 3, Code Supplement 1999, is amended to read as follows:

3. a. Notwithstanding any contrary provision in chapter 490, division XIII, in determining the fair value of the shareholder's shares under this section of a bank organized under this chapter or a bank holding company as defined in section 524.1801 in a transaction or event in which the shareholder is entitled to the rights and remedies of a dissenting shareholder, due consideration shall be given to valuation issues acknowledged and authorized by the Internal Revenue Code, as defined in section 422-3 factors recognized for federal and estate tax purposes, including discounts for minority interests and discounts for lack of marketability. However, any payment made to dissenting shareholders under section 490.1325 shall be in an amount not less than the stockholders' equity in the bank disclosed in its last statement of condition filed under section 524.220 or the total equity capital of the bank holding company disclosed in the most recent report filed by the bank holding company with the board of governors of the federal reserve system, divided by the number of shares outstanding.

b. Prior to giving notice of a meeting at which a shareholder of a bank organized under this chapter or a bank holding company as defined in section 524.1801 would be entitled to assert dissenter's rights, a bank the rights and remedies of a dissenting shareholder, such bank or bank holding company may seek a declaratory judgment to establish the fair value for purposes of section 490.1301, subsection 4, of shares held by such shareholders who would have a right to dissent. Another cause of action or a counterclaim shall not

be joined with such a declaratory action. A declaratory judgment shall be filed in the county where the bank's principal place of business of the bank or bank holding company is located. The court shall appoint an attorney to represent minority shareholders. All shareholders of the bank or bank holding company shall be served with notice of the action and be advised of the name, address, and telephone number of the attorney appointed to represent minority ~~shareholder-interests~~ shareholders. ~~The attorney appointed to represent minority shareholders shall select an appraiser to give an opinion of the fair value of such shares.~~ The bank or bank holding company may select an appraiser to give an opinion on ~~the fair value and the attorney shall select an appraiser to give an opinion on fair value~~ of the shares of the bank or bank holding company. Any shareholder may participate individually and present evidence of the fair value of such shareholder's shares. All court costs, appraiser's fees, and the fees and expenses of the attorney appointed to represent the minority shareholders shall be assessed against the bank or the bank holding company. A judgment in the action shall not determine fair value for a share to be less than the stockholders' equity in the bank disclosed in its last statement of condition filed under section 524.220 or the total equity capital of the bank holding company disclosed in the most recent report filed by the bank holding company with the board of governors of the federal reserve system, divided by the number of shares outstanding. A final judgment in the action shall establish fair value for the purposes of chapter 490, division XIII and shall be disclosed to the shareholders in the notice to shareholders of the meeting to approve the transaction that gives rise to dissenters' rights. If the proposed transaction is approved by the shareholders, upon consummation of the proposed transaction the fair value so established shall be paid to ~~all shareholders~~ each shareholder entitled to payment

for ~~these~~ the shareholder's shares upon receipt of such ~~shareholders'~~ shareholder's share certificates.

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BRENT SIEGRIST  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2197, Seventy-eighth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved 5/26, 2000

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THOMAS J. VILSACK  
Governor