

King
Redfern
McCoy

SSB-3072

Commerce

Succeeded By

SENATE FILE HF 2345

BY (PROPOSED COMMITTEE
ON COMMERCE BILL
BY CHAIRPERSON JENSEN)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

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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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-Internat
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.

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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.

20 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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Substituted for by HF 2197
4-19-00
(p. 1238)

3/22/00 Referred to Unfinished Business
Calendar
FILED FEB 24 '00

WITHDRAWN
4-19-00

SENATE FILE 2345
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3072)

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SF 2345

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