

# Senate Study Bill 3072

## Bill Text

PAG LIN

1 1 Section 1. Section [490.1330](#), Code 1999, is amended by  
1 2 adding the following new subsection:  
1 3 NEW SUBSECTION. 6. Notwithstanding the provisions of this  
1 4 division, if the corporation is a bank holding company as  
1 5 defined in section 524.1801, fair value, at the election of  
1 6 the bank holding company, may be determined as provided in  
1 7 section 524.1406, subsection 3, prior to giving notice under  
1 8 section 490.1320 or 490.1322. The fair value as determined  
1 9 shall be included in any notice under section 490.1320 or  
1 10 490.1322, and section 490.1328 shall not apply.

1 11 Sec. 2. Section [490.1301](#), subsection 4, Code 1999, is  
1 12 amended to read as follows:

1 13 4. "Fair value", with respect to a dissenter's shares,  
1 14 means the value of the shares immediately before the  
1 15 effectuation of the corporate action to which the dissenter  
1 16 objects, excluding any appreciation or depreciation in  
1 17 anticipation of the corporate action unless exclusion would be  
1 18 inequitable. With respect to a dissenter's shares that are  
1 19 the shares of a corporation that is a bank holding company as  
1 20 defined in section 524.1801, the factors identified in section  
1 21 524.1406, subsection 3, paragraph "a", shall also be  
1 22 considered.

1 23 Sec. 3. Section [524.1406](#), subsection 3, Code Supplement  
1 24 1999, is amended to read as follows:

1 25 3. a. Notwithstanding any contrary provision in chapter  
1 26 490, division XIII, in determining the fair value of the  
1 27 shareholder's shares

~~under this section~~

~~of a bank organized~~

1 28 under this chapter or a bank holding company as defined in  
1 29 section 524.1801 in a transaction or event in which the  
1 30 shareholder is entitled to the rights and remedies of a  
1 31 dissenting shareholder, due consideration shall be given to  
1 32 valuation

~~issues acknowledged and authorized by the Internal~~

1 33

~~Revenue Code, as defined in section 422.3~~

~~factors recognized~~

1 34 for federal and estate tax purposes, including discounts for  
1 35 minority interests and discounts for lack of marketability.  
2 1 However, any payment made to dissenting shareholders under  
2 2 section 490.1325 shall be in an amount not less than the  
2 3 stockholders' equity in the bank disclosed in its last  
2 4 statement of condition filed under section 524.220 or the  
2 5 total equity capital of the bank holding company disclosed in  
2 6 the most recent report filed by the bank holding company with  
2 7 the board of governors of the federal reserve system, divided  
2 8 by the number of shares outstanding.

2 9 b. Prior to giving notice of a meeting at which a  
2 10 shareholder of a bank organized under this chapter or a bank  
2 11 holding company as defined in section 524.1801 would be  
2 12 entitled to

~~assert dissenter's rights, a bank~~

~~the rights and~~

2 13 remedies of a dissenting shareholder, such bank or bank

2 14 holding company may seek a declaratory judgment to establish

2 15 the fair value for purposes of section 490.1301, subsection 4,

2 16 of shares held by such shareholders

~~who would have a right to~~

2 17

~~dissent~~

- Another cause of action or a counterclaim shall not

2 18 be joined with such a declaratory action. A declaratory

2 19 judgment shall be filed in the county where the

~~bank's~~

2 20 principal place of business of the bank or bank holding

2 21 company is located. The court shall appoint an attorney to

2 22 represent minority shareholders. All shareholders of the bank

2 23 or bank holding company shall be served with notice of the

2 24 action and be advised of the name, address, and telephone

2 25 number of the attorney appointed to represent minority

2 26

~~shareholder interests~~

~~shareholders. The attorney appointed to~~

2 27 represent minority shareholders shall select an appraiser to

2 28 give an opinion of the fair value of such shares. The bank or

2 29 bank holding company may select an appraiser to give an

2 30 opinion on the fair value

~~and the attorney shall select an~~

2 31

~~appraiser to give an opinion on fair value~~

~~of the shares of~~

2 32 the bank or bank holding company. Any shareholder may

2 33 participate individually and present evidence of the fair

2 34 value of such shareholder's shares. All court costs,

2 35 appraiser's fees, and the fees and expenses of the attorney

3 1 appointed to represent the minority shareholders shall be

3 2 assessed against the bank or the bank holding company. A

3 3 judgment in the action shall not determine fair value for a

3 4 share to be less than the stockholders' equity in the bank

3 5 disclosed in its last statement of condition filed under

3 6 section 524.220 or the total equity capital of the bank

3 7 holding company disclosed in the most recent report filed by

3 8 the bank holding company with the board of governors of the

3 9 federal reserve system, divided by the number of shares

3 10 outstanding. A final judgment in the action shall establish

3 11 fair value for the purposes of chapter 490, division XIII and

3 12 shall be disclosed to the shareholders in the notice to

3 13 shareholders of the meeting to approve the transaction that

3 14 gives rise to dissenters' rights. If the proposed transaction

3 15 is approved by the shareholders, upon consummation of the

3 16 proposed transaction the fair value so established shall be

3 17 paid to

~~all shareholders~~

~~each shareholder~~ entitled to payment

3 18 for

~~their~~

- the shareholder's shares upon receipt of such  
3 19

~~shareholders'~~

- shareholder's share certificates.

3 20

EXPLANATION

3 21 This bill provides for the determination of value of the  
3 22 shares of a dissenting shareholder of a bank holding company.  
3 23 The procedure for determining such fair value is similar to  
3 24 the procedure for the determination of the value of the shares  
3 25 of a dissenting shareholder of a bank organized under Code  
3 26 chapter 524.

3 27 The bill provides that any payment made to dissenting  
3 28 shareholders under Code section 490.1325 shall be in an amount  
3 29 not less than the stockholders' equity in the bank disclosed  
3 30 in its last statement of condition filed under Code section  
3 31 524.220 or the total equity capital of the bank holding  
3 32 company disclosed in the most recent report filed by the bank  
3 33 holding company with the board of governors of the federal  
3 34 reserve system, divided by the number of shares outstanding.

3 35 The bill provides in determining the fair value of the  
4 1 shares of a bank holding company under Code chapter 490, the  
4 2 factors identified under Code section 524.1406 must be  
4 3 considered. The bill also provides that a corporation that is  
4 4 a bank holding company may elect to have the fair value of the  
4 5 bank holding company's shares determined under Code section  
4 6 524.1406, notwithstanding the provisions of Code chapter 490,  
4 7 relating to corporations.

4 8 LSB 5893SC 78

4 9 mj/as/5