

Reported Recommending
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Failed to Pass Senate

House File 153

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Private Corporations.

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A BILL FOR

An Act to amend Chapter four hundred ninety-one (491),
Code 1946, to authorize merger or consolidation of
corporations.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. Chapter four hundred ninety-one (491),
2 Code 1946 is amended by adding thereto the following new
3 sections:

4 CONSOLIDATION AND MERGER.

5 (1) "Merger" means the uniting of two or more corpora-
6 tions into one corporation in such manner that the corpora-
7 tion resulting from the merger retains its corporate existence
8 and absorbs the other constituent corporation or corporations
9 which thereby lose their or its corporate existence.

10 (2) "Consolidation" means the uniting of two or more
11 corporations into a single new corporation, all of the
12 constituent corporations thereby ceasing to exist as separate
13 entities.

1 Sec. 2. PROCEDURE FOR MERGER.

2 Any two or more corporations may merge into one of such
3 corporations in the following manner:

4 The board of directors of each corporation shall, by
5 resolution adopted by a majority vote of the members of each
6 such board, approve a plan of merger setting forth:

7 (a) The names of the corporations proposing to merge,
8 and the name of the corporation into which they propose to
9 merge, which is hereinafter designated as the surviving corpora-
10 tion.

11 (b) The terms and conditions of the proposed merger.

12 (c) The manner and basis of converting the shares of
13 each merging corporation into shares or other securities or
14 obligations of the surviving corporation.

15 (d) A statement of any changes in the articles of
16 incorporation of the surviving corporation to be effected by
17 such merger.

18 (e) Such other provisions with respect to the proposed
19 merger as are deemed necessary or desirable.

1 Sec. 3. PROCEDURE FOR CONSOLIDATION.

2 Any two or more corporations may consolidate into a new
3 corporation in the following manner:

4 The board of directors of each corporation, shall by a
5 resolution adopted by a majority vote of the members of each
6 such board, approve a plan of consolidation setting forth:

7 (a) The names of the corporations proposing to consoli-
8 date, and the name of the new corporation into which they
9 propose to consolidate, which is hereinafter designated as
10 the new corporation.

11 (b) The terms and conditions of the proposed consoli-
12 dation.

13 (c) The manner and basis of converting the shares of
14 each corporation into shares, or other securities, or obligations
15 of the new corporation.

16 (d) With respect to the new corporation, all of the
17 statements required to be set forth in articles of incorpora-
18 tion for corporations organized under this chapter.

19 (e) Such other provisions with respect to the proposed
20 consolidation as are deemed necessary or desirable.

1 Sec. 4. MEETINGS OF SHAREHOLDERS.

2 The board of directors of each corporation, upon approving
3 such plan of merger or plan of consolidation, shall, by resolution,
4 direct that the plan be submitted to a vote at a meeting of
5 shareholders, which may be either an annual or a special meeting.
6 Written or printed notice shall be delivered not less than twenty
7 days before such meeting, either personally or by mail, to each
8 shareholder of record entitled to vote at such meeting. Such
9 notice shall state the place, day, hour and purpose of the
10 meeting, and a copy or a summary of the plan of merger or
11 plan of consolidation, as the case may be, shall be included in
12 or enclosed with such notice.

1 Sec. 5. APPROVAL BY SHAREHOLDERS.

2 At each such meeting, a vote of the shareholders entitled
3 to vote thereat shall be taken on the proposed plan of merger or
4 consolidation. The plan of merger or consolidation shall be approved

5 upon receiving the affirmative vote of the holders of at least two-
6 thirds of the outstanding shares entitled to vote at such meeting,
7 of each of such corporations, unless any class of shares of any
8 such corporations is entitled to vote as a class in respect thereof
9 in which event, as to such corporation, the plan of merger or consoli-
10 dation shall be approved upon receiving the affirmative vote of
11 the holders of at least a majority of the outstanding shares of each
12 such class of shares entitled to vote as a class in respect thereof
13 and two-thirds of the total outstanding shares entitled to vote at
14 such meeting. Any class of shares of any such corporation shall
15 be entitled to vote as a class if the plan of merger or consolidation,
16 as the case may be, contains any provision which, if contained in
17 a proposed amendment to articles of incorporation, would entitle
18 such class of shares to vote as a class.

1 Sec. 6. ARTICLES OF MERGER OR CONSOLIDATION.

2 Upon such approval, articles of merger or articles of
3 consolidation shall be executed in duplicate by each corporation
4 by its president or a vice president, and verified by him, attested
5 by its secretary or an assistant secretary, and shall be acknowledged
6 and shall set forth:

7 (a) The plan of merger or the plan of consolidation.

8 (b) As to each corporation, the number of shares out-
9 standing, and the number of shares entitled to vote, and, if the
10 shares of any class are entitled to vote as a class, the designa-
11 tion of each such class and the number of outstanding shares thereof
12 entitled to vote.

13 (c) As to each corporation, the number of shares voted for
14 and against such plan respectively, and, if the shares of any
15 class are entitled to vote as a class, the number of shares of each
16 such class voted for and against such plan, respectively.

1 Sec. 7. FILING ARTICLES OF MERGER OR CONSOLIDATION.

2 A duly executed and acknowledged copy of the articles of
3 merger or consolidation shall be forwarded to the Secretary of
4 State for filing and recording as provided in section four hundred
5 ninety-one point five (491.5) of this chapter, and if a new
6 corporation is created under the provisions of this chapter as the
7 result of consolidation or if an existing Iowa corporation becomes
8 the survivor corporation as the result of a merger the Secretary of
9 State shall then forward said articles to the County Recorder of
10 deeds of the county where the principal place of business of the
11 new corporation or the existing Iowa corporation is located as
12 provided in section four hundred ninety-one point five (491.5)
13 of this chapter.

14 The procedure set forth in sections four hundred ninety-one
15 point six (491.6) to four hundred ninety-one point nine (491.9)
16 inclusive of this chapter shall be applicable to the filing of
17 articles of consolidation or merger.

18 If as the result of a consolidation a new Iowa corporation
19 is formed then the fees provided for in section four hundred
20 ninety-one point eleven (491.11) of this chapter shall be applicable.
21 If as the result of a merger an existing Iowa corporation becomes
22 the survivor the articles of merger shall be deemed an amendment

23 to its articles of incorporation and section four hundred eleven
24 point twenty (411.20) of this chapter shall be applicable.

1 Sec. 8. EFFECTIVE DATE OF MERGER OR CONSOLIDATION.

2 Upon the payment of all fees and charges and upon the filing
3 of the articles of consolidation or merger with the Secretary of
4 State the Secretary of State shall issue to the corporation or
5 its representative a certificate of consolidation or a certificate
6 of merger and upon the issuance of said certificate the merger or
7 consolidation shall be effected.

1 Sec. 9. Notice of the articles of consolidation or merger
2 shall be given as provided in section four hundred ninety-one
3 point seven (491.7).

1 Sec. 10. EFFECT OF MERGER OR CONSOLIDATION.

2 When such merger or consolidation has been effected:

3 (a) The several corporations parties to the plan of
4 merger or consolidation shall be a single corporation, which in
5 the case of a merger, shall be that corporation designated in the
6 plan of merger as the surviving corporation, and, in the case of
7 a consolidation, shall be the new corporation provided for in the
8 plan of consolidation.

9 (b) The separate existence of all corporations parties to
10 the plan of merger or consolidation, except the surviving or new
11 corporation, shall cease.

12 (c) Such surviving or new corporation shall have all the
13 rights, privileges, immunities and powers and shall be subject
14 to all the duties and liabilities of a corporation organized under

15 this chapter.

16 (d) Such surviving or new corporation shall thereupon and
17 thereafter possess all the rights, privileges, immunities and
18 franchises, as well of a public as of a private nature, of each of
19 the merging or consolidating corporations; and all property, real,
20 personal and mixed, and all debts due on whatever account,
21 including subscriptions to shares, and all other choses in action,
22 and all and every other interest, of or belonging to or due to
23 each of the corporations so merged or consolidated, shall be
24 taken and deemed to be transferred to and vested in such single
25 corporation without further act or deed; and the title to any
26 real estate, or any interest therein, vested in any of such
27 corporations shall not revert or be in any way impaired by
28 reason of such merger or consolidation.

29 (e) Such surviving or new corporation shall thenceforth
30 be responsible and liable for all the liabilities and obligations of
31 each of the corporations so merged or consolidated; and any claim
32 existing or action or proceeding pending by or against any of such
33 corporations may be prosecuted to judgment as if such merger or
34 consolidation had not taken place, or such surviving or new corpora-
35 tion may be substituted in its place. Neither the rights of
36 creditors nor any liens upon the property of any such corporation
37 shall be impaired by such merger or consolidation.

38 (f) In the case of a merger, the articles of incorporation
39 of the surviving corporation shall be deemed to be amended to the
40 extent, if any, that changes in its articles of incorporation are

41 stated in the articles of merger; and, in the case of a consolida-
42 tion, the statements set forth in the articles of consolidation and
43 which are required or permitted to be set forth in the articles of
44 incorporation of corporations organized under this chapter shall be
45 deemed to be the articles of incorporation of the new corporation.

46 (g) The aggregate amount of the net assets of the merging
47 or consolidating corporations which was available for the
48 payment of dividends immediately prior to such merger or consoli-
49 dation, to the extent that the amount thereof is not transferred to
50 stated capital by the issuance of shares or otherwise, shall continue
51 to be available for the payment of dividends by such surviving or
52 new corporation.

1 Sec. 11. MERGER OR CONSOLIDATION OF DOMESTIC AND
2 CORPORATIONS. FOREIGN

3 One or more foreign corporations and one or more domestic
4 corporations may be merged or consolidated in the following manner,
5 provided such merger or consolidation is permitted by the laws of
6 the state under which each such foreign corporation is organized:

7 (a) Each domestic corporation shall comply with the
8 provisions of this chapter with respect to the merger or
9 consolidation, as the case may be, of domestic corporations
10 and each foreign corporation shall comply with the applicable
11 provisions of the laws of the state under which it is organized.

12 (b) If the surviving or new corporation, as the case may
13 be, is to be governed by the laws of any state other than this
14 state, it shall comply with the provisions of the statutes of

15 the state of Iowa with respect to foreign corporations if it is
16 to do business in this state, and in every case it shall file
17 with the secretary of state of this state.

18 (1) An agreement that it may be served with process in
19 this state in any proceeding for the enforcement of any obligation
20 of any domestic corporation which is a party to such merger or
21 consolidation and in any proceeding for the enforcement of
22 the rights of a dissenting shareholder of any such domestic
23 corporation against the surviving or new corporation.

24 (2) The appointment of a resident agent as provided for
25 in subsection six (6) of section four hundred ninety-four point
26 two (494.2) of the Code 1946.

27 (3) An agreement that it will promptly pay to the dis-
28 senting shareholders of any such domestic corporation the amount,
29 if any, to which they shall be entitled under the provisions of
30 this act with respect to the rights of dissenting shareholders.

31 Insofar as the state of Iowa is concerned, the effect of
32 such merger or consolidation shall be the same as in the case
33 of the merger or consolidation of domestic corporations, if the
34 surviving or new corporation is to be governed by the laws of
35 this state. If the surviving or new corporation is to be
36 governed by the laws of any state other than this state, the
37 effect of such merger or consolidation shall be the same as in
38 the case of the merger or consolidation of domestic corporations
39 except insofar as the laws of such other state provide otherwise.

2 If a shareholder of a corporation which is a party to a
3 merger or consolidation shall file with such corporation, prior
4 to or at the meeting of shareholders at which the plan of
5 merger or consolidation is submitted to a vote, a written objection
6 to such plan of merger or consolidation, and shall not vote in
7 favor thereof, and such shareholder, within twenty days after
8 the merger or consolidation is effected, shall make written
9 demand on the surviving or new corporation for payment of the
10 fair value of his shares as of the day prior to the date on which
11 the vote was taken approving the merger or consolidation, the
12 surviving or new corporation shall pay to such shareholder,
13 upon surrender of his certificate or certificates representing
14 said shares, such fair value thereof. Such demand shall state
15 the number and class of the shares owned by such dissenting
16 shareholder. Any shareholder failing to make demand within
17 the twenty day period shall be conclusively presumed to have
18 consented to the merger or consolidation and shall be bound
19 by the terms thereof.

20 If within thirty days after the date on which such merger
21 or consolidation was effected the value of such shares is agreed
22 upon between the dissenting shareholder and the surviving or new
23 corporation payment therefor shall be made within ninety days
24 after the date on which such merger or consolidation was effected,
25 upon the surrender of his certificate or certificates representing
26 said shares. Upon payment of the agreed value the dissenting
27 shareholder shall cease to have any interest in such shares or

28 in the corporation.

29 If within such period of thirty days the shareholder and
30 the surviving or new corporation do not so agree, then the
31 dissenting shareholder may, within sixty days after the
32 expiration of the thirty day period, file a petition in any
33 court of competent jurisdiction within the state and judicial
34 subdivision thereof in which the registered office or the
35 principal place of business of the surviving or new corporation
36 is situated, asking for a finding and determination of the fair
37 value of such shares, and shall be entitled to judgment against
38 the surviving or new corporation for the amount of such fair
39 value as of the day prior to the date on which such vote was
40 taken approving such merger or consolidation, together with
41 interest thereon at the rate of five percentum per annum to the
42 date of such judgment. The action shall be prosecuted as an
43 equitable action and the practice and procedure shall conform
44 to the practice and procedure in equity cases. The judgment
45 shall be payable only upon and simultaneously with the surrender
46 to the surviving or new corporation of the certificate or
47 certificates representing said shares. Upon payment of the
48 judgment, the dissenting shareholder shall cease to have any
49 interest in such shares, or in the surviving or new corporation.
50 Such shares may be held and disposed of by the surviving or
51 new corporation as it may see fit. Unless the dissenting
52 shareholder shall file such petition within the time herein
53 limited, such shareholder and all persons claiming under him

54 shall be conclusively presumed to have approved and ratified
55 the merger or consolidation and shall be bound by the terms
56 thereof.

57 The right of a dissenting shareholder to be paid the fair
58 value of his shares as herein provided shall cease if and when
59 the corporation shall abandon the merger or consolidation.

60 Shares acquired by the corporation pursuant to the payment
61 of the agreed value thereof or to the payment of judgment entered
62 therefor as in this section provided may be held and disposed
63 of by the corporation as it shall see fit.

1 Sec. 13. ISSUANCE OF STOCK

2 All stock issued in connection with such merger or consoli-
3 dation shall be issued pursuant to the provisions of chapter
4 four hundred ninety-two (492) of the Iowa code and nothing in
5 this amendment shall be construed as eliminating the requirements
6 of said chapter.

1 Sec. 14. This act being deemed of immediate importance
2 shall be in full force and effect from and after its passage and
3 publication in a newspaper published at
4 and the, a newspaper published
5 at

1 Sec. 15. If any paragraph, sentence or word, or other
2 part of this act is held to be unconstitutional, it shall not
3 effect the validity of the remainder thereof, it being the
4 intention of the legislature that the remaining portion thereof
5 should become the law.

EXPLANATION OF H. F. 153

The present Iowa laws provide no procedure for merging or consolidating corporations. Mergers and consolidations can now be accomplished only by the formation of a new corporation with the dissolution of old corporations and purchase of their assets, and the procedure is cumbersome and expensive.

Most other states having any extensive corporate business have statutes for merging or consolidating their corporations. The secretary of state of Iowa is of the opinion that Iowa should adopt such a law so as to give Iowa corporations the same opportunity to conduct their business as in other jurisdictions and thereby induces corporations to organize under Iowa law rather than the laws of other states.

The committee of the American Bar Association, after reviewing all the various procedures in several states, has drawn a model corporate law which they recommend as a uniform act. The portions of this model law relating to merging and consolidation of corporations are incorporated in this bill with such minor changes as are required to adapt it to the Iowa corporation laws.

No change is made in existing corporation laws.