

Reported Recommending
Ind. Postponed
Passed House
Failed to Pass House
Passed Senate
Failed to Pass Senate

House File 476

February 27, 1947.
Private Corporations.

By BURKMAN.

A BILL FOR

An Act to provide for the amendment of articles of incorporation of corporations heretofore or hereafter organized under the laws of this State, by increasing or decreasing their authorized capital stock, or reclassifying the same by changing the number, par value, designations, preferences or other special rights of the shares, or by changing shares with par value into shares without par value, or shares without par value into shares with par value, and in connection therewith, fixing the amount of capital represented by outstanding shares and reducing the capital of the corporation to the aggregate amount thereof.

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

1 Section 1. Any corporation heretofore or hereafter
2 organized under the laws of this state, may, from time to time,
3 when and as desired, amend its articles of incorporation by
4 increasing or decreasing its authorized capital stock, or
5 reclassifying the same by changing the number, par value,
6 designations, preferences, or relative, participating, optional
7 or other special rights of the shares heretofore or hereafter
8 issued, including specified dividend and liquidation priorities
9 accrued or otherwise, or the qualifications, limitations or
10 restrictions of such rights, or by changing shares with par
11 value into shares without par value, or shares without par

12 value into shares with par value, either with or without
13 increasing or decreasing the number of shares.

1 Sec. 2. In connection with any such plan, a corporation
2 may by such amendment fix the amount of capital of the
3 corporation to be represented by such shares and each class
4 thereof and may provide in such amendment for a reduction of
5 the capital of the corporation to the aggregate amount of
6 capital to be represented by all such shares of stock after
7 such plan has been accomplished. The certificate of amendment
8 to any articles of incorporation effecting any change in the
9 issued shares of a corporation shall state whether the capital
10 has been reduced by reason of the reclassification, and to what
11 amount. No such reduction, however, shall be made in the capital
12 of the corporation unless the assets of the corporation
13 remaining after such reduction are sufficient to pay any debts,
14 the payment of which shall not have been otherwise provided for,
15 and the certificate of amendment shall so state.

1 Sec. 3. Every such amendment shall be made and effected
2 in the following manner:

3 The board of directors of the corporation shall adopt a
4 resolution setting forth the amendment proposed, declaring its
5 advisability, and calling a meeting of the stockholders entitled
6 to vote in respect thereof, for the consideration of such amendment.
7 Said meeting shall be called and held upon such notice as the
8 articles of incorporation or bylaws shall provide, or, in the
9 absence of such provision, upon notice thereof to each

10 stockholder so entitled to vote, either delivered to such
11 stockholder or mailed to him at his address as shown by the
12 records of the corporation, at least ten days before the date
13 fixed for said meeting, said notice to set forth such amendment
14 in full or a brief summary of the changes to be effected thereby,
15 as the directors deem advisable. At said meeting a vote of
16 the stockholders so entitled to vote, by ballot, in person or
17 by proxy, shall be taken for and against the proposed amendment,
18 which vote shall be conducted by two judges appointed for the
19 purpose, either by the directors or by the said meeting. Said
20 judges shall decide upon the qualifications of voters, and
21 accept their votes, and when the vote is completed, count and
22 ascertain the number of shares voted respectively for and
23 against the proposed amendment, and shall declare whether the
24 persons or corporations holding the majority of the voting
25 stock of said corporation (or of each class of stock entitled
26 to vote thereon, when such vote is to be taken by classes)
27 have voted for or against the proposed amendment; and shall
28 make out a certificate accordingly, stating the number of
29 shares of stock issued and outstanding and entitled to vote
30 thereon, and the number of shares voted for and the number of
31 shares voted against the amendment respectively, and shall
32 subscribe and deliver said certificate to the secretary of the
33 corporation. If it shall appear by said certificate of the
34 judges that the persons or corporations holding the majority
35 of the stock of said corporation entitled to vote (or of each

36 class of stock when the vote is taken by classes) have voted
37 in favor of the amendment, a certificate setting forth the
38 amendment and certifying that the amendment has been duly
39 adopted in accordance with the provisions of this section shall
40 be signed and acknowledged by such officers of the corporation
41 as may be designated by the stockholders to perform such act,
42 which certificate shall be recorded and published in the same
43 manner as the original articles are required to be published.

44 Upon the filing of such a certificate of amendment with
45 the Secretary of State, the then issued and outstanding shares
46 of the capital stock of the corporation shall ipso facto be
47 converted into new shares of stock as provided for in the
48 amendment and the corporation shall thereupon, upon surrender
49 of the certificates for the previously issued and outstanding
50 shares by the holders thereof, issue in substitution therefor
51 new certificates for the shares to which the holder is
52 entitled under the amendment.

53 Provided, however, that if any proposed amendment would
54 alter or change the preferences, special rights or powers
55 given to any one class of stock by the existing articles of
56 incorporation, so as to affect such class or classes of stock
57 adversely, or would increase or decrease the amount of the
58 authorized stock of such class or classes of stock, or would
59 increase or decrease the par value thereof, then the holders
60 of the stock of each class of stock so affected by the
61 amendments shall be entitled to vote as a class upon such

62 amendment, whether by the terms of the articles of incorporation
63 such class be entitled to vote or not; and the affirmative vote
64 of a majority in interest of each such class of stock so
65 affected by the amendment shall be necessary to the adoption
66 thereof, in addition to the affirmative vote of a majority of
67 all other stock entitled to vote thereon; and provided, further,
68 that the amount of authorized stock of any such class or classes
69 of stock may be increased or decreased by the affirmative vote
70 of the holders of a majority of the stock of the corporation
71 entitled to vote, if so provided in the original articles of
72 incorporation, or in any amendment thereto, which created such
73 class or classes of stock, or in any amendment thereto which
74 was authorized by a resolution adopted by the affirmative vote
75 of the holders of a majority of such class or classes of
76 stock under this Act.

EXPLANATION OF H. F. 476

This bill is designed to enable Iowa corporations to amend their articles of incorporation to recognize their capital stock structure and change and reclassify outstanding stock and in connection therewith to reduce their capital, all upon the vote of the holders of a majority of each class of stock outstanding which may be affected by the change.

There is now no provision in the Iowa Corporation Law authorizing Iowa corporations to change or reclassify their stock or to reduce their capital. When the original capital of the corporation has been impaired by operating losses, Iowa corporations, even though solvent, are helpless to scale down the face value of their outstanding stock and to adjust their capital structure so that new earnings can be employed for payment of dividends to stockholders. Furthermore, a corporation cannot simplify its capital stock structure by changing the classes of outstanding stock unless it is in a position to call in all such stock and retire the same under its articles.

These things can now only be accomplished by Iowa corporations by proceeding to reorganize under the Federal Bankruptcy Law or by the organization of a new corporation with the desired stock structure to take over the business and assets of the old. Neither of these is a satisfactory method of accomplishing this purpose. Such methods accomplish only what can and should be accomplished by simple and direct action by the stockholders affected, under proper statutory authorization, through amendment of the corporation's articles.

Rights of creditors of the corporation are not affected in any way by the bill. Existing creditors must be provided for in any reduction of capital and there is provision for the usual publication of notice of any such amendment to the articles.

Legislation of this character is found in numerous states, particularly those in which foreign corporations are domiciled. It is almost an indispensable requisite for the incorporation of a prosperous business on a sound basis that the law under which

it is incorporated contain some such provision in order that the corporation may if occasion arises adjust its capital stock structure to meet future conditions and reverses. This proposed bill is closely modeled on the legislation of other states and its enactment will serve to modernize the Iowa Corporation Law in respect to this matter and to place Iowa corporations upon a footing equal with those of other states doing business in Iowa insofar as this matter is concerned.