

February 21, 1963.

Passed on File.

Manufacturing 2/21, Pass 3/21, Deferred 3/29
Passed Senate, Date.....

Vote: Ayes..... Nays.....

Approved.....

Senate File 231 *Substituted*
By SHAFF. *By H.F. 354*
4/1
Passed House, Date.....
Vote: Ayes..... Nays.....
Withdrawn
4/1

A BILL FOR

An Act to amend chapter four hundred ninety-six A (496A), Code 1962, relating to corporations for profit.

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

- 1 Section 1. Section four hundred ninety-six A point twenty-six
- 2 (496A.26), Code 1962, is amended by adding thereto the following:
- 3 "The board of directors of any corporation may adopt emergency
- 4 bylaws, subject to repeal or change by action of the shareholders,
- 5 which shall, notwithstanding any different provision elsewhere in
- 6 this Act or in the articles of incorporation or bylaws, be
- 7 operative during any emergency in the conduct of the business of
- 8 the corporation resulting from an attack on the United States or
- 9 any nuclear or atomic disaster. The emergency bylaws may make any
- 10 provision that may be practical and necessary for the
- 11 circumstances of the emergency, including provisions that:
- 12 1. A meeting of the board of directors may be called by any
- 13 officer or director in such manner and under such conditions as
- 14 shall be prescribed in the emergency bylaws;
- 15 2. The director or directors in attendance at the meeting, or
- 16 any greater number fixed by the emergency bylaws, shall
- 17 constitute a quorum; and
- 18 3. The officers or other persons designated on a list
- 19 approved by the board of directors before the emergency, all in
- 20 such order of priority and subject to such conditions and for

21 such period of time (not longer than reasonably necessary after
22 the termination of the emergency) as may be provided in the
23 emergency bylaws or in the resolution approving the list, shall,
24 to the extent required to provide a quorum at any meeting of the
25 board of directors, be deemed directors for such meeting.

26 "The board of directors, either before or during any such
27 emergency, may provide, and from time to time modify, lines of
28 succession in the event that during such an emergency any or all
29 officers or agents of the corporation shall for any reason be
30 rendered incapable of discharging their duties.

31 "The board of directors, either before or during any such
32 emergency, may, effective in the emergency, change the head-
33 office or designate several alternative head offices or regional
34 offices, or authorize the officers so to do.

35 "To the extent not inconsistent with any emergency bylaws so
36 adopted, the bylaws of the corporation shall remain in effect
37 during any such emergency and upon its termination the emergency
38 bylaws shall cease to be operative.

39 "Unless otherwise provided in emergency bylaws, notice of any
40 meeting of the board of directors during any such emergency may
41 be given only to such of the directors as it may be feasible to
42 reach at the time and by such means as may be feasible at the
43 time, including publication or radio.

44 "To the extent required to constitute a quorum at any meeting
45 of the board of directors during any such emergency, the officers
46 of the corporation who are present shall, unless otherwise
47 provided in emergency bylaws, be deemed, in order of rank and
48 within the same rank in order of seniority, directors for such
49 meeting.

50 "No officer, director or employee acting in accordance with
51 any emergency bylaws shall be liable except for willful
52 misconduct. No officer, director or employee shall be liable
53 for any action taken by him in good faith in such an emergency
54 in furtherance of the ordinary business affairs of the
55 corporation even though not authorized by the bylaws then in
56 effect."

1 Sec. 2. Section four hundred ninety-six A point thirty-nine
2 (496A.39), Code 1962, is repealed and the following enacted in
3 lieu thereof:

4 "If the articles of incorporation or the bylaws so provide,
5 the board of directors, by resolution adopted by a majority of
6 the full board of directors, may designate from among its members
7 an executive committee and one or more other committees each of
8 which, to the extent provided in such resolution or in the
9 articles of incorporation or the bylaws of the corporation, shall
10 have and may exercise all the authority of the board of
11 directors, but no such committee shall have the authority of the
12 board of directors in reference to amending the articles of
13 incorporation, adopting a plan of merger or consolidation,
14 recommending to the shareholders the sale, lease, exchange or
15 other disposition of all or substantially all the property and
16 assets of the corporation otherwise than in the usual and regular
17 course of its business, recommending to the shareholders a
18 voluntary dissolution of the corporation or a revocation thereof,
19 or amending the bylaws of the corporation. The designation of
20 any such committee and the delegation thereto of authority shall
21 not operate to relieve the board of directors, or any member
22 thereof, of any responsibility imposed by law."

1 Sec. 3. Section four hundred ninety-six A point fifty-three
2 (496A.53), Code 1962, is amended by striking from line twenty
3 (20) thereof the words "duplicate executed".

1 Sec. 4. Section four hundred ninety-six A point seventy-one
2 (496A.71), Code 1962, is amended by striking from line twenty-five
3 (25) thereof the words "county recorder" and inserting in lieu
4 thereof the following:

5 "recorder of each county in which the registered office of
6 each domestic merging or consolidating corporation was located
7 prior to the merger or consolidation and, if the new corporation
8 into which the corporations have consolidated is a domestic
9 corporation, in the office of the recorder of the county in which
10 the registered office of the new corporation is located".

1 Sec. 5. Section four hundred ninety-six A point one hundred
2 twenty (496A.120), Code 1962, is amended by repealing the last
3 sentence thereof.

1 Sec. 6. Section four hundred ninety-six A point one hundred
2 twenty-two (496A.122), Code 1962, is amended by striking the
3 first (1st) sentence thereof and by enacting in lieu thereof the
4 following:

5 "Such annual report of a domestic or foreign corporation shall
6 be delivered to the secretary of state for filing in his office
7 between the first day of January and the first day of March of
8 each year, except as otherwise provided in this section. The
9 first annual report of a domestic corporation shall be filed
10 between the first day of January and the first day of March of
11 the year next succeeding the calendar year in which its corporate
12 existence began, except that if such existence began in December
13 of any year, its first annual report shall be filed between the

14 first day of January and the first day of March of the second
15 year succeeding the calendar year in which its corporate
16 existence began. The first annual report of a foreign
17 corporation shall be filed between the first day of January and
18 the first day of March of the year next succeeding the calendar
19 year in which its certificate of authority was issued by the
20 secretary of state except that if such certificate was issued
21 in December of any year, its first annual report shall be filed
22 between the first day of January and the first day of March of
23 the second year succeeding the calendar year in which such
24 certificate was issued by the secretary of state."

1 Sec. 7. Section four hundred ninety-six A point one hundred
2 twenty-seven (496A.127), Code 1962, is amended by striking from
3 line two (2) thereof the word "doing", and by enacting in lieu
4 thereof "having a permit to transact".

1 Sec. 8. Section four hundred ninety-six A point one hundred
2 thirty (496A.130), Code 1962, is amended by placing a period
3 after the word "delinquent" in line five (5) of the second (2d)
4 paragraph thereof, and by striking the remainder of said
5 paragraph.

6 Further amend said section by adding thereto the following:

7 "The secretary of state may cancel the certificate of
8 incorporation of any corporation that fails or refuses to file
9 its annual report for any year prior to the first day of October
10 of the year in which it is due by issuing a certificate of such
11 cancellation at any time after the expiration of thirty days
12 following the mailing to the corporation of notice of the
13 certification to the attorney general of the failure of the
14 corporation to file such annual report as required by section

15 four hundred ninety-six A point ninety-two (496A.92) of the Code,
16 provided the corporation has not filed such annual report prior
17 to the issuance of the certificate of cancellation. Upon the
18 issuance of the certificate of cancellation, the secretary of
19 state shall send the certificate to the corporation at its
20 registered office and shall retain a copy thereof in the
21 permanent records of his office.

22 "Upon the issuance of the certificate of cancellation, the
23 corporate existence of the corporation shall terminate, subject
24 to right of reinstatement as herein provided, and the corporation
25 shall cease to carry on its business, except insofar as may be
26 necessary for the winding up thereof or for securing
27 reinstatement and the right of the corporation to the use of its
28 name shall cease and such name shall thereupon be available to
29 any other corporation or foreign corporation or for reservation,
30 registration or use as a trade name as provided in this chapter.
31 The cancellation of the certificate of incorporation of a
32 corporation shall not take away or impair any remedy available
33 to or against such corporation, its directors, officers or
34 shareholders for any right to claim existing or any liability
35 incurred prior to such cancellation, but no action or proceeding
36 thereon may be prosecuted by such corporation until it shall
37 have been reinstated. Any such action or proceeding against
38 such corporation may be defended by the corporation, if it has
39 not been reinstated, in its corporate name to which there shall
40 be appended the word "Cancelled" followed by the date of the
41 issuance of the certificate of cancellation, unless the
42 corporation is reinstated, the corporation, upon the issuance of
43 the certificate of cancellation, shall proceed to liquidate its

44 business and affairs as provided by this chapter in cases of
45 dissolution by consent of shareholders or by act of the
46 corporation, provided, however, that the district court in a suit
47 in equity shall have full power to liquidate the assets and
48 business of such a corporation upon application by such
49 corporation or in a suit by a shareholder or creditor of such
50 corporation when such corporation fails to proceed promptly with
51 such liquidation or to make application to the court therefor.
52 A copy of the certificate of cancellation, certified by the
53 secretary of state, shall be taken and received in all courts
54 as prima-facie evidence of the cancellation of the certificate
55 of incorporation as stated therein.

56 "If the certificate of incorporation of a corporation has been
57 cancelled by the secretary of state as provided in this section
58 for failure to file an annual report, such corporation shall be
59 reinstated by the secretary of state at any time within five
60 years following the date of the issuance by the secretary of
61 state of the certificate of cancellation upon:

62 1. The delivery by the corporation to the secretary of state
63 for filing in his office of an application for reinstatement,
64 executed by its president or vice-president and by its secretary
65 or an assistant secretary and verified by one of the officers
66 signing such application, which shall set forth:

67 a. The date of the issuance by the secretary of state of the
68 certificate of cancellation;

69 b. The name of the corporation at the time of the issuance
70 of the certificate of cancellation and, if, at the time of the
71 filing of the application for reinstatement, another corporation
72 or foreign corporation is entitled to use such name or such name

73 is then reserved or registered as provided in this chapter, the
74 name of the corporation as changed, which shall be a name then
75 available under the laws of this state; and

76 c. The address, including street and number, if any, of the
77 registered office of the corporation upon the reinstatement
78 thereof, which shall be located in the same county as the county
79 in which the registered office of the corporation was located at
80 the time of the issuance of the certificate of cancellation, and
81 the name of its registered agent or agents at such address upon
82 the reinstatement of the corporation;

83 2. The filing with the secretary of state by the corporation
84 of all annual reports then due and theretofore becoming due;

85 3. The payment to the secretary of state by the corporation
86 of all annual license fees and penalties then due and theretofore
87 becoming due and an additional penalty of one hundred dollars
88 (\$100).

89 "The secretary of state, upon filing the application for
90 reinstatement, shall issue a certificate of reinstatement and
91 file and record the same in his office and, if the application
92 for reinstatement shall set forth a change in the name of the
93 corporation, as required by this section, the same shall
94 constitute an amendment to the articles of incorporation of
95 the corporation and the certificate of reinstatement shall set
96 forth such fact and shall be filed and recorded in the office of
97 the county recorder. Upon the issuance of the certificate of
98 reinstatement, the corporation shall be entitled to continue
99 to act as a corporation for the unexpired portion of its
100 corporate period as fixed by its articles of incorporation,
101 provided, however, that the corporation shall not be entitled

102 to use the name of the corporation at the time of the issuance
103 of the certificate of cancellation if another corporation or
104 foreign corporation is entitled to use such name or such name
105 is then reserved or registered as provided in this chapter."

1 Sec. 9. Section four hundred ninety-six A point one hundred
2 forty-two (496A.142), Code 1962, subsection eleven (11) is
3 repealed and the following enacted in lieu thereof:

4 "If any corporation, organized under the provisions of chapter
5 four hundred ninety-one (491) of the Code and existing for a
6 period of years, shall elect to adopt the provisions of this
7 chapter and shall at the same time or thereafter amend its
8 articles of incorporation to extend its period of duration,
9 then upon the amendment becoming effective, the shares voted
10 against the amendment shall be purchased in accordance with the
11 following provisions:

12 a. The purchase shall be made by the corporation, if the
13 resolution setting forth the amendment provides for the purchase
14 by the corporation; of the resolution does not so provide, the
15 purchase shall be made by the holders of the shares voted for the
16 amendment.

17 b. The purchase price shall be the real value of the shares,
18 as of the day on which the vote was taken approving the
19 amendment.

20 c. The purchase price, together with interest thereon at five
21 (5) percent per annum for the effective date of the amendment,
22 shall be paid within three years from such date.

23 d. This subsection shall not apply to any subsequent
24 amendment to the articles of incorporation further extending the
25 period of duration of said corporation."