highways and shall be exempt from the provisions of this Act. Motor vehicles, which are used only for the purpose of carrying sawing machines, well drilling machines, feed grinders and corn shellers temporarily attached to them, shall be subject to the registration tax as herein provided, but the machine so attached shall not be subject to this tax but shall be listed for taxation as personal property as provided by law. Motor vehicles, which are used only for the purpose of carrying sawing machines, well drilling machines or corn shellers permanently attached to them shall not be subject to the registration tax as herein provided, but shall be listed for taxation as personal property as provided by law. *Motor vehicles which during any calendar year have not been operated on a public highway shall be exempt from the provisions of this Act requiring registration payment of tax and penalties for non-payment thereof, provided that the owner of any such vehicle shall first file his verified written application with the Registrar of Motor Vehicles, correctly describing such vehicle. Nothing herein shall be construed as repealing or modifying Chapter 361, Laws of 1929, or Chapters 217 and 220, Laws of 1931."*

Approved April 17, 1933.

CHAPTER 299—H. F. No. 1722

An act to appropriate the sum of $15,000 to the Century of Progress Exposition Commission.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Appropriation for Century of Progress exhibition.**—There is hereby appropriated out of monies in the State Treasury not otherwise appropriated, the sum of Fifteen Thousand Dollars ($15,000) to the Century of Progress Exposition Commission created by Laws 1931, Chapter 415, for the use of said commission in connection with the Century of Progress exhibition to be held in Chicago in the year of 1933.

Approved April 17, 1933.

CHAPTER 300—H. F. No. 883

An act to provide for the formation and conduct of business corporations; for their merger, consolidation and dissolution; for the

powers, rights, duties and liabilities of such corporations, their officers, directors, agents, shareholders and persons dealing with them; providing certain penalties; for the coming under this Act of certain existing corporations; amending Mason's Minnesota Statutes of 1927, Sections 7443, 7447-1, 7455 and 7463; and repealing Mason's Minnesota Statutes of 1927, Sections 7435, 7440, 7775, and 7777.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Definitions.**—As used in this Act:

I. "Corporation" means a corporation formed under this Act, or one which has accepted and come under this Act.

II. "Domestic corporation" means a corporation formed under the laws of this State, and the term "foreign corporation" includes every other corporation.

III. "Articles of incorporation" and "articles," when not otherwise indicated by the context, include the original articles of incorporation or amended articles of incorporation, all articles of amendment, all certificates made pursuant to subdivision V of Section 13 and subdivision II of Section 32 of this Act and agreements of consolidation or merger.

IV. An "incorporator" is one of the signers of the original or amended articles of incorporation.

V. A "subscriber" is one who subscribes for shares in a corporation whether before or after incorporation.

VI. "Shares" are the units into which shareholders' rights are divided.

VII. A "shareholder" is one who owns one or more fully paid shares or one who is the assignee for value of a certificate purporting to represent fully paid shares without knowledge or notice that the shares so represented had not been fully paid for.

VIII. A "certificate of shares" is a written instrument signed by the proper corporate officers, as required by this Act, and evidencing the fact that the person therein named is the registered owner of the share or shares therein described.

IX. "Allotment" means the apportioning of a certain number of shares to a purchaser, or to a subscriber in response to the application contained in his subscription, or to a shareholder pursuant to the declaration of a share dividend.

X. The "stated capital" of a corporation at any time is:
(a) the sum of

(1) The aggregate par value of all shares having par value theretofore alloted, whether then outstanding or not,

(2) The aggregate amount of consideration received for all its shares without par value theretofore allotted, whether then outstanding or not, except such portion thereof as shall have been designated as paid-in surplus pursuant to Section 20 of this Act,

(3) Such amounts as may have been transferred from surplus to stated capital upon declaration of a share dividend,

(4) Such amounts as may have been transferred from surplus to stated capital by action of the directors of shareholders;

(b) less such amounts, if any, as may have become paid-in surplus by reason of a reduction or reductions of stated capital pursuant to Section 38 of this Act.

XI. The term "registered office" means that office maintained by the corporation in this State, the address of which is kept on file in the office of the Secretary of State in the manner required by the provisions of this Act.

XII. "Acknowledged" means acknowledged before any officer authorized by the laws of this State to take acknowledgments of deeds within or without the State.

Sec. 2. **Purpose of incorporation and qualification of incorporators.**—Three or more natural persons of full age may form a corporation under this Act for any lawful business purposes; provided, that banks, savings banks, trust companies, building, loan and savings associations and insurance companies shall not be formed under the provisions of this Act; and provided, further, that where other statutes prescribe a special procedure for the incorporation of designated classes of corporations, such corporations shall be formed under such statutes and not under this Act.

Sec. 3. **Articles of incorporation.**

I. Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them and, in addition to stating the name of the corporation, shall state in the English language:

(a) Its purposes;

(b) Its duration, which may be limited or perpetual;

(c) The location and post-office address of its registered office in this State;

(d) The total authorized number of par value shares and the par value of each share; and, if any of its shares are without par value, the authorized number of such shares;

(e) A description of the classes of shares, if the shares are to to be classified and a statement of the number of shares in each class, and the relative rights, voting power, preferences and restrictions granted to or imposed upon the shares of each class; provided, the articles of incorporation may authorize the board of directors, within the limitations and restrictions stated therein, if any, to fix or alter from time to time the dividend rate, or the redemption or liquidation price of shares of any class, or of any series of any class, or the number of shares constituting any series of any class, in respect of shares then unallotted;

(f) The amount of stated capital with which the corporation will begin business, which shall be not less than one thousand dollars;

(g) The names, post-office address and terms of office of the first directors;

(h) The name and post-office address of each of the incorporators;

(i) Such provisions as may be desired, if any, limiting or denying to the shareholders, or to any class or classes thereof, the preemptive right to subscribe for any or all shares of any or all classes or series.

II. Articles of incorporation may contain any other provisions, consistent with the laws of this State, for regulating the corporation's business or the conduct of its affairs.

Sec. 4. **Corporate name.**

I. The corporate name shall end with the word "Corporation," or the word "Incorporated" or the abbreviation "Inc.", or shall contain the word "Company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&." The provisions of this subdivision shall not affect the right of any corporation existing at the time this Act takes effect to continue the use of its name.

II. The corporate name shall not be the same as, nor deceptively similar to, the name of any other domestic corporation or of

any foreign corporation authorized to do business in this State unless—

(a) Such other domestic or foreign corporation is about to change its name, or to cease to do business, or is being wound up, or such foreign corporation is about to withdraw from doing business in this State, and

(b) The written consent of such other domestic or foreign corporation to the adoption of its name or a deceptively similar name has been given and is filed with the articles of incorporation.

III. The corporate name shall not be the same as, nor deceptively similar to the trade name of any person or unincorporated association doing business under such trade name in this State or elsewhere, if such person or unincorporated association has within the last preceding twelve months signified an intention to procure incorporation in this State under such name by filing notice of such intention with the Secretary of State, unless the written consent to the adoption of such name or deceptively similar name has been given by such person or unincorporated association, and is filed with the articles of incorporation.

IV. The corporate name shall not be the same as, nor deceptively similar to, the name of any foreign corporation doing business elsewhere than in this State if such foreign corporation has within the last preceding twelve months signified an intention to procure incorporation in this State under such name, or to do business as a foreign corporation in this State under such name, by filing notice of such intention with the Secretary of State, unless the written consent to the adoption of such name or a deceptively similar name has been given by such foreign corporation and is filed with the articles of incorporation.

V. Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practices, nor derogate from the common law, the principles of equity, or the statutes of this State or of the United States with respect to the right to acquire and protect trade names.

VI. A corporation formed under this Act may have a corporate name in any language, but the same must be in English letters or characters.

VII. No corporation formed under this Act shall include in its corporate name any of the following words or phrases: bank, trust, insurance, building and loan, savings or co-operative.

VIII. The use of a name in violation of this section shall not affect or vitiate the corporate existence, but the courts of this State having equity jurisdiction may, upon the application of the State, or of any person, unincorporated association, or corporation interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section, although its articles of incorporation may have been approved and a certificate of incorporation issued.

Sec. 5. **Filing articles of incorporation with Secretary of State; issuing certificate of incorporation.**

I. The articles of incorporation shall be filed for record with the Secretary of State. If the articles conform to law, he shall, when all fees and charges have been paid as required by law, record the same and issue and record a certificate of incorporation, which shall state the name of the corporation and the fact and date of incorporation.

II. Upon the issuance of the certificate of incorporation, the corporate existence shall begin.

III. Within fourteen days after the issuance of the certificate of incorporation, the corporation shall cause to be published once in a qualified newspaper in the county wherein it has its registered office, a notice stating the name of the corporation, the date of its incorporation, the general nature of the business being, or about to be conducted by it, the address of its registered office, and the names and addresses of the incorporators and of the first board of directors. Proof of the publication of such notice shall be filed with the Secretary of State within ten days after it publication. If a corporation shall fail to comply with the provisions of this subdivision it shall forfeit to the State $50.00.

Sec. 6. **Filing certain papers with Register of Deeds.**—The Secretary of State, after recording in his office any instrument in this Act provided to be "filed for record" in his office, shall file the same, or a copy thereof certified by him, for record in the office of the register of deeds of the county in which the registered office of the corporation is situated, for which service there shall be paid to the Secretary of State a fee of one dollar for each instrument in addition to all his other fees provided by law. There shall also be paid to the Secretary of State, for transmission by him to such register of deeds, a sum sufficient under existing laws to pay the proper fees of the register of deeds for recording such instruments.

Sec. 7. **Validity and effect of certificate of incorporation.**—The certificate of incorporation issued by the Secretary of State

in accordance with the provisions of Section 5 of this Act shall be conclusive evidence of the fact of incorporation. Nothing in this section shall limit the existing rules of law as to corporations de facto, nor as to corporations by estoppel.

Sec. 8. **Powers common to corporations.**—Every corporation shall have power:

(a) To continue as a corporation for the time limited in its articles of incorporation, or, if no such time limit is specified, then perpetually.

(b) To sue and be sued.

(c) To adopt, use, and, at will, alter a corporate seal, but failure to affix the corporate seal, if any, shall not affect the validity of any instrument.

(d) To acquire, hold, lease, encumber, convey or otherwise dispose of real and personal property within or without the state, and to take real and personal property by will or gift, subject to any limitation prescribed by law or the articles of incorporation.

(e) To conduct business in this State and elsewhere.

(f) To enter into obligations or contracts and to do any acts incidental to the transaction of its business or expedient for the attainment of the purposes stated in its articles.

Sec. 9. **Holding shares and securities of other corporations.**—When so provided in its articles of incorporation a corporation may acquire, hold, mortgage, pledge or dispose of the shares, bonds, securities and other evidences of indebtedness of any domestic or foreign corporation; and, without such authority in its articles, may guarantee, acquire, hold, mortgage, pledge or dispose of the shares, bonds, securities and other evidences of indebtedness of any domestic or foreign corporation when reasonably necessary or incidental to accomplish the purposes stated in its articles.

Sec. 10. **Constructive notice of recorded articles and certificates not to be implied.**—The filing for record of articles and certificates pursuant to this Act is for the purpose of affording means of acquiring knowledge of the contents thereof, but shall not constitute constructive notice of such contents.

Sec. 11. **Ultra vires acts.**

1. Every corporation shall confine its acts to those authorized by the statement of purposes in the articles of incorporation and

within the limitations and restrictions contained therein, but shall have the capacity possessed by natural persons to perform all acts within or without this State.

II. No claim of lack of authority based on the articles shall be asserted or be of effect except by or on behalf of the corporation (a) against a person having actual knowledge of such lack of authority, or (b) against a director or officer.

III. The provisions of this section shall not affect:

(a) The right of shareholders or the State to enjoin the doing or continuing of unauthorized acts by the corporation; but in such case the court shall protect or make compensation for rights which may have been acquired by third parties by reason of the doing of any unauthorized act by the corporation.

(b) The right of a corporation to recover against its directors or officers for violation of their authority.

Sec. 12. **Conditions precedent to beginning business; liability.**

I. A corporation shall not begin business nor incur any debts except such as are incidental to its organization or to the obtaining of subscriptions to or the payment for its shares, until consideration for its shares, equal to the amount of stated capital with which it will begin business, as set forth in the articles of incorporation, has been fully paid in.

II. If a corporation has incurred any debts or transacted any business in violation of this section, the officers who participated therein, and the directors who authorized or ratified the same, shall be jointly and severally liable for the debts or liabilities of the corporation arising therefrom to an amount not exceeding the unpaid portion of such stated capital, to be paid to the corporation for the benefit of such creditors.

Sec. 13. **Shares; filing certain resolutions; options and conversion rights.**

I. The shares of a corporation may be divided into classes, and the classes may be divided into series, with such rights, voting power, preferences and restrictions as may be provided in the articles of incorporation, or by resolution of the board of directors if authorized by the articles under subdivision I (e) of Section 3 of this Act.

II. Any or all of the shares may have a par value or be without par value as provided in the articles of incorporation.

III. Except as otherwise provided by the articles of incorporation, or by the board of directors pursuant to the provisions of subdivision I hereof, each share shall be in all respects equal to every other share.

IV. All shares of a class which is not divided into series shall be equal in all respects, and all shares of a series shall be equal in all respects.

V. Before the corporation shall allot any shares of any class, or of any series of any class, of which the dividend rate, the redemption price, the liquidation price or the number of shares constituting any series is not set forth in its articles of incorporation but is fixed in a resolution adopted by the board of directors pursuant to authority given by the articles, a certificate setting forth a copy of such resolution, made by the president or a vice-president of the corporation and by its secretary or an assistant secretary and acknowledged by such officers, shall be filed for record in the office of the Secretary of State.

VI. Within the limitations and restrictions, if any, stated in its articles, a corporation may grant, (a) rights to convert any of its securities into shares of any class or classes, or (b) options to purchase or subscribe for shares of any class or classes, but such grants shall be made only in connection with the allotment of shares or issuance of other securities; provided, however, that nothing herein contained shall limit the right of a corporation to grant to its shareholders or any class or classes thereof, options to subscribe for unalloted shares of the corporation ratably in proportion to the number of shares held. The corporation may issue share purchase or subscription warrants or other evidences of such option rights, setting forth the terms, provisions and conditions thereof, and such options may be transferable or nontransferable and separable or inseparable from other shares or securities of the corporation.

VII. The terms and provisions of such rights or options shall be set forth in the articles or determined by the shareholders; provided, that the articles or the shareholders may authorize the board of directors by resolution to grant such rights or options.

VIII. The contract, certificate, warrant or other instrument evidencing such conversion rights or options shall set forth in full, summarize or incorporate by reference all the terms and provisions thereof. The corporation shall at all times reserve sufficient shares to meet the exercise of all conversion rights or options at the time outstanding.

Sec. 14. **Shares—allotment and consideration; liability for improper valuation.**

I. No shares shall be allotted except in consideration of cash, or other property, tangible or intangible, received or to be received by the corporation, or services rendered or to be rendered to the corporation, or of an amount transferred from surplus to stated capital upon a share dividend.

II. At the time of each allotment of shares, the shareholders or directors making such allotment shall state by resolution their determination of the fair value to the corporation in monetary terms of any consideration other than cash for which shares with or without par value are allotted.

III. The amount of consideration to be received, in cash or otherwise, shall not be less than the par value of shares having a par value so allotted nor less than the stated capital to be represented by shares without par value so allotted. The provisions of this subdivision shall not apply to shares of its own stock acquired by the corporation.

IV. If shares are allotted in violation of the provisions of subdivision III of this section, the person to whom such shares are allotted and his assignees with notice, and shareholders and directors voting in favor of such allotment, shall be liable to the corporation for the benefit of all persons thereafter becoming creditors who did not assent thereto and are damaged thereby, to the extent of their damages, not exceeding, however, the difference between the par value of shares having a par value so allotted, or the stated capital to be represented by shares without par value so allotted, and the fair value to the corporation of the consideration therefor; provided, however, that the person to whom such shares were allotted, or his assignees, shall not be liable under the provisions of this subdivision if he received such shares in good faith and without actual knowledge of the violation of subdivision III of this section; and provided further that directors and shareholders shall be liable only if they wilfully or without reasonable investigation voted in favor of such allotment.

V. No action shall be maintained under the provisions of this section unless commenced within three years from the date on which such allotment was made. In any such action, creditors shall not be presumed to have extended credit to the corporation relying upon the compliance by the corporation with the provisions of this section relating to allotment of shares and the consideration to be received therefor.

Sec. 15. **Shares—allotment and consideration—cont'd.**

I. Shares with or without par value shall not be allotted for a cash consideration which is unfair to the then shareholders nor for a consideration other than cash upon a valuation thereof which is unfair to such shareholders.

II. Directors or shareholders who, wilfully or without reasonable investigation, either make an allotment of shares for a cash consideration which is unfair to the then shareholders or so overvalue property or services received or to be received by the corporation as consideration for shares allotted, shall be jointly and severally liable to the corporation for the benefit of the then shareholders who did not assent to and are damaged by such action, to the extent of their damages. Directors or shareholders who are present and entitled to vote but fail to vote against such allotment or valuation shall be considered, for the purposes of this section, as participating in such allotment or valuation.

III. No action shall be maintained against a director or shareholder under the provisions of this section unless commenced within three years from the date on which such allotment was made.

Sec. 16. **Subscription for shares, acceptance thereof; calls; enforcement.**

I. All subscriptions for shares of a corporation shall be in writing.

II. Unless otherwise provided in the writing, subscriptions for shares of a corporation to be formed shall be:

(a) Irrevocable until sixty days after the issuance of the certificate of incorporation, but void unless accepted within said period; and

(b) Irrevocable for a period of one year after first subscription for shares of such corporation if no certificate of incorporation shall be issued within such period of one year, but void upon the expiration of such year.

III. Notwithstanding the foregoing provisions, a subscription for shares may be avoided at any time by either party upon such grounds as exist at law or in equity for the avoidance of any contract.

IV. Acceptance of a subscription, or the making of a contract by the corporation to sell shares, shall constitute an allotment of the shares subscribed for or agreed to be purchased.

V. Acceptance or rejection of subscriptions for shares made before incorporation shall be by the board of directors. Acceptance

or rejection of subscriptions for shares made after incorporation shall be by the shareholders at any annual meeting or at any special meeting duly called and held for that purpose, or by the board of directors acting under authority conferred by the shareholders or the articles of incorporation.

VI. When no provision as to the time of payment is made in the subscription therefor, shares shall be paid for on the call of the board of directors. Notice of each call shall be mailed to each subscriber at his address as shown by the records of the secretary of the corporation. Such notice shall state the due date of the payment required by such call, which due date shall not be less than twenty days from the date of mailing such notice unless the subscription expressly provides for a shorter period of notice.

VII. If a subscriber be indebted to the corporation on account of a subscription for shares, it shall have a lien upon such shares for such indebtedness; but no corporation shall have any such lien upon any shares evidenced by any certificate of shares by it issued and delivered.

VIII. A subscriber shall be treated for all purposes as if he were a holder of a number of shares equal to that proportion of the total number of shares subscribed for by him which the portion of the subscription price paid bears to the total subscription price, unless the subscription agreement expressly restricts or negatives such rights. Unless otherwise provided in the subscription agreement, no certificate of shares shall be issued for any of the shares so ratably paid for while any part of such subscription remains unpaid.

IX. If any payment for shares subscribed and allotted is not made on the due date, the corporation may:

(a) Invoke its remedies at law or in equity; or

(b) Foreclose its lien by advertised sale.

X. In case of foreclosure of the lien by advertised sale:

(a) The sale shall be at public auction, at the registered office of the corporation, between nine o'clock in the morning and five o'clock in the afternoon.

(b) Two weeks published notice of such sale shall be given.

(c) At least two weeks before the appointed time of sale a copy of the notice of sale may be served upon the subscriber in like manner as a summons may be personally served in a civil action in the district court, and if not so served such notice shall be mailed, by registered mail, to

such subscriber at least ten days before the appointed time of sale at his address appearing upon the books of the secretary of the corporation, and if no address shall there appear, then to such address as shall be known to the secretary. In case neither the place of residence nor the post-office address of such subscriber is known to or appears upon the records of the secretary, the published notice herein provided shall be sufficient to authorize such sale.

(d) Such notice shall state the time and place of sale, the amount which will be due on the date of sale exclusive of the expense of sale, and the number and description of the shares to be sold.

(e) Under the power of sale hereby given only enough shares shall be sold to pay the expenses of sale and to satisfy the amount due.

(f) The proceeds of such sale shall be applied first to the payment of the expense of sale, then to the satisfaction of the amount due on such subscription, and the remainder, if any, shall be deposited with the corporation and be paid upon demand of such subscriber or other person entitled thereto.

(g) The corporation or its assigns may fairly and in good faith purchase any shares sold under the provisions of this subdivision, provided the sale is conducted by the sheriff, his deputy, or a constable. Shares so acquired by the corporation shall have the status of unallotted and unsubscribed shares.

(h) Notwithstanding any such sale, the lien shall continue unimpaired upon all shares not sold, to secure payment of any indebtedness thereafter becoming due on such subscription.

XI. Enforcement contracts to purchase shares from the corporation shall for all purposes have the same status as accepted subscriptions.

Sec. 17. **Payment for shares; issue of certificate.**

I. Each shareholder shall be entitled to a certificate of shares but no certificate of shares shall be issued until the shares represented thereby have been fully paid for.

II. Shares allotted as share dividends, and shares for which the agreed consideration has been paid, delivered or rendered to the corporation shall be fully paid shares.

III. When a corporation has received a note or check as consideration for shares, such shares shall not be considered fully paid until such note or check has been paid.

IV. Every certificate of shares shall be signed by the president and the secretary, or by such officers as the articles of incorporation or by-laws may provide, but when a certificate is signed by a transfer agent or registrar the signature of any such corporate officer and the corporate seal, if any, upon such certificate may be facsimiles, engraved or printed.

V. Every certificate of shares shall state:

(a) The name of the corporation, and a statement that it is organized under the laws of Minnesota;

(b) The name of the registered holder of the shares represented thereby;

(c) The number of shares, and if the corporation is authorized to issue shares of more than one class, the class, or series and class, of the shares represented thereby;

(d) The par value of each share represented, or a statement that such shares are without par value;

(e) If the corporation is authorized to issue shares of more than one class, the rights, preferences, and restrictions granted to or imposed upon the shares of all classes or series, or a summary thereof with a reference to the articles, and the authority, if any, vested by the articles in the board of directors under subdivision I (e) or Section 3 of this Act to fix the rights of series of shares then unallotted.

VI. Such certificate shall be prima facie evidence of the ownership of the shares therein referred to.

VII. A certificate of shares without par value shall not state any par value, nor any value thereof in money, nor any rate of dividend to which such shares shall be entitled in terms of a percentage of any par or other value.

Sec. 18. **Liability of subscribers and shareholders.**

I. Except as provided in subdivision IV of Section 14 of this Act, and except in case of actual fraud, a subscriber to or holder of shares of a corporation shall be under no liability to the corporation, whether for the benefit of its shareholders or creditors, with respect to such shares, other than the obligation to comply with the terms of the subscription or contract therefor.

II. One who becomes a shareholder by transfer and in good faith, and without knowledge or notice that the shares acquired have not been fully paid for, shall not be liable to the corporation or to its creditors with respect to such shares.

Sec. 19. **Validity of shares.**—The fact that shares are allotted in violation of, or without full compliance with, the provisions of this Act shall not make the shares so allotted invalid.

Sec. 20. **Stated capital and surplus.**

I. In the case of shares without par value, unless a part of the total consideration for such shares is designated as paid-in surplus in the manner set forth in subdivision III of this section, the entire amount thereof shall be stated capital.

II. In the case of shares having par value, the consideration received therefor in excess of such par value shall constitute paid-in surplus.

III. If upon the allotment of shares without par value any part of the consideration received therefor is to constitute paid-in surplus, the shareholders or directors, as the case may be, who fix the amount of cash or determine the value of other consideration for such shares, shall at the time of allotment specify in monetary terms the amount thereof that is to be stated capital and the amount thereof that is to be paid-in surplus; provided, however, that in the case of shares having a preference upon liquidation, unless the subscription or contract for purchase thereof expressly otherwise provides, only that part, if any, of the value of the consideration received therefor, which is in excess of the amount to which such shares upon involuntary liquidation are entitled in preference to shares of another class or classes, may constitute paid-in surplus.

IV. Upon a reduction of the stated capital of a corporation pursuant to Section 38 of this Act, the amount of such reduction shall consitute paid-in surplus.

V. If upon a consolidation or merger the stated capital of the consolidated or surviving corporation shall be less than the aggregate of the stated capital of the constituent corporations, the amount of such difference shall constitute paid-in surplus.

VI. All contributions by shareholders to a corporation shall constitute paid-in surplus.

VII. The shareholders or directors may at any time by resolution transfer amounts from paid-in or earned surplus to stated capital.

VIII. Whenever a corporation acquires all or substantially all of the assets of another corporation in consideration of the allotment of shares of the acquiring corporation, with or without other consideration, the earned surplus of the acquired corporation shall become earned surplus of the acquiring corporation, but only to the extent that the aggregate of the stated capital, paid-in surplus and earned surplus of the acquired corporation exceeds the aggregate of the following amounts.

(a) The value of the consideration given therefor, other than shares of the acquiring corporation and other than the assumption by the acquiring corporation of liabilities of the acquired corporation,

(b) The par value of all shares of the acquiring corporation having par value, given as consideration, and

(c) The stated capital represented by all shares of the acquiring corporation without par value, given as consideration.

IX. Whenever two or more corporations shall hereafter be consolidated or merged, the earned surpluses of the constituent or merged corporation or corporations may, to the extent that they are not capitalized upon such consolidation or merger, be treated as earned surplus by the consolidated or surviving corporation.

X. The provisions of this section with reference to paid-in surplus and earned surplus are, for the purposes set forth in Section 21 of this Act, subject further to all the terms and provisions thereof.

Sec. 21. **Dividends and purchase of own shares.**

I. In determining the fair value of the assets of a corporation to ascertain whether it may pay a dividend or may purchase its own shares, unrealized appreciation of assets shall not be included; provided, that securities having a readily ascertainable market value, other than securities issued by the corporation, may be valued at not more than market value. Proper deduction shall be made for depreciation and depletion and for losses of every character whether or not realized. The excess of such value, if any, above the aggregate of the liabilities and stated capital of the corporation shall constitute the aggregate of its paid-in and earned surplus and the balance remaining, if any, after deducting therefrom the earned surplus of the corporation, shall constitute its paid-in surplus. If the payment of a dividend or the purchase by a corporation of its shares is otherwise lawful, it shall not be unlawful because of failure to determine the fair value of all its assets.

II. A corporation may declare dividends in cash or property only as follows:

(a) Out of earned surplus;

(b) Out of paid-in surplus, provided, that if there are outstanding shares entitled to preferential dividends, then dividends may be declared out of paid-in surplus only upon such shares. When dividends are paid from paid-in surplus, notice of such fact shall be given to the share-holders receiving the same concurrently with the payment thereof;

(c) Out of its net earnings for its current or for the preceding fiscal year, whether or not it then has a paid-in or earned surplus, provided, that if there are outstanding shares entitled to a preference upon liquidation, such dividends shall not be paid upon any other shares except to the extent that the fair value of its assets, determined as set forth in subdivision 1 of this section, exceeds the aggregate of its liabilities and its stated capital represented by all shares entitled to a preference upon liquidation; provided, further, that no such dividend shall be declared if the fair value of the assets of the corporation is less than the aggregate of its liabilities, including such proposed dividend as a liability.

III. A corporation may declare dividends payable in shares of the corporation only as follows.

(a) Out of earned surplus;

(b) Out of paid-in surplus, provided, that notice of such fact shall be given to the shareholders receiving such dividends concurrently with the payment thereof;

(c) Upon declaration of a dividend payable in shares, the amount of surplus from which such dividend is declared shall be capitalized. If a dividend is declared in shares having a par value, the amount of surplus so to be capitalized shall equal the aggregate par value of such shares. If a dividend is declared in shares without par value then if such shares are preferred shares they shall be capitalized at the amount to which such shares, upon involuntary liquidation, are entitled in preference to shares of another class or classes, or if such shares are common shares they shall be capitalized on the basis of the estimated fair value of such shares upon allotment as determined by the board of directors;

(d) No dividend payable in shares of any class shall be paid to shareholders of any other class unless the articles so provide or such payment is authorized by the vote or written consent of the holders of two-thirds of the shares of the class in which the payment is to be made.

IV. Nothing in subdivision III of this section shall be construed to forbid or limit the power of a corporation to split up or subdivide its shares into a larger number of shares without increasing its stated capital.

V. A corporation engaged principally in the exploitation of mines, quarries, oil wells, gas wells, patents or other wasting assets, or organized principally to liquidate specific assets, may distribute the net income derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without making any deduction or allowance for the depletion of such assets incidental to the lapse of time, consumption, liquidation or exploitation; provided, however, that it shall make adequate provision for meeting liabilities and fixed preferences of outstanding shares as to assets on liquidation and shall give notice to shareholders concurrently with the payment of *each* distribution that no deduction or allowance has been made for depletion.

VI. A corporation may purchase or redeem shares of its own stock, whether pursuant to contract previously made or otherwise, only as follows:

(a) Out of earned surplus;

(b) Out of paid-in surplus; provided, that, if the corporation has outstanding shares entitled to preferential dividends or to a preference upon liquidation, then only such share may be purchased or redeemed out of paid-in surplus.

VII. Subject to any provisions of the articles of incorporation or by-laws, the board of directors may fix a time not exceeding forty days preceding the date fixed for the payment of any dividend or distribution, or the date for the allotment of rights or, subject to contract rights with respect thereto, the date when any change or conversion or exchange of shares shall be made or go into effect, as a record date for the determination of the shareholders entitled to receive payments of any such dividend, distribution or allotment of rights, or to exercise rights in respect to any such change, conversion or exchange of shares, and in such case only shareholders of record on the date so fixed shall be entitled to receive payment of such dividend, distribution or allotment of rights or to exercise such rights of change, conversion or exchange of shares, as the case may be, notwithstanding any transfer of any shares on the

books of the corporation after any record date fixed as aforesaid. The board of directors may close the books of the corporation against the transfer of shares during the whole or any part of such period.

Sec. 22. **Liability of shareholders and directors for dividends unlawfully paid, or for corporate assets otherwise unlawfully distributed.**

I. If any dividend be paid in violation of Section 21 of this Act, or if any other unlawful distribution be made to shareholders,

(a) Every shareholder who received any such dividend or any such distribution shall be individually liable to the corporation in an amount equal to the amount so received by him. Any number of shareholders may be sued in the same action.

(b) The directors who wilfully or negligently voted in favor thereof shall be jointly and severally liable to the corporation in an amount equal to the dividend so paid and the distribution so made. A director shall not be held to have been negligent within the meaning of this section if he exercised that diligence and care which an ordinarily prudent man would exercise under similar circumstances, nor if he relied and acted in good faith upon a profit and loss statement of the corporation represented to him to be correct by the president or other officer of the corporation having charge of or supervision of its accounts or certified to be correct by a public accountant or firm of public accountants selected with reasonable care. Any director against whom a claim is asserted pursuant thereto, except in case of participation in a deliberate fraud, shall be entitled to contribution from other directors who are liable, pro rata according to the number of such directors.

II. A corporation shall not be entitled to recover under the provisions hereof an amount greater than the aggregate of the dividends unlawfully paid and other unlawful distributions.

III. No action shall be maintained against a director or a shareholder under the provisions of this section unless commenced within three years from the date on which such dividend payment or other distribution was made.

Sec. 23. **By-laws.**

I. The shareholders may make and alter by-laws, not inconsistent with law or the articles of incorporation, for the government

of the corporation, the conduct of its affairs, the management of its property and business, and the transfer of its shares.

II. Authority to make and alter by-laws may be vested by the articles of incorporation in the board of directors subject to the power of the shareholders to change or repeal such by-laws; provided, however, the board shall not make or alter any by-law fixing their number, qualifications, classifications or term of office; provided further that the first board of directors, without such authority in the articles, shall adopt by-laws which shall remain effective until and except as legally amended.

Sec. 24. **Shareholders' meetings; quorum.**

I. Meetings of the shareholders may be held at the registered office of the corporation or at any place within or without the state designated in the by-laws or by the board of directors pursuant to authority in the by-laws, or by written consent of all the shareholders entitled to vote thereat.

II. Shareholders shall hold a meeting each calendar year, known as the annual meeting, at which they shall elect directors, and may transact any other business; provided, however, that no business with respect to which special notice is required shall be transacted unless such notice shall have been given. When the annual meeting is not held, or the directors are not elected thereat, directors may be elected at a special meeting held for that purpose, and it shall be the duty of the president, vice-president or secretary, upon demand of any shareholder entitled to vote, to call such special meeting.

III. Special meetings of the shareholders may be called for any purpose or purposes, at any time by the president, by the board of directors or any two or more members thereof, or by such other officers or persons as the by-laws may authorize, or, in the manner hereinafter provided, by one or more shareholders holding not less than one-tenth of the voting power of the shareholders. Upon request in writing by registered mail or delivered in person to the president, vice-president or secretary, by any person or persons entitled to call a meeting of shareholders, it shall be the duty of such officer forthwith to cause notice to be given to the shareholders entitled to vote, of a meeting to be held at such time as such officer may fix, not less than ten nor more than sixty days after the receipt of such request. If such notice shall not be given within seven days after delivery or the date of mailing of such request, the person or persons requesting the meeting may fix the time of meeting and give notice in the manner provided by law or the by-laws.

IV. If any meeting of the shareholders be adjourned to another time or place, no notice as to such adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken, unless otherwise provided in the by-laws.

V. Written notice of each meeting of shareholders, stating the time and place, and in case of special meeting the prupose, shall be given in the manner provided in the by-laws, by the secretary or other person charged with that duty, to each shareholder entitled to vote at such meeting.

VI. Notice of the time, place and purpose of any meeting of shareholders, whether required by this Act, the articles or the by-laws, may be waived in writing by any shareholder. Such waiver may be given before or after the meeting, and shall be filed with the secretary or entered upon the records of the meeting.

VII. Unless otherwise provided in the articles of incorporation, the presence in person or by proxy of the holders of a majority of the shares entitled to vote at the meeting shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting may be adjourned from time to time. The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

Sec. 25. **Voting rights.**

I. Unless the articles otherwise provide, every shareholder of record, or his legal representatives, at the date fixed for the determination of the persons entitled to vote at a meeting of shareholders, or, if no date has been fixed, then at the date of the meeting, shall be entitled at such meeting to one vote for each share standing in his name on the books of the corporation.

II. Subject to any provisions of the articles or by-laws, the board of directors may fix a time, not exceeding forty days preceding the date of any meeting of shareholders, as a record date for the determination of the shareholders entitled to notice of and to vote at such meeting, and in such case only shareholders of record on the date so fixed, or their legal representatives, shall be entitled to notice of and to vote at such meeting, notwithstanding any transfer of any shares on the books of the corporation after any record date so fixed. The board of directors may close the books of the corporation against transfers of shares during the whole or any part of such period.

III. If notice in writing is given by any shareholder to the president or secretary of a corporation not less than twenty-four hours before the time fixed for holding a meeting for the election of directors that he intends to cumulate his votes in such election, each shareholder shall have the right to multiply the number of votes to which he may be entitled by the number of directors to be elected, and he may cast all such votes for one candidate or distribute them among any two or more candidates. In such case it shall be the duty of the presiding officer upon the convening of the meeting to announce that such notice has been given. If the articles of incorporation expressly provide that there shall be no cumulative voting, the provisions of this subdivision shall be inapplicable to such corporation.

IV. A shareholder may cast his vote in person or through proxy. The appointment of a proxy shall be in writing filed with the secretary at or before the meeting. The authority of a proxy, if not coupled with an interest, may be terminated at will. Unless otherwise provided in the appointment, the proxy's authority shall cease eleven months after the appointment. A termination of a proxy's authority by act of the shareholder shall be ineffective until written notice of the termination has been given to the secretary. Unless otherwise provided therein, an appointment filed with the secretary shall have the effect of revoking all appointments of prior date.

V. If a shareholder shall appoint two or more persons to act as proxies, and if the instrument shall not otherwise provide, then a majority of such persons present at the meeting, or if only one shall be present then that one, shall have and may exercise all of the powers conferred by such instrument upon all of the persons so appointed; and if such proxies be equally divided as to the right and manner of voting in any particular case, the vote shall be divided equally among the proxies.

VI. A person or persons holding shares in a representative or fiduciary capacity may vote the same in person or by proxy. General or discretionary power may be conferred on such proxy. Where shares are held jointly by three or more representatives or fiduciaries, the will of the majority of them shall control the manner of voting or the giving of a proxy, unless the instrument or order appointing them otherwise directs. Where in any case the representatives or fiduciaries are equally divided upon the manner of voting the shares jointly held by them, any court of competent jurisdiction may, upon petition filed by any of them or

by any beneficiary, appoint an additional person to act with them in determining the manner in which such shares shall be voted upon the particular questions as to which they are divided.

VII. A proxy's authority shall not be revoked by the death or incapacity of the maker unless, before the vote is cast or the authority is exercised, written notice of such death or incapacity is given to the corporation.

VIII. A transferee of pledged shares shall be regarded by the corporation as the owner thereof unless the instrument of transfer discloses the pledge. A person whose shares are transferred on the books of the corporation as a disclosed pledge shall be entitled to vote unless in the instrument of transfer the pledgor shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent such shares and vote thereon.

IX. A corporation owning shares in another corporation whether domestic or foreign, may vote the same by its president or by proxy appointed by him unless some other person, by resolution of its board of directors, shall be appointed to vote such shares in which case such person shall be entitled to vote upon the production of a certified copy of such resolution.

X. A corporation shall not vote any shares of its own issue belonging to it, nor shall any such shares be counted in calculating the total voting power of all shareholders of such corporation at any given time.

XI. Any action which, under any provisions of this Act or the articles of incorporation, may be taken at a meeting of the shareholders, may be taken without a meeting if authorized by a writing signed by all of the holders of shares who would be entitled to a notice of a meeting for such purpose. Whenever a certificate in respect of any such action is required by this Act to be filed in the office of the Secretary of State, the officers signing the same shall state therein that the action was effected in the manner aforesaid.

XII. The articles of incorporation may confer upon the creditors of the corporation, or upon a class or classes thereof, the right to vote to the extent and subject to the limitations stated therein.

Sec. 26. **Voting trusts.**

I. Shares of stock in any corporation may be transferred to a trustee or trustees, pursuant to written agreement, for the purpose

of conferring on such trustee or trustees the right to vote and otherwise represent such shares for a period not exceeding fifteen years, except that in case such agreement is made in connection with an indebtedness of the corporation such voting trust may extend throughout the period of such indebtedness, all in the manner and upon the conditions in such agreement stated. Unless otherwise specified therein, such voting trust may be terminated at any time by the holders of a majority in interest of the beneficial interests thereunder.

II. A duplicate of the voting trust agreement shall be filed in the registered office of the corporation and shall there be open to inspection by any shareholder, and by any holder of any beneficial interest under such agreement, and by the agents of either, in like manner and upon such conditions as the books of the corporation are open to inspection by a shareholder.

III. Unless otherwise provided in such agreement, (a) the trustees may vote in person or by proxy; (b) if there are two or more trustees, the manner of voting shall be determined as provided in subdivision VI of Section 25 of this Act; (c) vacancies among the trustees shall be filled by the remaining trustees; and (d) a trustee shall incur no personal liability except for his own neglect or malfeasance.

Sec. 27. **Directors.**

I. The business of a corporation shall be managed by a board of at least three directors, who need not be shareholders unless the articles of incorporation or by-laws so require. A director shall hold office for the term for which he was named or elected and until his successor is elected and qualified, unless removed as provided in Section 28 of this Act.

II. Except as otherwise provided in the articles and in paragraph (b) of subdivision IV of this section, directors, other than those constituting the first board, shall be elected by the shareholders.

III. The number, qualifications, term of office, manner of election, time and place of meeting, and the powers and duties of the directors, may, subject to the provisions of this Act, be prescribed by the articles or by-laws, provided that the term of a director shall not be longer than five years.

IV. Except as otherwise prescribed in the articles or by-laws:

(a) A director shall be elected for a term of one year;

(b) Vacancies in the board of directors shall be filled by the remaining members of the board, though less than a quorum, and each person so elected shall be a director until his successor is elected by the shareholders who may make such election at their next annual meeting or at any special meeting duly called for that purpose;

(c) Meetings of the board of directors may be held at such place, whether in this State or elsewhere, as a majority of the members of the board may from time to time appoint;

(d) Notice shall be given to each director of the time and place of each meeting of the board, but any director may, in writing, either before or after the meeting, waive notice thereof; and, without notice, any director by his attendance at and participation in the action taken at any meeting, shall be deemed to have waived notice;

(e) Until provision has been made by by-law for calling meetings of the board, meetings may be called by any member thereof by giving to each of the other members written notice of the time and place of meeting, mailed at least ten days before the time of meeting.

(f) A majority of the board of directors shall be necessary to constitute a quorum for the transaction of business, unless the by-laws provide that a different number shall constitute a quorum, which in no case shall be less than one-third of the entire number of directors, nor less than two; and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of directors;

(g) Any action which might be taken at a meeting of the board of directors, may be taken without a meeting if done in writing signed by all of the directors;

(h) The board of directors may, by unanimous affirmative action of the entire board, designate two or more of their number to constitute an executive committee, which, to the extent determined by unanimous affirmative action of the entire board, shall have and exercise the authority of the board in the management of the business of the corporation. Any such executive committee shall act only in the interval between meetings of the board, and shall be subject at all times to the control and direction of the board.

Sec. 28. **Removal of directors.**

I. The entire board of directors or any individual director may be removed from office, with or without cause, by a vote of shareholders holding a majority of the shares entitled to vote at an election of directors; provided, in the case of a corporation having cumulative voting, unless the entire board be removed, no individual director shall be removed in case the votes of a sufficient number of shares are cast against his removal, which if then cumulatively voted at an election of the full board would be sufficient to elect him.

II. In case the board or any one or more directors be so removed, new directors may be elected at the same meeting. In the case of a corporation having cumulative voting, if such election is held at the same meeting, the notice of intention to cumulate votes provided for in subdivision III of Section 25 of this Act may be given at any time prior to the voting at such election, and in such case announcement of the giving of such notice shall be made prior to said voting, and said cumulative voting provisions shall be applicable.

Sec. 29. **Officers and agents.**

I. The board of directors shall elect a president, a secretary, and a treasurer, and may appoint such other officers and agents as they may deem necessary, for such terms, if any, as may be prescribed in the by-laws. The president shall be a director, but shall hold office until his successor is elected notwithstanding an earlier termination of his office as director. No one of the other officers need be a director. A vice-president who is not a director shall not succeed to the office of president. Any two of the offices except those of president and vice-president may be held by the same person.

II. All officers shall respectively have such authority and perform such duties in the management of the business of the corporation, as may be prescribed in the by-laws, or, in the absence of controlling provisions in the by-laws, as may be determined by the board of directors.

III. Any officer may be removed by the board of directors with or without cause. Such removal, however, shall be without prejudice to the contract rights of the person so removed.

Sec. 30. **Relation of directors and officers to corporation.**—Officers and directors shall discharge the duties of their respective postions in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

Sec. 31. **Loans to officers, directors and shareholders.**—No corporation shall lend any of its assets to any officer or director of the corporation, nor shall any corporation lend any of its assets to a shareholder on the security of its shares. If any such loan be made, the officers and directors who make such loan, or assent thereto, shall be jointly and severally liable for repayment or return thereof. No corporation shall take as security for any debt a lien upon its shares unless such lien shall be taken to secure a debt previously contracted.

Sec. 32. **Registered office; changes; penalty.**

I. Every corporation shall maintain an office in this State to be known as its registered office.

II. After incorporation, a change of the location of the registered office from that designated in the articles of incorporation may be made from time to time by the board of directors, without amending the articles, provided that, on or before the day that such change is to become effective a certificate of such change and of the location and post-office address of the new registered office shall be filed with the Secretary of State.

III. If the effect of any change shall be to designate a place in a county other than that in which the registered office has theretofore been located, (a) the articles of incorporation, or a certified copy thereof, shall be filed by the Secretary of State for record in the office of the register of deeds of the county in which the new registered office is located; and (b) such certificate of change of location shall be recorded by the Secretary of State and by him be filed for record in the offices of the register of deeds of the counties from and to which such change of location of the registered office is effected. For such purposes the corporation shall pay to the Secretary of State like fees for himself and the register of deeds as provided in Section 6 of this Act.

IV. If a corporation carries on business without complying with the requirements of subdivisions I and III of this section, it shall forfeit to the State $25.00 for each day during which it so carries on business, not exceeding, however, an aggregate forfeiture of $500.00.

Sec. 33. **Corporate books and records; right of inspection; penalties.**

I. Every corporation shall keep at its registered office, or at such other place or places within the United States as the board of directors may determine, a share register giving the names and

addresses of the shareholders, the number and classes of shares held by each, and the dates on which the certificates therefor were issued.

II. Every corporation shall keep at its registered office originals or copies of:

(a) Records of all proceedings of shareholders and directors;

(b) Its by-laws and all amendments thereto; and,

(c) Reports made to shareholders or any of them within the next preceding three years.

III. Every corporation shall keep open to public inspection at its registered office a statement of the names and post-office addresses of its principal officers; provided, that the presence in such office during usual business hours of any one of such officers shall excuse compliance with this subdivision.

IV. Every corporation shall keep appropriate and complete books of account.

V. Every shareholder and every holder of a voting trust certificate shall have a right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, and at the place or places where usually kept or at such other place as the court may order, the share register, books of account and records of the proceedings of the shareholders and directors, and to make extracts therefrom.

VI. A corporation shall forfeit to the State $50.00 for each day it neglects to keep any or all of the books or records as required by subdivisions I, II, III, and IV of this section, not exceeding however an aggregate forfeiture of $500.00.

Sec. 34. **Information to shareholders and creditors.**

I. Upon request by a shareholder, a corporation shall furnish to him a statement of profit and loss for its last annual accounting period, setting forth separately the amount of all dividends paid from paid-in surplus during such year, and a balance sheet containing a summary of the assets and liabilities as of the closing date of such year, the originals of which, to be retained by the corporation, shall be certified by the president or a vice-president and the treasurer or an assistant treasurer or a public accountant or a firm of public accountants.

II. Upon written demand of any creditor, the corporation shall within thirty days furnish to him a statement of all dividends paid, and the number and purchase price of its shares bought by it, within three years preceding such demand.

III. Upon written demand therefor by any shareholder or creditor, the corporation shall within thirty days furnish to him a brief description of all property or services received or agreed to be received by the corporation as consideration for shares allotted within three years prior to such demand, together with the valuation of such property or services as stated under the provisions of Section 14 of this Act.

IV. Upon wilful failure to comply, in reasonable detail, with any such demand by a creditor, the indebtedness of the corporation to such creditor shall, at his election, become immediately due and payable.

V. With respect to any shareholder or creditor making demand under subdivisions II or III of this section, the time from such demand and until compliance therewith by the corporation shall not be computed as a part of the period of limitation for the commencement of an action under Sections 14, 15, 21, or 22 of this Act. Any statement furnished by a corporation which is false in any substantial matter, or which does not give in reasonable detail the information demanded, shall not constitute compliance with such demand. With respect to any shareholder or creditor who has relied upon any such false statement furnished by a corporation to him or to another, the period of limitation shall not commence until he has learned or ought to have learned of the falsity of the statement.

Sec. 35. **Voluntary transfer of corporate assets.**—A corporation may, by action taken at any meeting of its board of directors, sell, lease, exchange or otherwise dispose of all or substantially all of its property and assets, including its good will, upon such terms and conditions and for such considerations, which may be money, shares, bonds, or other instruments for the payment of money or other property, as its board of directors deems expedient, when and as authorized by the vote of holders of shares entitling them to exercise at least two-thirds of the voting power on such proposal, or the vote of such other proportion, not less than a majority, or vote by classes, as the articles may require, at a shareholders' meeting called for that purpose, or when authorized upon the written consent of the holders of such shares. Notice of any such meeting shall be given to all shareholders of record whether or not they shall be entitled to vote thereat.

Sec. 36. **Amendments of articles of incorporation.**

I. A corporation may amend its articles of incorporation in the manner herein provided, so as to include or omit any provision

which it would be lawful to include in or omit from original articles at the time the amendment is made, or so as to extend its duration for a further definite time or perpetually.

II. Prior to the allotment of any shares, amended articles to supersede the original articles may be executed and acknowledged by all the incorporators and filed and recorded as provided in Sections 5 and 6 of this Act with respect to original articles.

III. After allotment of any shares:

(a) Amendment of the articles may be made at any meeting of the shareholders, provided notice of proposal to amend, stating the nature of such proposal, shall have been mailed to each shareholder entitled to vote thereon, at least ten days prior to such meeting, or by written consent of such shareholders given as provided by subdivision XI of Section 25 of this Act.

(b) Except as hereinafter in this section provided, an amendment may be adopted by the vote of the holders of two-thirds of the voting power of all shareholders entitled under the articles to vote, or by such larger or smaller vote, not less than a majority, as the articles may require.

(c) If an amendment would adversely affect the rights of the holders of shares of any class, then in addition to the vote required by subdivision III (b) of this section, the holders of each class of shares so affected by the amendment shall be entitled to vote as a class upon such amendment, whether or not by the terms of the articles such class is entitled to vote; and the vote of the holders of two-thirds of the shares (or such larger or smaller vote of each class, not less than a majority, as the articles may require) of each class so affected by the amendment shall be necessary to the adoption thereof.

(d) If an amendment would make any substantial change in the purpose or purposes for which the corporation was organized, then the holders of each class of the shares shall be entitled to vote as a class upon such amendment, whether by the terms of the articles such class is entitled to vote or not; and the vote of the holders of two-thirds of the shares of each class (or such larger vote as the articles may provide), shall be necessary to the adoption thereof.

IV. After an amendment has been adopted by the shareholders, articles of amendment setting forth the amendment and the manner

of adoption thereof shall be signed and acknowledged by the president or vice-president and by the secretary or assistant secretary, and filed for record with the Secretary of State. If they conform to law, he shall, when all fees and charges therefor have been paid as required by law, record the same, and thereupon the amendment shall be effective.

Sec. 37. **Provisions relating to certain amendments.**

I. If the total authorized number of shares is increased or decreased the articles of amendment shall also state:

(a) The total number of shares, including those previously authorized, which the corporation will thenceforth be authorized to have;

(b) The number of shares having a par value and the par value thereof, and the number of shares without par value, and, if the shares are divided into more than one class, a statement of the number of shares in each class.

II. If shares having a par value are changed into an equal or different number of shares without par value, the amount of stated capital represented by shares without par value allotted to replace outstanding shares having a par value shall be the amount of the aggregate par value of such outstanding shares.

III. If shares without par value are changed into an equal or different number of shares having a par value, the shares having a par value allotted to replace outstanding shares without par value shall be fully paid for, and the stated capital of the corporation shall not thereby be decreased and shall be increased by the difference, if any, between the par value of the shares so allotted and the stated capital represented by the shares without par value so to be replaced.

IV. If shares without par value are changed into a different number of the same class or of any other class or classes of shares without par value, the stated capital of the corporation shall not thereby be affected.

Sec. 38. **Reduction of Stated Capital.**

I. The stated capital of a corporation may be reduced to an amount not less than the par value of its shares having par value then outstanding by a resolution adopted by the vote of the holders of a majority in interest of the shares entitled to vote thereon, at a meeting of the shareholders called for such purpose, or by such greater vote as the articles of incorporation may require; provided, however, that, without the prior affirmative vote of a majority in

interest of each class of stock entitled to a preference upon liquidation, in addition to the vote above required, the stated capital shall not be reduced below an amount equal to the sum of the par value of all outstanding shares having a par value and the aggregate amount to which outstanding shares without par value are entitled upon involuntary liquidation in preference to shares of another class or classes, but in no event shall the stated capital be reduced to an amount less than the par value of all outstanding shares having a par value.

II. Following the adoption of a resolution reducing the stated capital, articles of reduction of stated capital shall be executed and filed for record in the form and manner required by Section 36 for the execution and filing of articles of amendment, and, subject to the provisions of subdivision IV hereof, upon the recording thereof by the Secretary of State the reduction of stated capital shall become effective.

III. No part of the surplus created by such reduction shall be distributed to the shareholders in any form unless the fair value of the assets of the corporation remaining after such distribution shall be at least equal to the aggregate of its liabilities and of its stated capital as so reduced. If any distribution is made in violation hereof, the directors and shareholders shall be liable to the corporation to the extent, in the manner and subject to the conditions and limitations stated in Section 22 of this Act.

IV. A resolution reducing the stated capital of a corporation may be adopted at a meeting at which an amendment of its articles is adopted and such reduction may be conditioned upon such amendment becoming effective and in such event such reduction shall not become effective until articles of amendment shall have been duly filed for record as provided in Section 36 of this Act and then only upon the filing for record of articles of reduction with the Secretary of State as provided in subdivision II of this section.

V. The stated capital of a corporation shall never be reduced to an amount less than $1,000.00.

Sec. 39. **Rights of shareholder not assenting to certain corporate action.**

I. If a corporation has authorized an amendment which substantially changes the corporate purposes or extends the duration of the corporation, a shareholder who did not vote in favor of or consent in writing to such corporate action may, within twenty days after the date upon which such amendment was authorized, object thereto in writing and demand payment for his shares.

II. If, after such a demand by a shareholder, the corporation and the shareholder cannot agree upon the fair cash value of the shares at the time such amendment was authorized, such value shall be determined by three disinterested appraisers, one of whom shall be named by the shareholder, another by the corporation and the third by the two thus chosen. The determination of a majority of the appraisers in good faith made shall be final, and if the amount so determined is not paid by the corporation within thirty days after it is made, such amount may be recovered in an action by the shareholder against the corporation. The corporation shall not be required to make payment of such amount except upon transfer to it of the shares for which such payment was demanded and upon surrender of the certificate or certificates evidencing the same.

III. A shareholder shall not be entitled to payment for his shares under the provisions of this section unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of stated capital.

Sec. 40. **Consolidation and merger authorized.**—Two or more corporations, except corporations formed for the purpose of carrying on the business of a railroad, may merge into one of the constituent corporations or consolidate into a new corporation, in accordance with the provisions of Sections 41 to 44 of this Act.

Sec. 41. **Procedure of consolidation or merger.**

I. The directors, or a majority of them, of each of the corporations to be consolidated or merged, shall enter into an agreement signed by them, prescribing the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, and stating such other facts as are applicable among those required or permitted by Section 3 of this Act to be stated in articles of incorporation, and the manner and basis of converting the shares of each of the constituent corporations into the shares of the consolidated or surviving corporation (whether into the same or a different number of shares of the consolidated or surviving corporation and whether with or without par value) with such other details and provisions as are deemed necessary or desirable. The agreement shall further state the amount of stated capital with which the consolidated or surviving corporation will begin business.

II. Said agreement shall be submitted for consideration to the shareholders of record of each corporation at a meeting, notice of the time, place and object of which shall be mailed at least two weeks before the meeting to each shareholder of record, whether

entitled to vote or not, at his last post-office address as shown by the records of the secretary of the corporation. At such meeting, or an adjournment thereof, said agreement shall be considered and a vote by ballot taken for the adoption or rejection of the same. If the votes of shareholders of each corporation holding stock in such corporation entitling them to exercise at least two-thirds of the voting power thereof, or such other proportion of the voting power, not less than one-half, as may be prescribed by the articles of incorporation, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the secretary or assistant secretary of each corporation.

III. The agreement so adopted and certified shall be signed by the president or vice-president and secretary or assistant secretary of each corporation and acknowledged on behalf of the corporation by such officers.

IV. The agreement so adopted, certified and acknowledged, shall be filed for record with the Secretary of State. If the same conforms to law, he shall, when the fees and charges provided in subdivision V of this section have been paid, record the same, and issue a certificate of incorporation or merger, as the case may be. Upon the issuance of such certificate of incorporation the corporate existence of the consolidated corporation shall begin, and upon the issuance of such certificate of merger the merger shall be effective. The certificate of incorporation, or the certificate of merger, and the agreement bearing the endorsement of the fact and time of delivery thereof to the Secretary of State, or a copy of such agreement certified by him, shall be filed by the Secretary of State for record in the office of the register of deeds of the counties in which the corporate parties to the agreement have their registered offices, for which service and purpose there shall be paid to the Secretary of State like fees for himself and the registers of deeds as provided in Section 6 of this Act.

V. Before the Secretary of State shall record any agreement of consolidation or merger, there shall be paid to the State Treasurer the same fees as are required on incorporation, less the aggregate amount of fees theretofore paid to the State Treasurer in respect of the authorized shares of the constituent corporations.

Sec. 42. **Effect of consolidation or merger.**—Upon the issuance of the certificate of incorporation or merger, as provided by Section 41 of this Act:

(a) The separate existence of the constituent corporations, or of all except the one into which the constituent corporations have merged, as the case may be, shall cease, unless the

agreement of consolidation or merger expressly provides for the continuance of the corporate existence and identity of one or more of the constituent corporations, in which case the corporate existence and identity thereof shall continue in the consolidated or surviving corporation, as the case may be.

(b) All the property, assets, rights, privileges, powers, franchises and immunities of each of said constituent corporations so consolidated or merged shall vest in the consolidated or surviving corporation, as the case may be.

(c) All debts, liabilities and obligations of the constituent corporations shall become the debts, liabilities and obligations of the consolidated or surviving corporation, as the case may be.

Sec. 43. **Rights of dissenting shareholders.**

I. When a corporation has become a party to a consolidation or merger agreement, as hereinbefore provided, any shareholder of such corporation who has not assented thereto in writing, and who did not vote in favor of such consolidation or merger, or who did not have the right to vote thereon, may, at any time within twenty days after such authorization was given, object thereto in writing and demand payment for his shares and have the fair cash value thereof determined as provided in Section 39 hereof, the relevant provisions of which section shall be in all respects applicable. The liability of such corporation to such dissenting shareholder for the fair cash value of the shares so agreed upon or awarded shall also be a liability of the consolidated or surviving corporation, as the case may be.

II. Those shareholders of the constituent corporations who do not object in writing and demand payment for their shares pursuant to the provisions of subdivision I of this section shall be deemed to have assented to the consolidation or merger, as the case may be, on the terms specified in the agreement of consolidation or merger.

Sec. 44. **Additional provisions relating to consolidation or merger.**

I. The liabilties of the constituent corporations or of their shareholders, directors, or officers shall not be affected nor shall the rights of creditors or of any persons dealing with such corporations be impaired by the consolidation or merger, and any claim existing or action or proceeding pending by or against any of such constituent corporations may be prosecuted to judgment as if such con-

solidation or merger had not taken place, or the consolidated or surviving corporation may be proceeded against or substituted in its place.

II. The stated capital of a consolidated or surviving corporation at the time it begins business shall be at least equal to the aggregate par value of the shares having par value to be distributed pursuant to the agreement of consolidation or merger, plus the amount of the stated capital designated by such agreement in respect of shares without par value to be so distributed. If any shares without par value to be so distributed shall be entitled to a preference upon liquidation, the amount of stated capital in respect of such shares shall not be less than the aggregate amount to which such shares would be entitled upon involuntary liquidation in preference to shares of another class or classes, without the prior affirmative vote or written consent of a majority in interest of all persons to whom such shares are to be distributed.

III. If, in connection with a consolidation or merger, there be a reduction of the aggregate stated capital of the constituent corporations, no part of any surplus thereby created shall be distributed to the shareholders of the consolidated or surviving corporation unless the fair value of the assets of the consolidated or surviving corporation remaining after such distribution at least equals the aggregate of its liabilities and its stated capital.

IV. No distribution other than of shares of stock of the consolidated or surviving corporation shall be made to the shareholders of the constituent corporations or any of them unless after such distribution the fair value of the assets of such consolidated or surviving corporation shall at least equal the sum of its liabilities and its stated capital.

V. If any distribution is made in violation of subdivisions III or IV of this section, the directors and shareholders shall be liable to the corporation to the extent, in the manner and subject to the conditions and limitations stated in Section 22 of this Act.

VI. Whenever a conveyance, assignment, transfer or any act, deed or instrument is necessary or appropriate to evidence the vesting of property or rights in the consolidated or surviving corporation the officers of the respective constituent corporations shall execute, acknowledge and deliver such deeds or instruments and do such acts as may be necessary or appropriate in the premises. For such purposes the existence, capacity and authority of the constituent corporations and their respective officers and directors shall be deemed to be continued notwithstanding such consolidation or merger.

Sec. 45. **Proceedings for dissolution.**—A corporation may be wound up and dissolved either voluntarily or involuntarily. If the proceedings are voluntary, they may be conducted either out of court or subject to the supervision of the court. If involuntary, they shall be subject to the supervision of the court.

Sec. 46. **Voluntary proceedings for dissolution.**

I. Voluntary proceedings for dissolution may be instituted whenever a resolution therefor is adopted by the holders of at least two-thirds of the voting power of all shareholders at a shareholders' meeting duly called for that purpose.

II. The resolution may provide that the affairs of the corporation shall be wound up out of court, in which case the resolution shall designate a trustee or trustees to conduct the winding up, and may provide a method for filling vacancies in the office of trustee; but such appointment shall not be operative until a certificate, setting forth the resolution and the manner of adoption thereof, signed and acknowledged by the president or vice-president and by the secretary or assistant secretary, shall be filed for record with the Secretary of State.

III. If a vacancy occurs in the office of trustee, it may be filled by resolution adopted by the holders of a majority of the voting power represented at a meeting of shareholders. Such meeting may be called by the remaining trustee or trustees, if any, and if none then in the manner provided in subdivision III of Section 24 of this Act.

IV. Unless the resolution to dissolve otherwise provides, the trustee or trustees may be removed, with or without cause, by the holders of a majority of the voting power of the shareholders at a meeting called for that purpose.

V. The resolution to dissolve may provide that the affairs of the corporation shall be wound up under the supervision of the court, in which case the resolution shall authorize certain directors or shareholders to sign and present a petition to the court praying that the corporation be wound up and dissolved under the supervision of the court.

VI. Where a corporation is being wound up and dissolved out of court, the trustee, or if there be more than one then a majority of the trustees, may by petition apply to the court for a receiver and to have the proceedings continued under the supervision of the court and thereafter the proceedings shall continue as if originally instituted subject to the supervision of the court.

Sec. 47. **Winding up out-of-court.**

I. Except as otherwise provided in the resolution for dissolution, the trustee or trustees appointed by the shareholders to conduct a winding up out of court shall, as speedily as practicable after his or their appointment has become operative as provided in Section 46, proceed:

(a) To collect all sums due or owing to the corporation,

(b) To sell and convert into cash all corporate assets,

(c) To collect any amounts remaining unpaid on subscriptions to shares, and

(d) To pay all debts and liabilities of the corporation according to their respective priorities.

II. Any property remaining after discharging the debts and liabilities of the corporation shall be distributed by the trustee or trustees to the shareholders according to their respective rights and preferences.

III. Nothing in this section shall interfere with a reorganization pursuant to the provisions of Section 54 of this Act.

Sec. 48. **Grounds for involuntary dissolution.**

A corporation may be dissolved by involuntary proceedings in the discretion of the court when it is made to appear:

(a) That the corporate assets are insufficient to pay when due all just demands for which the corporation is liable; or

(b) That the objects of the corporation have wholly failed or are entirely abandoned or their accomplishment is impracticable; or

(c) That the directors or those in control of the corporation have been guilty of fraud or mismanagement, or of abuse of authority or of persistent unfairness toward minority shareholders; or

(d) That there is internal dissention and that two or more factions of the shareholders in the corporation are so deadlocked that its business cannot longer be conducted with advantage to its shareholders; or

(e) That the period for which the corporation was formed has terminated without extension.

Sec. 49. **Who may institute involuntary proceedings.**

I. A petition for involuntary dissolution of a corporation may be filed by:

(a) A shareholder or

(b) A judgment creditor after return unsatisfied of an execution on his judgment.

II. The commencement of a proceeding for dissolution out of court shall not affect the right of any qualified person to petition for involuntary proceedings for dissolution.

Sec. 50. **Appointment of receivers.**

I. Upon the filing of a petition by a corporation for voluntary liquidation, or by the trustee or trustees as authorized in subdivision VI of Section 46 of this Act, the court may appoint a liquidating receiver or receivers.

II. Upon the filing of a petition for involuntary dissolution, the court shall fix a time and place for hearing thereon and order such notice thereof to be given as it may deem proper. At the time and place so fixed the court shall hear the evidence of all parties interested and, if any ground specified in the complaint is sustained, may in its discretion appoint a liquidating receiver or receivers.

III. Upon the filing of any such petition, the court shall have the ordinary powers of a court of equity to appoint a temporary receiver or receivers.

Sec. 51. **Duties and powers of trustees and receivers.**

I. The receiver or receivers, appointed as provided in Section 50 of this Act shall, after giving such bond as the court may require for the faithful performance of his or their duties, proceed with the liquidation of the affairs of the corporation in such manner as the court shall direct.

II. Trustees or receivers in dissolution proceedings shall have full authority to enforce within or without the State any and all causes of action which the creditors or shareholders or any class thereof may have against officers, directors, shareholders or any one else, and to enforce, defend, compromise, compound and settle claims in favor of or against the corporation upon such terms as they shall deem best; but if the proceeding is subject to the supervision of the court, no such compromise, composition or settlement shall be valid unless approved by the court.

III. Such trustees or receivers may call meetings of the shareholders in the manner the directors might have done, or, if the proceeding is subject to the supervision of the court, in such manner as the court may direct.

Sec. 52. **Effect of dissolution proceedings.**—Upon adoption of a resolution for dissolution, or upon a finding by the court of the existence of grounds for involuntary dissolution, the authority and duties of the directors and officers of the corporation shall cease, except insofar as may be necessary to preserve the corporate assets, or insofar as they may be continued by the trustee or receiver, or as may be necessary for the calling of meetings of the shareholders.

Sec. 53. **Claims against corporations in dissolution subject to court supervision.**

I. In a proceeding for dissolution subject to court supervision, the court shall make an order limiting the time for creditors to present claims against the corporation, and fixing the time and place of hearing thereon.

II. The time so limited shall not be more than one year nor less than six months, unless it shall appear by affidavit that there are no claims, in which case the limitation may be three months. For cause shown, and upon notice to the receiver or receivers, the court in its discretion may receive, hear and allow a claim filed within eighteen months after the day on which the order to present claims was entered if an order of dissolution shall not have been entered before such claim is filed.

III. Three weeks published notice of such order to present claims shall be given, and a copy thereof shall be mailed to each creditor shown by the books of the corporation or known to the receiver at the address of such creditor appearing on such books or known to the receiver.

IV. All claims, whether due, not due, or contingent, which are not presented within the time fixed by the court shall be forever barred from participation in any assets of such corporation at any time in the possession or under the control of the receiver or receivers, whether or not distributed to creditors or shareholders; provided that contingent claims which do not become absolute and capable of liquidation before the order of dissolution, need not be so presented or allowed.

V. Claims presented shall be itemized, and show the security, if any, held therefor, and be verified by an affidavit of the claimant or his agent or attorney showing the balance due, that no payments have been made thereon that are not credited, and that there are no offsets thereto known to the affiant.

VI. Any claim may be pleaded as an offset or counterclaim in any action brought against the claimant by the receiver or re-

ceivers, except in an action for the balance due upon a subscription for or contract to purchase shares.

VII. If a claim presented be contingent or not due, the particulars thereof shall be stated. If contingent claims are presented, the court may require such provision to be made as it may deem adequate for payment thereof if and when due, and no distribution to shareholders shall be made until such order shall have been made and complied with.

Sec. 54. **Compromise arrangements; reorganizations; approval and effect.**

I. When a compromise or arrangement is proposed between a corporation and its creditors or any class of them, or between the corporation and its shareholders or any class of them, or between the corporation and both creditors and shareholders or any class or classes of them, the court may, upon the application of the corporation or of a liquidating trustee or receiver thereof, order a meeting of the creditors or class of creditors, or of the shareholders or class of shareholders, as the case may be, to be called in such manner as the court may direct.

II. If the majority in number representing three-fourths in value of the creditors or class of creditors, or if the shareholders or class of shareholders holding three-fourths of the voting power of all shareholders or of the class of shareholders, as the case may be, agree to any compromise or arrangement or to a reorganization of the corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court, be binding on all the creditors or class of creditors, and on all the shareholders or class of shareholders, as the case may be, and also on the corporation and its liquidating trustee or receiver, if any.

III. If the articles of incorporation so provide, the corporation shall not be subject to the provisions of this section.

Sec. 55. **Order or certificate of dissolution; filing; omitted assets.**

I. When a corporation has been completely wound up, the court, if the proceeding is subject to the supervision of the court, shall make an order adjudging the corporation to be dissolved; and if the proceeding is out of court, the trustee or trustees shall sign and acknowledge a certificate stating that the corporation has been completely wound up and is dissolved.

II. The order or certificate of dissolution shall be filed for record with the Secretary of State and thereupon the corporate existence shall terminate.

III. The title to any assets omitted from the winding up shall vest in the trustee or trustees, or receiver or receivers, for the benefit of the persons entitled thereto and shall be administered and distributed accordingly.

Sec. 56. **Action to terminate corporate existence.**

I. Whenever the public interest may require, the attorney general may bring an action against a corporation to terminate its corporate existence upon the ground that:

(a) The corporate franchise was procured through fraud practiced upon the state; or

(b) The corporation should not have been formed under this Act; or

(c) The corporation was formed without a substantial compliance with the conditions prescribed by this Act as precedent or essential to incorporation; or

(d) The corporation has offended against any provision of the statutes regulating corporations or has abused or usurped corporate privileges or powers; or

(e) The corporation has knowingly and persistently violated any provision of law; or

(f) The corporation has done or omitted any act which amounts to a surrender of its corporate franchise, has failed to exercise or has discontinued its corporate privileges, or has abandoned the corporate enterprise.

II. If the ground for the action is an act which the corporation has done or omitted to do, and correction can be made by amendment to its articles, or otherwise, then such action shall not be instituted unless the Attorney General shall give the corporation written notice of the act done or omitted to be done, and the corporation shall fail to institute proceedings to correct the same within thirty days thereafter.

III. If the court adjudges that the existence of the corporation be terminated, it may appoint a receiver of the corporation's property and make distribution thereof among its creditors and shareholders. The Attorney General shall cause a copy of the judgment terminating the corporate existence to be filed for record with the

Secretary of State and in the office of the register of deeds of the county in which the registered office of the corporation was located.

Sec. 57. **Monopolies and restraint of trade.**—Nothing in this Act shall be construed to authorize a corporation to do any act in violation of the common law or the statutes of this State or of the United States with respect to monopolies and illegal restraint of trade.

Sec. 58. **Constitutionality.**—The invalidity of any part of this Act shall not affect the validity of any other part thereof which can be given effect without such invalid part.

Sec. 59. **Name of Act.**—This Act may be cited as the Minnesota Business Corporation Act.

Sec. 60. **Reservation of right to alter, amend or repeal.**—The State hereby fully reserves the right to alter, amend or repeal the several provisions of this Act and all corporations formed or coming under this Act are subject to such reserved right.

Sec. 61. **Application of this Act to existing corporations; election not to come under its provisions; acceptance notwithstanding such election.**

I. This Act shall not apply to corporations in existence at the time it takes effect; but every such corporation formed under the laws of Minnesota, if formed for a purpose or purposes for which a corporation might be formed under this Act, may accept and come under this Act, and every such corporation shall be conclusively presumed to have accepted and come under this Act unless, within one year after this Act takes effect, the corporation shall signify its election not to accept or be bound by the provisions of this Act.

II. Such election shall be effective only if made by resolution of the stockholders adopted by a majority vote of all stockholders then entitled to vote and voting at an annual meeting or at a special meeting duly called for that purpose, and if a copy of the resolution, certified by the president or vice-president, and the secretary or assistant secretary, shall be filed with the Secretary of State and if a copy thereof, duly certified by the Secretary of State, shall be filed for record in the office of the register of deeds of the county in which the corporation's principal place of business is located, together with the payment of $5.00 to the Secretary of State as a filing fee and of the lawful recording fee to the register of deeds; all within the one year period in subdivision I of this section provided.

III. Whether or not a corporation eligible to accept the provisions of this Act has elected not to accept, under subdivision II

of this section, it may, at any time within said one year period, accept and come under the provisions of this Act by resolution adopted, certified, and filed, with the payment of fees, in the same manner as in subdivision II of this section provided for election not to accept.

IV. The Secretary of State, upon the payment of the $5.00 as a filing fee, shall record each resolution of election not to accept and each resolution of acceptance filed within the said one year period, if the same conforms to the requirements of this section.

V. Upon acceptance of the provisions of this Act, whether by resolution as in subdivision III of this section provided or by failure within the one year period to elect not to accept, all provisions of this Act shall apply to all accepting corporations as fully as though such corporations had been formed hereunder, except as hereinafter in this section otherwise provided.

VI. The principal place of business of the accepting corporation shall become its registered office. If its certificate of incorporation or any amendment thereof does not contain a statement of the location and post-office address of such principal place of business, the accepting corporation shall, upon coming under this Act, file for record with the Secretary of State a certificate stating the location and post-office address of its registered office.

VII. The stated capital of the accepting corporation shall be a sum equal to the aggregate of the following amounts:

(a) The aggregate par value of all shares having par value outstanding at the time it comes under this Act.

(b) The aggregate consideration received by the corporation for all shares without par value issued by it prior to the time it comes under this Act, less such part of such consideration as has been received as paid-in surplus, and less the aggregate purchase price of all its shares without par value repurchased by the corporation prior to the time this Act becomes effective.

VIII. The surplus of the accepting corporation at the time it comes under this Act, shall be determined as provided by subdivision I of section 21 of this Act; but the whole of such surplus shall be deemed earned surplus.

IX. The duration of the accepting corporation shall not be in anywise altered by its coming under this Act. Any extension of its duration for a further definite time or perpetually shall be by amendment of its articles of incorporation made at any meeting of

the shareholders, provided notice of proposal to amend, stating the nature of such proposal, shall have been mailed to all shareholders whether entitled to vote thereon or not, at least ten days prior to such meeting, if such proposal be adopted by the vote of the holders of two-thirds of the voting power of all shareholders entitled under the articles to vote. A shareholder who did not vote in favor of or consent in writing to such amendment whether entitled to vote thereon or not, shall have the rights and remedies provided by Section 39 of this Act. The provisions of Section 36, subdivision IV of this Act shall apply to amendments under this subdivision.

X. All provisions of the certificate of incorporation of an accepting corporation which might lawfully be included in articles of incorporation under the provisions of this Act shall remain in full force, notwithstanding such provisions would not be required by this Act to be included in articles of incorporation. Any provision of the certificate of incorporation which might not lawfully be included in articles of incorporation under this Act shall, when the corporation comes under this Act, cease to be effective for any purpose.

Sec. 62. **Laws not to apply to corporations formed or coming under this Act; laws amended.**

I. The provisions of Mason's Minnesota Statutes of 1927, Sections 7453, 7454, 7457-12, 7457-13, 7457-14, 7457-15, 7457-16, 7457-17, 7457-18, 7458, 7459, 7460, 7461, 7462, 7464, 7465, 7466, 7467, 7468, 7469, 7470, 7470-1, 7470-2, 7470-3, 7470-5, 7470-6, 7470-7, 7470-8, 7470-9, 7470-10, 7470-11, 7471, 7472, 7477, 7478, 7479, 7480, 7481, 7483, 7484, 7489, 7491, 7776, 7778, 8015, 8016, 8017, 8019, 8022, 8023, 8024, 8025, 8026, 8027, 8028, 8029, 8030, 8031, as amended, shall not apply to corporations formed under this Act; nor shall they apply to any existing corporation after it comes under this Act in accordance with the provisions of section 61 of this Act.

II. Mason's Minnesota Statutes of 1927, section 7443, is hereby amended to read as follows:

"Any three or more persons may form a corporation for any of the purposes specified in this subdivision by complying with the conditions hereinafter prescribed; *provided, no corporation shall be formed under this section which might be formed under the Minnesota Business Corporation Act.* They shall subscribe and acknowledge a certificate specifying:

1. The name, the general nature of its business, and the principal place of transacting the same. Such name shall dis-

tinguish it from all other corporations, domestic or foreign, authorized to do business in this state, and shall contain the word "company," "corporation," "bank," "association," or "incorporated." In the case of a state bank the name shall contain the words "state bank."

2. The period of its duration, if limited.

3. The name and place of residence of the incorporators.

4. In what board its management shall be vested, the date of the annual meeting at which it shall be elected, and the names and addresses of those composing the board until the first election, a majority of whom, in the case of savings banks and building and loan associations, shall always be residents of the state.

5. The amount of capital stock, if any, how the same is to be paid in, the number of shares into which it is to be divided, and the par value of each share; and, if there is to be more than one class, a description and the terms of issue of each and the method of voting thereon.

6. The highest amount of indebtedness or liability to which the corporation shall at any time be subject.

It may also contain any other lawful provision defining and regulating the powers or business of the corporation, its officers, directors, trustees, members, and stockholders."

III. Section 7447-1, Mason's Minnesota Statutes of 1927, is hereby amended so as to read as follows:

"Every corporation heretofore or hereafter organized under the laws of this state, *except those formed or coming under the Minnesota Business Corporation Act,* may at any meeting of its board of directors, sell, lease or exchange all of its property, rights privileges and franchises upon such terms and conditions as its board of directors deem expedient, and for the best interests of the corporation, when and as authorized by the affirmative vote of the holders of two-thirds of the shares of stock of the company issued and outstanding having voting power, given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of two-thirds of the shares of stock of the company issued and outstanding having voting power. Provided, however, that the certificate of incorporation may require the vote or written consent of a larger portion of the stockholders."

IV. Section 7455, Mason's Minnesota Statutes of 1927, is hereby amended so as to read as follows:

"A railroad corporation may be formed for any period specified in its certificate of incorporation. A savings bank shall have perpetual succession. Every other corporation, except as hereinafter otherwise provided, shall be formed for a period not exceeding thirty years in the first instance, but may be renewed from time to time for a further term not exceeding thirty years, whenever a three-fourths vote of the stock or members in case of mutual or non-stock corporations represented at any regular meeting, or at any special meeting called for that purpose, which shall have been clearly specified in the call, shall have heretofore or shall hereafter adopt a resolution to that effect, and in case of stock companies when those desiring it shall have purchased at its value the stock of those opposed thereto; *provided, that no corporation formed under the provisions of the Minnesota Business Corporation Act, and no corporation which accepts the provisions of that Act or which elects not to accept the same, as provided by Section 61 of that Act, may be renewed hereunder.* Religious, social, fraternal and charitable corporations shall have perpetual succession unless the duration thereof is specifically limited in the certificate of incorporation and in case of existing religious, social, fraternal and charitable corporations where no period of duration is fixed in the certificate of incorporation the duration thereof shall be perpetual unless said corporations amend their articles of incorporation limiting the duration within ninety days after the taking effect of this Act, and where the certificate of incorporation of any such corporation provides a fixed period of duration, such corporation may have perpetual succession by amending its certificate of incorporation so as to provide therefor at any time within one year after the passage of this Act."

V. Mason's Minnesota Statutes of 1927, section 7463, is hereby amended to read as follows:

"The delivery, by the rightful owner or by one by him intrusted therewith, to a bona fide purchaser or pledgee for value, of a certificate of stock, duly transferred in writing by the holder personally, or accompanied by his power of attorney authorizing such transfer, shall be sufficient to transfer title, but shall not affect the right of the corporation to pay any dividend thereon, or to treat the holder of record as the owner in fact, until such transfer has been recorded on its books, or a new certificate issued to the transferee, who, upon delivery of the former certificate to the treasurer, shall be entitled to receive such new one. Stock *in any corporation, except one formed or coming under the Minnesota Business Corporation Act,* shall not be transferred upon the books of the corporation while any installment thereon remains delinquent, nor while any indebtedness of the record holder thereof to the corpora-

tion remains unpaid; nor shall any transfer deprive it of the right to maintain a personal action against any subscriber to its stock. A pledgee of stock transferred as collateral security shall be entitled to a new certificate, if the instrument of transfer substantially describe the debt or duty intended to be secured thereby. Such new certificate shall state on its face that it is held as collateral security, and the name of the pledgor, who alone shall be liable as a stockholder and entitled to vote thereon; *provided, that corporations formed or coming under the Minnesota Business Corporation Act shall not be subject to the provisions of this sentence.*"

Sec. 63. **Laws repealed.**—Mason's Minnesota Statutes of 1927, Sections 7435, 7440, 7775, and 7777, are hereby repealed.

Sec. 64. **Effective upon passage.**—This Act shall take effect from and after its passage.

Approved April 18, 1933.

CHAPTER 301—H. F. No. 370

An act authorizing certain counties of this state to acquire, equip and operate a public market; providing for the management and control thereof and for the issuance of bonds to meet the expenses incident thereto; providing for the securing of funds from the Reconstruction Finance Corporation, or other state or federal loaning agency, and providing for purchase.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Certain counties may acquire and operate a public market.**—Every county of this state now or hereafter having property of an assessed valuation of not less than $300,000,000, exclusive of moneys and credits, and containing a city of the first class of not less than 300,000 inhabitants according to the last federal census, by a majority vote of the board of county commissioners of such county is hereby authorized to acquire, either by gift, purchase, condemnation or otherwise, lands necessary for a public market and to purchase, erect or lease buildings, and to equip the same and the premises on which such buildings are located, same to be located in said city of first class at a distance not to exceed one mile from city hall and court house, and to maintain and operate said buildings and premises as a public market, such market to be maintained for the direct selling of farm products by the producers.