

provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 302A.135, subdivisions 2 to 4, for amendment of the articles. ~~The provisions of this subdivision regarding shareholder-proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.~~

Sec. 3. Minnesota Statutes 1998, section 302A.255, subdivision 1, is amended to read:

Subdivision 1. **CONFLICT; PROCEDURE WHEN CONFLICT ARISES.** A contract or other transaction between a corporation and one or more of its directors, or between a corporation and an organization in or of which one or more of its directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other organizations are parties or because the director or directors are present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(a) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;

(b) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by (1) the holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote;

(c) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

(d) The contract or transaction is a distribution described in section 302A.551, subdivision 1, or a merger or exchange described in section 302A.601, subdivision 1 or 2.

Sec. 4. Minnesota Statutes 1998, section 302A.405, subdivision 3, is amended to read:

Subd. 3. **PAYMENT; LIABILITY; CONTRIBUTION; STATUTE OF LIMITATIONS.** (a) A corporation shall issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassess-

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able" shares are shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation. Consideration in the form of a promissory note, a check, or a written agreement to transfer property or render services to a corporation in the future is fully paid when the note, check, or written agreement is delivered to the corporation, and consideration in the form of services to be rendered to the corporation is fully paid when the issuance of the shares is authorized or approved pursuant to subdivision 1, paragraph (a).

(b) If shares are issued in violation of paragraph (a), the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:

(1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;

(2) The person to whom the shares were issued; and

(3) A successor or transferee of the interest in the corporation of a person described in clause (1) or (2), including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in clause (1) or (2), or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.

(c)(1) A pledgee or holder of any other security interest in all or any shares that have been issued in violation of paragraph (a) is not liable under paragraph (b) if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.

(2) A pledgee, holder of any other security interest, or legal representative is liable under paragraph (b) only in that capacity. The liability of the person under paragraph (b) is limited to the assets held in that capacity for the person or estate of the person described in clause (1) or (2) of paragraph (b).

(3) Each person liable under paragraph (b) has a full right of contribution on an equitable basis from all other persons liable under paragraph (b) for the same transaction.

(4) An action shall not be maintained against a person under paragraph (b) unless commenced within two years from the date on which shares are issued in violation of paragraph (a).

Sec. 5. Minnesota Statutes 1998, section 302A.409, subdivision 3, is amended to read:

Subd. 3. **ISSUANCE PERMITTED.** A corporation may issue rights to purchase after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, or by an officer pursuant to board authorization,

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subject to any restrictions in the articles. Notwithstanding any provision of this chapter, a corporation may issue rights to purchase or amend the instrument or agreement fixing the terms, provisions, and conditions of the rights to purchase to include terms and conditions that prevent the holder of a specified percentage of the outstanding shares of the corporation, including subsequent transferees of the holder, from exercising those rights to purchase.

Sec. 6. Minnesota Statutes 1999 Supplement, section 302A.471, subdivision 1, is amended to read:

Subdivision 1. **ACTIONS CREATING RIGHTS.** A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) An amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder, in that it:

- (1) alters or abolishes a preferential right of the shares;
- (2) creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;
- (3) alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;
- (4) excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; except that an amendment to the articles of an issuing public corporation that provides that section 302A.671 does not apply to a control share acquisition does not give rise to the right to obtain payment under this section;

(b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation, but not including a transaction permitted without shareholder approval in section 302A.661, subdivision 1, or a disposition in dissolution described in section 302A.725, subdivision 2, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

(c) A plan of merger, whether under this chapter or under chapter 322B, to which the corporation is a constituent organization, except as provided in subdivision 3;

(d) A plan of exchange, whether under this chapter or under chapter 322B, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan except as provided in subdivision 3; or

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(e) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

Sec. 7. Minnesota Statutes 1998, section 302A.471, subdivision 3, is amended to read:

Subd. 3. **RIGHTS NOT TO APPLY.** (a) Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to a shareholder of (1) the surviving corporation in a merger, if the shares of the shareholder are not entitled to be voted on the merger with respect to shares of the shareholder that are not entitled to be voted on the merger and are not canceled or exchanged in the merger or (2) the corporation whose shares will be acquired by the acquiring corporation in a plan of exchange with respect to shares of the shareholder that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

(b) If a date is fixed according to section 302A.445, subdivision 1, for the determination of shareholders entitled to receive notice of and to vote on an action described in subdivision 1, only shareholders as of the date fixed, and beneficial owners as of the date fixed who hold through shareholders, as provided in subdivision 2, may exercise dissenters' rights.

Sec. 8. Minnesota Statutes 1998, section 302A.521, subdivision 6, is amended to read:

Subd. 6. **DETERMINATION OF ELIGIBILITY.** (a) All determinations whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 shall be made:

(1) by the board by a majority of a quorum, if the directors who are at the time parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

(2) if a quorum under clause (1) cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;

(3) if a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to clause (1) or (2) or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;

(4) if a determination is not made under clauses (1) to (3), by the shareholders affirmative vote of the shareholders required by section 302A.437, but the shares held by parties to the proceeding must not be counted in determining the presence of a

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quorum and are not considered to be present and entitled to vote on the determination; or

(5) if an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the corporation or (ii) a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

Sec. 9. Minnesota Statutes 1998, section 302A.613, subdivision 2, is amended to read:

Subd. 2. **APPROVAL BY OWNERS.** (a) At the meeting a vote of the owners shall be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote and, if the merger or exchange is with a domestic or foreign limited liability company, when approved in the manner required by the laws of the state under which the limited liability company is organized. Except as provided in paragraph (b), a class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

(b) A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation or exchange of the shares of the class or series if the plan of merger or exchange effects a cancellation or exchange of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 302A.471 in the event of the merger or exchange.

Sec. 10. Minnesota Statutes 1999 Supplement, section 322B.43, subdivision 1, is amended to read:

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Subdivision 1. **AGREEMENTS PERMITTED.** Subject to any restrictions in the articles of organization or a member control agreement, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors or by a manager pursuant to board authorization.

Sec. 11. Minnesota Statutes 1999 Supplement, section 322B.666, subdivision 1, is amended to read:

Subdivision 1. **CONFLICT AND PROCEDURE WHEN CONFLICT ARISES.** A contract or other transaction between a limited liability company and one or more of its governors, or between a limited liability company and an organization in or of which one or more of its governors are governors, directors, managers, officers, or legal representatives or have a material financial interest, is not void or voidable because the governor or governors or the other organizations are parties or because the governor or governors are present at the meeting of the members or the board of governors or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(1) the contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;

(2) the material facts as to the contract or transaction and as to the governor's or governors' interest are fully disclosed or known to the members, whether or not entitled to vote, and the contract or transaction is approved in good faith by (i) the owners of two-thirds of the voting power of the membership interests entitled to vote that are owned by persons other than the interested governor or governors, or (ii) the unanimous affirmative vote of all members, whether or not entitled to vote;

(3) the material facts as to the contract or transaction and as to the governor's or governors' interest are fully disclosed or known to the board of governors or a committee, and the board of governors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board of governors or committee, but the interested governor or governors are not counted in determining the presence of a quorum and must not vote; or

(4) the contract or transaction is a distribution described in section 322B.54, subdivision 1, or a merger or exchange described in section 322B.70, subdivision 1 or 2.

Sec. 12. Minnesota Statutes 1998, section 322B.699, subdivision 6, is amended to read:

Subd. 6. **DETERMINATION OF ELIGIBILITY.** (a) All determinations whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 must be made:

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(1) by the board of governors by a majority of a quorum. If the governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

(2) if a quorum under clause (1) cannot be obtained, by a majority of a committee of the board of governors, consisting solely of two or more governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of governors including governors who are parties;

(3) if a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to clause (1) or (2) or, if the requisite quorum of the full board of governors cannot be obtained and the committee cannot be established, by a majority of the full board of governors including governors who are parties;

(4) if a determination is not made under clauses (1) to (3), by the affirmative vote of the members required by section 322B.346, but the membership interests held by parties to the proceeding must not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or

(5) if an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the limited liability company or (ii) a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement or expenses.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made by an annually appointed committee of the board of governors, having at least one member who is a governor. The committee shall report at least annually to the board of governors concerning its actions.

Sec. 13. Minnesota Statutes 1999 Supplement, section 322B.72, subdivision 2, is amended to read:

Subd. 2. **APPROVAL BY OWNERS.** (a) At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote. Except as provided in paragraph (b) or a member

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control agreement, a class or series of ownership interests of the organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

(b) A class or series of ownership interests of the organization is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation or exchange of the ownership interests of the class or series if the plan of merger or exchange effects a cancellation or exchange of all ownership interests of the organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their shares ownership interests under section 322B.383 in the event of the merger or exchange.

Presented to the governor March 16, 2000

Signed by the governor March 20, 2000, 4:05 p.m.

CHAPTER 265—S.F.No. 2346

An act relating to natural resources; authorizing the use of motor vehicles in wildlife management areas by disabled hunters; modifying certain permits for hunters with disabilities; providing criminal penalties; amending Minnesota Statutes 1998, sections 97A.137, by adding a subdivision; and 97B.055, subdivision 3.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1998, section 97A.137, is amended by adding a subdivision to read:

Subd. 3. USE OF MOTORIZED VEHICLES BY DISABLED HUNTERS. The commissioner may issue a special permit, without a fee, authorizing a hunter with a permanent physical disability to use a snowmobile or all-terrain vehicle in wildlife management areas. To qualify for a permit under this subdivision, the disabled person must possess:

- (1) the required hunting licenses; and
- (2) a permit to shoot from a stationary vehicle under section 97B.055, subdivision 3.

Sec. 2. Minnesota Statutes 1998, section 97B.055, subdivision 3, is amended to read:

Subd. 3. HUNTING FROM VEHICLE BY DISABLED HUNTERS. (a) The commissioner may issue a special permit, without a fee, to discharge a firearm or bow and arrow from a stationary motor vehicle to a licensed hunter person who obtains the

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