

## CHAPTER 117—H. F. No. 704.

*An act to amend Laws 1933, Chapter 300, Section 1, Subdivision III; Section 14, Subdivision III; Section 15, Subdivision II, III and adding Subdivision IV; Section 36, Subdivisions III (b), III (c) and III (d); Section 40; Section 61, Subdivisions III and IV; and Section 62, Subdivision I, relating to the formation and conduct of business corporations, their merger, consolidation and dissolution, the powers, rights, duties and liabilities of such corporations, their officers, directors, agents, shareholders and persons dealing with them, and the coming under said act of certain existing corporations. Be it enacted by the Legislature of the State of Minnesota:*

**Section 1. Definitions.**—That Laws 1933, Chapter 300, Section 1, Subdivision III, be amended so as to read as follows:

**Sec. 1. 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 *Section 13, Subdivision V and Section 32, Subdivision II* of this act, agreements of consolidation or merger, and charters granted by special act or acts of the Legislature of the State or Territory of Minnesota.

**Sec. 2. Consideration.**—That Laws 1933, Chapter 300, Section 14, Subdivision III, be amended so as to read as follows:

**Sec. 14. III.** The amount of consideration to be received, in cash or otherwise, shall not be less than the par value of shares 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 *nor to shares of a corporation having par value allotted in consideration of the cancellation of an indebtedness of such corporation the amount of which is at least equal to the par value of the shares so allotted, unless the consideration received by such corporation upon the creation of such indebtedness was less than 85 per cent of the amount of such indebtedness.*

**Sec. 3. Directors and shareholders to be liable.**—That Laws 1933, Chapter 300, Section 15, Subdivision II, be amended so as to read as follows:

**Sec. 15. II.** Directors or shareholders who, wilfully 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; *provided, that if shares or securities convertible into shares or securities in connection with which options are granted to purchase or subscribe for shares, shall, before allotment or offer of such shares or securities is made to others, be offered in substantially ratable amounts to the then shareholders, who in the absence of waiver of such rights would be entitled to preemptive rights, at not more than the same considerations and terms as said shares or securities are allotted or offered to others, the portion of such shares or securities not subscribed for within the offering period by such shareholders may, at any time within four months after the expiration of the offering period, be allotted or sold to others at not less than the same considerations and terms, and any such allotment or sale shall, except in case of deliberate fraud, be conclusively presumed to have been fair. Such prior offer to shareholders shall be made by not less than sixty days' notice mailed to them at their addresses as shown by the records of the secretary of the corporation.* 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.

**Sec. 4. Limitation of action.**—That Laws 1933, Chapter 300, Section 15, Sub-division III, be amended to read as follows:

**Sec. 15. IV.** 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. 5. Directors or shareholders entitled to contribution.**—That Laws 1933, Chapter 300, Section 15, be amended by inserting therein after Subdivision II a new subdivision to be known as Subdivision III, reading as follows:

**Sec. 15. III.** *Any director or shareholder against whom a claim is asserted pursuant to this section, except in case of participation in a deliberate fraud, shall be entitled to contribution on an equitable basis from other directors or shareholders who are liable.*

Sec. 6. **Amendments to Articles of Incorporation.**—That Laws 1933, Chapter 300, Section 36, Subdivision III (b), be amended so as to read as follows:

Sec. 36. III (b) Except as hereinafter in this section provided, an amendment may be adopted *only if it receives either*

(1) *The affirmative vote of the holders of two-thirds of the voting power of all shareholders entitled under the articles to vote, or such larger or smaller vote not less than a majority as the articles may require; or*

(2) *If not otherwise provided by the articles, the affirmative vote of the holders of a majority of the voting power of all shareholders entitled under the articles to vote and does not receive the negative vote of the holders of more than one-fourth of the voting power of all shareholders entitled to vote.*

Sec. 7. **Who are entitled to vote.**—That Laws 1933, Chapter 300, Section 36, Subdivision III (c), be amended so as to read as follows:

Sec. 36. III (c) If an amendment would adversely affect the rights of 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 such amendment shall be adopted only if it receives as to each class so affected by the amendment either*

(1) *The affirmative vote of the holders of two-thirds of the shares of such class, or such larger or smaller vote thereof not less than a majority as the articles may require; or*

(2) *If not otherwise provided by the articles, the affirmative vote of the holders of a majority of the shares of such class and does not receive the negative vote of the holders of more than one-fourth of the shares of such class.*

Sec. 8. **Same.**—That Laws 1933, Chapter 300, Section 36, Subdivision III (d), be amended so as to read as follows:

Sec. 36. III (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 amend-

ment, whether by the terms of the articles such class is entitled to vote or not; and such amendment shall be adopted only if it receives as to each class either

(1) *The affirmative vote of the holders of two-thirds of the shares of such class, or such larger vote as the articles may require; or*

(2) *If not otherwise provided by the articles, the affirmative vote of the holders of a majority of the shares of such class and does not receive the negative vote of the holders of more than one-fourth of the shares of such class.*

**Sec. 9. Consolidation and merger authorized.**—That Laws 1933, Chapter 300, Section 40, be amended so as to read as follows:

**Sec. 40.** 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. *The consolidation of corporations formed for the purpose of carrying on the business of a railroad shall continue to be governed by the provisions of Sections 7506 to 7511, inclusive, Mason's Minnesota Statutes of 1927.*

**Sec. 10. Who may accept provisions of act.**—That Laws 1933, Chapter 300, Section 61, Subdivision III, be amended so as to read as follows:

**Sec. 61. 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 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.

**Sec. 11. Resolution to be recorded.**—That Laws 1933, Chapter 300, Section 61, Subdivision IV, be amended so as to read as follows:

**Sec. 61. 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 *filed within said one year period*, and each resolution of acceptance *whenever* filed, if the same conforms to the requirements of this section.

**Sec. 12. Application.**—That Laws, 1933, Chapter 300, Section 62, Subdivision I, be amended so as to read as follows:

Sec. 62. 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, 7518, 7522, 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.

Sec. 13. **Who may come under act.**—That a new section to be known as Section 65 be added to Laws 1933, Chapter 300, reading as follows:

Sec. 65. *Any corporation organized under or possessing a charter granted by a special act or acts of the Legislature of the State or Territory of Minnesota, which accepts and comes under this Act, shall be and remain subject to and shall not thereafter by amendment become divested of the duties, obligations and liabilities to the State or public imposed by such special act or acts or by the charter so possessed which would not be imposed on it if organized under this Act; but such corporation by accepting and coming under this Act shall thereby forfeit and surrender all rights, privileges, immunities, and franchises which it may have by reason of such special act or acts or by the charter so possessed, to the extent that such rights, privileges, immunities, and franchises could not be possessed by a corporation organized under this act, provided that nothing contained in this section shall be construed so as to deny to a corporation organized under or possessing a charter granted by such special act or acts which accepts and comes under this Act any right, privilege or power possessed by a corporation organized under this Act.*

Section 14. This act shall take effect and be in force from and after its passage.

Approved April 5, 1935.

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CHAPTER 118—H. F. No. 712.

*An act determining and fixing the time within which assessors are required to perform their duties and their com-*