

90° west. Provided, however, that the easement hereby authorized to be granted shall not take effect unless and until the said City of Faribault, acting by and through its city council, shall cause to be duly vacated that certain roadway known as Barron Road No. (1), lying approximately 150 feet south of and running parallel with the description over which the easement hereby authorized to be granted is conveyed and lying between State Avenue and Sixth Avenue Southeast in the City of Faribault, Rice County, Minnesota.
Approved March 20, 1951.

CHAPTER 98—H. F. 217

An act relating to Minnesota Business Corporation Act; amending Minnesota Statutes 1949, Sections 301.04, 301.09, 301.14, Subdivisions 5, 6, 7, 301.16, Subdivision 2, 301.35, Subdivision 1, 301.41, Subdivision 2, 301.42, Subdivision 5, 301.44, Subdivision 1, 301.47, Subdivision 2, 301.52, 301.02, Subdivision 10, 301.21, Subdivision 4, and 301.39.

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

Section 1. Minnesota Statutes 1949, Section 301.04, is amended to read:

301.04. Articles of incorporation. 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:—

- (1) Its purpose;
- (2) Its duration, which may be limited or perpetual;
- (3) The location and post-office address of its registered office in this state;
- (4) 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;

(5) A description of the classes of shares, if the shares are 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; *but* 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, *in respect of shares then unallotted, any or all of the following*: the dividend rate, the redemption price, the liquidation price, *the conversion rights and the sinking or purchase fund rights* of shares of any class, or of any series of any class, or the number of shares constituting any series of any class.

(6) The amount of stated capital with which the corporation will begin business, which shall be not less than \$1,000;

(7) The names, post-office addresses, and terms of office of the first directors;

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

(9) 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, *or denying the right of cumulative voting.*

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. 2. Minnesota Statutes 1949, Section 301.09, is amended to read:

301.09. Powers common to corporations. Every corporation shall have power:

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

(2) To sue and be sued;

(3) 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;

(4) 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;

(5) To conduct business in this state and elsewhere; and

(6) 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.

(7) *To indemnify each director or officer or former director or officer against all expenses, including attorneys' fees, but excluding amounts paid pursuant to a judgment or settlement agreement, reasonably incurred by him in connection with or arising out of any action, suit or proceeding to which he is a party, by reason of being or having been a director or officer of the corporation, except with respect to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duties. Such indemnification shall not be exclusive of any other rights to which he may be entitled under any by-law, agreement, vote of stockholders or otherwise.*

Sec. 3. Minnesota Statutes 1949, Section 301.14, Subdivision 5, is amended to read:

301.14 Subd. 5. **Certificate fixing equality.** 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, *the conversion rights, the sinking or purchase fund rights*, 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 said 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.

Sec. 4. Minnesota Statutes 1949, Section 301.14, Subdivision 6, is amended to read:

Subd. 6. **Rights or options granted to shareholders.** 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. A 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.

Sec. 5. Minnesota Statutes 1949, Section 301.14, Subdivision 7, is amended to read:

Subd. 7. **Rights or options, terms.** The terms and provisions of such *conversion* rights or options shall be set forth in the articles or determined by the shareholders; provided, that the articles or the shareholders *by resolution* may authorize the board of directors *to fix the terms and provisions of such rights or options and to authorize the issuance thereof.*

Sec. 6: Minnesota Statutes 1949, Section 301.16, Subdivision 2, is amended to read:

301.16 Subd. 2. **Unfair allotments, liability.** 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 such 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 notice mailed to them at their addresses as shown by the records of the secretary of the corporation, *giving a reasonable period of time for acceptance of such offer*. 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. 7. Minnesota Statutes 1949, Section 301.35, Subdivision 1, is amended to read:

301.35. Shareholders, creditors; information to. Subdivision 1. **Shareholders, given statement of profits and losses.** Upon *written* 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, *and setting forth in summary form information as to conversion rights of the holders of outstanding securities and as to outstanding options for the purchase of securities of the corporation*, 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.

Sec. 8. Minnesota Statutes 1949, Section 301.41, Subdivision 2, is amended to read:

301.41 Subd. 2. Certain corporations, merger or consolidation. One or more domestic corporations formed under sections 301.01 to 301.61, or which have accepted and come under those sections, except corporations formed for the purpose of carrying on the business of a railroad, and one or more foreign corporations with authority to carry on any business, *other than the business of a railroad*, for the conduct of which a corporation might be organized under those sections may be:

(1) Merged into one of such domestic corporations or one of such foreign corporations; or

(2) Consolidated into a new corporation to be formed under sections 301.01 to 301.61 or under the laws of the state or county in which one of such foreign corporations is formed if such foreign corporations are authorized by the laws of the respective states or countries under which they were formed to effect such merger or consolidation. Any such merger or consolidation shall be effected as to such domestic corporations in accordance with and subject to the provisions of sections 301.42 to 301.45. The consolidated or surviving corporation, if a domestic corporation, shall in all respects be subject to the provisions of sections 301.43 to 301.45, and shall have only such powers and authority as a corporation formed under sections 301.01 to 301.61 may have. The consolidated or surviving corporation, if a foreign corporation, shall in all respects be subject to the provisions of sections 301.43 and 301.44 and to subdivisions 1 and 6 of Section 301.45 and shall agree in the agreement of merger that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation which is a domestic corporation, as well as for enforcement of any obligation resulting from the provisions of Section 301.44 hereof, and shall in said agreement of merger irrevocably appoint the secretary of state of this state as its agent to accept service of process in any such suit or other proceeding and shall specify the address to which a copy of such process shall be mailed by the secretary of state, and in any such suit or proceeding service of process upon it may be made in any of the manners set forth in Section 303.13. Any such merger or consolidation shall be effected as to such foreign corporations in accordance with the applicable laws of the respective states or countries under which they were formed and in accordance with the provisions of section 301.42, subdivisions 1, 3, and 4. The consolidated or surviving corporation shall be subject, as to the rights of dissenting shareholders of each constituent corporation, to the applicable laws of the respective state or foreign country under which such foreign corporation was formed.

Sec. 9. Minnesota Statutes 1949, Section 301.42, Subdivision 5, is amended to read:

301.42 Subd. 5. Fees. Before the secretary of state shall record any agreement of consolidation or merger in

cases where the consolidated or surviving corporation is a domestic corporation, 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. 10. Minnesota Statutes 1949, Section 301.44, Subdivision 1, is amended to read:

301.44. **Dissenting shareholders' rights.** Subdivision 1. **Demand for payment.** *If a domestic corporation has given notice to shareholders of a proposal to merge into or consolidate with any other corporation or corporations, a shareholder may, at any time prior to the date of the meeting at which such proposed merger or consolidation is to be voted upon, file a written objection to such merger or consolidation in the office of the secretary or president of the corporation and demand payment for his shares and have the fair cash value thereof determined as provided in section 301.40, the relevant provisions of which section shall be in all respects applicable; provided, that such demand shall be of no force and effect if such shareholder votes in favor of the merger or consolidation, or at any time consents thereto in writing, or if the proposed merger or consolidation be not in fact effected. 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.*

Sec. 11. Minnesota Statutes 1949, Section 301.47, Subdivision 2, is amended to read:

301.47 Subd. 2. **Resolution.** 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, one of whom shall be a resident of the State of Minnesota, to conduct the winding up, and may provide a method for filling vacancies in the office of the 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, and thereupon the trustee or trustees shall be vested by operation of law with the title to all assets of the corporation.

Sec. 12. Minnesota Statutes 1949, Section 301.52, is amended to read:

301.52. Trustees, receivers; duties, powers. The receiver or receivers appointed as provided in section 301.51 shall, after giving such bond as the court may require for the faithful performance of his or their duties, *be vested by operation of law with the title to all assets of the corporation and shall proceed with the liquidation of the affairs of the corporation in such manner as the court shall direct.*

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.

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. 13. Minnesota Statutes 1949, Section 301.02, Subdivision 10, is amended to read:

301.02 Subd. 10. Stated capital. The "stated capital" of a corporation at any time is:

(1) the sum of:

- (a) The aggregate par value of all shares having par value theretofore allotted, whether then outstanding or not,
- (b) 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 301.21,

- (c) Such amounts as may have been transferred from surplus to stated capital upon declaration of a share dividend,
- (d) Such amounts as may have been transferred from surplus to stated capital by action of the directors or shareholders;

(2) less the amounts, if any, by which stated capital has been reduced pursuant to section 301.39.

Sec. 14. Minnesota Statutes 1949, Section 301.21, Subdivision 4, is amended to read:

301.21 Subd. 4. Stated capital, reduction of becomes paid-in surplus. Upon a reduction of the stated capital of a corporation, pursuant to section 301.39, *subdivision 2*, the amount of such reduction shall constitute paid-in surplus.

Sec. 15. Minnesota Statutes 1949, Section 301.39, is amended to read:

301.39. Stated capital, reduction. Subdivision 1. Resolution, redemption of outstanding shares. A corporation having outstanding shares entitled to preferential dividends or to a preference upon involuntary liquidation may, by resolution adopted by the board of directors, subject to the restrictions, if any, contained in the articles of incorporation, (1) redeem such shares in whole or in part at the redemption price thereof; (2) acquire such shares in whole or in part by purchase or by exchange, but in the case of purchase of shares subject to redemption at not more than the redemption price thereof; or (3) retire any such shares previously acquired in any manner. The corporation may by resolution adopted by the board of directors, and notwithstanding the provisions of section 301.22, subdivision 6, apply to such redemption, acquisition or retirement a part of its stated capital not exceeding the aggregate amount of the preference (exclusive of accrued and unpaid dividends) to which the shares so redeemed, acquired or retired were entitled upon involuntary liquidation. Whenever any stated capital of the corporation is so applied, articles of reduction of stated capital setting forth the number and description by class and series of the shares so redeemed, acquired or retired, the preference (exclusive of accrued and unpaid dividends) to which such shares were entitled upon

involuntary liquidation, and the amount in dollars of the stated capital which the corporation shall have immediately following the effective date of such articles of reduction, shall be executed and filed for record in the form and manner required by section 301.37, subdivision 4, for the execution and filing of articles of amendment, and upon the recording thereof by the secretary of state the reduction of stated capital shall become effective. As soon as said articles of reduction shall have become effective any such shares so redeemed, acquired or retired shall have the status of authorized and unissued shares of the class to which such shares belong.

Subd. 2. Resolution, reduction of stated capital. *In addition to the method set forth in subdivision 1 of this section, 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 *involuntary* liquidation, in addition to the vote above required, the stated capital shall not be reduced pursuant to the provisions of this subdivision 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. Upon the adoption of a resolution reducing the stated capital pursuant to this subdivision, articles of reduction of stated capital setting forth the amount of stated capital which the corporation shall have immediately following the effective date of such articles of reduction shall be executed and filed for record in the form and manner required by section 301.37, subdivision 4, for the execution and filing of articles of amendment, and, subject to the provisions of subdivision 4 hereof, upon the recording thereof by the secretary of state the reduction of stated capital shall become effective.*

Subd. 3. Distribution, when not to be made. *No distribution from stated capital under subdivision 1 or from paid-in surplus created by a reduction of stated capital under subdivision 2 shall be made 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 *such* distribution is made in violation hereof, the directors and shareholders shall be liable to the corporation to the extent, in the maner, and subject to the conditions and limitations stated in section 301.23.

Subd. 4. **Resolution, when adopted.** A resolution reducing the stated capital of a corporation may be adopted at a *shareholders'* 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 301.37, and then only upon the filing for record of articles of reduction with the secretary of state, as provided in subdivision 2.

Subd. 5. **Stated capital, minimum amount.** The stated capital of a corporation shall never be reduced to an amount less than *the par value of all shares remaining outstanding which have a par value nor to an amount less than \$1,000.*
Approved March 20, 1951.

CHAPTER 99—H. F. No. 512

[Coded as Sections 49.42 to 49.46]

An act relating to the conversion, merger, and consolidation of national and state banks and trust companies.

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

[49.42] Section 1. **State bank.** As used in this act "state bank" means any bank (other than a mutual savings bank), trust company, or bank and trust company which is now or may hereafter be organized under the laws of this state.

[49.43] Sec. 2. **State bank; conversion, merger, consolidation; national banking association.** A state bank may convert into a national banking association or merge or con-