

a physician, dentist, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided; and

(6) any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.

(d) The minimum benefits for a qualified plan shall include, in addition to those benefits specified in clauses (a) and (e), benefits for well baby care, effective July 1, 1980, subject to applicable deductibles, coinsurance provisions, and maximum lifetime benefit limitations.

(e) Effective July 1, 1979, the minimum benefits of a qualified plan shall include, in addition to those benefits specified in clause (a), a second opinion from a physician on all surgical procedures expected to cost a total of \$500 or more in physician, laboratory and hospital fees, provided that the coverage need not include the repetition of any diagnostic tests.

(f) Effective August 1, 1985, the minimum benefits of a qualified plan must include, in addition to the benefits specified in clauses (a), (d), and (e), coverage for special dietary treatment for phenylketonuria when recommended by a physician.

Approved May 21, 1987

CHAPTER 203—S.F.No. 577

An act relating to business corporations; regulating mergers and exchanges; amending Minnesota Statutes 1986, sections 302A.111, subdivision 2; 302A.471, subdivisions 1 and 3; 302A.601, subdivision 2; 302A.611; 302A.613; 302A.615; 302A.631; and 302A.641, subdivision 1.

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

Section 1. Minnesota Statutes 1986, section 302A.111, subdivision 2, is amended to read:

Subd. 2. **STATUTORY PROVISIONS THAT MAY BE MODIFIED ONLY IN ARTICLES.** The following provisions govern a corporation unless modified in the articles:

- (a) A corporation has general business purposes (section 302A.101);
- (b) A corporation has perpetual existence and certain powers (section 302A.161);
- (c) The power to adopt, amend, or repeal the bylaws is vested in the board (section 302A.181);

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- (d) A corporation must allow cumulative voting for directors (section 302A.215);
- (e) The affirmative vote of a majority of directors present is required for an action of the board (section 302A.237);
- (f) A written action by the board taken without a meeting must be signed by all directors (section 302A.239);
- (g) The board may authorize the issuance of securities and rights to purchase securities (section 302A.401, subdivision 1);
- (h) All shares are common shares entitled to vote and are of one class and one series (section 302A.401, subdivision 2, clauses (a) and (b));
- (i) All shares have equal rights and preferences in all matters not otherwise provided for by the board (section 302A.401, subdivision 2, clause (b));
- (j) The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes (section 302A.401, subdivision 2, clause (c));
- (k) The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, and determine the value of nonmonetary consideration (section 302A.405, subdivision 1);
- (l) Shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued (section 302A.405, subdivision 1);
- (m) A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board (section 302A.409);
- (n) A shareholder has certain preemptive rights, unless otherwise provided by the board (section 302A.413);
- (o) The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a majority of the voting power of all shares entitled to vote (section 302A.437, subdivision 1);
- (p) Shares of a corporation acquired by the corporation may be reissued (section 302A.553, subdivision 1); and
- (q) ~~An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than 20 percent immediately after the exchange (section 302A.613, subdivision 3, clause (e));~~
- (r) ~~An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will~~

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be increased by more than 20 percent immediately after the exchange (section 302A.613, subdivision 3, clause (d)); and

(e) Each share has one vote unless otherwise provided in the terms of the share (section 302A.445, subdivision 3).

Sec. 2. Minnesota Statutes 1986, 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 limited by dilution through the issuance of securities with similar voting rights;

(b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, but not including 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 to which the corporation is a party, except as provided in subdivision 3;

(d) A plan of exchange ~~pursuant to which the shares of the corporation are to be acquired~~ 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; or

(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.

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Sec. 3. Minnesota Statutes 1986, section 302A.471, subdivision 3, is amended to read:

Subd. 3. **RIGHTS NOT TO APPLY.** The right to obtain payment under this section does not apply to ~~the shareholders~~ a shareholder of the surviving corporation in a merger ~~or of the acquiring corporation in an exchange~~, if ~~a vote of the shareholders of the corporation is not necessary to authorize the merger or exchange~~ the shares of the shareholder are not entitled to be voted on the merger.

Sec. 4. Minnesota Statutes 1986, section 302A.601, subdivision 2, is amended to read:

Subd. 2. **EXCHANGE.** ~~The A corporation may acquire all of the outstanding~~ shares of one or more classes or series of a another corporation may be exchanged for shares of the same or a different class or series of one or more other corporations pursuant to a plan of exchange approved in the manner provided in sections 302A.611; ~~302A.613 to 302A.615~~, and 302A.631 to 302A.651.

Sec. 5. Minnesota Statutes 1986, section 302A.611, is amended to read:

302A.611 PLAN OF MERGER OR EXCHANGE.

Subdivision 1. **CONTENTS OF PLAN.** A plan of merger or exchange shall contain:

(a) The names of the corporations proposing to merge or participate in an exchange, and:

- (1) In the case of a merger, the name of the surviving corporation;
 - (2) In the case of an exchange, the name of the acquiring corporation;
- (b) The terms and conditions of the proposed merger or exchange;

(c) (1) In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or

(2) In the case of an exchange, the manner and basis of exchanging the shares ~~of other constituent corporations for shares of the acquiring corporation~~ to be acquired for securities of the acquiring corporation or any other corporation or, in whole or part, into money or other property;

(d) In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and

(e) Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

Subd. 2. **OTHER AGREEMENTS.** The procedure authorized by this sec-

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tion does not limit the power of a corporation to acquire ~~for money or property other than its shares~~ all or part of the shares of a class one or more classes or series of another corporation ~~by a negotiated agreement with the shareholders of the other corporation~~ through a negotiated agreement with the shareholders or otherwise.

Sec. 6. Minnesota Statutes 1986, section 302A.613, is amended to read:

302A.613 PLAN APPROVAL.

Subdivision 1. **BOARD APPROVAL; NOTICE TO SHAREHOLDERS.** A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and shall then be submitted at a regular or a special meeting to the shareholders of (i) each constituent corporation at a regular or a special meeting, in the case of a plan of merger, and (ii) the corporation whose shares will be acquired by the acquiring corporation in the exchange, in the case of a plan of exchange. If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this section, written notice shall be given to every shareholder of a corporation, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 302A.435 for notice of meetings of shareholders. The written notice shall state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange shall be included in or enclosed with the notice.

Subd. 2. **APPROVAL BY SHAREHOLDERS.** At the meeting a vote of the shareholders 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. 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 affected by the plan of included in the exchange.

Subd. 3. **WHEN APPROVAL BY SHAREHOLDERS NOT REQUIRED.** Notwithstanding the provisions of subdivisions 1 and 2, submission of a plan of merger ~~or exchange~~ to a vote at a meeting of shareholders of a surviving ~~or acquiring~~ corporation is not required if:

- (a) The articles of the corporation will not be amended in the transaction;
- (b) Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;
- (c) The number of shares of the corporation entitled to vote immediately after the merger ~~or exchange~~, plus the number of shares of the corporation

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entitled to vote issuable on conversion ~~or exchange~~ of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than 20 percent, ~~or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles;~~ the number of shares of the corporation entitled to vote immediately before the transaction; and

(d) The number of participating shares of the corporation immediately after the ~~transaction merger,~~ plus the number of participating shares of the corporation issuable on conversion ~~or exchange of,~~ or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than 20 percent, ~~or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles;~~ the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

Sec. 7. Minnesota Statutes 1986, section 302A.615, is amended to read:

302A.615 ARTICLES OF MERGER OR EXCHANGE; CERTIFICATE.

Subdivision 1. **CONTENTS OF ARTICLES.** Upon receiving the approval required by section 302A.613, articles of merger or exchange shall be prepared that contain:

(a) The plan of merger or exchange;

(b) For each corporation, either:

(1) A statement that the plan has been approved by a vote of the shareholders pursuant to section 302A.613, subdivision 2; or

(2) A statement that a vote of the shareholders is not required ~~by virtue of section 302A.613, subdivision 3.~~

Subd. 2. **ARTICLES SIGNED, FILED.** The articles of merger or exchange shall be signed on behalf of each constituent corporation and filed with the secretary of state.

Subd. 3. **CERTIFICATE.** The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative and a certificate of exchange to the acquiring corporation or its legal representative.

Sec. 8. Minnesota Statutes 1986, section 302A.631, is amended to read:

302A.631 ABANDONMENT.

Subdivision 1. **BY SHAREHOLDERS OR PLAN.** After a plan of merger or exchange has been approved ~~at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation by the shareholders entitled to vote on the approval of the plan as~~

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provided in section 302A.613, and before the effective date of the plan, it may be abandoned:

(a) ~~If the shareholders of each of the constituent corporations have considered abandoning the plan and the abandonment has been approved~~ entitled to vote on the approval of the plan as provided in section 302A.613 have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of all ~~voting the shares of each constituent corporation~~ entitled to vote and, if the shareholders of a constituent corporation are not entitled to vote on the approval of the plan under section 302A.613, the board of directors of the constituent corporation has approved the abandonment by the affirmative vote of a majority of the directors present;

(b) If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(c) Pursuant to subdivision 2.

Subd. 2. BY BOARD; ARTICLES OF ABANDONMENT. ~~If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution~~ A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution of the board of directors of any constituent corporation abandoning the plan of merger or exchange ~~may be approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan.~~

Subd. 3. FILING OF ARTICLES. ~~If articles of merger or exchange have been filed with the secretary of state, the board but have not yet become effective, the constituent corporations, in the case of abandonment under subdivision 1, clause (a), the constituent corporations or any one of them, in the case of abandonment under subdivision 1, clause (b), or the abandoning corporation in the case of abandonment under subdivision 2, shall file with the secretary of state articles of abandonment that contain:~~

(a) ~~The name~~ names of the corporation constituent corporations;

(b) The provision of this section under which the plan is abandoned; and

(c) ~~If the plan is abandoned under subdivision 2, the text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.~~

Sec. 9. Minnesota Statutes 1986, section 302A.641, subdivision 1, is amended to read:

Subdivision 1. EFFECTIVE DATE. A merger or exchange is effective when the articles of merger or exchange are filed with the secretary of state or on a later date specified in the articles of merger or exchange. ~~An exchange is effective on the date specified in the plan of exchange.~~

Approved May 21, 1987

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