

**FIRST SPECIAL SESSION LAWS  
of the  
STATE OF MINNESOTA**

**Enacted by the Seventy-Fifth Legislature  
at the 1987 First Special Session,  
June 25, 1987**

## Proclamation

WHEREAS: Events have occurred which require an urgent reexamination of Minnesota laws regarding corporate acquisitions; and

WHEREAS: The people of Minnesota are best served by public policies which foster corporate responsibility to investors, employees, and community; and

WHEREAS: A review of state laws regarding corporate acquisitions can be accomplished in a brief special session of the Minnesota Legislature; and

WHEREAS: Article IV, Section 12, of the Constitution of the State of Minnesota provides that a special session of the Legislature may be called on extraordinary occasions; and

WHEREAS: Elected leaders of the Legislature have agreed on an agenda and procedures to complete a special session in the shortest time possible;

NOW, THEREFORE, I, Rudy Perpich, Governor of the State of Minnesota, do hereby summon you, members of the Legislature, to convene in Special Session on Thursday, June 25, 1987, at 2 o'clock in the afternoon in the Capitol in Saint Paul, Minnesota.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Minnesota to be affixed at the State Capitol this twenty-fourth day of June in the year of our Lord one thousand nine hundred and eighty-seven, and of the State the one hundred twenty-ninth.

JOAN ANDERSON GROWE

RUDY PERPICH

SECRETARY OF STATE

GOVERNOR

# SESSION LAWS

of the

## STATE OF MINNESOTA

ENACTED BY THE SEVENTY-FIFTH LEGISLATURE

AT THE 1987 FIRST SPECIAL SESSION

JUNE 25, 1987

### CHAPTER 1—H.F.No. 1

*An act relating to shareholder protection and corporate take-overs; regulating the registration of take-over offers and limitations on offerors; expressly authorizing directors to consider the interests of a corporation's various constituencies; regulating acquisitions of shares; regulating the calling of special meetings of shareholders, control share acquisitions, and business combinations with interested shareholders; amending Minnesota Statutes 1986, sections 80B.01, subdivisions 6 and 9; 302A.011, subdivisions 37 to 39, 40, as amended, 41, and by adding subdivisions; 302A.251, by adding a subdivision; 302A.255, by adding a subdivision; 302A.433, subdivisions 1 and 2; 302A.553, subdivision 1, as amended, and by adding a subdivision; and 302A.671; proposing coding for new law in Minnesota Statutes, chapter 302A; repealing Laws 1985, First Special Session chapter 5, as amended.*

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

Section 1. Minnesota Statutes 1986, section 80B.01, subdivision 6, is amended to read:

Subd. 6. "Offeror" means a person who makes or in any way participates in making a take-over offer. Offeror does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and not otherwise participating in the take-over offer. When two or more persons act as a partnership, limited partnership, syndicate, or other group

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pursuant to any agreement, arrangement, relationship, understanding, or otherwise (whether or not in writing) for the purpose of acquiring, owning, or voting securities of a target company, all members of the partnership, syndicate or other group is an offeror constitute "a person."

Sec. 2. Minnesota Statutes 1986, section 80B.01, subdivision 9, is amended to read:

Subd. 9. "Target company" means an issuer of publicly traded equity securities (a) which has at least 20 percent of its equity securities beneficially owned by residents of this state and (1) has its principal place of business or its principal executive office located in this state, or (2) owns or controls assets located within this state which have a fair market value of at least \$1,000,000, and (b) which (1) has more than ten percent of its beneficial or record equity securityholders resident in this state, (2) has more than ten percent of its equity securities owned beneficially or of record by residents in this state, or (3) has more than 1,000 beneficial or record equity securityholders resident in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security at the time the offeror makes a take-over offer for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or the over-the-counter market.

Sec. 3. Minnesota statutes 1986, section 302A.011, subdivision 37, is amended to read:

Subd. 37. **ACQUIRING PERSON.** "Acquiring person" means a person that ~~is proposing~~ makes or proposes to make a control share acquisition. When two or more persons act as a partnership, limited partnership, syndicate, or other group pursuant to any agreement, arrangement, relationship, understanding, or otherwise (whether or not in writing) for the purposes of acquiring, owning, or voting securities shares of an issuing public corporation, all members of the partnership, syndicate, or other group is constitute a "person."

"Acquiring person" does not include a licensed broker/dealer or licensed underwriter who (1) purchases shares of an issuing public corporation solely for purposes of resale to the public; and (2) is not acting in concert with an acquiring person.

Sec. 4. Minnesota Statutes 1986, section 302A.011, subdivision 38, is amended to read:

Subd. 38. **CONTROL SHARE ACQUISITION.** "Control share acquisition" means an acquisition, directly or indirectly, by an acquiring person of beneficial ownership of shares of an issuing public corporation resulting in beneficial ownership by an acquiring person that, except for section 302A.671, would, when added to all other shares of the issuing public corporation beneficially owned by the acquiring person, entitle the acquiring person, immediately after

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the acquisition, to exercise or direct the exercise of a new range of voting power within any of the ranges specified in section 302A.671, subdivision 2, paragraph (d), but does not include any of the following:

(1) (a) an acquisition before, or pursuant to an agreement entered into before, August 1, 1984;

(2) (b) an acquisition by a donee pursuant to an inter vivos gift not made to avoid section 302A.671 or by a distributee as defined in section 524.1-201, clause (10);

(3) (c) an acquisition pursuant to a security agreement not created to avoid section 302A.671;

(4) (d) an acquisition under sections 302A.601 to 302A.661, if the issuing public corporation is a party to the transaction; or

(5) (e) an acquisition from the issuing public corporation; or

(f) an acquisition for the benefit of others by a person acting in good faith and not made to avoid section 302A.671, to the extent that the person may not exercise or direct the exercise of the voting power or disposition of the shares except upon the instruction of others.

All shares the beneficial ownership of which is acquired within a 120-day period, and all shares the beneficial ownership of which is acquired pursuant to a plan to make a control share acquisition, shall be deemed to have been acquired in the same acquisition.

Sec. 5. Minnesota Statutes 1986, section 302A.011, subdivision 39, is amended to read:

Subd. 39. **ISSUING PUBLIC CORPORATION.** "Issuing public corporation" means a corporation with (a) which has at least 50 shareholders and, (b) which (1) has either its principal place of business or its principal executive office located in this state or (2) owns or controls assets located within this state that have a fair market value of at least \$1,000,000, and (c) which (1) has more than ten percent of its beneficial or record shareholders resident in this state, (2) has more than ten percent of its shares owned beneficially or of record by residents in this state, or (3) has more than 1,000 beneficial or record shareholders resident in this state.

Sec. 6. Minnesota Statutes 1986, section 302A.011, subdivision 40, as amended by Laws 1987, chapter 104, section 6, is amended to read:

Subd. 40. **PUBLICLY HELD CORPORATION.** "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12, or is subject to section 15(d), of the Securities Exchange Act of 1934, ~~as amended through December 31, 1986.~~

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Sec. 7. Minnesota Statutes 1986, section 302A.011, subdivision 41, is amended to read:

Subd. 41. **BENEFICIAL OWNERSHIP.** "Beneficial owner", when used with respect to shares or other securities, includes, but is not limited to, any person who, directly or indirectly through any ~~contract agreement~~, arrangement, relationship, understanding, ~~relationship~~, or otherwise (whether or not in writing), has or shares the power to vote, or direct the voting of a security and, the shares or securities and/or has or shares the power to dispose of, or direct the disposition of, the security shares or securities, provided that a person shall not be deemed the beneficial owner of shares or securities tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares or securities are accepted for purchase or exchange, and provided that a person shall not be deemed the beneficial owner of shares or securities with respect to which the person has the power to vote or direct the voting arising solely from a revocable proxy given in response to a proxy solicitation required to be made and made in accordance with the applicable rules and regulations under the Securities Exchange Act of 1934 and is not then reportable under that act on a Schedule 13D or comparable report. "Beneficial ownership" includes, but is not limited to, the right, ~~exercisable within 60 days~~, to acquire shares or securities through the exercise of options, warrants, or rights, or the conversion of convertible securities, or otherwise. The shares or securities subject to ~~these~~ the options, warrants, rights, or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding shares or securities of the class or series owned by ~~this~~ the person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class or series owned by any other person. A person ~~is~~ shall be deemed the beneficial owner of shares and securities beneficially owned by any relative or spouse of the person or any relative of the spouse residing in the home of this the person, any trust or estate in which this the person owns ten percent or more of the total beneficial interest or serves as trustee or executor or in a similar fiduciary capacity, any corporation or entity in which this the person owns ten percent or more of the equity, and any affiliate or associate of this the person.

Sec. 8. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

Subd. 42. **INTERESTED SHARES.** "Interested shares" means the shares of an issuing public corporation with respect to which any of the following persons may exercise or direct the exercise of voting power in the election of directors of the issuing public corporation: (1) an acquiring person, (2) any officer of the issuing public corporation, or (3) any employee of the issuing public corporation who is also a director of the issuing public corporation.

Sec. 9. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

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Subd. 43. AFFILIATE. "Affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with, a specified person.

Sec. 10. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

Subd. 44. ANNOUNCEMENT DATE. "Announcement date," when used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for the business combination.

Sec. 11. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

Subd. 45. ASSOCIATE. "Associate," when used to indicate a relationship with any person, means any of the following:

(1) any corporation or organization of which the person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class or series of shares entitled to vote or other equity interest;

(2) any trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or executor or in a similar fiduciary capacity;

(3) any relative or spouse of the person, or any relative of the spouse, residing in the home of the person.

Sec. 12. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

Subd. 46. BUSINESS COMBINATION. "Business combination," when used in reference to any issuing public corporation and any interested shareholder of the issuing public corporation, means any of the following:

(a) any merger of the issuing public corporation or any subsidiary of the issuing public corporation with (1) the interested shareholder or (2) any other domestic or foreign corporation (whether or not itself an interested shareholder of the issuing public corporation) that is, or after the merger would be, an affiliate or associate of the interested shareholder, provided, however, that the foregoing shall not include the merger of a wholly-owned subsidiary of the issuing public corporation into the issuing public corporation or the merger of two or more wholly-owned subsidiaries of the issuing public corporation;

(b) any exchange, pursuant to a plan of exchange under section 302A.601, subdivision 2, or a comparable statute of any other state or jurisdiction, of shares of the issuing public corporation or any subsidiary of the issuing corporation for shares of (1) the interested shareholder or (2) any other domestic or foreign corporation (whether or not itself an interested shareholder of the issuing

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public corporation) that is, or after the exchange would be, an affiliate or associate of the interested shareholder;

(c) any sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in a single transaction or a series of transactions), to or with the interested shareholder or any affiliate or associate of the interested shareholder, of assets of the issuing public corporation or any subsidiary of the issuing public corporation (1) having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the issuing public corporation, (2) having an aggregate market value equal to ten percent or more of the aggregate market value of all the outstanding shares of the issuing public corporation, or (3) representing ten percent or more of the earning power or net income, determined on a consolidated basis, of the issuing public corporation;

(d) the issuance or transfer by the issuing public corporation or any subsidiary of the issuing public corporation (in a single transaction or a series of transactions) of any shares of the issuing public corporation or any subsidiary of the issuing public corporation that have an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the issuing public corporation to the interested shareholder or any affiliate or associate of the interested shareholder, except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend or distribution paid or made, pro rata to all shareholders of the issuing public corporation;

(e) the adoption of any plan or proposal for the liquidation or dissolution of the issuing public corporation, or any reincorporation of the issuing public corporation in another state or jurisdiction, proposed by or on behalf of, or pursuant to any agreement, arrangement, or understanding (whether or not in writing) with, the interested shareholder or any affiliate or associate of the interested shareholder;

(f) any reclassification of securities (including without limitation any share dividend or split, reverse share split, or other distribution of shares in respect of shares), recapitalization of the issuing public corporation, merger of the issuing public corporation with any subsidiary of the issuing public corporation, exchange of shares of the issuing public corporation with any subsidiary of the issuing public corporation, or other transaction (whether or not with or into or otherwise involving the interested shareholder), proposed by or on behalf of, or pursuant to any agreement, arrangement, or understanding (whether or not in writing) with, the interested shareholder or any affiliate or associate of the interested shareholder, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of shares entitled to vote, or securities that are exchangeable for, convertible into, or carry a right to acquire shares entitled to vote, of the issuing public corporation or any subsidiary of the issuing public corporation that is, directly or indirectly, owned by the interested shareholder or any affiliate or associate of the interested share-

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holder, except as a result of immaterial changes due to fractional share adjustments;

(g) any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit, directly or indirectly (except proportionately as a shareholder of the issuing public corporation), of any loans, advances, guarantees, pledges, or other financial assistance, or any tax credits or other tax advantages provided by or through the issuing public corporation or any subsidiary of the issuing public corporation.

Sec. 13. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

Subd. 47. CONSUMMATION DATE. "Consummation date," with respect to any business combination, means the date of consummation of the business combination or, in the case of a business combination as to which a shareholder vote is taken, the later of (1) the business day before the vote or (2) 20 days before the date of consummation of the business combination.

Sec. 14. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

Subd. 48. CONTROL. "Control," including the terms "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person's beneficial ownership of ten percent or more of the voting power of a corporation's outstanding shares entitled to vote in the election of directors creates a presumption that the person has control of the corporation. Notwithstanding the foregoing, a person is not considered to have control of a corporation if the person holds voting power, in good faith and not for the purpose of avoiding section 302A.673, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of the corporation.

Sec. 15. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

Subd. 49. INTERESTED SHAREHOLDER. "Interested shareholder," when used in reference to any issuing public corporation, means any person (other than the issuing public corporation or any subsidiary of the issuing public corporation) that is (1) the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation or (2) an affiliate or associate of the issuing public corporation and at any time within the five-year period immediately before the date in question was the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the then outstanding shares entitled to vote of the issuing public corporation.

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Sec. 16. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

Subd. 50. MARKET VALUE. "Market value," when used in reference to shares or property of any issuing public corporation, means the following:

(1) in the case of shares, the highest closing sale price during the 30-day period immediately preceding the date in question of a share on the composite tape for New York Stock Exchange listed shares, or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which the shares are listed, or, if the shares are not listed on any such exchange, on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, or, if the shares are not quoted on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, the highest closing bid quotation during the 30-day period preceding the date in question of a share on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or, if no such quotation is available, the fair market value on the date in question of a share as determined in good faith by the board of the issuing public corporation, subject to arbitration;

(2) in the case of property other than cash or shares, the fair market value of the property on the date in question as determined in good faith by the board of the issuing public corporation, subject to arbitration.

Sec. 17. Minnesota Statutes 1986, section 302A.011, is amended by adding a subdivision to read:

Subd 51. SHARE ACQUISITION DATE. "Share acquisition date," with respect to any person and any issuing public corporation, means the date that the person first becomes an interested shareholder of the issuing public corporation.

Sec. 18. Minnesota Statutes 1986, section 302A.251, is amended by adding a subdivision to read:

Subd. 5. CONSIDERATIONS. In discharging the duties of the position of director, a director may, in considering the best interests of the corporation, consider the interests of the corporation's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the corporation and its shareholders including the possibility that these interests may be best served by the continued independence of the corporation.

Sec. 19. Minnesota Statutes 1986, section 302A.255, is amended by adding a subdivision to read:

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Subd. 3. COMPENSATION AGREEMENTS. During any tender offer or request or invitation for tenders of any class or series of shares of a publicly held corporation, other than an offer, request, or invitation by the publicly held corporation, the publicly held corporation shall not enter into or amend, directly or indirectly, agreements containing provisions, whether or not dependent on the occurrence of any event or contingency, that increase, directly or indirectly, the current or future compensation of any officer or director of the publicly held corporation. This subdivision does not prohibit routine increases in compensation, or other routine compensation agreements, undertaken in the ordinary course of the publicly held corporation's business.

Sec. 20. Minnesota Statutes 1986, section 302A.433, subdivision 1, is amended to read:

Subdivision 1. **WHO MAY CALL.** Special meetings of the shareholders may be called for any purpose or purposes at any time, by:

- (a) The chief executive officer;
- (b) The chief financial officer;
- (c) Two or more directors;
- (d) A person authorized in the articles or bylaws to call special meetings; or
- (e) A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by 25 percent or more of the voting power of all shares entitled to vote.

Sec. 21. Minnesota Statutes 1986, section 302A.433, subdivision 2, is amended to read:

Subd. 2. **DEMAND BY SHAREHOLDERS.** A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote specified in subdivision 1, paragraph (e), may demand a special meeting of shareholders by written notice of demand given to the chief executive officer or chief financial officer of the corporation and containing the purposes of the meeting. Within 30 days after receipt of the demand by one of those officers, the board shall cause a special meeting of shareholders to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the corporation. If the board fails to cause a special meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the meeting by giving notice as required by section 302A.435, all at the expense of the corporation.

Sec. 22. Minnesota Statutes 1986, section 302A.553, subdivision 1, as amended by Laws 1987, chapter 104, section 39, is amended to read:

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Subdivision 1. **WHEN PERMITTED; STATUS OF SHARES.** A corporation may acquire its own shares, subject to section 302A.551 and subdivision 3. If the corporation pledges the shares to secure payment of the redemption price thereof, then the corporation shall not be deemed to have acquired the shares for the purposes of this subdivision until the pledge is released. Shares acquired by a corporation constitute authorized but unissued shares of the corporation, unless the articles provide that they shall not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.

Sec. 23. Minnesota Statutes 1986, section 302A.553, is amended by adding a subdivision to read:

**Subd. 3. LIMITATION ON SHARE PURCHASES.** Except for redemptions under section 302A.671, subdivision 6, a publicly held corporation shall not, directly or indirectly, purchase or agree to purchase any shares entitled to vote from a person (or two or more persons who act as a partnership, limited partnership, syndicate, or other group pursuant to any agreement, arrangement, relationship, understanding, or otherwise, whether or not in writing, for the purpose of acquiring, owning, or voting shares of the publicly held corporation) who beneficially owns more than five percent of the voting power of the publicly held corporation for more than the average market price thereof if the shares have been beneficially owned by the person or persons for less than six months, unless the purchase or agreement to purchase is approved at a meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote or the publicly held corporation makes an offer, of at least equal value per share, to all holders of shares of such class or series and to all holders of any class or series into which the securities may be converted. For purposes of this section, the average market price shall mean: the average closing sale price during the 30 trading days immediately preceding the purchase of the shares in question (or if the person or persons have commenced a tender offer or have announced an intention to seek control of the publicly held corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement), of a share on the composite tape for New York Stock Exchange listed shares, or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which the shares are listed, or, if the shares are not listed on any such exchange, on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, or, if the shares are not quoted on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, the average closing bid quotation, during the 30 trading days preceding the purchase of the shares in question of a share on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use (or if the person or persons have commenced a tender offer or have announced an intention to seek control of the publicly held corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement), provided that if no quotation is available, the average market price shall be the fair market value on the date of purchase of the shares in question of a share as determined in good faith by the board of the publicly held corporation.

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Sec. 24. Minnesota Statutes 1986, section 302A.671, is amended to read:

**302A.671 CONTROL SHARE ACQUISITIONS.**

Subdivision 1. **AUTHORIZATION IN ARTICLES.** (a) Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section ~~does not apply~~ applies to a control share acquisition consummated, or a proposed control share acquisition with respect to which an information statement has been received by the issuing public corporation, on or before July 31, 1989.

Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section does not apply to a control share acquisition consummated after July 31, 1989, with respect to which no information statement has been received by the issuing public corporation, on or before July 31, 1989.

(b) All shares acquired by an acquiring person in violation of subdivision 4 shall be denied voting rights for one year after acquisition; the shares shall be nontransferable on the books of the corporation for one year after acquisition and the corporation shall, during the one-year period, have the option to call the shares for redemption at the price at which the shares were acquired. Such a redemption shall occur on the date set in the call notice but not later than 60 days after the call notice is given. The shares of an issuing public corporation acquired by an acquiring person in a control share acquisition that exceed the threshold of voting power of any of the ranges specified in subdivision 2, paragraph (d), shall have only the voting rights as shall be accorded to them pursuant to subdivision 4a.

Subd. 2. **INFORMATION STATEMENT.** An acquiring person shall deliver to the issuing public corporation at its principal executive office an information statement containing all of the following:

(a) the identity of the acquiring person, including the identity of each member of any partnership, limited partnership, syndicate, or other group constituting the acquiring person, and the identity of each affiliate and associate of the acquiring person, including the identity of each affiliate and associate of each member of such partnership, syndicate, or other group;

(b) a reference that the information statement is made under this section;

(c) the number and class or series of shares of the issuing public corporation beneficially owned, directly or indirectly, before the control share acquisition by the acquiring person each of the persons identified pursuant to paragraph (a);

(d) a the number and class or series of shares of the issuing public corporation acquired or proposed to be acquired pursuant to the control share acquisition by each of the persons identified pursuant to paragraph (a) and specification

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of which of the following ranges of voting power in the election of directors that, except for this section, resulted or would result from consummation of the control share acquisition:

- (1) at least 20 percent but less than 33-1/3 percent;
- (2) at least 33-1/3 percent but less than or equal to 50 percent;
- (3) over 50 percent; and

(e) the terms of the ~~proposed~~ control share acquisition or proposed control share acquisition, including, but not limited to, the source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition, plans or proposals of the acquiring person (including plans or proposals under consideration) to liquidate or dissolve the issuing public corporation, to sell all or ~~substantially all~~ a substantial part of its assets, or merge it or exchange its shares with any other person, to change the location of its principal place of business or its principal executive office or of a material portion of its business activities, to change materially its management or policies of employment, to change materially its charitable or community contributions or its policies, programs, or practices relating thereto, to alter change materially its relationship with suppliers or customers or the communities in which it operates, or to make any other material change in its business, corporate structure, management or personnel, and such other objective facts as would be substantially likely to affect the decision of a shareholder with respect to voting on the ~~proposed~~ control share acquisition.

If any material change occurs in the facts set forth in the information statement, including but not limited to any material increase or decrease in the number of shares of the issuing public corporation acquired or proposed to be acquired by the persons identified pursuant to paragraph (a), the acquiring person shall promptly deliver to the issuing public corporation at its principal executive office an amendment to the information statement containing information relating to such material change. An increase or decrease or proposed increase or decrease equal, in the aggregate for all persons identified pursuant to paragraph (a), to one percent or more of the total number of outstanding shares of any class or series of the issuing public corporation shall be deemed "material" for purposes of this paragraph; an increase or decrease or proposed increase or decrease of less than this amount may be material, depending upon the facts and circumstances.

Subd. 3. **MEETING OF SHAREHOLDERS.** If the acquiring person so requests in writing at the time of delivery of an information statement pursuant to subdivision 2, and has made, or has made a bona fide written offer to make, a control share acquisition and gives a written undertaking to pay or reimburse the issuing public corporation's expenses of a special meeting, except the expenses of the issuing public corporation in opposing approval of the control share acquisition, within five ten days after receipt by the issuing public corporation of

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~~an~~ the information statement pursuant to subdivision 2, a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 302A.433, subdivision 1, to vote on the proposed control share acquisition for the purpose of considering the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to the control share acquisition. The special meeting shall be held no later than 20 business 55 days after receipt of the information statement, unless the acquiring person agrees to a later date. If the acquiring person so requests in writing at the time of delivery of the information statement, the special meeting shall not be held sooner than 30 days after receipt by the issuing public corporation of the information statement. If no request for a special meeting is made, consideration of the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to the control share acquisition shall be presented at the next special or annual meeting of the shareholders, unless prior thereto the matter of the voting rights becomes moot. The notice of the meeting shall at a minimum be accompanied by a copy of the information statement (and a copy of any amendment to the information statement previously delivered to the issuing public corporation) and a statement disclosing that the board of directors of the issuing public corporation recommends acceptance approval of, expresses no opinion and is remaining neutral toward, recommends rejection of, or is unable to take a position with respect to according voting rights to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired in the proposed control share acquisition. The notice of meeting shall be given at least ten days prior to the meeting.

Subd. 4. **CONSUMMATION OF CONTROL SHARE ACQUISITION FINANCING.** The acquiring person may consummate the proposed control share acquisition if and only if both of the following occur:

(1) the proposed control share acquisition is 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 control share acquisition would, if contained in a proposed amendment to the articles, entitle the class or series to vote as a class or series; and

(2) the proposed control share acquisition is consummated within 180 days after shareholder approval. Notwithstanding anything to the contrary contained in this chapter, no call of a special meeting of the shareholders of the issuing public corporation shall be required to be made pursuant to subdivision 3 and no consideration of the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to a control share acquisition shall be presented at any special or annual meeting of the shareholders of the issuing public corporation unless at the time of delivery of the information statement pursuant to subdivision 2, the acquiring person shall have entered into, and shall deliver to the issuing public corporation a copy or copies of, a definitive financing agreement or definitive financing agreements, with one or more responsible financial institution or other entity having the necessary financial capacity, for any financing of the control share acquisition not to be provided by funds of the acquiring person.

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Subd. 4a. **VOTING RIGHTS.** (a) Shares referred to in subdivision 1, paragraph (b), acquired in a control share acquisition shall have the same voting rights as other shares of the same class or series only if approved by resolution of shareholders of the issuing public corporation at a special or annual meeting of shareholders pursuant to subdivision 3.

(b) The resolution of shareholders must be approved by (1) the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, and (2) the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote excluding all interested shares. A class or series of shares of the issuing public corporation is entitled to vote separately as a class or series if any provision of the control share acquisition would, if contained in a proposed amendment to the articles, entitle the class or series to vote separately as a class or series.

(c) To have the voting rights accorded by approval of a resolution of shareholders, any proposed control share acquisition not consummated prior to the time of the shareholder approval must be consummated within 180 days after the shareholder approval.

(d) Any shares referred to in subdivision 1, paragraph (b), acquired in a control share acquisition that do not have voting rights accorded to them by approval of a resolution of shareholders shall regain their voting rights upon transfer to a person other than the acquiring person or any affiliate or associate of the acquiring person unless the acquisition of the shares by the other person constitutes a control share acquisition, in which case the voting rights of the shares are subject to the provisions of this section.

Subd. 5. **RIGHTS OF ACTION.** An acquiring person, an issuing public corporation, and shareholders of an issuing public corporation may sue at law or in equity to enforce the provisions of this section and section 302A.449, subdivision 7.

Subd. 6. **RETURN OF SHARES IF ACQUISITION NOT CONSUMMATED REDEMPTION.** If the proposed control share acquisition is not consummated in accordance with this section, the acquiring person shall immediately return any and all shares held in anticipation of the consummation to the shareholders from whom the person received the shares. Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, the issuing public corporation shall have the option to call for redemption all but not less than all shares referred to in subdivision 1, paragraph (b), acquired in a control share acquisition, at a redemption price equal to the market value of the shares at the time the call for redemption is given, in the event (1) an information statement has not been delivered to the issuing public corporation by the acquiring person by the tenth day after the control share acquisition, or (2) an information statement has been delivered but the shareholders have voted not to accord voting rights to such

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shares pursuant to subdivision 4a, paragraph (b). The call for redemption shall be given by the issuing public corporation within 30 days after the event giving the issuing public corporation the option to call the shares for redemption and the shares shall be redeemed within 60 days after the call is given.

Sec. 25. [302A.673] BUSINESS COMBINATIONS.

Subdivision 1. BUSINESS COMBINATION WITH INTERESTED SHAREHOLDER; APPROVAL BY DIRECTORS. (a) Notwithstanding anything to the contrary contained in this chapter (except the provisions of subdivision 3), an issuing public corporation may not engage in any business combination, or vote, consent or otherwise act to authorize a subsidiary of the issuing public corporation to engage in any business combination, with, with respect to, proposed by or on behalf of, or pursuant to any agreement, arrangement, or understanding (whether or not in writing) with, any interested shareholder of the issuing public corporation or any affiliate or associate of the interested shareholder for a period of five years following the interested shareholder's share acquisition date unless the business combination or the acquisition of shares made by the interested shareholder on the interested shareholder's share acquisition date is approved by a committee of the board of the issuing public corporation before the interested shareholder's share acquisition date. The committee shall be formed in accordance with paragraph (d).

(b) If a good faith definitive proposal regarding a business combination is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d) shall consider and take action on the proposal and respond in writing within 45 days after receipt of the proposal by the issuing public corporation, or a shorter period, if any, as may be required by the Securities Exchange Act of 1934 or rules and regulations under that act, setting forth its decision regarding the proposal.

(c) If a good faith definitive proposal to acquire shares is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d), shall consider and take action on the proposal. Unless the committee responds affirmatively in writing within 45 days after receipt of the proposal by the issuing public corporation, or a shorter period, if any, as may be required by the Securities Exchange Act of 1934 or rules and regulations under that act, the committee shall be considered to have disapproved the share acquisition.

(d)(1) When a business combination or acquisition of shares is proposed pursuant to this subdivision, the board shall promptly form a committee composed of all of the board's disinterested directors. The committee shall take action on the proposal by the affirmative vote of a majority of committee members. No larger proportion or number of votes shall be required. Notwithstanding the provisions of section 302A.241, subdivision 1, the committee shall not be subject to any direction or control by the board with respect to

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the committee's consideration of, or any action concerning, a business combination or acquisition of shares pursuant to this section.

(2) A committee formed pursuant to this subdivision shall be composed of one or more members. Only disinterested directors may be members of a committee formed pursuant to this subdivision. However, if the board has no disinterested directors, the board shall select three or more disinterested persons to be committee members.

(3) For purposes of this subdivision, a director or person is "disinterested" if the director or person is not a present or former officer or employee of the issuing public corporation, or a related corporation.

Subd. 2. REQUIREMENTS AFTER FIVE YEARS. Notwithstanding anything to the contrary contained in this chapter (except the provisions of subdivisions 1 and 3), an issuing public corporation may not engage at any time in any business combination, or vote, consent or otherwise act to authorize a subsidiary of the issuing public corporation to engage in any business combination, with, with respect to, proposed by or on behalf of, or pursuant to any agreement, arrangement, or understanding (whether or not in writing) with, any interested shareholder of the issuing public corporation or any affiliate or associate of the interested shareholder other than a business combination meeting all requirements of this chapter, the articles of the issuing public corporation and the requirements specified in any of the following:

(a) A business combination approved by the board of the issuing public corporation before the interested shareholder's share acquisition date, or as to which the acquisition of shares made by the interested shareholder on the interested shareholder's share acquisition date had been approved by the board of the issuing public corporation before the interested shareholder's share acquisition date.

(b) A business combination approved by the affirmative vote of the holders of a majority of the outstanding shares entitled to vote not beneficially owned by the interested shareholder proposing the business combination, or any affiliate or associate of the interested shareholder proposing the business combination, at a meeting called for that purpose no earlier than five years after the interested shareholder's share acquisition date.

(c) A business combination, with respect to which the consummation date is no earlier than five years after the interested shareholder's share acquisition date, that meets all of the following conditions:

(1) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of the issuing public corporation in the business combination is at least equal to the higher of the following:

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(i) the highest per share price paid by the interested shareholder, at a time when the interested shareholder was the beneficial owner, directly or indirectly, of five percent or more of the outstanding shares entitled to vote of the issuing public corporation, for any common shares of the same class or series acquired by it within the five-year period immediately before the announcement date with respect to the business combination or within the five-year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per common share since the earliest date, up to the amount of the interest;

(ii) the market value per common share on the announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from that date through the consummation date at the rate for one-year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per common share since that date, up to the amount of the interest.

(2) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the issuing public corporation in the business combination is at least equal to the highest of the following (whether or not the interested shareholder has previously acquired any shares of the class or series):

(i) the highest per share price paid by the interested shareholder, at a time when the interested shareholder was the beneficial owner, directly or indirectly, of five percent or more of the outstanding shares entitled to vote of the issuing public corporation, for any shares of the class or series acquired by it within the five-year period immediately before the announcement date with respect to the business combination or within the five-year period immediately before, or in, the transaction in which the interested shareholder became an interested shareholder, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series since such earliest date, up to the amount of the interest;

(ii) the highest preferential amount per share to which the holders of shares of the class or series are entitled in the event of any voluntary liquidation, dissolution, or winding up of the issuing public corporation; plus the aggregate amount of any unpaid dividends declared or due as to which the holders are entitled before payment of dividends on some other class or series of shares

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(unless the aggregate amount of the dividends is included in the preferential amount);

(iii) the market value per share of the class or series on the announcement date with respect to the business combination or on the interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from that date through the consummation date at the rate for one-year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the class or series since that date, up to the amount of the interest.

(3) The consideration to be received by holders of a particular class or series of outstanding shares (including common shares) of the issuing public corporation in the business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of the class or series of shares previously acquired by it, and the consideration is distributed promptly.

(4) The holders of all outstanding shares of the issuing public corporation not beneficially owned by the interested shareholder immediately before the consummation date with respect to the business combination are entitled to receive in the business combination cash or other consideration for the shares in compliance with paragraph (c), clauses (1), (2), and (3).

(5) After the interested shareholder's share acquisition date and before the consummation date with respect to the business combination, the interested shareholder has not become the beneficial owner of any additional shares entitled to vote of the issuing public corporation except:

(i) as part of the transaction that resulted in the interested shareholder becoming an interested shareholder;

(ii) by virtue of proportionate share splits, share dividends, or other distributions of shares in respect of shares not constituting a business combination under section 302A.011, subdivision 46, paragraph (f);

(iii) through a business combination meeting all of the conditions of subdivision 1 and subdivision 2, paragraph (c);

(iv) through purchase by the interested shareholder at any price that, if the price had been paid in an otherwise permissible business combination the announcement date and consummation date of which were the date of the purchase, would have satisfied the requirements of paragraph (c), clauses (1), (2), and (3).

Subd. 3. APPLICATION. (a) Unless by express provision electing to be subject to this section contained in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section does not apply to any business combination of an issuing public corporation, that is not, at any time during the period from the effective date of this section until adoption of the article or bylaw provision, a publicly held corporation. If the article or bylaw

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provision electing to be subject to this section expressly so provides, this section shall not apply to any business combination with an interested shareholder whose share acquisition date is before the effective date of the article or bylaw provision.

(b) This section does not apply to any business combination of an issuing public corporation:

(1) if the original articles or bylaws of the issuing public corporation contain a provision expressly electing not to be subject to this section;

(2) if the board of the issuing public corporation adopts, prior to September 1, 1987, an amendment to the issuing public corporation's bylaws expressly electing not to be subject to this section;

(3) if an amendment to the articles or bylaws of the issuing public corporation is approved by the shareholders, other than interested shareholders and their affiliates and associates, holding a majority of the outstanding voting power of all shares entitled to vote, excluding the shares of interested shareholders and their affiliates and associates, expressly electing not to be subject to this section and such amendment provides that it is not to be effective until 18 months after the vote of shareholders, or August 1, 1989, whichever date is earlier, and provides that, except as provided in paragraph (d), it does not apply to any business combination of the issuing public corporation with an interested shareholder whose share acquisition date is on or before the effective date of the amendment; or

(4) if the business combination was consummated before, or if a binding agreement for the business combination was entered into before, the day following final enactment of this section.

(c) This section does not apply to any business combination of an issuing public corporation with an interested shareholder of the issuing public corporation who became an interested shareholder inadvertently, if the interested shareholder:

(1) as soon as practicable, divests itself of a sufficient amount of the shares entitled to vote of the issuing public corporation so that it no longer is the beneficial owner, directly or indirectly, of ten percent or more of the outstanding shares entitled to vote of the issuing public corporation, and

(2) would not at any time within the five-year period preceding the announcement date with respect to the business combination have been an interested shareholder but for the inadvertent acquisition.

(d) This section does not apply to any business combination of an issuing public corporation with an interested shareholder that was the beneficial owner, directly or indirectly, of ten percent or more of the outstanding shares entitled to vote of the issuing public corporation on June 1, 1987.

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(e) Unless the articles or bylaws approved by the shareholders of the issuing public corporation otherwise provide, this section does not apply to any business combination of an issuing public corporation with, with respect to, proposed by or on behalf of, or pursuant to any agreement, arrangement, or understanding (whether or not in writing) with, any interested shareholder if the interested shareholder's share acquisition date is on or after August 1, 1989, or an affiliate or associate of that interested shareholder.

Sec. 26. **REPEALER.**

Laws 1985, First Special Session chapter 5, section 21, as amended by Laws 1986, chapter 431, section 4, and Laws 1987, chapter 12, is repealed.

Sec. 27. **EFFECTIVE DATE.**

Notwithstanding Minnesota Statutes 1986, section 645.21, sections 1 to 18, 20, 21, and 24 to 26 are effective retroactive to June 1, 1987. Section 19 is effective the day following final enactment. Sections 22 and 23 are effective March 1, 1988.

Approved June 25, 1987

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**CHAPTER 2—H.F.No. 2**

*An act relating to the legislature; providing for succession of legislative officers; amending Minnesota Statutes 1986, section 3.06.*

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

Section 1. Minnesota Statutes 1986, section 3.06, is amended to read:

**3.06 OFFICERS AND EMPLOYEES.**

Subdivision 1. ELECTION. Thereupon, a quorum being present, the respective houses shall elect the following officers, any of whom may be removed by resolution of the appointing body:

The senate, a secretary, a first and a second assistant secretary, an enrolling clerk, an engrossing clerk, a sergeant-at-arms, an assistant sergeant-at-arms, and a chaplain; and

The house, a speaker, who shall be a member thereof, a chief clerk, a first and a second assistant clerk, an index clerk, a chief sergeant-at-arms, a first and a second assistant sergeant-at-arms, a postmaster, an assistant postmaster, and a chaplain.

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