

Subd. 1a. LABOR DISPUTES. No license holder, in the course of providing protective agent services, may provide armed protective personnel to labor disputes or strike locations. This subdivision does not apply to the use of armed security personnel services utilized in the usual course of business for the protection of persons, property, and payroll.

Sec. 7. Minnesota Statutes 1988, section 326.3384, subdivision 2, is amended to read:

Subd. 2. **PENALTY.** A license holder violating subdivision 1 or 1a is guilty of a gross misdemeanor.

Sec. 8. Minnesota Statutes 1988, section 364.09, is amended to read:

364.09 EXCEPTIONS.

This chapter shall not apply to the practice of law enforcement, to eligibility for a private detective or protective agent license, to eligibility for a family day care license, a family foster care license, a home care provider license, or to eligibility for school bus driver endorsements. Nothing in this section shall be construed to preclude the Minnesota police and peace officers training board from recommending policies set forth in this chapter to the attorney general for adoption in the attorney general's discretion to apply to law enforcement.

Sec. 9. **EFFECT ON CURRENT EMPLOYEES.**

Sections 1 to 4 do not apply to persons hired before the effective date of those sections.

Sec. 10. **EFFECTIVE DATE.**

Sections 1 to 9 are effective the day following final enactment.

Presented to the governor May 16, 1989

Signed by the governor May 19, 1989, 4:35 p.m.

CHAPTER 172—H.F.No. 1574

An act relating to corporations; providing that the control share acquisition and business combination statutes apply to certain corporations unless they elect not to be covered; clarifying application of the statutes; reducing the period of time that business combinations may be regulated from five years to four years; eliminating procedures for the use of committees to determine whether a corporation should pursue certain legal remedies; providing that meeting notices do not have to be sent to shareholders when mail has been returned undeliverable; amending Minnesota Statutes 1988, sections 302A.011, subdivisions 41 and 49; 302A.111, subdivision 3; 302A.161, subdivision 17; 302A.241, subdivision 1; 302A.251, subdivision 2;

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302A.435, subdivision 1; 302A.671, subdivision 1; and 302A.673, subdivisions 1 and 3; repealing Minnesota Statutes 1988, section 302A.243.

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

Section 1. Minnesota Statutes 1988, section 302A.011, subdivision 41, is amended to read:

Subd. 41. **BENEFICIAL OWNER; BENEFICIAL OWNERSHIP.** (a) "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 written or oral agreement, arrangement, relationship, understanding, or otherwise, has or shares the power to vote, or direct the voting of, the shares or securities or has or shares the power to dispose of, or direct the disposition of, the shares or securities, except that:

(1) 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

(2) 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, or, if the corporation is not subject to the rules and regulations under the Securities Exchange Act of 1934, would have been required to be made and would not have been reportable if the corporation had been subject to the rules and regulations.

(b) "Beneficial ownership" includes, but is not limited to, the right 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 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 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 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 the person, any trust or estate in which 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 the person owns ten percent or more of the equity, and any affiliate of the person.

(c) When two or more persons act or agree to act as a partnership, limited partnership, syndicate, or other group for the purposes of acquiring, owning, or voting shares or other securities of a corporation, all members of the partner-

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ship, syndicate, or other group are deemed to constitute a "person" and to have acquired beneficial ownership, as of the date they first so act or agree to act together, of all shares or securities of the corporation beneficially owned by the person.

Sec. 2. Minnesota Statutes 1988, section 302A.011, subdivision 49, is amended 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~~ four-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. Notwithstanding anything stated in this subdivision, if a person who has not been a beneficial owner of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation immediately prior to a repurchase of shares by, or recapitalization of, the issuing public corporation or similar action shall become a beneficial owner of ten percent or more of the voting power solely as a result of the share repurchase, recapitalization, or similar action, the person shall not be deemed to be the beneficial owner of ten percent or more of the voting power for purposes of clause (1) or (2) unless:

(i) the repurchase, recapitalization, conversion, or similar action was proposed by or on behalf of, or pursuant to any agreement, arrangement, relationship, understanding, or otherwise (whether or not in writing) with, the person or any affiliate or associate of the person; or

(ii) the person thereafter acquires beneficial ownership, directly or indirectly, of outstanding shares entitled to vote of the issuing public corporation and, immediately after the acquisition, is 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.

Sec. 3. Minnesota Statutes 1988, section 302A.111, subdivision 3, is amended to read:

Subd. 3. **STATUTORY PROVISIONS THAT MAY BE MODIFIED EITHER IN ARTICLES OR IN BYLAWS.** The following provisions govern a corporation unless modified either in the articles or in the bylaws:

(a) Directors serve for an indefinite term that expires at the next regular meeting of shareholders (section 302A.207);

(b) The compensation of directors is fixed by the board (section 302A.211);

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- (c) A certain method must be used for removal of directors (section 302A.223);
- (d) A certain method must be used for filling board vacancies (section 302A.225);
- (e) If the board fails to select a place for a board meeting, it must be held at the principal executive office (section 302A.231, subdivision 1);
- (f) A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting (section 302A.231, subdivision 3);
- (g) A majority of the board is a quorum for a board meeting (section 302A.235);
- (h) A committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present (section 302A.241, subdivision 2);
- (i) The board may establish a special litigation committee of disinterested persons (section ~~302A.243~~ 302A.241);
- (j) The chief executive officer and chief financial officer have specified duties, until the board determines otherwise (section 302A.305);
- (k) Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so (section 302A.351);
- (l) The board may establish uncertificated shares (section 302A.417, subdivision 7);
- (m) Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions (section 302A.431);
- (n) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten-days notice is required for a meeting of shareholders (section 302A.435, subdivision 2);
- (o) The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting (section 302A.443);
- (p) The board may fix a date up to 60 days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting (section 302A.445, subdivision 1);
- (q) Indemnification of certain persons is required (section 302A.521); and
- (r) The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement (section 302A.551, subdivision 1).

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Sec. 4. Minnesota Statutes 1988, section 302A.161, subdivision 17, is amended to read:

Subd. 17. **COMMITTEES.** A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in ~~sections~~ section 302A.241 and 302A.243 and fix their compensation.

Sec. 5. Minnesota Statutes 1988, section 302A.241, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board; ~~except as provided in section 302A.243.~~

Sec. 6. Minnesota Statutes 1988, section 302A.251, subdivision 2, is amended to read:

Subd. 2. **RELIANCE.** (a) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, duly established in accordance with ~~sections~~ section 302A.241 and 302A.243, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

(b) Paragraph (a) does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

Sec. 7. Minnesota Statutes 1988, section 302A.435, subdivision 1, is amended to read:

Subdivision 1. **TO WHOM GIVEN.** Except as otherwise provided in this chapter, notice of all meetings of shareholders shall be given to every holder of shares entitled to vote, ~~except where~~ unless:

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(1) the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or

(2) the following have been mailed by first class mail to a shareholder at the address in the corporate records and returned undeliverable:

(i) two consecutive annual meeting notices; and

(ii) all meeting notices during the period between the two annual meetings; or all payments of dividends, provided there are at least two sent during a 12-month period.

An action or meeting that is taken or held without notice under clause (2) has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

Sec. 8. Minnesota Statutes 1988, section 302A.671, subdivision 1, is amended to read: .

Subdivision 1. **AUTHORIZATION IN ARTICLES APPLICATION.** (a) Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section 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, 1990.~~

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, 1990, with respect to which no information statement has been received by the issuing public corporation, ~~on or before July 31, 1990.~~

(b) 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.

Sec. 9. Minnesota Statutes 1988, section 302A.673, subdivision 1, is amended to read:

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 written or oral agreement, arrangement, relationship, understanding, or otherwise with, any interested shareholder of the issuing public corporation or any affiliate or associate of the interested share-

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holder for a period of ~~five~~ four 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~~ by a committee shall be of the board of the issuing public corporation 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 30 days after receipt of the proposal by the issuing public corporation, 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 and respond in writing within 30 days after receipt of the proposal by the issuing public corporation, setting forth its decision regarding the proposal.

(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 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. Committee members are deemed to be directors for purposes of sections 302A.251, 302A.255, and 302A.521.

(3) For purposes of this subdivision, a director or person is "disinterested" if the director or person is neither an officer nor an employee, nor has been an officer or employee within five years preceding the formation of the committee pursuant to this section, of the issuing public corporation, or of a related corporation.

Sec. 10. Minnesota Statutes 1988, section 302A.673, subdivision 3, is amended to read:

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

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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 June 1, 1987, until adoption of the article or bylaw provision, a publicly held corporation. If the article or bylaw 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) Except as provided in paragraph (c), this section does not apply to any business combination of an issuing public corporation:

(1) if, prior to the time the issuing public corporation becomes a publicly held corporation or becomes subject to this section by virtue of an election under paragraph (a), including any time prior to the time that the corporation becomes an issuing public corporation, articles or bylaws of the 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 the amendment provides that it is not to be effective until 18 months after the vote of shareholders; ~~or August 1, 1990; whichever date is earlier;~~ and provides that, except as provided in paragraph (c), 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 June 1, 1987.

(c) This section does not apply to any business combination of an issuing public corporation with respect to, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with any person that would have been an interested shareholder on June 1, 1987, had this section been in effect on this date and had the issuing public corporation been an issuing public corporation on this date.

This section applies to any business combination of an issuing public corporation to which it previously did not apply because of provisions in articles or bylaws adopted or approved under paragraph (b), clause (1), (2), or (3), upon an amendment to the articles or bylaws approved by shareholders holding a majority of the outstanding voting power of all shares entitled to vote expressly elect-

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ing to be subject to this section becoming effective. This section does not apply to any business combination of the corporation with, with respect to, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with any person that would have been an interested shareholder on the effective date of the amendment if this section had been applicable.

~~(d) 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, 1990, or an affiliate or associate of that interested shareholder.~~

Sec. 11. REPEALER.

Minnesota Statutes 1988, section 302A.243, is repealed.

Sec. 12. EFFECTIVE DATE.

Section 11 is effective the day following final enactment and applies to proceedings pending under Minnesota Statutes, section 302A.243, or proceedings commenced on or after that date. Notwithstanding any contrary provision of Minnesota Statutes, chapter 645, the repeal of Minnesota Statutes, section 302A.243, does not imply that the legislature has accepted or rejected the substance of the repealed section but must be interpreted in the same manner as if section 302A.243 had not been enacted.

Presented to the governor May 16, 1989

Signed by the governor May 19, 1989, 4:30 p.m.

CHAPTER 173—H.F.No. 1581

An act relating to commerce; securities regulation; exempting certain over-the-counter securities from registration requirements; amending Minnesota Statutes 1988, section 80A.15, subdivision 1.

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

Section 1. Minnesota Statutes 1988, section 80A.15, subdivision 1, is amended to read:

Subdivision 1. The following securities are exempted from sections 80A.08 and 80A.16:

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