

CHAPTER 11--H.F.No. 747

An act relating to business organizations; modifying the Minnesota Business Corporation Act; amending Minnesota Statutes 2024, sections 302A.011, subdivision 41, by adding subdivisions; 302A.111, subdivision 2; 302A.161, by adding a subdivision; 302A.181, by adding a subdivision; 302A.201, subdivision 1; 302A.237, by adding a subdivision; 302A.361; 302A.461, subdivision 4; 302A.471, subdivisions 1, 3; 302A.611, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 302A.

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

Section 1. Minnesota Statutes 2024, 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~~ is deemed the beneficial owner of shares and securities beneficially owned by: (1) any relative or spouse of the person or any relative of the spouse, residing in the home of the person; (2) any trust or estate in which the person (i) owns ten percent or more of the total beneficial interest of the trust or estate, or (ii) serves as trustee or executor or in a similar fiduciary capacity; for the trust or estate; (3) any organization in which the person owns ten percent or more of the equity; and (4) 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 partnership, 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 2024, section 302A.011, is amended by adding a subdivision to read:

Subd. 72. **Defective corporate act.** "Defective corporate act" means an overissue, an election or appointment of directors that is void or voidable due to a failure of authorization, or an act or transaction purportedly taken by or on behalf of the corporation that is and, at the time the act or transaction was purportedly taken, would have been within the corporation's power under section 302A.101 but is void or voidable due to a failure of authorization.

Sec. 3. Minnesota Statutes 2024, section 302A.011, is amended by adding a subdivision to read:

Subd. 73. **Emergency.** "Emergency" means a situation during which it is impracticable for the corporation to conduct the corporation's affairs in accordance with this chapter, the articles, the bylaws, or as specified in a notice for the meeting previously given as a result of a catastrophic event or condition, including but not limited to an act of nature, an epidemic or pandemic, a technological failure or malfunction, a terrorist incident or an act of war, a cyber attack, a civil disturbance, or a governmental authority's emergency declaration.

Sec. 4. Minnesota Statutes 2024, section 302A.011, is amended by adding a subdivision to read:

Subd. 74. **Failure of authorization.** "Failure of authorization" means the failure: (1) to authorize or effect an act or transaction in compliance with (i) this chapter, (ii) the articles or bylaws, (iii) any plan or agreement to which the corporation is a party, or (iv) the disclosure set forth in any proxy or consent solicitation statement, if and to the extent the failure renders the act or transaction void or voidable; or (2) of the board or an officer to authorize or approve an act or transaction taken by or on behalf of the corporation that requires board or officer approval for the act or transaction's due authorization.

Sec. 5. Minnesota Statutes 2024, section 302A.011, is amended by adding a subdivision to read:

Subd. 75. **Overissue.** "Overissue" means the purported issuance of: (1) shares of a class or series in excess of the number of shares of the class or series the corporation has the power under the articles to issue under section 302A.401, subdivision 1, at the time of the issuance; or (2) shares of any class or series that are not then authorized for issuance by the articles.

Sec. 6. Minnesota Statutes 2024, section 302A.011, is amended by adding a subdivision to read:

Subd. 76. **Putative shares.** "Putative shares" means shares, including shares issued upon exercise of rights to purchase, in each case, that were created or issued pursuant to a defective corporate act, that: (1) but for a failure of authorization, would constitute valid shares; or (2) the board is unable to determine are valid shares.

Sec. 7. Minnesota Statutes 2024, section 302A.011, is amended by adding a subdivision to read:

Subd. 77. **Time of defective corporate act.** "Time of defective corporate act" means the date and time at which the defective corporate act was purportedly taken.

Sec. 8. Minnesota Statutes 2024, section 302A.011, is amended by adding a subdivision to read:

Subd. 78. **Validation effective time.** "Validation effective time," with respect to a defective corporate act ratified under section 302A.166 or 302A.167, means the latest of:

(1) the time when a defective corporate act submitted to shareholders for approval under section 302A.166, subdivision 4, is approved by shareholders or, if no vote of the shareholders is required to approve the ratification of the defective corporate act, immediately following the time when the board adopts the resolutions required under section 302A.166, subdivision 2 or 3;

(2) if no certificate of validation must be filed under section 302A.166, subdivision 6, the time, if any, specified by the board of directors in the resolutions adopted under section 302A.166, subdivision 2 or 3, provided the time specified by the board of directors does not precede the time when the resolutions are adopted; or

(3) the time when any certificate of validation filed under section 302A.166, subdivision 6, is filed with the secretary of state.

Sec. 9. Minnesota Statutes 2024, section 302A.011, is amended by adding a subdivision to read:

Subd. 79. **Valid shares.** "Valid shares" means shares that have been duly authorized and validly issued as required under this chapter.

Sec. 10. Minnesota Statutes 2024, section 302A.111, subdivision 2, is amended to read:

Subd. 2. **Statutory provisions that may be modified only in articles or in a shareholder control agreement.** The following provisions govern a corporation unless modified in the articles or in a shareholder control agreement under section 302A.457:

- (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);
- (d) a corporation must allow cumulative voting for directors (section 302A.215, subdivision 2);
- (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, divisions, or combinations, 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, divisions, or combinations, 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 plurality of the votes cast (section 302A.215, subdivision 1) or 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);

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

(r) a corporation may issue shares for a consideration less than the par value, if any, of the shares (section 302A.405, subdivision 2);

(s) the board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval (section 302A.402);

(t) a written action of shareholders must be signed by all shareholders (section 302A.441);

(u) specified amendments of the articles create dissenters' rights (section 302A.471, subdivision 1, clause (a)); ~~and~~

(v) shareholders are entitled to vote as a class or series upon proposed amendments to the articles in specified circumstances (section 302A.137); and

(w) the corporation's business and affairs must be managed by or under the board's direction (section 302A.201).

Sec. 11. Minnesota Statutes 2024, section 302A.161, is amended by adding a subdivision to read:

Subd. 23a. **Emergency powers.** (a) During an emergency, unless emergency bylaws provide otherwise:

(1) notice of a meeting of the board must be given only to the directors that are practicable to reach and may, if ordinary notice is impracticable or inadvisable due to the emergency, be given in any practicable manner; and

(2) the officers designated on a list approved by the board of directors before the emergency, in the priority order and subject to conditions as may be provided in the board resolution approving the list, must, to the extent required to provide a quorum at any meeting of the board, be deemed directors for the meeting.

(b) During an emergency that makes it impracticable to convene a meeting of shareholders in accordance with this chapter, the articles, the bylaws, or as specified in a notice for the meeting previously given, unless emergency bylaws provide otherwise, the board may postpone a meeting of shareholders for which notice has been given or authorize shareholders to participate in a meeting by any means of remote communication that conforms with section 302A.436. The corporation must give notice to shareholders, by the means and with shorter advance notice as are reasonable in the circumstances, of a postponement, including any new date, time, or place, and describe any means of remote communication to be used. The notice to shareholders by a publicly held corporation may be given solely by means of a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to the rules and regulations under the Securities Exchange Act of 1934, United States Code, title 15, section 78a, et seq.

(c) A corporate action taken in good faith under this subdivision during an emergency to further the business and affairs of the corporation binds the corporation.

Sec. 12. [302A.166] DEFECTIVE CORPORATE ACTS AND SHARES; RATIFICATION.

Subdivision 1. **Effect of ratification or validation.** Subject to subdivision 7, a defective corporate act or putative share is not void or voidable solely as a result of a failure of authorization if the defective corporate act or putative share is ratified under this section or validated by a court in a proceeding brought under section 302A.167.

Subd. 2. **Board approval; generally.** (a) In order to ratify one or more defective corporate acts under this section other than ratifying an election of the first board under subdivision 3, the board must adopt resolutions stating:

(1) the defective corporate act or acts to be ratified;

(2) the date of each defective corporate act or acts;

(3) if the defective corporate act or acts involved the issuance of putative shares, the number and type of putative shares issued and the date or dates upon which the putative shares were purported to have been issued;

(4) the nature of the failure of authorization in respect of each defective corporate act to be ratified; and

(5) that the board approves ratification of the defective corporate act or acts.

(b) The resolutions also may provide that, at any time before the validation effective time in respect of a defective corporate act set forth in the resolutions, notwithstanding the approval of the ratification of the defective corporate act by shareholders, the board may abandon the ratification of the defective corporate act without further action of the shareholders.

(c) The quorum and voting requirements that apply to the board's ratification of any defective corporate act must be the quorum and voting requirements applicable to the type of defective corporate act proposed to be ratified at the time the board adopts the resolutions ratifying the defective corporate act. If the articles or bylaws, any plan or agreement to which the corporation was a party, or any provision of this chapter, in each case as in effect as of the time of the defective corporate act, require a larger number or portion of directors or of specified directors for a quorum to be present or to approve the defective corporate act, the larger number or portion of the directors or the specified directors must be required for a quorum to be present or to adopt the resolutions to ratify the defective corporate act, as applicable; except that the presence or approval of a director elected, appointed, or nominated by holders of any class or series of which no

shares are outstanding at the time the board adopts the resolutions ratifying the defective corporate act, or by any person that is no longer a shareholder at the time the board adopts the resolutions ratifying the defective corporate act, is not required.

Subd. 3. **Board approval; election of first board.** To ratify a defective corporate act in respect of the election of the first board under section 302A.201, subdivision 1, a majority of the persons who, at the time the resolutions required by this subdivision are adopted, are exercising the powers of directors under claim and color of an election or appointment as such may adopt resolutions stating:

(1) the name of the person or persons who first took action in the name of the corporation as the first board;

(2) the earlier of the date on which the persons first took the action or were purported to have been elected as the first board; and

(3) that the ratification of the election of the person or persons as the first board is approved.

Subd. 4. **Shareholder approval; when required.** A defective corporate act ratified under subdivision 2 must be submitted to shareholders for approval under subdivision 5, unless:

(1)(i) no other provision of this chapter, and no provision of the articles or bylaws, or of any plan or agreement to which the corporation is a party, requires shareholder approval of the defective corporate act to be ratified, either at the time of the defective corporate act or at the time the board adopts the resolutions ratifying the defective corporate act under subdivision 2, and (ii) the defective corporate act did not result from a failure to comply with section 302A.673; or

(2) as of the adoption of the resolutions of the board under subdivision 2, there are no valid shares outstanding and entitled to vote thereon, regardless of whether there then exist any putative shares.

Subd. 5. **Shareholder approval; process.** (a) If the ratification of a defective corporate act must be submitted to shareholders for approval under subdivision 4, notice of the meeting must be given in the manner set forth in section 302A.435 to each holder of valid shares and putative shares, whether voting or nonvoting.

(b) The notice under this subdivision must be given as follows:

(1) in the case of a defective corporate act that did not involve the establishment of a record date for notice of or voting at any meeting of shareholders, for written action of shareholders in lieu of a meeting, or for any other purpose, to the shareholders of valid shares and putative shares, whether voting or nonvoting, as of the time of the defective corporate act, other than holders whose identities or addresses cannot be determined from the corporation's records; or

(2) in the case of a defective corporate act that involved the establishment of a record date for notice of or voting at any meeting of shareholders, for written action of shareholders in lieu of a meeting, or for any other purpose, to the shareholders of valid shares and putative shares, whether voting or nonvoting, as of the record date for notice of or voting at the meeting, the record date for written action, or the record date for the other action, as the case may be, other than holders whose identities or addresses cannot be determined from the corporation's records.

(c) The notice must contain a copy of the resolutions adopted by the board under subdivision 2 or the information required by subdivision 2, paragraph (a), clauses (1) to (5). The notice must include a statement that any claim that the defective corporate act or putative shares ratified under this section is void or voidable

due to the failure of authorization, or that a court should declare in the court's discretion that a ratification in accordance with this section is not effective or is effective only on certain conditions, must be brought within 120 days from the applicable validation effective time.

(d) At the meeting, the quorum and voting requirements that apply to ratification of the defective corporate act must be the same quorum and voting requirements that apply to the type of defective corporate act proposed to be ratified at the time of the approval of the ratification, except that:

(1) if the articles or bylaws, a plan or agreement to which the corporation was a party, or a provision under this chapter in effect as of the time of the defective corporate act requires a larger number or portion of shares or of any class or series thereof or of specified shareholders for a quorum to be present or to approve the defective corporate act, the presence or approval of the larger number or portion of stock or of the class or series thereof or of the specified shareholders must be required for a quorum to be present or to approve the ratification of the defective corporate act, as applicable; except that the presence or approval of shares of any class or series of which no shares are outstanding at the time of the approval of the ratification, or of any person that is no longer a shareholder at the time of the approval of the ratification, is not required; and

(2) the approval by shareholders of the ratification of a director's election requires the affirmative vote of a plurality of shares present at the meeting and entitled to vote on the election of the director in the manner set forth in section 302A.215, except that, if the articles or bylaws then in effect or in effect at the time of the defective election require or required a larger number or portion of shares or of any class or series thereof or of specified shareholders to elect the director, the affirmative vote of the larger number or portion of shares or of any class or series thereof or of the specified shareholders must be required to ratify the election of the director; except that the presence or approval of shares of any class or series of which no shares are outstanding at the time of the approval of the ratification, or of any person that is no longer a shareholder at the time of the approval of the ratification, is not required.

(e) Putative shares, measured as of the adoption by the board of resolutions under subdivision 2 and without giving effect to any ratification that becomes effective after the adoption, are neither entitled to vote nor counted for quorum purposes in a vote to ratify a defective corporate act.

Subd. 6. **Certificate of validation.** (a) If a defective corporate act ratified under this section requires under any other section of this chapter a certificate to be filed with the secretary of state, and either (1) the certificate requires any change to give effect to the defective corporate act in accordance with this section, including a change to the date and time of the effectiveness of the certificate, or (2) a certificate was not previously filed with respect to the defective corporate act, the corporation must file with the secretary of state a certificate of validation with respect to the defective corporate act in lieu of filing the certificate otherwise required by this chapter.

(b) A separate certificate of validation is required for each defective corporate act that requires the filing of a certificate of validation under this section, except that (1) two or more defective corporate acts may be included in a single certificate of validation if the corporation filed with the secretary of state, or to comply with this chapter would have filed with the secretary of state, a single certificate under another provision of this chapter to effect the acts, and (2) two or more overissues of shares, or of any class or series of shares, may be included in a single certificate of validation; provided that the increase in the number of authorized shares, or of each class or series, set forth in the certificate of validation is effective on the date of the first overissue.

(c) The certificate of validation must set forth:

(1) that the corporation has ratified one or more defective corporate acts that would have required filing with the secretary of state of a certificate under this chapter;

(2) that each defective corporate act has been ratified in accordance with this section; and

(3) the following information:

(i) if a certificate was previously filed with the secretary of state under this chapter with respect to the defective corporate act and the certificate requires any change to give effect to the defective corporate act in accordance with this section, including a change to the date and time of the effectiveness of the certificate, the certificate of validation must set forth:

(A) the name, title, and filing date of the certificate previously filed and any certificate of correction to the certificate previously filed;

(B) a statement that a certificate containing all of the information that must be included under the applicable section or sections of this chapter to give effect to the defective corporate act is attached as an exhibit to the certificate of validation; and

(C) the date and time that the certificate is deemed effective pursuant to this section; or

(ii) if a certificate was not previously filed with the secretary of state under this chapter in respect of the defective corporate act and the defective corporate act ratified pursuant to this section would have required under any other section of this chapter the filing with the secretary of state of a certificate, the certificate of validation shall set forth:

(A) a statement that a certificate containing all of the information required to be included under the applicable section or sections of this chapter to give effect to the defective corporate act is attached as an exhibit to the certificate of validation; and

(B) the date and time that the certificate shall be deemed to have become effective pursuant to this section.

(d) A certificate attached to a certificate of validation need not be separately executed and acknowledged and need not include a statement required by another section under this chapter that the instrument has been approved and adopted in accordance with the provisions of the other section under this chapter.

Subd. 7. **Retroactive effect.** From and after the validation effective time, unless otherwise determined in an action brought pursuant to section 302A.167, subject to subdivision 5, paragraph (e):

(1) each defective corporate act ratified in accordance with this section is no longer deemed void or voidable as a result of the failure of authorization described in the resolutions adopted under subdivision 2, effective retroactively from the time of the defective corporate act; and

(2) each share or fraction of a share of putative shares issued or purportedly issued pursuant to the defective corporate act is no longer deemed void or voidable, and is deemed to be an identical outstanding share or fraction of an outstanding share as of the time the share or fraction of a share was purportedly issued.

Subd. 8. **Postratification notice.** (a) Except as provided under paragraph (b), with respect to each defective corporate act ratified by the board under subdivision 2 or subdivision 3, prompt notice of the ratification must be given to all shareholders of valid shares and putative shares, whether voting or nonvoting, as of the date the board adopts the resolutions approving the defective corporate act, or as of a date within 60 days after the date of adoption, as established by the board. The notice must be sent to the address of the

holder as the address appears or most recently appeared, as appropriate, on the corporation's records. The notice must be given to the shareholders of valid shares and putative shares, whether voting or nonvoting, as of the time of the defective corporate act, other than holders whose identities or addresses cannot be determined from the records of the corporation. The notice must contain a copy of the resolutions adopted under subdivision 2 or the information specified under subdivision 2, paragraph (a), clauses (1) to (5), or subdivision 3, clauses (1) to (3), as applicable, and a statement that any claim that the defective corporate act or putative shares ratified under this section is void or voidable due to the failure of authorization, or that a court should declare in the court's discretion that a ratification in accordance with this section is not effective or is effective only on certain conditions, must be brought within 120 days from the latter of the validation effective time or the time at which the notice required by this subdivision is given.

(b) Notice is not required if notice of the ratification of the defective corporate act is given in accordance with subdivision 5 and, in the case of a corporation that has a class of shares listed on a national securities exchange, the notice required by this subdivision and subdivision 5 may be deemed given if disclosed in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to section 13, 14, or 15(d) of the Securities Exchange Act of 1934, as amended, United States Code, title 15, section 78a, et seq., and rules and regulations promulgated under the Securities Exchange Act of 1934, as amended, or the corresponding provisions of any subsequent United States securities laws, rules, or regulations.

(c) If a defective corporate act has been approved by shareholders acting pursuant to section 302A.441, the notice required by this subdivision may be included in a notice required under section 302A.441, subdivision 3. If the notice is given under section 302A.441, the notice must be sent to the shareholders entitled to the notice under section 302A.441, subdivision 3, and to all holders of valid shares and putative shares to whom notice is required under this subdivision if the defective corporate act had been approved at a meeting and the record date for determining the shareholders entitled to notice of the meeting had been the date for determining the shareholders entitled to notice under paragraph (a) other than any shareholder who approved the written action in lieu of a meeting under section 302A.441 or any holder of putative shares who otherwise consented thereto in writing.

(d) For purposes of this subdivision and subdivision 5 only, notice to holders of putative shares, and notice to holders of valid shares and putative shares as of the time of the defective corporate act, is treated as notice to holders of valid shares for purposes of sections 302A.435 and 302A.441.

Sec. 13. [302A.167] VALIDITY OF DEFECTIVE CORPORATE ACTS AND SHARES; PROCEEDINGS.

Subdivision 1. **When permitted.** Subject to subdivision 5, upon application by the corporation, a successor entity to the corporation, a member of the board, a shareholder or beneficial owner of valid shares or putative shares, a shareholder or beneficial owner of valid shares or putative shares as of the time of a defective corporate act ratified pursuant to section 302A.166, or other person claiming to be substantially and adversely affected by a ratification pursuant to section 302A.166, a court may:

(1) determine the validity and effectiveness of any defective corporate act ratified pursuant to section 302A.166;

(2) determine the validity and effectiveness of the ratification of any defective corporate act pursuant to section 302A.166;

(3) determine the validity and effectiveness of any defective corporate act not ratified or not ratified effectively pursuant to section 302A.166;

(4) determine the validity of any corporate act or transaction and any shares or rights to purchase; and

(5) modify or waive any of the procedures set forth in section 302A.166 to ratify a defective corporate act.

Subd. 2. **Remedies.** In connection with an action under this section, a court may:

(1) declare that a ratification under section 302A.166 is not effective or is only effective at a time or upon conditions established by the court;

(2) validate and declare effective a defective corporate act or putative shares and impose conditions upon the court's validation;

(3) require measures to remedy or avoid harm to a person substantially and adversely affected by a ratification under section 302A.166 or from a court order pursuant to this section, excluding harm that would have resulted if the defective corporate act had been valid when approved or effectuated;

(4) order the secretary of state to accept an instrument for filing with an effective time specified by the court, which may be before or after the time of the order, provided that the filing date of the instrument must be determined in accordance with section 302A.011, subdivision 11;

(5) approve a share register for the corporation that includes any shares ratified or validated in accordance with this section or section 302A.166;

(6) declare that putative shares are valid shares or require a corporation to issue and deliver valid shares in place of any putative shares;

(7) order a meeting of holders of valid shares or putative shares and determine the right and power of persons claiming to hold valid shares or putative shares to vote at the ordered meeting;

(8) declare that a defective corporate act validated by a court is effective as of the time of the defective corporate act or at another time the court may determine;

(9) declare that putative shares validated by a court shall be deemed to be an identical share or fraction of a valid share as of the time originally issued or purportedly issued or at such other time as the court may determine; and

(10) make other orders regarding matters as the court deems proper under the circumstances.

Subd. 3. **Service.** Service of the application under subdivision 1 upon the registered agent of the corporation is deemed to be service upon the corporation, and no other party needs to be joined in order for a court to adjudicate the matter. In an action filed by the corporation, a court may require notice of the action be provided to other persons specified by the court and permit the other persons to intervene in the action.

Subd. 4. **Considerations.** In connection with resolving matters pursuant to subdivisions 1 and 2, a court may consider the following:

(1) whether the defective corporate act was originally approved or effectuated with the good faith belief that the approval or effectuation was in compliance with the provisions of this chapter, the articles, or the bylaws;

(2) whether the corporation and board have treated the defective corporate act as a valid act or transaction and whether a person has acted in reliance on the public record that the defective corporate act was valid;

(3) whether any person may be or was harmed by the ratification or validation of the defective corporate act, excluding harm that would have resulted if the defective corporate act had been valid when approved or effectuated;

(4) whether any person is harmed by the failure to ratify or validate the defective corporate act; and

(5) any other factors or considerations the court deems just and equitable.

Subd. 5. **Statute of limitations.** An action asserting that (1) a defective corporate act or putative shares ratified in accordance with section 302A.166 is void or voidable due to a failure of authorization identified in the resolution adopted in accordance with section 302A.166, subdivision 2 or 3, or (2) a court should declare in its discretion that a ratification in accordance with section 302A.166 not be effective or be effective only on certain conditions, is prohibited from being brought after the expiration of 120 days from the later of the validation effective time and the time notice, if any, that is required to be given pursuant to section 302A.166, subdivision 8, is given with respect to the ratification; except that this subdivision does not apply to an action asserting that a ratification was not accomplished in accordance with section 302A.166 or to any person to whom notice of the ratification was required to have been given pursuant to 302A.166, subdivision 5 or 8, but to whom the notice was not given.

Sec. 14. Minnesota Statutes 2024, section 302A.181, is amended by adding a subdivision to read:

Subd. 4. **Emergency bylaws.** (a) Unless the articles provide otherwise, bylaws may contain provisions that are effective only during an emergency. The emergency bylaws may contain provisions necessary to manage the corporation during the emergency, including:

(1) procedures for calling a meeting of the board;

(2) quorum requirements for the meeting;

(3) designation of additional or substitute directors; and

(4) procedures for the board to determine the duration of an emergency.

(b) All provisions of the regular bylaws that are not inconsistent with the emergency bylaws remain effective during the emergency.

(c) Corporate action taken in good faith in accordance with the emergency bylaws binds the corporation.

Sec. 15. Minnesota Statutes 2024, section 302A.201, subdivision 1, is amended to read:

Subdivision 1. **Board to manage.** The business and affairs of a corporation shall be managed by or under the direction of a board, subject to the provisions of subdivision 2 and section 302A.457, and except as may be otherwise provided in the articles. If a provision is made in the articles: (1) the powers and duties conferred or imposed upon the board of directors by this chapter must be exercised or performed to the extent and by the natural persons provided in the articles, (2) the directors have no duties, liabilities, or responsibilities as directors under this chapter with respect to or arising from the exercise or performance of, or from the failure to exercise or perform, the conferred or imposed powers and duties by the other persons, and (3) the other persons have all of the duties, liabilities, and responsibilities of directors under this chapter with respect to and arising from the exercise or performance of, or the failure to exercise or perform, the conferred or imposed powers and duties. The members of the first board may be named in the articles or elected by the incorporators pursuant to section 302A.171 or by the shareholders.

Sec. 16. Minnesota Statutes 2024, section 302A.237, is amended by adding a subdivision to read:

Subd. 3. **Agreements and other instruments; authorization.** When this chapter requires the board to approve or to take other action with respect to an agreement, instrument, plan, or document, the agreement, instrument, plan, or document may be approved by the board in final form or in substantially final form. If the board acts to approve or take other action with respect to an agreement, instrument, plan, or document that this chapter requires to be filed with the secretary of state or referenced in any certificate filed, the board may, at any time after providing the approval or taking other action and prior to the effectiveness of the filing with the secretary of state, adopt a resolution ratifying the agreement, instrument, plan, or document. The ratification under this subdivision is effective as of the time of the original approval or other action by the board and to satisfy any requirement under this chapter that the board approve or take other action with respect to the agreement, instrument, plan, or document in a specific manner or sequence.

Sec. 17. Minnesota Statutes 2024, section 302A.361, is amended to read:

302A.361 STANDARD OF CONDUCT.

Subdivision 1. **Standard; liability.** An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been an officer of the corporation. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 302A.351 is deemed an officer for purposes of this section and sections 302A.467 and 302A.521.

Subd. 2. **Liability; elimination or limitation.** The articles of a corporation may provide that an officer's personal liability to the shareholders for monetary damages for breach, during the time the corporation is a publicly held corporation, of fiduciary duty as an officer may be eliminated or limited. The articles must not eliminate or limit the liability of an officer:

- (1) for any breach of the officer's duty of loyalty to the corporation or the corporation's shareholders;
- (2) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- (3) under section 80A.76;
- (4) for any transaction from which the officer derived an improper personal benefit;
- (5) in any action by or in the right of the corporation; or
- (6) for any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

Sec. 18. Minnesota Statutes 2024, section 302A.461, subdivision 4, is amended to read:

Subd. 4. Right to inspect. (a) A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the corporation shall make available within ten days after receipt by an officer of the corporation of the written demand:

- (1) the share register; and

(2) all documents referred to in subdivision 2.

(b) A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination.

(c) A shareholder, beneficial owner, or a holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged or verified in the manner provided in chapter 358, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office in this state or at its principal place of business.

(d) For purposes of this section, a "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

(e) If a corporation or an officer or director of the corporation violates this section, a court in Minnesota may, in an action brought by a shareholder, beneficial owner, or a holder of a voting trust certificate of the corporation, specifically enforce this section and award expenses, including attorney fees and disbursements, to the shareholder, beneficial owner, or a holder of a voting trust certificate.

Sec. 19. Minnesota Statutes 2024, 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) unless otherwise provided in the articles, 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 excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; except that an amendment to the articles of an issuing public corporation that provides that section 302A.671 does not apply to a control share acquisition does not give rise to the right to obtain payment under this section; ~~or~~

(5) eliminates the right to obtain payment under this subdivision; or

(6) pursuant to section 302A.201, subdivision 1, diminishes or abolishes the board's right to manage, or to direct the management of, the corporation's business and affairs;

(b) a sale, lease, transfer, or other disposition of property and assets of the corporation that requires shareholder approval under section 302A.661, subdivision 2, 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, whether under this chapter or under chapter 322C, to which the corporation is a constituent organization, except as provided in subdivision 3, and except for a plan of merger adopted under section 302A.626;

(d) a plan of exchange, whether under this chapter or under chapter 322C, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring organization, except as provided in subdivision 3;

(e) a plan of conversion is adopted by the corporation and becomes effective;

(f) an amendment of the articles in connection with a combination of a class or series under section 302A.402 that reduces the number of shares of the class or series owned by the shareholder to a fraction of a share if the corporation exercises its right to repurchase the fractional share so created under section 302A.423; or

(g) 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.

Sec. 20. Minnesota Statutes 2024, section 302A.471, subdivision 3, is amended to read:

Subd. 3. **Rights not to apply.** (a) Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to a shareholder of (1) the surviving corporation in a merger with respect to shares of the shareholder that are not entitled to be voted on the merger and are not canceled or exchanged in the merger or (2) the corporation whose shares will be acquired by the acquiring organization in a plan of exchange with respect to shares of the shareholder that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

(b) If a date is fixed according to section 302A.445, subdivision 1, for the determination of shareholders entitled to receive notice of and to vote on an action described in subdivision 1, only shareholders as of the date fixed, and beneficial owners as of the date fixed who hold through shareholders, as provided in subdivision 2, may exercise dissenters' rights.

(c) Notwithstanding subdivision 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 302A.613, subdivision 4, or 302A.621, is limited in accordance with the following provisions:

(1) The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on ~~the New York Stock Exchange, NYSE MKT LLC, the Nasdaq Global Market, the NASDAQ Global Select Market, the Nasdaq Capital Market, or any successor to any such market~~ any national securities exchange registered with the United States Securities and Exchange Commission under Section 6 of the Securities Exchange Act of 1934, United States Code, title 15, section 78a, et seq.

(2) The applicability of clause (1) is determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subdivision 1; or

(ii) the day before the effective date of corporate action described in subdivision 1 if there is no meeting of shareholders.

(3) Clause (1) is not applicable, and the right to obtain payment under this section is available pursuant to subdivision 1, for the holders of any class or series of shares who are required by the terms of the corporate action described in subdivision 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of a domestic or foreign corporation, or any other ownership interest of any other organization, that satisfies the standards set forth in clause (1) at the time the corporate action becomes effective.

Sec. 21. Minnesota Statutes 2024, section 302A.611, is amended by adding a subdivision to read:

Subd. 1a. **Additional remedies; shareholder representatives.** A plan of merger or exchange may provide:

(1) that: (i) a party to the plan that fails to perform the party's obligations under the plan in accordance with the terms and conditions of the plan, or that otherwise fails to comply with the terms and conditions of the plan, in each case required to be performed or complied with prior to the time the merger or exchange becomes effective, or that otherwise fails to consummate, or fails to cause the consummation of, the merger or exchange, whether prior to a specified date, upon satisfaction or, to the extent permitted by law, waiver of all conditions to consummation set forth in the plan or otherwise, is subject, in addition to any other remedies available at law or in equity, to penalties or consequences set forth in the plan of merger or exchange, which may include an obligation to pay to the other party or parties to the plan an amount representing or based on the loss of any premium or other economic entitlement the shareholders or holders of rights to purchase of the other party would be entitled to receive pursuant to the terms of the plan if the merger or exchange were consummated in accordance with the terms of the plan; and (ii) if, pursuant to the terms of the plan of merger or exchange, the corporation is entitled to receive payment from another party to the plan of any amount representing a penalty or consequence, the corporation is entitled to enforce the other party's payment obligation and upon receipt of a payment is entitled to retain the amount of the payment received; or

(2)(i) for the appointment, at or after the time at which the plan of merger or exchange is approved by the shareholders of the corporation in accordance with the requirements of this chapter, of one or more persons, which may include the surviving or resulting organization or any officer, representative, or agent of the surviving or resulting organization, as representative of the shareholders or the holders of rights to purchase of the corporation, including the shareholders and holders whose shares or rights to purchase must be canceled, converted, or exchanged in the merger or exchange and for the delegation to the person or persons of the sole and exclusive authority to take action and bring claims on behalf of the shareholders and the holders pursuant to the plan, including taking actions and bringing claims, including by entering into settlements, as the representative determines to enforce the rights of the shareholders and holders under the plan of merger or exchange, on the terms and subject to the conditions set forth in the plan; (ii) that an appointment is irrevocable and binding on all shareholders and holders from and after the approval of the plan of merger or exchange by the requisite vote of shareholders pursuant to this chapter; and (iii) that a provision adopted pursuant to this clause may not be amended after the merger or exchange has become effective or may be amended only with the consent or approval of persons specified in the plan of merger or exchange.

Presented to the governor April 29, 2025

Signed by the governor April 30, 2025, 12:29 p.m.