

MINNESOTA STATUTES 1953 ANNOTATIONS

300.60 CORPORATIONS, GENERAL PROVISIONS

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300.60 DIVERSION OF CORPORATE PROPERTY A FELONY

NOTE: As to domestic nonprofit corporations, see section 317.68.

300.62 EXISTING CORPORATION, HOW TO REORGANIZE

HISTORY. 1857 c 39 s 12; PS 1858 c 129 s 12; 1865 c 6 s 5; GS 1866 c 34 s 12; GS 1878 c 34 s 12; GS 1894 s 2603; RL 1905 s 2886; GS 1913 s 6204; GS 1923 s 7491; MS 1927 s 7491.

300.63 ATTORNEY GENERAL TO EXAMINE

HISTORY. RS 1851 c 42 s 22; PS 1858 c 17 s 360; GS 1866 c 34 s 172; GS 1878 c 34 s 421; GS 1894 s 3436; RL 1905 s 2887; GS 1913 s 6205; GS 1923 s 7492; MS 1927 s 7492.

NOTE: Nonprofit domestic corporations. See section 317.68.

300.66 CONTRIBUTIONS BY CORPORATIONS

HISTORY. Amended, 1949 c 156 s 1.

A mutual savings bank may contribute to a community chest and make contributions for other uses set out in Laws 1949, Chapter 156, Section 2. OAG Oct. 6, 1949 (30-K).

300.67 DECLARATION OF POLICIES

HISTORY. 1949 c 156 s 2.

A mutual savings bank may contribute to a community chest and make contributions for other uses set out in Laws 1949, Chapter 156. OAG Oct. 6, 1949 (30-K).

300.68 NOT TO INVALIDATE PRIOR GIFTS

HISTORY. 1949 c 156 s 3.

CHAPTER 301

BUSINESS CORPORATIONS ACT

NOTE: There is no Uniform Business Corporation Act. The National Conference of Commissioners on Uniform State Laws, in 1928, approved a model business corporation act which has been used as the basis for many of the acts now on the statute books of various states.

The first complete revision of the business laws of Minnesota is found in Revised Statutes 1866, Chapter 34. Messrs. Gordon E. Cole, E. C. Palmer, S. J. R. McMillan, and Thomas Wilson, were the revision commissioners.

The commission created a very workable law intended to invite capital and new business to incorporate under its liberal provisions; but capital was still reluctant to incorporate in Minnesota because of Minnesota Constitution, Article X, Section 3, imposing a double liability on stockholders. This hazard was removed by the amendment adopted Nov. 4, 1930, which permitted stockholders liability to be regulated by the legislature.

The organized Bar of the state, by a committee of which Joseph H. Colman was chairman, at once formulated a bill which, when enacted as Laws 1933, Chapter 300, became the basis for our present Business Corporation Act, coded as Chapter 301 of the 1953 Statutes.

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301.02 DEFINITIONS

HISTORY. Amended, 1951 c 98 s 13.

301.03 PURPOSE OF INCORPORATION AND QUALIFICATION OF INCORPORATORS

HISTORY. 1860 c 224 s 2; GS 1866 c 34 s 45; 1873 c 11 s 1; 1876 c 28 s 1; 1878 c 10 s 1; GS 1878 c 34 s 109, 120, 144; 1881 c 27 s 1; 1887 c 71; GS 1894 s 2794, 2805, 2827; RL 1905 s 2844, 2846; GS 1913 s 6139, 6144; GS 1923 s 7435, 7440; MS 1927 s 7435, 7440; 1933 c 300 s 2; M Supp s 7492-2.

Where the purpose of incorporation of a livestock association, as stated in its articles, was to improve livestock and marketing methods and the articles prohibited it from engaging in any business for pecuniary profit it could not properly be incorporated under the Business Corporation Act. Re Red River Valley Livestock Assn., 235 M 208, 50 NW(2d) 287.

A corporation for the purpose of operating a cemetery for profit cannot be organized under section 301.03. It may be organized under chapter 306. OAG May 16, 1950 (102).

301.04 ARTICLES OF INCORPORATION

HISTORY. Amended, 1951 c 98 s 1.

Conclusiveness of statement in articles as to residence for purposes of venue. 32 MLR 823.

Delegation of authority to directors to fill vacancies on the board. 33 MLR 186.

The nature and status of a corporation is controlled by the purpose clause as recited in the articles of incorporation; and where, in proceedings by stockholders under the Business Corporation Act for involuntary dissolution, evidence was offered to show that the association was not a business corporation, was properly refused. Re Red River Valley Livestock Assn., 235 M 208, 50 NW(2d) 287.

301.05 CORPORATE NAME

Conflicting interests and equities must be weighed in determining the lines to be drawn in separating fair competition from unfair competition. A personal name, whether it be a surname or a given name, may become a trade name. In order for a subsequent user of a personal name to use such name in conjunction with a distinguishing legend as a trade name in a market in which another has acquired a prior right to use the same personal name with respect to related goods, the distinguishing legend must be sufficiently striking in appearance or effect to distinguish the subsequent user's name from that of the prior user when the names are seen apart from each other as they are normally used in the trade. *Howards Clothes v Howard Clothes Corp.*, 236 M 291, 52 NW(2d) 753.

The word "insurer" may not be used in the name of a corporation formed under the Business Corporation Act. OAG June 19, 1952 (92-A-16).

On May 19 a reservation of the corporate name of an association was accepted by the secretary of state and the corporation filed its articles on June 11. On July 11 another corporation also formed under the Nonprofit Corporation Act and, using the same name, was filed. The first corporation had priority. OAG July 1, 1952 (92-A-30).

301.08 VALIDITY AND EFFECT OF CERTIFICATE OF INCORPORATION

A court of equity will mold its relief so as to determine the right of all the parties and will not allow the pleadings to prevent it from getting at the heart of the controversy. The relation between partners is essentially one of mutual trust and confidence and the utmost good faith is imposed upon each. Where bad faith

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is shown in the incorporation of a copartnership enterprise, action by the plaintiff was not waived by delay in rescinding the agreement after acquiring knowledge of the fraud. *Prince v Sonnesyn*, 222 M 528, 35 NW(2d) 468.

301.09 POWERS COMMON TO CORPORATIONS

HISTORY. Amended, 1951 c 98 s 2.

A corporate body, which by virtue of compliance with statutory conditions or by special grant is permitted to operate as a collective unit, separate and apart from its individual members, and is otherwise vested with privileges not common to citizens in general, is thereby accorded by favor of the state a status which by its very nature carries with it an inherent obligation that its acts shall be compatible with the public welfare. In re *E. C. Warner Co.*, 232 M 207, 45 NW(2d) 388.

In the absence of a charter or statutory restriction, it is presumed that a corporation may determine who and how persons may be admitted to membership. A corporate body acquires a status which carries with it an inherent and unqualified responsibility of seeing that its actions are always compatible with the public welfare. Although a corporate charter and bylaw provisions are ordinarily pleaded defensively, they must be pleaded affirmatively where they are incidental to a right asserted. *Viiilainen v American Finnish Workers Society*, 236 M 412, 53 NW(2d) 112.

The Acme Register Company ordered plaintiff to recondition a printing press and equip it to do two color printing. When the work was partly completed Acme sold its business to System Forms, Inc. The manager of Acme became the manager of System. Plaintiff was instructed by said manager to complete the work and bill System for the balance of the work. The manager of System had authority to bind it for the balance of the work done after it became the owner of the press. *Johnson v Acme Register Co.*, 237 M 161, 54 NW(2d) 57.

Where articles do not authorize members of a business corporation to organize an association within themselves to operate a bingo game under section 614.054 and the operation of such activity cannot be implied, the corporation lacks the power to carry on such an activity; but a business corporation may permit a properly conducted bingo game to operate on its premises, provided such permission is within the corporate powers of the corporation. OAG Oct. 8, 1947 (733-G).

301.14 SHARES, FILING CERTAIN RESOLUTIONS; OPTIONS AND CONVERSION RIGHTS

HISTORY. 1933 c 300 s 13; 1951 c 98 s 3-5; 1953 c 329 s 1, 2.

"Preferred stock" of a corporation is corporate stock with preference rights representing a contribution to capital and not a loan of money. A "dividend" is a portion of the profits of a corporation declared by the governing body to be set aside and paid to stockholders ratably according to their respective interests. The power to determine by amendment of the articles the preference of preferred stock, includes the power of determining whether the preferred stockholders have any right to accrued, but undeclared, dividends and to cancel such dividends entirely where there are no funds available for the payment of such dividends. A stockholder has no vested rights in dividends. *Sherman v Pepin Pickling Co.*, 230 M 87, 41 NW (2d) 571.

Where a mutual agreement between stockholders requires that a shareholder give the corporation the right of first refusal before selling stock to outsiders, unless the shareholder makes an offer to the corporation within the provisions of the agreement, the corporation's rejection of the stockholder's offer or failure to accept it does not entitle the shareholder to sell to outsiders. *Simons Lumber Co. v Simons*, 232 M 187, 44 NW(2d) 726.

301.16 SHARES; ALLOTMENT AND CONSIDERATION

HISTORY. 1933 c 300 s 15; 1935 c 117 s 3-5; 1951 c 98 s 6; 1953 c 211 s 1; 1953 c 329 s 3.

301.19 LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS

Where, on all material matters, a plaintiff dealt with a decedent personally, and a proposed corporation to take over the insurance agency was completely dormant and carried on no business, and aside from issuance of stock certificates, no one used the corporate name or conducted business in its behalf prior to the death of the decedent, the persons dealing with the corporation with the idea of becoming stockholders did not become liable as partners in a defective corporation which was neither a de jure nor de facto corporation. *Halvorson v Geurkink*, M, 57 NW(2d) 793.

301.21 STATED CAPITAL; SURPLUS

HISTORY. 1933 c 300 s 20; 1951 c 98 s 14.

301.22 DIVIDENDS AND PURCHASE OF OWN SHARES

Suit to compel declaration and payment of dividends. 35 MLR 95.

"Preferred stock" of a corporation is corporate stock with preference rights representing a contribution to capital and not a loan of money. A "dividend" is a portion of the profits of a corporation declared by the governing body to be set aside and paid to stockholders ratably according to their respective interests. The power to determine by amendment of the articles the preference of preferred stock, includes the power of determining whether the preferred stockholders have any right to accrued, but undeclared dividends, and to cancel such dividends entirely where there are no funds available for the payment of such dividends. A stockholder has no vested rights in dividends. *Sherman v Pepin Pickling Co.*, 230 M 87, 41 NW(2d) 571.

301.25 SHAREHOLDERS MEETING

Delegation of authority to board of directors to fill vacancies in the board. 33 MLR 186.

Where evidence established that in their business relationship plaintiff and defendant were really co-partners in their ownership and management of the corporate defendant, a mutual trust and confidence was required; and, because of such relationship, the law imposes upon each the highest standard of integrity and faith in their mutual dealings. *Fewell v Tappan*, 223 M 483, 27 NW(2d) 648.

Individual shareholders have no authority to dictate to the company's agents what policy they shall pursue, or to impair that discretion which was conferred upon them by the charter. *Warner v Warner*, 226 M 565, 33 NW(2d) 721.

301.26 VOTING RIGHTS

Vacancies in board of directors, delegation to board of directors to fill. 33 MLR 186.

In an action based upon a contract the evidence is sufficient to sustain the trial court's finding that plaintiff found a purchaser ready, willing, and able to buy defendant's property under the authorized terms and plaintiff is entitled to the customary broker's commission. *Lohman v Edgewater Holding Co.*, 227 M 40, 33 NW(2d) 842.

301.28 DIRECTORS

HISTORY. 1933 c 300 s 27; 1949 c 285 s 1; 1953 c 419 s 1.

Filling vacancies in board of directors; delegation of authority to directors. 33 MLR 186.

An officer or director of a corporation is not ordinarily criminally liable for acts performed by other officers or agents. He is criminally liable for his own acts, although done in his official capacity, if he participated in the unlawful act either directly, or as an aider, abettor, or accessory. *State v Lux*, 235 M 181, 50 NW(2d) 290.

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In an action based upon a contract the evidence is sufficient to sustain the trial court's finding that plaintiff found a purchaser ready, willing, and able to buy defendant's property under the authorized terms and plaintiff is entitled to the customary broker's commission. *Lohman v Edgewater Holding Co.*, 227 M 40, 33 NW(2d) 842.

301.29 REMOVAL OF DIRECTORS

Ultimate control is in the hands of the stockholders. Directors may be removed with or without cause by the shareholders and their successors elected in the same meeting. 22 MLR 189.

301.30 OFFICERS AND AGENTS

When the manager of a printing company ordered the rebuilding of a press and after a unit of the work was done the printing company was sold to another owner, a corporation, and that corporation continued such manager in the same position, and thereafter such manager told the contractor changing the press to complete the work and charge it to the new owner of the printing company, the new owner was bound by such order, and it was immaterial that the manager acted in a triple capacity as an officer of seller of the printing company, manager of the purchasing corporation, and bookkeeper of the contractor rebuilding the press. *Johnson v Acme Register Co.*, 237 M 161, 54 NW(2d) 37.

301.31 RELATION OF DIRECTORS AND OFFICERS TO CORPORATION

Rules applicable to trustees and agents, developed before the modern corporation came into existence, do not apply to a corporate director. 35 MLR 564.

In a stockholder's derivative action the courts will not interfere unless powers were illegally or unconscientiously executed; or such acts were fraudulent or collusive and destructive of stockholder's rights. In the suit the plaintiff must allege facts showing that the officer's action was so opposed to the corporation's true interest as to lead to a clear inference that no officer thus acting could have been influenced by an honest desire to secure such interests and was, in fact, acting in a manner inconsistent with the corporation interest. *Warner v Warner*, 226 M 565, 33 NW(2d) 721.

The position of a director of a corporation, though fiduciary in many respects, is sui generis and is not to be confused with the position of a trustee, quasi trustee, or agent; and, though a corporation is named as a defendant in a derivative suit such suit by a minority stockholder is essentially for the benefit of the corporation and the corporation, though standing as a neutral pendente lite, is a true plaintiff. In re *E. C. Warner Co.*, 232 M 207, 45 NW(2d) 388.

The *Acme Register Company* ordered plaintiff to re-condition a printing press and equip it to do two color printing. When the work was partly completed *Acme* sold its business to *System Forms, Inc.* The manager of *Acme* became the manager of *System*. Plaintiff was instructed by said manager to complete the work and bill *System* for the balance of the work. The manager of *System* had authority to bind it for the balance of the work done after it became the owner of the press. *Johnson v Acme Register Co.*, 237 M 161, 54 NW(2d) 57.

301.33 REGISTERED OFFICE; CHANGES; PENALTY

Conclusiveness of statement in the articles of incorporation as to residence for the purpose of venue. 32 MLR 823.

When a firm had its physical assets and shop office in a town but had its registered office in a village, its situs for ad valorem taxation is in the town. OAG March 12, 1948 (421-A-17).

301.35 SHAREHOLDERS, CREDITORS; INFORMATION TO

HISTORY. 1933 c 300 s 34; 1951 c 98 s 7.

301.39 STATED CAPITAL, REDUCTION

HISTORY. Amended, 1951 c 98 s 15.

301.40 RIGHTS OF SHAREHOLDERS NOT ASSENTING TO CERTAIN CORPORATE ACTION

The book value of the stock of a corporation is only a minor element to be considered with other factors in determining the true value of stock and is of little weight standing alone. *Warner v Warner Co.*, 226 M 565, 33 NW(2d) 721.

The law does not justify recovery in stockholders' representative suits for mere errors of judgment in handling corporate affairs. Individual stockholders of corporation have no authority to dictate to the corporation's agents what policy they shall pursue or to impair the discretion conferred upon the agents by the corporation's charter; and in stockholder's derivative action assailing acts of the corporation directors, the court will not transfer unless the powers were illegal or unconscientiously executed or unless such acts were fraudulent or collusive and destructive of the rights of the stockholders. *Warner v Warner Co.*, 226 M 565 33 NW(2d) 721.

The Sibley County Agricultural Society whose corporate existence terminated June 1, 1913, and which did not take advantage of Laws 1945, Chapter 193, or Laws 1947, Chapter 158, and as Laws 1949, Chapter 6, 12, and 41 are not applicable in the present instance, there is no way by which the corporate existence of the Sibley County Agricultural Society may now be renewed and the persons interested should form a new corporation under present existing laws. OAG May 18, 1949 (772-A-5).

301.41 CONSOLIDATION, MERGER

HISTORY. Amended, 1951 c 98 s 8.

301.42 CONSOLIDATION, MERGER; PROCEDURE

HISTORY. Amended, 1951 c 98 s 9.

301.44 DISSENTING SHAREHOLDERS; RIGHTS

HISTORY. Amended, 1951 c 98 s 10.

The law does not justify recovery in stockholders' representative suits for mere errors of judgment in handling corporate affairs. Individual stockholders of corporation have no authority to dictate to the corporation's agents what policy they shall pursue or to impair the discretion conferred upon the agents by the corporation's charter; and in stockholder's derivative action assailing acts of the corporation directors, the court will not transfer unless the powers were illegal or unconscientiously executed or unless such acts were fraudulent or collusive and destructive of the rights of the stockholders. *Warner v Warner Co.*, 226 M 565, 33 NW(2d) 721.

301.47 VOLUNTARY PROCEEDINGS FOR DISSOLUTION

HISTORY. 1933 c 300 s 46; 1949 c 286 s 1; 1951 c 98 s 11.

Position of corporate director as *suis generis* in re *E. C. Warner Company* case. 45 NW(2d) 388. 35 MLR 564.

Irrespective of any showing of direct or tangible benefit to the corporation a corporate director, after he has been vindicated on the merits of a shareholder's derivative suit charging him with dereliction of duty, is entitled to be repaid his reasonable expense out of corporate funds and what is a reasonable amount for defense expenses inclusive of attorney's fees, to be allowed, a director after he has been judicially vindicated upon the merits in a derivative action, rests in the sound discretion of the trial court. In re *E. C. Warner Co.*, 232 M 207, 45 NW(2d) 388.

301.49 GROUNDS FOR INVOLUNTARY DISSOLUTION

The provisions of sections 301.49, 301.50, and 301.51 are inapplicable to a proceeding for the involuntary dissolution of a non-profit, non-business corporation

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and the court properly dismissed a proceeding for the dissolution of such a corporation. Where the nature or status of a corporation is in question, the objects and purposes stated in its articles of incorporation are controlling. *Brantner v Red River Livestock Assn.*, 235 M 267, 50 NW(2d) 287.

301.50 WHO MAY INSTITUTE INVOLUNTARY PROCEEDINGS

Demurrer to petition for involuntary dissolution of domestic business corporation under MSA, section 301.49 was properly overruled where petition alleged that petitioners and appellants, husbands and wives, each own 50 percent of the corporation's stock; that the two families constitute two factions, which are so deadlocked that its business cannot longer be conducted with advantage to its shareholders; that there is internal dissension between them; that one appellant is president and in control of the corporation and has been guilty of mismanagement, abuse of authority, and persistent unfairness toward petitioners; and that, although the corporation is solvent and has prospered financially from its operations in the past, depletion of its assets and irreparable damage to its stockholders will result if appellants and petitioners continue to carry on the corporation's business. In *re Hedberg-Freidheim & Co.*, 233 M 534, 47 NW(2d) 424.

301.52 TRUSTEES, RECEIVERS; DUTIES, POWERS

HISTORY. Amended, 1951 c 98 s 12.

Irrespective of any showing of direct or tangible benefit to the corporation a corporate director, after he has been vindicated on the merits of a shareholder's derivative suit charging him with dereliction of duty, is entitled to be repaid his reasonable expense out of corporate funds and what is a reasonable amount for defense expenses inclusive of attorney's fees, to be allowed, a director after he has been judicially vindicated upon the merits in a derivative action, rests in the sound discretion of the trial court. In *re E. C. Warner Co.*, 232 M 207, 45 NW(2d) 388.

301.53 EFFECT OF DISSOLUTION PROCEEDINGS

The law of the state on incorporation governs as to dissolution of a corporation and its rights after dissolution to exercise its corporate functions elsewhere; and dissolution of a corporation and deprivation of the right to exercise its corporate powers by the law of the state of incorporation will be effective in another state. Assignment of a contract for a deed which was void under laws of the state of Delaware, the state of incorporation of assignee because assignee's charter had become void and its powers inoperative by reason of nonpayment of taxes, was also void in Minnesota. *Kratky v Andrews*, 224 M 386, 28 NW(2d) 624.

301.54 CLAIMS AGAINST CORPORATION IN DISSOLUTION PROCEEDINGS SUBJECT TO COURT SUPERVISION

Irrespective of any showing of direct or tangible benefit to the corporation a corporate director, after he has been vindicated on the merits of a shareholder's derivative suit charging him with dereliction of duty, is entitled to be repaid his reasonable expense out of corporate funds and what is a reasonable amount for defense expenses inclusive of attorney's fees, to be allowed, a director after he has been judicially vindicated upon the merits in a derivative action, rests in the sound discretion of the trial court. In *re E. C. Warner Co.*, 232 M 207, 45 NW(2d) 388.

301.563 Repealed, 1951 c 550 s 78.

301.57 ACTION TO TERMINATE CORPORATE EXISTENCE

Although the attorney general, in seeking to vacate a corporate charter, may proceed either by a civil action under sections 301.57 and 556.07 or by quo warranto, any other person, in the absence of express statutory authorization, must rely exclusively on quo warranto as a remedy. *Miller v Minneapolis Underwriters Assn.*, 226 M 367, 33 NW(2d) 49.