

## CHAPTER 302A

### BUSINESS CORPORATIONS

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**302A.011 DEFINITIONS.***[For text of subds 1 to 36, see M.S.1984]*

Subd. 37. **Acquiring person.** "Acquiring person" means a person that is proposing to make a control share acquisition. When two or more persons act as a partnership, limited partnership, syndicate, or other group for purposes of acquiring, owning or voting securities of an issuing public corporation, the syndicate or group is a "person."

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

*[For text of subd 38, see M.S.1984]*

Subd. 39. **Issuing public corporation.** "Issuing public corporation" means a corporation with at least 50 shareholders and which has either its principal place of business located in this state or owns or controls assets located within this state that have a fair market value of at least \$1,000,000.

Subd. 40. **Publicly held corporation.** "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934, as amended through December 31, 1984.

Subd. 41. **Beneficial ownership.** Beneficial owner includes, but is not limited to, any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise has or shares the power to vote or direct the voting of a security and the power to dispose of, or direct the disposition of, the security. "Beneficial ownership" includes, but is not limited to, the right, exercisable within 60 days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities, or otherwise. The securities subject to these 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 securities of the class owned by this person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of this person, any trust or estate in which this person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which this person owns ten percent or more of the equity, and any affiliate or associate of this person.

**History:** 1985 c 97 s 1; 1Sp1985 c 5 s 15-17

**302A.135 PROCEDURE FOR AMENDMENT AFTER ISSUANCE OF SHARES.***[For text of subds 1 to 3, see M.S.1984]*

Subd. 4. **Approval by shareholders.** (a) The proposed amendment is adopted when approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except as provided in paragraphs (b) and (c).

(b) For a closely held corporation, if the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:

(1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

(2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

(c) For corporations other than closely held corporations, if the articles provide for a larger proportion or number to transact a specified type of business at a meeting, the affirmative vote of that larger proportion or number is necessary to amend the articles to decrease the proportion or number necessary to transact the business.

**History:** 1985 c 5 s 1

**302A.449 PROXIES.***[For text of subds 1 to 6, see M.S.1984]*

Subd. 7. **Proxy in control share acquisition.** Notwithstanding any contrary provision of this chapter, a proxy relating to a meeting of shareholders required under section 302A.671, subdivision 3, must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation and must not be solicited less than 30 days before the meeting unless otherwise agreed in writing by the acquiring person and the issuing public corporation. Except for irrevocable proxies appointed in the regular course of business and not in connection with a control share acquisition, all proxies appointed for or in connection with the shareholder authorization of a control share acquisition pursuant to section 302A.671 shall be at all times terminable at will prior to the obtaining of the shareholder authorization, whether or not the proxy is coupled with an interest. Without affecting any vote previously taken, the proxy may be terminated in any manner permitted by subdivision 3, or by giving oral notice of the termination in the open meeting of shareholders held pursuant to section 302A.671, subdivision 3. The presence at a meeting of the person appointing a proxy does not revoke the appointment.

**History:** 1Sp1985 c 5 s 18

**302A.461 BOOKS AND RECORDS; INSPECTION.***[For text of subds 1 to 3, see M.S.1984]*

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:

- (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 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.

*[For text of subd 4a, see M.S.1984]*

Subd. 4b. **Other use prohibited.** A shareholder, beneficial owner, or holder of a voting trust certificate who has gained access under this section to any corporate record including the share register may not use or furnish to another for use the corporate record or a portion of the contents for any purpose other than a proper purpose. Upon application of the corporation, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subdivision.

Subd. 5. **Cost of copies.** Copies of the share register and all documents referred to in subdivision 2, if required to be furnished under this section, shall be furnished at the expense of the corporation. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

*[For text of subd 6, see M.S.1984]***History:** 1985 c 97 s 2-4**302A.671 CONTROL SHARE ACQUISITIONS.**

Subdivision 1. **Authorization in articles.** (a) Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section does not apply to a control share acquisition.

(b) All shares acquired by an acquiring person in violation of subdivision 4 shall be denied voting rights for one year after acquisition, the shares shall be nontransferable on the books of the corporation for one year after acquisition and the corporation shall, during the one-year period, have the option to call the shares for redemption at the price at which the shares were acquired. Such a redemption shall

occur on the date set in the call notice but not later than 60 days after the call notice is given.

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

- (a) the identity of the acquiring person;
- (b) a reference that the statement is made under this section;
- (c) the number of shares of the issuing public corporation beneficially owned by the acquiring person;

- (d) a specification of which of the following ranges of voting power in the election of directors would result from consummation of the control share acquisition:

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

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

**Subd. 3. Meeting of shareholders.** Within five days after receipt of an information statement pursuant to subdivision 2, a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 302A.433, subdivision 1, to vote on the proposed control share acquisition. The meeting shall be held no later than 55 days after receipt of the information statement, unless the acquiring person agrees to a later date, and no sooner than 30 days after receipt of the information statement, if the acquiring person so requests in writing when delivering the information statement. The notice of the meeting shall at a minimum be accompanied by a copy of the information statement and a statement disclosing that the board of directors of the issuing public corporation recommends acceptance of, expresses no opinion and is remaining neutral toward, recommends rejection of, or is unable to take a position with respect to the proposed control share acquisition. The notice of meeting shall be given within 25 days after receipt of the information statement.

**Subd. 4. Consummation of control share acquisition.** The acquiring person may consummate the proposed control share acquisition if and only if both of the following occur:

- (1) the proposed control share acquisition is approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote.

A class or series of shares of the corporation is entitled to vote as a class or series if any provision of the control share acquisition would, if contained in a proposed amendment to the articles, entitle the class or series to vote as a class or series; and

(2) the proposed control share acquisition is consummated within 180 days after shareholder approval.

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

Subd. 6. **Return of shares if acquisition not consummated.** If the proposed control share acquisition is not consummated in accordance with this section, the acquiring person shall immediately return any and all shares held in anticipation of the consummation to the shareholders from whom the person received the shares.

**History:** *1Sp1985 c 5 s 19*

NOTE: Subdivision 1, paragraph (a), as amended by Laws 1985, First Special Session chapter 5, section 19, is effective August 1, 1986. See Laws 1985, First Special Session chapter 5, section 21.