

## CHAPTER 302A

### BUSINESS CORPORATIONS

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#### 302A.011 DEFINITIONS.

*[For text of subs 1 to 10, see M.S.1986]*

Subd. 11. **Filed with the secretary of state.** "Filed with the secretary of state" means that an original of a document meeting the applicable requirements of this chapter, signed, and acknowledged or verified in the manner provided in chapter 358, and accompanied by a filing fee of \$25, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the original the word "Filed" and the month, day, year, and time of filing, record the document in the office of the secretary of state, and return the document to the person who delivered it for filing.

*[For text of subs 12 to 36, see M.S.1986]*

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

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

Subd. 38. **Control share acquisition.** "Control share acquisition" means an acquisition, directly or indirectly, by an acquiring person of beneficial ownership of shares of an issuing public corporation that, except for section 302A.671, would, when added to all other shares of the issuing public corporation beneficially owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the ranges specified in section 302A.671, subdivision 2, paragraph (d), but does not include any of the following:

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

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

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

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

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

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

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

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

**Subd. 40. Publicly held corporation.** "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12, or is subject to section 15(d), of the Securities Exchange Act of 1934.

**Subd. 41. Beneficial ownership.** "Beneficial owner," when used with respect to shares or other securities, includes, but is not limited to, any person who, directly or indirectly through any agreement, arrangement, relationship, understanding, or otherwise (whether or not in writing), has or shares the power to vote, or direct the voting of, the shares or securities and/or has or shares the power to dispose of, or direct the disposition of, the shares or securities, provided that a person shall not be deemed the beneficial owner of shares or securities tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares or securities are accepted for purchase or exchange, and provided that a person shall not be deemed the beneficial owner of shares or securities with respect to which the person has the power to vote or direct the voting arising solely from a revocable proxy given in response to a proxy solicitation required to be made and made in accordance with the applicable rules and regulations under the Securities Exchange Act of 1934 and is not then reportable under that act on a Schedule 13D or comparable report. "Beneficial ownership" includes, but is not limited to, the right 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) in the case of shares, the highest closing sale price during the 30-day period immediately preceding the date in question of a share on the composite tape for New York Stock Exchange listed shares, or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which the shares are listed, or, if the shares are not listed on any such exchange, on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, or, if the shares are not quoted on the National Association of Securities Dealers, Inc.

Automated Quotations National Market System, the highest closing bid quotation during the 30-day period preceding the date in question of a share on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or, if no such quotation is available, the fair market value on the date in question of a share as determined in good faith by the board of the issuing public corporation, subject to arbitration;

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

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

**History:** 1987 c 104 s 6; 1987 c 404 s 163; 1Sp1987 c 1 s 3-17

### 302A.111 ARTICLES.

*[For text of subd 1, see M.S.1986]*

Subd. 2. **Statutory provisions that may be modified only in articles.** The following provisions govern a corporation unless modified in the articles:

- (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);
- (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 or splits, 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 or splits, 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 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); and

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

**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);

(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 committee of disinterested persons (section 302A.243);

(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).

**Subd. 4. Optional provisions; specific subjects.** The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board, fixing a greater than majority director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:

(a) The members of the first board may be named in the articles (section 302A.201, subdivision 1);

(b) A manner for increasing or decreasing the number of directors may be provided (section 302A.203);

(c) Additional qualifications for directors may be imposed (section 302A.205);

- (d) Directors may be classified (section 302A.213);
- (e) The day or date, time, and place of board meetings may be fixed (section 302A.231, subdivision 1);
- (f) Absent directors may be permitted to give written consent or opposition to a proposal (section 302A.233);
- (g) A larger than majority vote may be required for board action (section 302A.237);
- (h) Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer (section 302A.305, subdivision 2);
- (i) Additional officers may be designated (section 302A.311);
- (j) Additional powers, rights, duties, and responsibilities may be given to officers (section 302A.315);
- (k) A method for filling vacant offices may be specified (section 302A.341, subdivision 3);
- (l) A certain officer or agent may be authorized to sign share certificates (section 302A.417, subdivision 2);
- (m) The transfer or registration of transfer of securities may be restricted (section 302A.429);
- (n) The day or date, time, and place of regular shareholder meetings may be fixed (section 302A.431, subdivision 3);
- (o) Certain persons may be authorized to call special meetings of shareholders (section 302A.433, subdivision 1);
- (p) Notices of shareholder meetings may be required to contain certain information (section 302A.435, subdivision 3);
- (q) A larger than majority vote may be required for shareholder action (section 302A.437);
- (r) Voting rights may be granted in or pursuant to the articles to persons who are not shareholders (section 302A.445, subdivision 4);
- (s) Corporate actions giving rise to dissenter rights may be designated (section 302A.471, subdivision 1, clause (e));
- (t) The rights and priorities of persons to receive distributions may be established (section 302A.551); and
- (u) A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles (section 302A.251, subdivision 4).

*[For text of subs 5 and 6, see M.S.1986]*

**History:** 1987 c 2 s 1; 1987 c 104 s 7,8; 1987 c 203 s 1

### **302A.133 PROCEDURE FOR AMENDMENT BEFORE ISSUANCE OF SHARES.**

Before the issuance of shares by a corporation, the articles may be amended pursuant to section 302A.171 by the incorporators or by the board. The articles may be amended by the board to change a statement pursuant to section 302A.401, subdivision 3, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series.

**History:** 1987 c 104 s 9

### **302A.135 PROCEDURE FOR AMENDMENT AFTER ISSUANCE OF SHARES.**

*[For text of subs 1 to 3, see M.S.1986]*

**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) and subdivision 5.

(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.

**Subd. 5. Certain restatements.** An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in subdivisions 2, 3, and 4.

**History:** 1987 c 104 s 10,11

### **302A.137 CLASS OR SERIES VOTING ON AMENDMENTS.**

The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class or series;

(b) Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;

(c) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;

(d) Change the rights or preferences of the shares of the class or series;

(e) Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same or another class or series;

(f) Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;

(g) Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;

(h) Limit or deny any existing preemptive rights of the shares of the class or series;

or

(i) Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

**History:** 1987 c 104 s 12

### **302A.139 ARTICLES OF AMENDMENT.**

When an amendment has been adopted, articles of amendment shall be prepared that contain:

- (a) The name of the corporation;
- (b) The amendment adopted;
- (c) The date of the adoption of the amendment by the shareholders, or by the incorporators or the board where no shares have been issued; or the date of adoption of the amendment by the board if:

(1) the amendment merely restates the existing articles, as amended, and the amendment was not submitted to and approved by the shareholders, in which case the articles of amendment must contain a statement that the amendment restating the articles correctly sets forth without change the corresponding provisions of the articles as previously amended; or

(2) the amendment is to a statement establishing or fixing the rights and preferences of a class or series of shares before the issuance of shares of that class or series;

(d) If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, or cancellation of issued shares, a statement of the manner in which it will be effected; and

(e) If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to them.

**History:** 1987 c 104 s 13

### 302A.141 EFFECT OF AMENDMENT.

*[For text of subs 1 and 2, see M.S.1986]*

Subd. 3. **Effect of amendments restating articles.** When effective under section 302A.153, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

**History:** 1987 c 104 s 14

### 302A.153 EFFECTIVE DATE OF ARTICLES.

Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the secretary of state accompanied by a payment of \$125, which includes a \$100 incorporation fee in addition to the \$25 filing fee required by section 302A.011, subdivision 11. Articles of amendment and articles of merger are effective when filed with the secretary of state or at another time within 30 days after filing if the articles of amendment so provide. Articles of merger must be accompanied by a fee of \$50, which includes a \$25 merger fee in addition to the \$25 filing fee required by section 302A.011, subdivision 11.

**History:** 1987 c 404 s 164

### 302A.161 POWERS.

*[For text of subs 1 to 21, see M.S.1986]*

Subd. 22. **Indemnification.** A corporation shall indemnify those persons identified in section 302A.521 against certain expenses and liabilities only as provided in section 302A.521 and may indemnify other persons.

*[For text of subs 23 and 24, see M.S.1986]*

**History:** 1987 c 104 s 15

### 302A.201 BOARD.

*[For text of subd 1, see M.S.1986]*

Subd. 2. **Shareholder management.** The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this chapter requires or permits the board to take. As to an action taken by the shareholders in that manner:

(a) The directors have no duties, liabilities, or responsibilities as directors under this chapter with respect to or arising from the action;

(b) The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this chapter with respect to and arising from the action;

(c) If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board; and

(d) A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is satisfied by a statement that the shareholders have taken the action under this subdivision.

**History:** 1987 c 104 s 16

### 302A.251 STANDARD OF CONDUCT.

*[For text of subs 1 to 3, see M.S.1986]*

**Subd. 4. Elimination or limitation of liability.** A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles shall not eliminate or limit the liability of a director:

(a) for any breach of the director's duty of loyalty to the corporation or its shareholders;

(b) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(c) under section 302A.559 or 80A.23;

(d) for any transaction from which the director derived an improper personal benefit; or

(e) for any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

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

**History:** 1987 c 2 s 2; 1Sp1987 c 1 s 18

### 302A.255 DIRECTOR CONFLICTS OF INTEREST.

**Subdivision 1. Conflict; procedure when conflict arises.** A contract or other transaction between a corporation and one or more of its directors, or between a corporation and an organization in or of which one or more of its directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other organizations are parties or because the director or directors are present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(a) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;

(b) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by (1) the holders of two-thirds of the voting

power of the shares entitled to vote which are owned by persons other than the interested director or directors, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote;

(c) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

(d) The contract or transaction is a distribution described in section 302A.551, subdivision 1, or a merger or exchange described in section 302A.601, subdivision 1 or 2.

*[For text of subd 2, see M.S.1986]*

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

**History:** 1987 c 104 s 17; 1Sp1987 c 1 s 19

### 302A.401 AUTHORIZED SHARES.

*[For text of subs 1 and 2, see M.S.1986]*

**Subd. 3. Procedure for fixing terms.** (a) Subject to any restrictions in the articles, the power granted in subdivision 2 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series.

(b) A statement setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption shall be filed with the secretary of state before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles; provided, however, where the shareholders have received notice of the creation of shares with rights or preferences not set forth in the articles before the issuance of the shares, the statement may be filed any time within one year after the issuance of the shares. The resolution is effective when the statement has been filed with the secretary of state; or, if it is not required to be filed with the secretary of state before the issuance of shares, on the date of its adoption by the directors.

*[For text of subd 4, see M.S.1986]*

**History:** 1987 c 104 s 18

### 302A.405 CONSIDERATION FOR SHARES; VALUE AND PAYMENT; LIABILITY.

**Subdivision 1. Consideration; procedure.** Subject to any restrictions in the articles:

(a) Shares may be issued for any consideration, including, without limitation, money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or to be rendered to the corporation under a written agreement, as authorized by resolution approved by the affirmative vote of a majority of the directors present, or approved by the affirmative vote of the holders of a majority of the voting

power of the shares present, valuing all nonmonetary consideration and establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined; and

(b) Upon authorization by resolution approved by the affirmative vote of a majority of the directors present or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends or splits, including reverse share splits. No shares of a class or series, shares of which are then outstanding, shall be issued to the holders of shares of another class or series (except in exchange for or in conversion of outstanding shares of the other class or series), unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

Subd. 2. **Value; liability.** The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances, and, unless otherwise required by the articles, the consideration may be less than the par value, if any, of the shares. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this subdivision, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.

*[For text of subd 3, see M.S.1986]*

**History:** 1987 c 104 s 19,20

### 302A.409 RIGHTS TO PURCHASE.

*[For text of subs 1 and 2, see M.S.1986]*

Subd. 3. **Issuance permitted.** A corporation may issue rights to purchase after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, subject to any restrictions in the articles.

*[For text of subd 4, see M.S.1986]*

**History:** 1987 c 104 s 21

### 302A.413 PREEMPTIVE RIGHTS.

*[For text of subs 1 to 4, see M.S.1986]*

Subd. 5. **Fraction to be acquired.** The fraction of the new issue that each shareholder may acquire by exercise of a preemptive right is the ratio that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue.

*[For text of subs 6 to 9, see M.S.1986]*

**History:** 1987 c 104 s 22

**302A.433 SPECIAL MEETINGS OF SHAREHOLDERS.**

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

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

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

Subd. 3. **Time; place.** Special meetings shall be held on the date and at the time and place fixed by the chief executive officer, the chief financial officer, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subdivision 2 shall be held in the county where the principal executive office is located.

*[For text of subd 4, see M.S.1986]*

**History:** 1987 c 104 s 23; 1Sp1987 c 1 s 20,21

**302A.435 NOTICE.**

*[For text of subd 1, see M.S.1986]*

Subd. 2. **When given.** In all instances where a specific minimum notice period has not otherwise been fixed by law, the notice shall be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than 60 days before the date of the meeting.

*[For text of subs 3 and 4, see M.S.1986]*

**History:** 1987 c 104 s 24

**302A.437 ACT OF THE SHAREHOLDERS.**

*[For text of subd 1, see M.S.1986]*

Subd. 2. **Voting by class.** In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series, or of the total outstanding shares of that class or series, as the proportion required pursuant to subdivision 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class, the minimum percentage of the total number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 302A.443.

**History:** 1987 c 104 s 25

**302A.447 VOTING OF SHARES BY ORGANIZATIONS AND LEGAL REPRESENTATIVES.**

*[For text of subs 1 to 6, see M.S.1986]*

Subd. 7. **Pledged shares.** A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee. If the corporation pledges its own shares under section 302A.553, subdivision 1, the corporation shall not be entitled to vote the shares at a meeting or otherwise.

**History:** 1987 c 104 s 26

**302A.455 SHAREHOLDER VOTING AGREEMENTS.**

A written agreement among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 302A.449 regarding proxies and is not subject to the provisions of section 302A.453 regarding voting trusts.

**History:** 1987 c 104 s 27

**302A.457 SHAREHOLDER CONTROL AGREEMENTS.**

Subdivision 1. **Authorized.** A written agreement among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subdivision 2.

Subd. 2. **Method of approval; enforceability; copies.** (a) A written agreement among persons described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.

(b) The agreement is enforceable by the persons described in subdivision 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A copy of the agreement shall be filed with the corporation. The existence and location of a copy of the agreement shall be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement.

(c) A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.

*[For text of subs 3 and 4, see M.S.1986]*

**History:** 1987 c 104 s 28,29

**302A.471 RIGHTS OF DISSENTING SHAREHOLDERS.**

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) 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 limited by dilution through the issuance of securities with similar voting rights;

(b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, 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 to which the corporation is a party, except as provided in subdivision 3;

(d) A plan of exchange to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan; or

(e) 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.

*[For text of subd 2, see M.S.1986]*

Subd. 3. **Rights not to apply.** The right to obtain payment under this section does not apply to a shareholder of the surviving corporation in a merger, if the shares of the shareholder are not entitled to be voted on the merger.

*[For text of subd 4, see M.S.1986]*

**History:** 1987 c 203 s 2,3

### 302A.473 PROCEDURES FOR ASSERTING DISSENTERS' RIGHTS.

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Corporation" means the issuer of the shares held by a dissenter before the corporate action referred to in section 302A.471, subdivision 1 or the successor by merger of that issuer.

(c) "Fair value of the shares" means the value of the shares of a corporation immediately before the effective date of the corporate action referred to in section 302A.471, subdivision 1.

(d) "Interest" means interest commencing five days after the effective date of the corporate action referred to in section 302A.471, subdivision 1, up to and including the date of payment, calculated at the rate provided in section 549.09 for interest on verdicts and judgments.

*[For text of subs 2 to 4, see M.S.1986]*

Subd. 5. **Payment; return of shares.** (a) After the corporate action takes effect, or after the corporation receives a valid demand for payment, whichever is later, the corporation shall remit to each dissenting shareholder who has complied with subdivisions 3 and 4 the amount the corporation estimates to be the fair value of the shares, plus interest, accompanied by:

(1) the corporation's closing balance sheet and statement of income for a fiscal

year ending not more than 16 months before the effective date of the corporate action, together with the latest available interim financial statements;

(2) an estimate by the corporation of the fair value of the shares and a brief description of the method used to reach the estimate; and

(3) a copy of section 302A.471 and this section, and a brief description of the procedure to be followed in demanding supplemental payment.

(b) The corporation may withhold the remittance described in paragraph (a) from a person who was not a shareholder on the date the action dissented from was first announced to the public or who is dissenting on behalf of a person who was not a beneficial owner on that date. If the dissenter has complied with subdivisions 3 and 4, the corporation shall forward to the dissenter the materials described in paragraph (a), a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subdivision 6. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subdivisions 7 and 8 apply.

(c) If the corporation fails to remit payment within 60 days of the deposit of certificates or the imposition of transfer restrictions on uncertificated shares, it shall return all deposited certificates and cancel all transfer restrictions. However, the corporation may again give notice under subdivision 4 and require deposit or restrict transfer at a later time.

**Subd. 6. Supplemental payment; demand.** If a dissenter believes that the amount remitted under subdivision 5 is less than the fair value of the shares plus interest, the dissenter may give written notice to the corporation of the dissenter's own estimate of the fair value of the shares, plus interest, within 30 days after the corporation mails the remittance under subdivision 5, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the corporation.

**Subd. 7. Petition; determination.** If the corporation receives a demand under subdivision 6, it shall, within 60 days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares, plus interest. The petition shall be filed in the county in which the registered office of the corporation is located, except that a surviving foreign corporation that receives a demand relating to the shares of a constituent domestic corporation shall file the petition in the county in this state in which the last registered office of the constituent corporation was located. The petition shall name as parties all dissenters who have demanded payment under subdivision 6 and who have not reached agreement with the corporation. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the shares as determined by the court, plus interest.

*[For text of subd 8, see M.S.1986]*

**History:** 1987 c 104 s 30-33

**302A.501 LOANS; GUARANTEES; SURETYSHIP.**

Subdivision 1. **Prerequisites.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the directors present and:

(a) Is in the usual and regular course of business of the corporation;

(b) Is with, or for the benefit of, a related corporation, an organization in which the corporation has a financial interest, an organization with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations;

(c) Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or

(d) Has been approved by (1) the holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

*[For text of subs 2 and 3, see M.S.1986]*

**History:** 1987 c 104 s 34

**302A.521 INDEMNIFICATION.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(c) "Official capacity" means (1) with respect to a director, the position of director in a corporation, (2) with respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation, and (3) with respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

(d) "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

(e) "Special legal counsel" means counsel who has not represented the corporation or a related corporation, or a director, officer, member of a committee of the board, or employee, whose indemnification is in issue.

*[For text of subs 2 and 3, see M.S.1986]*

**Subd. 4. Prohibition or limit on indemnification or advances.** The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subdivisions 2 and 3 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of

adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

*[For text of subds 5 to 7, see M.S.1986]*

**Subd. 8. Disclosure.** A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of shareholders.

**Subd. 9. Indemnification of other persons.** Nothing in this section shall be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

**History:** 1987 c 104 s 35-38

### **302A.553 POWER TO ACQUIRE SHARES.**

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

*[For text of subd 2, see M.S.1986]*

**Subd. 3. Limitation on share purchases.** Except for redemptions under section 302A.671, subdivision 6, a publicly held corporation shall not, directly or indirectly, purchase or agree to purchase any shares entitled to vote from a person (or two or more persons who act as a partnership, limited partnership, syndicate, or other group pursuant to any agreement, arrangement, relationship, understanding, or otherwise, whether or not in writing, for the purpose of acquiring, owning, or voting shares of the publicly held corporation) who beneficially owns more than five percent of the voting power of the publicly held corporation for more than the average market price thereof if the shares have been beneficially owned by the person or persons for less than six months, unless the purchase or agreement to purchase is approved at a meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote or the publicly held corporation makes an offer, of at least equal value per share, to all holders of shares of such class or series and to all holders of any class or series into which the securities may be converted. For purposes of this section, the average market price shall mean: the average closing sale price during the 30 trading days immediately preceding the purchase of the shares in question (or if the person or persons have commenced a tender offer or have announced an intention to seek control of the publicly held corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement), of a share on the composite tape for New York Stock Exchange listed shares, or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which the shares are listed, or, if the shares are not listed on any such exchange, on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, or, if the shares are not quoted on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, the average closing bid quotation, during the 30 trading days preceding the purchase of the shares in question of a share on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use (or if the person or persons have commenced a tender offer or have announced an intention to seek control of the publicly held corporation, during the 30 trading days preceding the

earlier of the commencement of the tender offer or the making of the announcement), provided that if no quotation is available, the average market price shall be the fair market value on the date of purchase of the shares in question of a share as determined in good faith by the board of the publicly held corporation.

**History:** 1987 c 104 s 39; 1Sp1987 c 1 s 22,23

**NOTE:** Subdivision 1, as amended by Laws 1987, First Special Session chapter 1, section 22, is effective March 1, 1988. See Laws 1987, First Special Session chapter 1, section 27.

**NOTE:** Subdivision 3, as added by Laws 1987, First Special Session chapter 1, section 23, is effective March 1, 1988. See Laws 1987, First Special Session chapter 1, section 27.

### 302A.601 MERGER, EXCHANGE, TRANSFER.

*[For text of subd 1, see M.S.1986]*

**Subd. 2. Exchange.** A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation pursuant to a plan of exchange approved in the manner provided in sections 302A.611 to 302A.615, and 302A.631 to 302A.651.

*[For text of subd 3, see M.S.1986]*

**History:** 1987 c 203 s 4

### 302A.611 PLAN OF MERGER OR EXCHANGE.

**Subdivision 1. Contents of plan.** A plan of merger or exchange shall contain:

(a) The names of the corporations proposing to merge or participate in an exchange, and:

- (1) in the case of a merger, the name of the surviving corporation;
  - (2) in the case of an exchange, the name of the acquiring corporation;
- (b) The terms and conditions of the proposed merger or exchange;

(c)(1) In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or

(2) In the case of an exchange, the manner and basis of exchanging the shares to be acquired for securities of the acquiring corporation or any other corporation or, in whole or part, into money or other property;

(d) In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and

(e) Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

**Subd. 2. Other agreements.** The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a negotiated agreement with the shareholders or otherwise.

**History:** 1987 c 203 s 5

### 302A.613 PLAN APPROVAL.

**Subdivision 1. Board approval; notice to shareholders.** A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and shall then be submitted at a regular or a special meeting to the shareholders of (i) each constituent corporation, in the case of a plan of merger, and (ii) the corporation whose shares will be acquired by the acquiring corporation in the exchange, in the case of a plan of exchange. If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this section, written notice shall be given to every shareholder of a corporation, whether or not entitled to

vote at the meeting, not less than 14 days nor more than 60 days before the meeting, in the manner provided in section 302A.435 for notice of meetings of shareholders. The written notice shall state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange shall be included in or enclosed with the notice.

**Subd. 2. Approval by shareholders.** At the meeting a vote of the shareholders shall be taken on the proposed plan. The plan of merger or exchange is adopted when 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 plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

**Subd. 3. When approval by shareholders not required.** Notwithstanding the provisions of subdivisions 1 and 2, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

(a) The articles of the corporation will not be amended in the transaction;

(b) Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;

(c) The number of shares of the corporation entitled to vote immediately after the merger, plus the number of shares of the corporation entitled to vote issuable on conversion of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than 20 percent, the number of shares of the corporation entitled to vote immediately before the transaction; and

(d) The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than 20 percent, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

**History:** 1987 c 203 s 6

### 302A.615 ARTICLES OF MERGER OR EXCHANGE; CERTIFICATE.

**Subdivision 1. Contents of articles.** Upon receiving the approval required by section 302A.613, articles of merger or exchange shall be prepared that contain:

(a) The plan of merger or exchange;

(b) For each corporation, either:

(1) a statement that the plan has been approved by a vote of the shareholders pursuant to section 302A.613, subdivision 2; or

(2) a statement that a vote of the shareholders is not required.

**Subd. 2. Articles signed, filed.** The articles of merger or exchange shall be signed on behalf of each constituent corporation and filed with the secretary of state.

**Subd. 3. Certificate.** The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative and a certificate of exchange to the acquiring corporation or its legal representative.

**History:** 1987 c 203 s 7

### 302A.631 ABANDONMENT.

**Subdivision 1. By shareholders or plan.** After a plan of merger or exchange has been approved by the shareholders entitled to vote on the approval of the plan as provided in section 302A.613, and before the effective date of the plan, it may be abandoned:

(a) If the shareholders of each of the constituent corporations entitled to vote on the approval of the plan as provided in section 302A.613 have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote and, if the shareholders of a constituent corporation are not entitled to vote on the approval of the plan under section 302A.613, the board of directors of the constituent corporation has approved the abandonment by the affirmative vote of a majority of the directors present;

(b) If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(c) Pursuant to subdivision 2.

**Subd. 2. By board.** A plan of merger or exchange may be abandoned, before the effective date of the plan, by a resolution of the board of directors of any constituent corporation abandoning the plan of merger or exchange approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan.

**Subd. 3. Filing of articles.** If articles of merger or exchange have been filed with the secretary of state, but have not yet become effective, the constituent corporations, in the case of abandonment under subdivision 1, clause (a), the constituent corporations or any one of them, in the case of abandonment under subdivision 1, clause (b), or the abandoning corporation in the case of abandonment under subdivision 2, shall file with the secretary of state articles of abandonment that contain:

(a) The names of the constituent corporations;

(b) The provision of this section under which the plan is abandoned; and

(c) If the plan is abandoned under subdivision 2, the text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

**History:** 1987 c 203 s 8

### 302A.641 EFFECTIVE DATE OF MERGER OR EXCHANGE; EFFECT.

**Subdivision 1. Effective date.** A merger or exchange is effective when the articles of merger or exchange are filed with the secretary of state or on a later date specified in the articles of merger or exchange.

*[For text of subs 2 and 3, see M.S.1986]*

**History:** 1987 c 203 s 9

### 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 applies to a control share acquisition consummated, or a proposed control share acquisition with respect to which an information statement has been received by the issuing public corporation, on or before July 31, 1989.

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

(b) The shares of an issuing public corporation acquired by an acquiring person in a control share acquisition that exceed the threshold of voting power of any of the ranges specified in subdivision 2, paragraph (d), shall have only the voting rights as shall be accorded to them pursuant to subdivision 4a.

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

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

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

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

(d) the number and class or series of shares of the issuing public corporation acquired or proposed to be acquired pursuant to the control share acquisition by each of the persons identified pursuant to paragraph (a) and specification of which of the following ranges of voting power in the election of directors that, except for this section, resulted or would result from consummation of the control share acquisition:

(1) at least 20 percent but less than 33-1/3 percent;

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

(3) over 50 percent; and

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

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

**Subd. 3. Meeting of shareholders.** If the acquiring person so requests in writing at the time of delivery of an information statement pursuant to subdivision 2, and has made, or has made a bona fide written offer to make, a control share acquisition and gives a written undertaking to pay or reimburse the issuing public corporation's expenses of a special meeting, except the expenses of the issuing public corporation in opposing approval of the control share acquisition, within ten days after receipt by the issuing public corporation of the information statement, a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 302A.433, subdivision 1, for the purpose of considering the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to the control share acquisition. The special meeting shall be held no later than 55 days after receipt of the information statement, unless the acquiring person

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

**Subd. 4. Financing.** Notwithstanding anything to the contrary contained in this chapter, no call of a special meeting of the shareholders of the issuing public corporation shall be required to be made pursuant to subdivision 3 and no consideration of the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to a control share acquisition shall be presented at any special or annual meeting of the shareholders of the issuing public corporation unless at the time of delivery of the information statement pursuant to subdivision 2, the acquiring person shall have entered into, and shall deliver to the issuing public corporation a copy or copies of, a definitive financing agreement or definitive financing agreements, with one or more responsible financial institution or other entity having the necessary financial capacity, for any financing of the control share acquisition not to be provided by funds of the acquiring person.

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

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

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

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

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

**Subd. 6. Redemption.** Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, the issuing public corporation shall have the option to call for redemption all but not less than all

shares referred to in subdivision 1, paragraph (b), acquired in a control share acquisition, at a redemption price equal to the market value of the shares at the time the call for redemption is given, in the event (1) an information statement has not been delivered to the issuing public corporation by the acquiring person by the tenth day after the control share acquisition, or (2) an information statement has been delivered but the shareholders have voted not to accord voting rights to such shares pursuant to subdivision 4a, paragraph (b). The call for redemption shall be given by the issuing public corporation within 30 days after the event giving the issuing public corporation the option to call the shares for redemption and the shares shall be redeemed within 60 days after the call is given.

**History:** *1Sp1987 c 1 s 24*

### **302A.673 BUSINESS COMBINATIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the highest per share price paid by the interested shareholder, at a time when the interested shareholder was the beneficial owner, directly or indirectly, of five

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** *1Sp1987 c 1 s 25*

### 302A.727 NOTICE TO CREDITORS AND CLAIMANTS.

**Subdivision 1. When permitted; how given.** When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in a legal newspaper in the county or counties where the registered office and the principal executive office of the corporation are located and by giving written notice to known creditors and claimants pursuant to section 302A.011, subdivision 17.

Subd. 2. **Contents.** The notice to creditors and claimants shall contain:

- (a) A statement that the corporation is in the process of dissolving;
- (b) A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;
- (c) The date of filing the notice of intent to dissolve;
- (d) The address of the office to which written claims against the corporation must be presented; and
- (e) The date by which all the claims must be received, which shall be the later of 90 days after published notice or, with respect to a particular known creditor or claimant, 90 days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.

**History:** 1987 c 104 s 40; 1987 c 384 art 3 s 13

### 302A.729 CLAIMS IN DISSOLUTION.

If the corporation gives notice to creditors and claimants pursuant to section 302A.727:

- (a) The corporation has 30 days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it; a claim not expressly rejected in this manner is deemed accepted; and
- (b) A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has 60 days from the date of rejection, or 180 days from the date the corporation filed with the secretary of state the notice of intent to dissolve, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.

**History:** 1987 c 104 s 41

### 302A.730 STATUTE OF LIMITATIONS.

Subdivision 1. **Corporations that give notice.** If the corporation gives notice to creditors and claimants pursuant to section 302A.727:

- (1) the claim of a creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is subject to the provisions of section 302A.781;
- (2) the claim of a creditor or claimant that is rejected by the corporation in accordance with section 302A.729 is subject to the provisions of section 302A.781 if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim during the period set forth in section 302A.729, clause (b).

Subd. 2. **Other corporations.** If the corporation does not give notice to creditors and claimants pursuant to section 302A.727, the claim of a creditor or claimant who does not initiate legal, administrative, or arbitration proceedings concerning the claim within two years after the date of filing the notice of intent to dissolve is subject to the provisions of section 302A.781.

**History:** 1987 c 104 s 42

### 302A.733 ARTICLES OF DISSOLUTION; CERTIFICATE OF DISSOLUTION; EFFECT.

Subdivision 1. **Articles; when filed.** Articles of dissolution for a corporation dissolving pursuant to section 302A.721 shall be filed with the secretary of state after:

- (a) The payment of claims of all known creditors and claimants has been made or provided for;
- (b) If the corporation has given notice to creditors and claimants in the manner

provided in section 302A.727: (1) the 90-day period in section 302A.727, subdivision 2, clause (e), has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or (2) the longer of the periods described in section 302A.729, clause (b), has expired; or, in all other cases,

(c) The two-year period described in section 302A.730 has expired.

Subd. 2. **Contents of articles.** The articles of dissolution shall state:

(a) Whether notice has been given to all creditors and claimants of the corporation in the manner provided in section 302A.727, and, if notice has been given, the last date on which the notice was given and: (1) that the payment of all creditors and claimants filing a claim within the 90-day period set forth in section 302A.727, subdivision 2, clause (e), has been made or provided for; or (2) the date on which the longer of the periods described in section 302A.729, clause (b), expired; or

(b) If notice was not given and articles of dissolution are being filed pursuant to section 302A.733, subdivision 1, clause (a), that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provisions have been made therefor; and

(c) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with section 302A.551, subdivision 4, or that adequate provision has been made for that distribution; and

(d) That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

*[For text of subs 3 and 4, see M.S.1986]*

**History:** 1987 c 104 s 43,44

### **302A.781 CLAIMS BARRED; EXCEPTIONS.**

Subdivision 1. **Claims barred.** A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within the time provided in section 302A.730, 302A.741, 302A.751, or 302A.759, or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

Subd. 2. **Claims reopened.** At any time within one year after articles of dissolution have been filed with the secretary of state pursuant to section 302A.733, subdivision 1, clause (b) or (c), or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

(a) Against the corporation to the extent of undistributed assets; or

(b) If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability shall be limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder.

Subd. 3. **Claims permitted.** All debts, obligations, and liabilities incurred during dissolution proceedings shall be paid or provided for by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers, directors, and shareholders of the corporation before the expiration of the applicable statute of limitations. This subdivision does not apply to dissolution under the supervision or order of a court.

**History:** 1987 c 104 s 45