

CHAPTER 302A

BUSINESS CORPORATIONS

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302A.011 DEFINITIONS.

[For text of subds 1 and 2, see M.S.1988]

Subd. 3. **Address.** "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which shall not be a post office box.

[For text of subds 4 to 10, see M.S.1988]

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 accompanied by a filing fee of \$35, 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 subds 12 to 40, see M.S.1988]

Subd. 41. **Beneficial owner; beneficial ownership.** (a) "Beneficial owner," when used with respect to shares or other securities, includes, but is not limited to, any person who, directly or indirectly through any written or oral agreement, arrangement, relationship, understanding, or otherwise, has or shares the power to vote, or direct the voting of, the shares or securities or has or shares the power to dispose of, or direct the disposition of, the shares or securities, except that:

(1) a person shall not be deemed the beneficial owner of shares or securities tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares or securities are accepted for purchase or exchange; and

(2) a person shall not be deemed the beneficial owner of shares or securities with respect to which the person has the power to vote or direct the voting arising solely from a revocable proxy given in response to a proxy solicitation required to be made and made in accordance with the applicable rules and regulations under the Securities Exchange Act of 1934 and is not then reportable under that act on a Schedule 13D or comparable report, or, if the corporation is not subject to the rules and regulations under the Securities Exchange Act of 1934, would have been required to be made and would not have been reportable if the corporation had been subject to the rules and regulations.

(b) "Beneficial ownership" includes, but is not limited to, the right to acquire shares or securities through the exercise of options, warrants, or rights, or the conversion of convertible securities, or otherwise. The shares or securities subject to the options, warrants, rights, or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding shares or securities of the class or series owned by the person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class or series owned

by any other person. A person shall be deemed the beneficial owner of shares and securities beneficially owned by any relative or spouse of the person or any relative of the spouse, residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor or in a similar fiduciary capacity, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate of the person.

(c) When two or more persons act or agree to act as a partnership, limited partnership, syndicate, or other group for the purposes of acquiring, owning, or voting shares or other securities of a corporation, all members of the partnership, syndicate, or other group are deemed to constitute a "person" and to have acquired beneficial ownership, as of the date they first so act or agree to act together, of all shares or securities of the corporation beneficially owned by the person.

[For text of subds 42 to 48, see M.S.1988]

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 four-year period immediately before the date in question was the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the then outstanding shares entitled to vote of the issuing public corporation. Notwithstanding anything stated in this subdivision, if a person who has not been a beneficial owner of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation immediately prior to a repurchase of shares by, or recapitalization of, the issuing public corporation or similar action shall become a beneficial owner of ten percent or more of the voting power solely as a result of the share repurchase, recapitalization, or similar action, the person shall not be deemed to be the beneficial owner of ten percent or more of the voting power for purposes of clause (1) or (2) unless:

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

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

[For text of subds 50 and 51, see M.S.1988]

History: 1989 c 172 s 1,2; 1989 c 236 s 3; 1989 c 335 art 1 s 193

302A.111 ARTICLES.

[For text of subds 1 and 2, see M.S.1988]

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 special litigation committee (section 302A.241);

(j) The chief executive officer and chief financial officer have specified duties, until the board determines otherwise (section 302A.305);

(k) Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so (section 302A.351);

(l) The board may establish uncertificated shares (section 302A.417, subdivision 7);

(m) Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions (section 302A.431);

(n) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten-days notice is required for a meeting of shareholders (section 302A.435, subdivision 2);

(o) The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting (section 302A.443);

(p) The board may fix a date up to 60 days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting (section 302A.445, subdivision 1);

(q) Indemnification of certain persons is required (section 302A.521); and

(r) The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement (section 302A.551, subdivision 1).

[For text of subds 4 to 6, see M.S. 1988]

History: 1989 c 172 s 3

302A.115 CORPORATE NAME.

Subdivision 1. Requirements; prohibitions. The corporate name:

(a) Shall be in the English language or in any other language expressed in English letters or characters;

(b) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&;

(c) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;

(d) Shall be distinguishable upon the records in the office of the secretary of state from the name of a domestic corporation or limited partnership, whether profit or nonprofit, or a foreign corporation or limited partnership authorized or registered to do business in this state, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved or provided for in sections 302A.117, 322A.03, or 333.001 to 333.54, unless there is filed with the articles one of the following:

(1) The written consent of the domestic corporation or limited partnership or foreign corporation or limited partnership authorized or registered to do business in this state or the holder of a reserved name or a name filed by or registered with the secretary of state under sections 333.001 to 333.54 having a name that is not distinguishable;

(2) A certified copy of a final decree of a court in this state establishing the prior right of the applicant to the use of the name in this state; or

(3) The applicant's affidavit that the corporation or limited partnership with the name that is not distinguishable has been incorporated or on file in this state for at least three years prior to the affidavit, if it is a domestic corporation or limited partnership, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign corporation or limited partnership, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit, and has not during the three-year period filed any document with the secretary of state; that the applicant has mailed written notice to the corporation or limited partnership or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the corporation or in care of the agent of the limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, that the applicant intends to use a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee corporation or limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the corporation or limited partnership with the name that is not distinguishable in the county in which is located the registered office of the corporation shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the corporation or limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

[For text of subd 2, see M.S.1988]

Subd. 3. Determination. The secretary of state shall determine whether a name is "distinguishable" from another name for purposes of this section and section 302A.117.

[For text of subds 4 to 7, see M.S.1988]

Subd. 8. Contest of registration of name. A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 5.22.

History: 1989 c 292 s 3-5

302A.117 RESERVED NAME.

Subdivision 1. Who may reserve. The exclusive right to the use of a corporate name otherwise permitted by section 302A.115 may be reserved by:

- (a) a person doing business in this state under that name;
- (b) a person intending to incorporate under this chapter;
- (c) a domestic corporation intending to change its name;
- (d) a foreign corporation intending to make application for a certificate of authority to transact business in this state;
- (e) a foreign corporation authorized to transact business in this state and intending to change its name;
- (f) a person intending to incorporate a foreign corporation and intending to have the foreign corporation make application for a certificate of authority to transact business in this state; or
- (g) a foreign corporation doing business under that name or a name deceptively similar to that name in one or more states other than this state and not described in clause (d), (e), or (f).

[For text of subds 2 and 3, see M.S.1988]

History: 1989 c 292 s 6

302A.123 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT; CHANGE OF NAME OF REGISTERED AGENT.

Subdivision 1. **Statement.** A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state a statement containing:

- (a) The name of the corporation;
- (b) If the address of its registered office is to be changed, the new address of its registered office;
- (c) If its registered agent is to be designated or changed, the name of its new registered agent;
- (d) If the name of its registered agent is to be changed, the name of its registered agent as changed;
- (e) A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (f) A statement that the change of registered office or registered agent was authorized by resolution approved by the affirmative vote of a majority of the directors present.

[For text of subds 2 and 3, see M.S.1988]

History: 1989 c 236 s 4

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 \$135, which includes a \$100 incorporation fee in addition to the \$35 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 \$60, which includes a \$25 merger fee in addition to the \$35 filing fee required by section 302A.011, subdivision 11.

History: 1989 c 335 art 1 s 194

302A.161 POWERS.

[For text of subds 1 to 16, see M.S.1988]

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

[For text of subds 18 to 24, see M.S.1988]

History: 1989 c 172 s 4

302A.241 COMMITTEES.

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

[For text of subds 2 to 7, see M.S.1988]

History: 1989 c 172 s 5

302A.243 [Repealed, 1989 c 172 s 11]

302A.251 STANDARD OF CONDUCT.

[For text of subd 1, see M.S.1988]

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

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

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

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

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

[For text of subds 3 to 5, see M.S.1988]

History: 1989 c 172 s 6

302A.435 NOTICE.

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

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

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

(i) two consecutive annual meeting notices; and

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

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

[For text of subds 2 to 4, see M.S.1988]

History: 1989 c 172 s 7

302A.671 CONTROL SHARE ACQUISITIONS.

Subdivision 1. **Application.** (a) Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section applies to a control share acquisition.

(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.

[For text of subds 2 to 6, see M.S.1988]

History: 1989 c 172 s 8

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 written or oral agreement, arrangement, relationship, understanding, or otherwise with, any interested shareholder of the issuing public corporation or any affiliate or associate of the interested shareholder for a period of four years following the interested shareholder's share acquisition date unless the business combination or the acquisition of shares made by the interested shareholder on the interested shareholder's share acquisition date is approved before the interested shareholder's share acquisition date by a committee of the board of the issuing public corporation formed in accordance with paragraph (d).

(b) If a good faith definitive proposal regarding a business combination is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d) shall consider and take action on the proposal and respond in writing within 30 days after receipt of the proposal by the issuing public corporation, setting forth its decision regarding the proposal.

(c) If a good faith definitive proposal to acquire shares is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d), shall consider and take action on the proposal and respond in writing within 30 days after receipt of the proposal by the issuing public corporation, setting forth its decision regarding the proposal.

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

(2) A committee formed pursuant to this subdivision shall be composed of one or more members. Only disinterested directors may be members of a committee formed pursuant to this subdivision. However, if the board has no disinterested directors, the board shall select three or more disinterested persons to be committee members. Committee members are deemed to be directors for purposes of sections 302A.251, 302A.255, and 302A.521.

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

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 June 1, 1987, until adoption of the article or bylaw provision, a publicly held corporation. If the article or bylaw provision electing to be subject to this section expressly so provides, this section shall not apply to any business combination with an interested shareholder whose share acquisition date is before the effective date of the article or bylaw provision.

(b) Except as provided in paragraph (c), this section does not apply to any business combination of an issuing public corporation:

(1) if, prior to the time the issuing public corporation becomes a publicly held corporation or becomes subject to this section by virtue of an election under paragraph

(a), including any time prior to the time that the corporation becomes an issuing public corporation, articles or bylaws of the corporation contain a provision expressly electing not to be subject to this section;

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

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

(4) if the business combination was consummated before, or if a binding agreement for the business combination was entered into before, the day following June 1, 1987.

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

This section applies to any business combination of an issuing public corporation to which it previously did not apply because of provisions in articles or bylaws adopted or approved under paragraph (b), clause (1), (2), or (3), upon an amendment to the articles or bylaws approved by shareholders holding a majority of the outstanding voting power of all shares entitled to vote expressly electing to be subject to this section becoming effective. This section does not apply to any business combination of the corporation with, with respect to, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with any person that would have been an interested shareholder on the effective date of the amendment if this section had been applicable.

History: 1989 c 172 s 9,10

302A.821 MINNESOTA CORPORATE REGISTRATION.

Subdivision 1. Information required. A domestic corporation shall once each calendar year file either (a) with the commissioner of revenue along with the return required by sections 290.37 and 290.974, or along with an affidavit that the corporation need not file a return under section 290.37, or (b) with the secretary of state, a registration containing:

- (a) The name of the corporation;
- (b) The address of its principal executive office, if different from the registered office address;
- (c) The address of its registered office;
- (d) The state of incorporation;
- (e) The name of its registered agent, if any;
- (f) The name and business address of the officer or other person exercising the principal functions of the chief executive officer of the corporation; and
- (g) The signature of a person authorized to sign the registration on behalf of the corporation.

[For text of subs 2 and 3, see M.S.1988]

Subd. 4. **Notice of repeated violation.** If a corporation fails for three consecutive years to file a registration pursuant to the requirements of subdivision 1, the secretary of state shall give notice by first class mail to the corporation at its registered office that it has violated this section and is subject to dissolution by the office of the secretary of state if the delinquent registrations are not filed pursuant to subdivision 1 within 60 days after the mailing of the notice.

Subd. 5. **Penalty.** (a) A corporation that has failed for three consecutive years to file a registration pursuant to the requirements of subdivision 1, has been notified of the failure pursuant to subdivision 4, and has failed to file the delinquent registrations during the 60-day period described in subdivision 4, may be dissolved by the secretary of state as described in paragraph (b).

(b) Immediately after the expiration of the 60-day period described in paragraph (a), if the corporation has not filed the delinquent registrations, the secretary of state shall issue a certificate of involuntary dissolution, and a copy of the certificate shall be filed in the office of the secretary of state. The original certificate and a notice explaining that the corporation has been dissolved shall be sent to the registered office of the corporation. The secretary of state shall annually inform the attorney general and the commissioner of revenue of the names of corporations dissolved under this section during the preceding year. A corporation dissolved in this manner is not entitled to the benefits of section 302A.781, subdivision 1. The liability, if any, of the shareholders of a corporation dissolved in this manner shall be determined and limited in accordance with section 302A.557, except that the shareholders shall have no liability to any director of the corporation under section 302A.559, subdivision 2.

History: 1989 c 236 s 5; 1989 c 335 art 1 s 195,196