

CHAPTER 302A

BUSINESS CORPORATIONS

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302A.011 DEFINITIONS.

[For text of subs 1 to 10, see M.S.1996]

Subd. 11. **Filed with the secretary of state.** "Filed with the secretary of state" means that 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 document the word "Filed" and the month, day, and year of filing, record the document in the office of the secretary of state, and return a document to the person who delivered it for filing.

[For text of subs 12 to 29, see M.S.1996]

Subd. 30. **Signed.** (a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required by section 302A.237 or the shareholders as required by section 302A.437.

(b) A signature on a document may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

[For text of subs 31 and 32, see M.S.1996]

Subd. 33. [Repealed, 1997 c 10 art 1 s 33]

[For text of subs 34 to 37, see M.S.1996]

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;

(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;

(g) an acquisition pursuant to a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or any of its subsidiaries, or by a fiduciary of the plan acting in a fiduciary capacity pursuant to the plan; or

(h) an acquisition subsequent to January 1, 1991, pursuant to an offer to purchase for cash pursuant to a tender offer all shares of the voting stock of the issuing public corporation:

(i) which has been approved by a majority vote of the members of a committee comprised of the disinterested members of the board of the issuing public corporation formed pursuant to section 302A.673, subdivision 1, paragraph (d), before the commencement of, or the public announcement of the intent to commence, the tender offer; and

(ii) pursuant to which the acquiring person will become the owner of over 50 percent of the voting stock of the issuing public corporation outstanding at the time of the transaction.

For purposes of this subdivision, shares beneficially owned by a plan described in clause (g), or by a fiduciary of a plan described in clause (g) pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan.

Subd. 39. Issuing public corporation. "Issuing public corporation" means either: (1) a publicly held corporation that has at least 50 shareholders; or (2) any other corporation that has at least 100 shareholders, provided that if, before January 1, 1998, a corporation that has at least 50 shareholders elects to be an issuing public corporation by express amendment contained in the articles or bylaws, including bylaws approved by the board, that corporation is an issuing public corporation if it has at least 50 shareholders.

[For text of subs 40 to 49, see M.S.1996]

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

(1) in the case of shares, the average closing sale price of a share on the composite tape for New York Stock Exchange listed shares during the 30 trading days immediately preceding the date in question or, with respect to the references in section 302A.553, subdivision 3, if a person or persons selling the shares have commenced a tender offer or have announced an intention to seek control of the corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement, 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 NASDAQ National Market, or, if the shares are not quoted on the NASDAQ National Market, on the NASDAQ Small Cap Market, or any system then in use, or, with respect to the reference in section 302A.553, subdivision 3, if the person or persons selling the shares shall have commenced a tender offer or have announced an intention to seek control of the 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 market value is the fair market value on the date in question of the shares as determined in good faith by the board of the corporation;

(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 corporation.

[For text of subs 51 and 52, see M.S.1996]

Subd. 53. Takeover offer. (a) "Takeover offer" means an offer to acquire shares of an issuing public corporation from a shareholder pursuant to a tender offer or request or invitation for tenders, if, after the acquisition of all shares acquired pursuant to the offer:

(1) the offeror would be directly or indirectly a beneficial owner of more than ten percent of any class or series of the outstanding shares of the issuing public corporation and was directly or indirectly the beneficial owner of ten percent or less of that class or series of the outstanding shares of the issuing public corporation before commencement of the offer; or

(2) the beneficial ownership by the offeror of any class or series of the outstanding shares of the issuing public corporation would be increased by more than ten percent of that class or series and the offeror was directly or indirectly the beneficial owner of ten percent or more of any class or series of the outstanding shares of the issuing public corporation before commencement of the offer.

(b) Takeover offer does not include:

(1) an offer in connection with the acquisition of a share which, together with all other acquisitions by the offeror of shares of the same class or series of shares of the issuer, would not result in the offeror having acquired more than two percent of that class or series during the preceding 12-month period;

(2) an offer by the issuer to acquire its own shares unless the offer is made during the pendency of a takeover offer by a person who is not an associate or affiliate of the issuer;

(3) an offer in which the issuing public corporation is an insurance company subject to regulation by the commissioner of commerce, a financial institution regulated by the commissioner, or a public service utility subject to regulation by the public utilities commission.

[For text of subd 54, see M.S.1996]

Subd. 55. Acquiring organization. "Acquiring organization" means a corporation, foreign corporation, or domestic or foreign limited liability company that acquires in an exchange the shares of a corporation or foreign corporation or the membership interests of a domestic or foreign limited liability company.

Subd. 56. Constituent organization. "Constituent organization" means a corporation, foreign corporation, or a domestic or foreign limited liability company that is a party to a merger or an exchange.

Subd. 57. Owners. "Owners" means shareholders in the case of a corporation or foreign corporation and members in the case of a limited liability company.

Subd. 58. Ownership interests. "Ownership interests" means shares in the case of a corporation or foreign corporation and membership interests in the case of a domestic or foreign limited liability company.

Subd. 59. Surviving organization. "Surviving organization" means the corporation or foreign corporation or domestic or foreign limited liability company resulting from a merger.

History: 1997 c 10 art 1 s 1-6; art 3 s 1-5

302A.111 ARTICLES.

[For text of subs 1 to 3, see M.S.1996]

Subd. 4. Optional provisions; specific subjects. The provisions in paragraphs (a), (g), (q), (r), and (u) may be included in the articles.

The provisions in paragraphs (b) to (f), (h) to (p), (s), and (t) may be included either in the articles or 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.311);
- (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).

Nothing in this subdivision limits the right of the board, by resolution, to take an action that may be included in the bylaws under this subdivision without including it in the bylaws, unless it is required to be included in the bylaws by another provision of this chapter.

[For text of subs 5 and 6, see M.S.1996]

History: 1997 c 10 art 1 s 7

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 each domestic corporation, limited partnership, limited liability partnership, and limited liability company, whether profit or nonprofit, and each foreign corporation, limited partnership, limited liability partnership, and limited liability company authorized or regis-

tered to do business in this state, whether profit or nonprofit, and each name the right to which is, at the time of incorporation, reserved as provided for in sections 302A.117, 322A.03, 322B.125, 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, limited partnership, limited liability partnership, or limited liability company, or the foreign corporation, limited partnership, limited liability partnership, or limited liability company 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, limited partnership, or limited liability company 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, limited partnership, or limited liability company, 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, limited partnership, or limited liability company, 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; that the corporation, limited partnership, or limited liability company or holder has not during the three-year period before the affidavit filed any document with the secretary of state; that the applicant has mailed written notice to the corporation, limited partnership, or limited liability company 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 limited liability company 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, stating 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, limited partnership, limited liability company, 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, limited partnership, or limited liability company with the name that is not distinguishable in the county in which is located the registered office of the corporation, limited partnership, or limited liability company 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, limited partnership, limited liability company, 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 subs 2 to 8, see M.S.1996]

History: 1997 c 10 art 1 s 8

302A.171 ORGANIZATION.

[For text of subd 1, see M.S.1996]

Subd. 2. Meeting. After the filing of articles of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a

meeting is held, the person or persons calling the meeting shall give at least three days notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to section 302A.231, subdivision 5.

History: 1997 c 10 art 1 s 9

302A.223 REMOVAL OF DIRECTORS.

[For text of subs 1 to 4, see M.S.1996]

Subd. 5. Election of replacements. New directors may be elected at a meeting at which directors are removed. If the corporation allows cumulative voting and a shareholder notifies the presiding officer at any time prior to the election of new directors of intent to cumulate the votes of the shareholder, the presiding officer shall announce before the election that cumulative voting is in effect, and shareholders shall cumulate their votes as provided in section 302A.215, subdivision 1, clause (b).

History: 1997 c 10 art 1 s 10

302A.401 AUTHORIZED SHARES.

[For text of subs 1 and 2, see M.S.1996]

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 or resolutions approved by the affirmative vote of the directors required by section 302A.237 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. Any of the rights and preferences of a class or series established in the articles or by resolution of the directors:

(1) may be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and

(2) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(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.

(c) A statement filed with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles for purposes of sections 302A.137 and 302A.471.

[For text of subd 4, see M.S.1996]

History: 1997 c 10 art 1 s 11

302A.402 SHARE DIVIDENDS, DIVISIONS, AND COMBINATIONS.

[For text of subs 1 and 2, see M.S.1996]

Subd. 3. By action of board alone; filing of articles of amendment. (a) Subject to the restrictions provided in subdivision 2 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 302A.135 and 302A.137. In effecting a division or combination under this subdivision, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

(b) If a division or combination that includes an amendment of the articles is effected under this subdivision, then articles of amendment must be prepared that contain the information required by section 302A.139 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares of any class or series that remains unissued after the division or combination exceeding the percentage of authorized shares of that class or series that were unissued before the division or combination.

[For text of subd 4, see M.S.1996]

History: 1997 c 10 art 1 s 12

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 the directors required by section 302A.237, or, if provided for in the articles, approved by the affirmative vote of the shareholders required by section 302A.437, 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) A corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or, subject to authorization of share dividends, divisions, and combinations according to section 302A.402, issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. 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.

[For text of subs 2 and 3, see M.S.1996]

History: 1997 c 10 art 1 s 13

302A.409 RIGHTS TO PURCHASE.

[For text of subs 1 to 3, see M.S.1996]

Subd. 4. Terms set forth. The instrument evidencing the right to purchase or, if no instrument exists, a written agreement, shall set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

History: 1997 c 10 art 1 s 14

302A.413 PREEMPTIVE RIGHTS.

[For text of subs 1 to 9, see M.S.1996]

Subd. 10. **Contractual rights.** A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a corporation to grant first refusal rights or other rights to purchase from the corporation shares or other securities of the corporation to shareholders, subscribers, or other persons before they are offered to, or acquired by, any other person.

History: 1997 c 10 art 1 s 15

302A.417 SHARE CERTIFICATES; ISSUANCE AND CONTENTS; UNCERTIFICATED SHARES.

[For text of subs 1 to 6, see M.S.1996]

Subd. 7. **Uncertificated shares.** Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its shares will be uncertificated shares. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates. This information is not required to be sent to the new shareholder by a publicly held corporation that has adopted a system of issuance, recordation, and transfer of its shares by electronic or other means not involving an issuance of certificates if the system complies with section 174 of the Securities Exchange Act of 1934. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

History: 1997 c 10 art 1 s 16

302A.423 FRACTIONAL SHARES.

[For text of subd 1, see M.S.1996]

Subd. 2. **Restrictions; rights.** A corporation shall not pay money for fractional shares if that action would result in the cancellation of more than 20 percent of the outstanding shares of a class or series. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificated or uncertificated fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

History: 1997 c 10 art 1 s 17

302A.429 RESTRICTION ON TRANSFER OR REGISTRATION OF SECURITIES.

[For text of subd 1, see M.S.1996]

Subd. 2. **Restrictions permitted.** A written restriction on the transfer or registration of transfer of securities of a corporation that is not manifestly unreasonable under the circumstances and is either: (1) noted conspicuously on the face or back of the certificate; or (2) included in information sent to the holders of uncertificated shares in accordance with section 302A.417, subdivision 7, may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate or included in information sent to the holders of uncertificated shares in accordance with section 302A.417, subdivision 7, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously

ously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

History: 1997 c 10 art 1 s 18

302A.437 ACT OF THE SHAREHOLDERS.

[For text of subd 1, see M.S.1996]

Subd. 2. Voting by class or series. In any case where a class or series of shares is entitled by this chapter, the articles 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 or series, 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: 1997 c 10 art 1 s 19

302A.445 VOTING RIGHTS.

Subdivision 1. Determination. The board may fix, or authorize an officer to fix, a date not more than 60 days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.

[For text of subs 2 to 6, see M.S.1996]

History: 1997 c 10 art 1 s 20

302A.449 PROXIES.

Subdivision 1. Authorization. (a) A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy, signed by the shareholder, with an officer of the corporation at or before the meeting at which the appointment is to be effective. In addition, a shareholder of a publicly held corporation may cast or authorize the casting of a vote by a proxy by transmitting to the corporation or the corporation's duly authorized agent before the meeting, an appointment of a proxy by means of a telegram, cablegram, or any other form of electronic transmission, including telephonic transmission, whether or not accompanied by written instructions of the shareholder. The electronic transmission must set forth or be submitted with information from which it can be determined that the appointment was authorized by the shareholder. If it is determined that a telegram, cablegram, or other electronic transmission is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination shall specify the information upon which they relied to make that determination.

(b) A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or transmission could be used, provided that the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

(c) An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or otherwise authorized by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

[For text of subs 2 to 8, see M.S.1996]

History: 1997 c 10 art 1 s 21

302A.457 SHAREHOLDER CONTROL AGREEMENTS.

[For text of subd 1, see M.S.1996]

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 included in information sent to the holders of uncertificated shares according to section 302A.417, subdivision 7.

(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.1996]

History: 1997 c 10 art 1 s 22

302A.461 BOOKS AND RECORDS; INSPECTION.

Subdivision 1. Share register; dates of issuance. (a) A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder.

(b) A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the dates on which certificated or uncertificated shares were issued.

[For text of subs 2 to 6, see M.S.1996]

History: 1997 c 10 art 1 s 23

302A.471 RIGHTS OF DISSENTING SHAREHOLDERS.

[For text of subs 1 and 2, see M.S.1996]

Subd. 3. Rights not to apply. (a) Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to a shareholder of the surviving corporation in a merger, if the shares of the shareholder are not entitled to be voted on the merger.

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

[For text of subd 4, see M.S.1996]

History: 1997 c 10 art 1 s 24

302A.473 PROCEDURES FOR ASSERTING DISSENTERS' RIGHTS.

[For text of subs 1 and 2, see M.S.1996]

Subd. 3. **Notice of dissent.** If the proposed action must be approved by the shareholders, a shareholder who is entitled to dissent under section 302A.471 and who wishes to exercise dissenters' rights must file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and must not vote the shares in favor of the proposed action.

[For text of subs 4 to 8, see M.S.1996]

History: 1997 c 10 art 1 s 25

302A.521 INDEMNIFICATION.

[For text of subs 1 to 3, see M.S.1996]

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 prohibition or 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 subs 5 to 8, see M.S.1996]

Subd. 9. **Indemnification of other persons.** Nothing in this section shall be construed to limit the power of the corporation to indemnify persons other than a director, officer, employee, or member of a committee of the board of the corporation by contract or otherwise.

History: 1997 c 10 art 1 s 26,27

302A.601 MERGER, EXCHANGE, TRANSFER.

[For text of subs 1 to 3, see M.S.1996]

Subd. 4. **Merger or exchange with a limited liability company.** A corporation may participate in a merger or exchange with a limited liability company. The dissenters' rights for shareholders of a corporation are governed by this chapter.

History: 1997 c 10 art 3 s 6

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 constituent organizations proposing to merge or participate in an exchange, and:

(1) in the case of a merger, the name of the surviving organization;

(2) in the case of an exchange, the name of the acquiring organization;

(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 ownership interests of the constituent organizations into securities of the surviving organization or of any other organization, 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 organization or any other organization 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 incorporation or organization of the surviving organization 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 ownership interests of one or more classes or series of another organization through a negotiated agreement with the owners or otherwise.

History: 1997 c 10 art 3 s 7

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 organization 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. If the merger or exchange is with a domestic or foreign limited liability company, the plan of merger or exchange must also be approved in the manner required by the laws of the state under which the limited liability company is organized.

Subd. 2. **Approval by owners.** (a) At the meeting a vote of the owners 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 and, if the merger or exchange is with a domestic or foreign limited liability company, when approved in the manner required by the laws of the state under which the limited liability company is organized. Except as provided in paragraph (b), 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.

(b) A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger effects a cancellation of the shares of the class or series if the plan of merger effects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 302A.471 in the event of the merger.

[For text of subd 3, see M.S.1996]

History: 1997 c 10 art 3 s 8,9

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; and
- (b) a statement that the plan has been approved by each constituent organization pursuant to this chapter.

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

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

History: 1997 c 10 art 3 s 10

302A.621 MERGER OF SUBSIDIARY.

[For text of subs 1 to 5, see M.S.1996]

Subd. 6. Rights of dissenting shareholders. In the event all of the stock of one or more domestic subsidiaries that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenters' rights under section 302A.471, without regard to section 302A.471, subdivision 3. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenters' rights under section 302A.471, subdivision 1, paragraph (a), if the articles of incorporation of the surviving corporation constituted an amendment to the articles of incorporation of the parent, that shareholder of the parent has dissenters' rights as provided under sections 302A.471 and 302A.473. Except as provided in this subdivision, sections 302A.471 and 302A.473 do not apply to any merger effected under this section.

[For text of subd 7, see M.S.1996]

History: 1997 c 10 art 1 s 28

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 (i) 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; (ii) the merger or exchange is with a domestic or foreign limited liability company, if abandonment is approved in such manner as may be required by the laws of the state under which the limited liability company is organized; and (iii) 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. If a plan of merger or exchange is with a domestic or foreign limited liability company, the plan of merger or exchange may be abandoned before the effective date of the plan by a resolution of the limited liability company adopted according to the laws of the state under which the limited liability company is organized, 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 organizations, in the case of abandonment under subdivision 1, clause (a), the constituent organizations or any one of them, in the case of abandonment under subdivision 1, clause (b), or the abandoning organization 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 organizations;

(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 abandoning the plan.

History: 1997 c 10 art 3 s 11

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

[For text of subd 1, see M.S.1996]

Subd. 2. Effect on organization. When a merger becomes effective:

(a) The constituent organizations become a single entity, the surviving corporation or surviving limited liability company, as the case may be;

(b) The separate existence of all constituent organizations except the surviving organization ceases;

(c) If the surviving organization is a corporation, the surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter;

(d) The surviving organization, whether a corporation, foreign corporation, or domestic or foreign limited liability company, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be. The title to any real estate or any interest therein vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;

(e) The surviving organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations. A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization. Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and

(f) The articles of the surviving organization are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

[For text of subd 3, see M.S.1996]

History: 1997 c 10 art 3 s 12

302A.651 MERGER OR EXCHANGE WITH FOREIGN CORPORATION OR LIMITED LIABILITY COMPANY.

Subdivision 1. When permitted. A domestic corporation may merge with or participate in an exchange with a foreign corporation or limited liability company by following the procedures set forth in this section, if:

(1) with respect to a merger, the merger is permitted by the laws of the jurisdiction under which the foreign corporation or limited liability company is incorporated or organized; and

(2) with respect to an exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or limited liability company is incorporated or organized.

Subd. 2. Laws applicable before transaction. Each domestic corporation shall comply with the provisions of sections 302A.601 to 302A.651 with respect to the merger or exchange of shares of corporations and each foreign corporation or limited liability company shall comply with the applicable provisions of the laws under which it was incorporated or organized or by which it is governed.

Subd. 3. **Domestic surviving corporation.** If the surviving organization in a merger will be a domestic corporation, it shall comply with all the provisions of this chapter.

Subd. 4. **Foreign surviving organization.** If the surviving organization in a merger will be a foreign corporation or limited liability company and will transact business in this state, it shall comply with the provisions of chapter 303 with respect to foreign corporations or chapter 322B with respect to foreign limited liability companies. In every case the surviving organization shall file with the secretary of state:

(a) An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the surviving organization;

(b) An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

(c) An agreement that it will promptly pay to the dissenting shareholders of each domestic constituent corporation the amount, if any, to which they are entitled under section 302A.473.

History: 1997 c 10 art 3 s 13; 1997 c 10 art 1 s 29

302A.671 CONTROL SHARE ACQUISITIONS.

[For text of subs 1 and 2, see M.S.1996]

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 according voting rights with respect to shares acquired or to be acquired in 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 sole 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 and written undertaking to pay or reimburse the issuing public corporation's expenses of the special meeting, 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, (1) the special meeting shall not be held sooner than 30 days after receipt by the issuing public corporation of the information statement and (2) the record date for the meeting must be at least 30 days prior to the date of the meeting. 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 of which notice has not been given, unless prior thereto the matter of the voting rights becomes moot. The issuing public corporation is not required to have the voting rights to be accorded to shares acquired or to be acquired according to a control share acquisition considered at the next special or annual meeting of the shareholders unless it has received the information statement and documents required by subdivision 4 at least 55 days before the meeting. 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. Any amendments to the information statement received after mailing of the notice of the meeting must be mailed promptly to the shareholders by the issuing public corporation.

[For text of subs 4 to 6, see M.S.1996]

History: 1997 c 10 art 1 s 30

302A.673 BUSINESS COMBINATIONS.

[For text of subd 1, see M.S.1996]

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.

(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, with respect to, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with:

(1) 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;

(2) any interested shareholder whose share acquisition date is either before the effective date of the article or bylaw provision by which an issuing public corporation that was not subject to this section immediately prior to the election elected to be subject to this section, or on the effective date, but prior to the effective time of the article or bylaw provision; or

(3) in the case of a corporation that was not subject to this section immediately prior to becoming a publicly held corporation, any interested shareholder whose share acquisition date is either before the date on which the corporation becomes a publicly held corporation or on that date, but prior to the time the corporation becomes a publicly held corporation, and to whom the application of this section is expressly excluded by an amendment to the articles or bylaws of the corporation approved by the shareholders before the corporation becomes a publicly held corporation and, if expressly provided by the amendment to the articles or bylaws, any affiliate or associate of an interested shareholder described in this clause.

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. Also, 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 at the effective time of the amendment if this section had been applicable.

History: 1997 c 10 art 1 s 31

302A.675 TAKEOVER OFFER; FAIR PRICE.

Subdivision 1. Fair price requirement. An offeror may not acquire shares of a publicly held corporation within two years following the last purchase of shares pursuant to a takeover offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the shareholder is afforded, at the time of the proposed acquisition, a reasonable opportunity to dispose of the shares to the offeror upon substantially equivalent terms as those provided in the earlier takeover offer.

Subd. 2. Exception. Subdivision 1 does not apply if the proposed acquisition of shares is approved by a committee of the board's disinterested directors before the purchase of any shares by the offeror pursuant to the earlier takeover offer. The provisions of section 302A.673, subdivision 1, paragraph (d), relating to a committee of disinterested directors, apply to this section.

History: 1997 c 10 art 1 s 32

302A.821 MINNESOTA CORPORATE REGISTRATION.

[For text of subs 1 to 4, see M.S.1996]

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 registration during the 60-day period described in subdivision 4, shall 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 registration, 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 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 methods by which the names of corporations dissolved under this section during the preceding year may be determined. A corporation dissolved in this manner is not entitled to the benefits of section 302A.781. 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.

[For text of subd 6, see M.S.1996]

History: 1997 c 137 s 7