CHAPTER 302A

BUSINESS CORPORATIONS

MINNESOTA BUSINESS CORPORATION ACT

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MINNESOTA BUSINESS CORPORATION ACT

302A.001 CITATION.

This chapter may be cited as the "Minnesota Business Corporation Act."

History: *1981 c 270 s 125*

DEFINITIONS

302A.011 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

Subd. 2. [Repealed, 2006 c 250 art 1 s 45]

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.

Subd. 4. **Articles.** "Articles" means, in the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of conversion, articles of abandonment, and articles of dissolution. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the foreign corporation's state of incorporation. In the case of a corporation formed under chapter 300, the term means the certificate of incorporation.

Subd. 5. **Board.** "Board" means the board of directors of a corporation.

Subd. 6. **Class.** "Class," when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.

Subd. 6a. **Closely held corporation.** "Closely held corporation" means a corporation which does not have more than 35 shareholders.

Subd. 7. **Constituent corporation.** "Constituent corporation" means a corporation or a foreign corporation that:

(1) in a merger is either the surviving corporation or a domestic or foreign corporation that is merged into the surviving organization; or

(2) in an exchange is either the acquiring organization or a corporation whose shares are acquired by the acquiring organization.

Subd. 8. **Corporation; domestic corporation.** "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.

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Subd. 9. **Director.** "Director" means a member of the board.

Subd. 10. **Distribution.** "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

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.

Subd. 12. **Foreign corporation.** "Foreign corporation" means an organization organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under this chapter.

Subd. 13. **Good faith.** "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

Subd. 14. **Intentionally.** "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

Subd. 15. **Know; knowledge.** A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

Subd. 16. **Legal representative.** "Legal representative" means a person empowered to act for another person, including, but not limited to, an agent, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of a person or a person's estate.

Subd. 17. **Notice.** (a) "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation.

(b) In all other cases, "notice" is given to a person when:

(1) mailed to the person at an address designated by the person or at the last known address of the person; or

(2) deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person; or

(3) communicated to the person orally; or

(4) handed to the person; or

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(5) left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.

(c) Notice is also given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

(d) Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice by deposit for delivery is given when deposited for delivery as provided in paragraph (b), clause (2), after having made sufficient arrangements for payment by the sender.

(e) Notice is deemed received when it is given.

Subd. 18. **Officer.** "Officer" means the chief executive officer, the chief financial officer, a person elected, appointed, or otherwise designated as an officer pursuant to section 302A.311, and any other person deemed elected as an officer pursuant to section 302A.321. The term does not include a person elected, appointed, or otherwise designated chair of the board of the corporation, unless otherwise provided in the articles or bylaws.

Subd. 19. **Organization.** "Organization" means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.

Subd. 20. **Outstanding shares.** "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

Subd. 21. **Parent.** "Parent" of a specified corporation means an organization that directly, or indirectly through related organizations, owns more than 50 percent of the voting power of the shares or other ownership interests entitled to vote for directors or other members of the governing body of the specified organization.

Subd. 22. **Person.** "Person" includes a natural person, an organization, and any other association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Subd. 23. **Principal executive office.** "Principal executive office" means an office where the elected or appointed chief executive officer of a corporation has an office. If the corporation has no elected or appointed chief executive officer, "principal executive office" means the registered office of the corporation.

Subd. 24. **Registered office.** "Registered office" means the place in this state designated in the articles of a corporation as the registered office of the corporation.

Subd. 25. **Related organization.** "Related organization" of a specified corporation means:

(1) a parent or subsidiary of the specified corporation;

(2) another subsidiary of a parent of the specified corporation;

(3) a limited liability company owning, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation;

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(4) a limited liability company having more than 50 percent of the voting power of its membership interests entitled to vote for members of its governing body owned directly or indirectly by the specified corporation;

(5) a limited liability company having more than 50 percent of the voting power of its membership interests entitled to vote for members of its governing body owned directly or indirectly either (i) by a parent of the specified corporation or (ii) a limited liability company owning, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation; or

(6) a corporation having more than 50 percent of the voting power of its shares entitled to vote for directors owned directly or indirectly by a limited liability company owning, directly or indirectly, more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation.

Subd. 26. **Security.** "Security" has the meaning given it in section 80A.41(30).

Subd. 27. **Series.** "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

Subd. 28. **Share.** "Share" means one of the units, however designated, into which the shareholders' ownership interests in a corporation are divided.

Subd. 29. **Shareholder.** "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.

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.

Subd. 31. **Subsidiary.** "Subsidiary" of a specified organization means an organization having more than 50 percent of the voting power of its shares or other ownership interests entitled to vote for directors or other members of the governing body of the organization owned directly, or indirectly through related organizations, by the specified organization.

Subd. 32. **Surviving corporation.** "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

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

Subd. 34. **Vote.** "Vote" includes authorization by written action.

Subd. 35. [Repealed, 1982 c 497 s 73]

Subd. 36. **Written action.** "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons

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signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

Subd. 37. **Acquiring person.** "Acquiring person" means a person that makes or proposes to make a control share acquisition. When two or more persons act as a partnership, limited partnership, syndicate, or other group pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise for the purposes of acquiring, owning, or voting shares of an issuing public corporation, all members of the partnership, syndicate, or other group constitute a "person."

"Acquiring person" does not include (a) a licensed broker/dealer or licensed underwriter who (1) purchases shares of an issuing public corporation solely for purposes of resale to the public and (2) is not acting in concert with an acquiring person, or (b) a person who becomes entitled 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), solely as a result of a repurchase of shares by, or recapitalization of, the issuing public corporation or similar action unless (1) the repurchase, recapitalization, or similar action was proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with, the person or any affiliate or associate of the person or (2) 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 entitled to exercise or direct the exercise of the same or a higher range of voting power under section 302A.671, subdivision 2, paragraph (d), as the person became entitled to exercise as a result of the repurchase, recapitalization, or similar action.

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 pursuant to an offer to purchase for cash pursuant to a tender offer, or to exchange for stock pursuant to an exchange offer, all shares of the voting stock of the issuing public corporation:

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(1) that has been approved by a majority vote of the members of a committee composed solely of one or more 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 or exchange offer; and

(2) 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.

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

Subd. 41. **Beneficial 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 organization in which the person owns ten percent or more of the equity, and any affiliate of the person.

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(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.

Subd. 42. **Interested shares.** "Interested shares" means the shares of an issuing public corporation beneficially owned by any of the following persons: (1) the acquiring person, (2) any officer of the issuing public corporation, or (3) any employee of the issuing public corporation who is also a director of the issuing public corporation.

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

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

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

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

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

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

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

(a) any merger of the issuing public corporation or any subsidiary of the issuing public corporation with (1) the interested shareholder or (2) any other organization (whether or not itself an interested shareholder of the issuing public corporation) that is, or after the merger would be, an affiliate or associate of the interested shareholder, but excluding (i) the merger of a wholly owned subsidiary of the issuing public corporation into the issuing public corporation, (ii) the merger of two or more wholly owned subsidiaries of the issuing public corporation, or (iii) the merger of an organization, other than an interested shareholder or an affiliate or associate of an interested shareholder, with a wholly owned subsidiary of the issuing public corporation pursuant to which the surviving organization, immediately after the merger, becomes a wholly owned subsidiary of the issuing public corporation;

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

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(c) any sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in a single transaction or a series of transactions), other than sales of goods or services in the ordinary course of business or redemptions pursuant to section 302A.671, subdivision 6, to or with the interested shareholder or any affiliate or associate of the interested shareholder, other than to or with the issuing public corporation or a wholly owned subsidiary of the issuing public corporation, of assets of the issuing public corporation or any subsidiary of the issuing public corporation (1) having an aggregate market value equal to ten percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the issuing public corporation, (2) having an aggregate market value equal to ten percent or more of the aggregate market value of all the outstanding shares of the issuing public corporation, or (3) representing ten percent or more of the earning power or net income, determined on a consolidated basis, of the issuing public corporation except a cash dividend or distribution paid or made pro rata to all shareholders of the issuing public corporation;

(d) the issuance or transfer by the issuing public corporation or any subsidiary of the issuing public corporation (in a single transaction or a series of transactions) of any shares of, or other ownership interests in, the issuing public corporation or any subsidiary of the issuing public corporation that have an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the issuing public corporation to the interested shareholder or any affiliate or associate of the interested shareholder, except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend or distribution paid or made, pro rata to all shareholders of the issuing public corporation other than for the purpose, directly or indirectly, of facilitating or effecting a subsequent transaction that would have been a business combination if the dividend or distribution had not been made;

(e) the adoption of any plan or proposal for the liquidation or dissolution of the issuing public corporation, or any reincorporation of the issuing public corporation in another state or jurisdiction, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with, the interested shareholder or any affiliate or associate of the interested shareholder;

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

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

Subd. 47. **Consummation date.** "Consummation date," with respect to any business combination, means the date of consummation of the business combination or, in the case of a business combination as to which

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a shareholder vote is taken, the later of (1) the business day before the vote or (2) 20 days before the date of consummation of the business combination.

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

Subd. 49. **Interested shareholder.** (a) "Interested shareholder," when used in reference to any issuing public corporation, means any person 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 that, 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.

(b) 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 paragraph (a), clause (1) or (2), unless:

(1) 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

(2) 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.

(c) Interested shareholder does not include:

(1) the issuing public corporation or any of its subsidiaries;

(2) a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or its subsidiary, or a fiduciary of the plan when acting in a fiduciary capacity pursuant to the plan; or

(3) a licensed broker/dealer or licensed underwriter who:

(i) purchases shares of an issuing public corporation solely for purposes of resale to the public; and

(ii) is not acting in concert with an interested shareholder.

(d) For purposes of this subdivision, shares beneficially owned by a plan described in paragraph (c), clause (2), or by a fiduciary of a plan described in paragraph (c), clause (2), pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan.

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

(a) In the case of shares, the average closing sale price of a share 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, in either case:

(1) on the composite tape for New York Stock Exchange listed shares; or

(2) 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, which may include the NASDAQ Stock Market, on which the shares are listed; or

(3) if the shares are not listed on any such exchange, on any system then in use.

If no quotation under clauses (1) through (3) is available, then 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.

(b) 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.

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

(a) if a person becomes, on one or more dates, an interested shareholder of the issuing public corporation, but thereafter ceases to be an interested shareholder of the issuing public corporation, and subsequently again becomes an interested shareholder, "share acquisition date," with respect to that person means the date on which the person most recently became an interested shareholder of the issuing public corporation; and

(b) if, on or after August 1, 2004, a person 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 at the time the issuing public corporation becomes a publicly held corporation, "share acquisition date," with respect to that person means the date on which the person first became the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding shares entitled to vote of the corporation.

Subd. 52. **Offeror.** "Offeror" means a person who makes or in any way participates in making a takeover offer. Offeror does not include a bank or broker-dealer loaning funds to an offeror in the ordinary course of its business or a bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror and not otherwise participating in the takeover offer. When two or more persons act as a partnership, limited partnership, syndicate, or other group pursuant to any agreement, arrangement, relationship, understanding, or otherwise, whether or not in writing, for the purpose of acquiring, owning, or voting shares of a target company, all members of the partnership, syndicate, or other group constitute "a person."

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:

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(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.

Subd. 54. **Division or combination.** "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

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, limited liability company or foreign limited liability company that:

(1) in a merger is either the surviving organization or an organization that is merged into the surviving organization; or

(2) in an exchange is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

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, membership interests in the case of a limited liability company, and governance or transferable interests in the case of any other organization.

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

Subd. 60. **Electronic communication.** "Electronic communication" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved,

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and reviewed by a recipient of the communication, and that may be directly reproduced in paper form by the recipient through an automated process.

Subd. 61. **Remote communication.** "Remote communication" means communication via electronic communication, conference telephone, video conference, the Internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Subd. 62. **Authenticated.** "Authenticated" means, with respect to an electronic communication, that the communication is delivered to the principal place of business of the corporation, or to an officer or agent of the corporation authorized by the corporation to receive the communication, and that the communication sets forth information from which the corporation can reasonably conclude that the communication was sent by the purported sender.

Subd. 63. **Converted organization.** "Converted organization" means the organization into which a converting organization converts pursuant to sections 302A.682 to 302A.692.

Subd. 64. **Converting organization.** "Converting organization" means an organization that converts into another organization pursuant to sections 302A.682 to 302A.692.

Subd. 65. **Governing body.** "Governing body" means the body of an organization selected by its owners that has the ultimate power to determine the organization's policies and control its activities. The governing body of a domestic corporation is its board of directors, and the governing body of a domestic limited liability company is its board of governors.

Subd. 66. **Limited liability company.** "Limited liability company" means either a domestic or a foreign limited liability company, unless specified otherwise in this chapter.

Subd. 67. **Converting corporation.** "Converting corporation" means a converting organization that is a corporation.

Subd. 68. **Organizational documents.** "Organizational documents" means:

(1) for a domestic or foreign general partnership, its partnership agreement;

(2) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(3) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable documents as provided in its governing statute;

(4) for a business trust, its agreement of trust and declaration of trust;

(5) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders that are authorized by its governing statute, or comparable documents as provided in its governing statute; and

(6) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it, in each case as provided or authorized by its governing statute.

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Subd. 69. **Personal liability.** "Personal liability" means liability for a debt, obligation, or other liability of an organization that is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(1) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(2) by the organization's organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

Subd. 70. **Governing statute.** "Governing statute" means the statute that governs an organization's internal affairs.

History: *1981 c 270 s 1; 1981 c 356 s 343; 1982 c 497 s 2-9; 1983 c 368 s 2; 1984 c 488 s 14-16; 1985 c 97 s 1; 1Sp1985 c 5 s 15-17; 1987 c 104 s 6; 1987 c 404 s 163; 1Sp1987 c 1 s 3-17; 1988 c 682 s 6; 1988 c 692 s 3-9; 1989 c 172 s 1,2; 1989 c 236 s 3; 1989 c 335 art 1 s 193; 1991 c 58 s 9-13; 1992 c 517 art 1 s 12; 1993 c 17 s 1-4; 1993 c 137 s 11; 1997 c 10 art 1 s 1-6; art 3 s 1-5; 1999 c 85 art 1 s 1,2; 2002 c 311 art 1 s 1-8; 2004 c 199 art 14 s 1-6; 2005 c 10 art 4 s 17; 2005 c 69 art 1 s 16; 2006 c 196 art 1 s 52; art 2 s 6; 2006 c 250 art 1 s 1-14; 2008 c 233 art 1 s 1,2; 2008 c 256 s 22; 2010 c 250 art 1 s 1; 2014 c 157 art 2 s 6-8,31; 2014 c 170 s 3-5; 2015 c 39 s 2-7*

LEGAL RECOGNITION OF ELECTRONIC RECORDS AND SIGNATURES

302A.015 LEGAL RECOGNITION OF ELECTRONIC RECORDS AND SIGNATURES.

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

(b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(d) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(e) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Subd. 2. **Electronic records and signatures.** For purposes of this chapter:

(1) a record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

(2) a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

(3) if a provision requires a record to be in writing, an electronic record satisfies the requirement; and

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(4) if a provision requires a signature, an electronic signature satisfies the requirement.

History: *2002 c 311 art 1 s 9*

APPLICATION

302A.021 APPLICATION AND ELECTION.

Subdivision 1. **Election by chapter 300 corporations.** A corporation incorporated under chapter 300 that has not subsequently become governed by chapter 301 and that was incorporated for a purpose or purposes for which a corporation may be incorporated under this chapter may elect to become governed by this chapter.

Subd. 2. **Election by business and professional corporations.** A corporation incorporated under sections 301.01 to 301.67 may elect, on or after July 1, 1981 and before January 1, 1984, to become governed by this chapter. A corporation incorporated under sections 301.01 to 301.67 and 319A.01 to 319A.22 may elect, on or after July 1, 1981 and before January 1, 1984, to become governed by this chapter and sections 319A.01 to 319A.22.

Subd. 3. **Conforming articles of electing corporations.** If the articles of an electing corporation include a provision prohibited by this chapter or omit a provision required by this chapter or are otherwise inconsistent with this chapter, the electing corporation shall amend its articles to conform to the requirements of this chapter. The appropriate provisions of the corporation's articles or bylaws or the law by which it was governed before the effective date of the election made pursuant to this section control the manner of adoption of the amendment.

Subd. 4. **Method of election.** An election by a corporation to become governed by this chapter shall be made by resolution approved by the affirmative vote of the holders of the same proportion or number of the voting power of the shares entitled to vote that is required for amendment of the articles of the corporation prior to the election. The resolution, and articles of amendment if required, shall be filed with the secretary of state and is effective upon filing. If no amendment of the articles is required, the resolution shall state that the articles of the corporation conform to the requirements of this chapter.

Subd. 5. **Effect of election upon bylaws.** Upon filing an election pursuant to subdivision 4, all provisions of the bylaws that are consistent with this chapter remain or become effective and all provisions of the bylaws that are inconsistent with this chapter cease to be effective.

Subd. 6. **Choice of incorporation until January 1, 1984.** From July 1, 1981 to December 31, 1983, inclusive, a corporation incorporated for a purpose or purposes for which a corporation may be incorporated under this chapter may be incorporated either under this chapter or under sections 301.01 to 301.67, or, if applicable, sections 301.01 to 301.67 and 319A.01 to 319A.22.

Subd. 7. **Nonelecting business corporations subject to law as of January 1, 1984.** A corporation in existence on January 1, 1984 and incorporated under another statute of this state for a purpose or purposes for which a corporation may be incorporated under this chapter or, if applicable, this chapter and chapter 319A, other than a corporation incorporated under chapter 300 that has not subsequently become governed by chapter 301, that has not elected before January 1, 1984 to become subject to this chapter, becomes governed by this chapter or, if applicable, this chapter and chapter 319A, on January 1, 1984 as fully as though the corporation had been incorporated under this chapter or, if applicable, this chapter and chapter 319A. All provisions of the articles and bylaws of the corporation that may be included in the articles or bylaws under this chapter remain in effect. All provisions of the articles and bylaws of the corporation that

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are inconsistent with this chapter cease to be effective on January 1, 1984. Any provisions required by this chapter to be contained in the articles that do not appear in the articles are read into them as a matter of law.

Subd. 7a. **Chapter 300 corporation subject to law as of August 1, 2006.** A corporation incorporated under chapter 300 in existence on August 1, 2006, becomes governed by this chapter on August 1, 2006, as fully as though the corporation had been incorporated under this chapter, except as specifically otherwise provided by law.

Subd. 8. **Retention of two-thirds majority.** (a) If the articles of a corporation described in subdivision 1 or 2 and electing to become governed by this chapter or, if applicable, this chapter and chapter 319A, or described in subdivision 7, do not contain a provision specifying the proportion of the voting power of the shares required for approval of amendments to the articles, plans of merger or exchange, or sales of assets, a shareholder or shareholders holding more than one-third of the voting power of all the shares entitled to vote for any or all of the above mentioned actions may, by signed written demand filed with the secretary of state, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of the shares entitled to vote for any or all of the above mentioned actions for which no required majority was specified, notwithstanding any provisions of section 302A.135, 302A.613 or 302A.661 to the contrary. Notice that the demand has been filed shall be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.

(b) A shareholder or shareholders holding more than one-third of the voting power of the shares entitled to vote for dissolution of a corporation described in subdivision 1 or 2 and electing to become governed by this chapter or, if applicable, this chapter and chapter 319A, or described in subdivision 7, may, by signed written demand filed with the secretary of state, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of the shares for the authorization of the dissolution of the corporation, notwithstanding the provisions of section 302A.721. Notice that the demand has been filed shall be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.

(c) A signed written demand by the shareholders of a corporation pursuant to paragraph (a) or (b) is valid only if filed with the secretary of state before January 1, 1984 or, in the case of a corporation described in subdivision 7, before April 1, 1984.

Subd. 9. **Incorporation after January 1, 1984.** Effective January 1, 1984, a corporation incorporated for a purpose or purposes for which a corporation may be incorporated under this chapter shall be incorporated only under this chapter.

Subd. 10. **Laws not to apply.** Chapters 301, 316, and 556 do not apply to a corporation incorporated under or governed by this chapter.

History: *1981 c 270 s 2; 1982 c 497 s 10-13; 2005 c 69 art 1 s 17,18; 2014 c 227 art 2 s 16*

302A.031 TRANSITION.

Subdivision 1. **Continuation of legal acts.** The continuation or completion of any act by a corporation that has not incorporated under, but has become governed by, this chapter, and the continuation or performance of any executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, shall, if otherwise lawful before the corporation became governed by this chapter, remain valid, and may be continued, completed, consummated, enforced, or terminated as required or permitted by a statute applicable prior to the date on which the corporation became governed by this chapter.

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Subd. 2. **Transition of preemptive rights.** For purposes of denial of preemptive rights under section 302A.413, subdivision 1, the articles of a corporation formed under chapter 301 shall be construed to deny completely preemptive rights for all shares, rights to purchase shares, securities other than shares or rights to purchase securities other than shares, if those articles deny shareholders the preemptive right to purchase or subscribe to shares.

Subd. 3. **Perpetual duration granted for chapter 300 corporations.** (a) All corporations formed under chapter 300 and governed by this chapter pursuant to section 302A.021, subdivision 7a, are granted perpetual duration irrespective of the period of duration set forth in their articles of incorporation. This grant may be modified in the articles as authorized under section 302A.111, subdivision 2, paragraph (b).

(b) All corporations formed under chapter 300 and governed by this chapter pursuant to section 47.13, are granted perpetual duration irrespective of the period of duration set forth in their certificates of incorporation. This grant may be modified in the certificate of incorporation as authorized under section 47.12, subdivision 2, paragraph (a), clause (3).

History: *1981 c 270 s 3; 1984 c 618 s 10; 2005 c 69 art 1 s 19*

302A.041 RESERVATION OF RIGHT.

The state reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.

History: *1981 c 270 s 4*

INCORPORATION; ARTICLES

302A.101 PURPOSES.

A corporation may be incorporated under this chapter for any business purpose or purposes, unless some other statute of this state requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

History: *1981 c 270 s 5*

302A.105 INCORPORATORS.

One or more natural persons of at least 18 years of age may act as incorporators of a corporation by filing with the secretary of state articles of incorporation for the corporation.

History: *1981 c 270 s 6; 1993 c 17 s 5*

302A.111 ARTICLES.

Subdivision 1. **Required provisions.** The articles of incorporation shall contain:

(a) the name of the corporation;

(b) the address of the registered office of the corporation and the name of its registered agent, if any, at that address;

(c) the aggregate number of shares that the corporation has authority to issue; and

(d) the name and address of each incorporator.

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Subd. 2. **Statutory provisions that may be modified only in articles or in a shareholder control agreement.** The following provisions govern a corporation unless modified in the articles or in a shareholder control agreement under section 302A.457:

(a) a corporation has general business purposes (section 302A.101);

(b) a corporation has perpetual existence and certain powers (section 302A.161);

(c) the power to adopt, amend, or repeal the bylaws is vested in the board (section 302A.181);

(d) a corporation must allow cumulative voting for directors (section 302A.215, subdivision 2);

(e) the affirmative vote of a majority of directors present is required for an action of the board (section 302A.237);

(f) a written action by the board taken without a meeting must be signed by all directors (section 302A.239);

(g) the board may authorize the issuance of securities and rights to purchase securities (section 302A.401, subdivision 1);

(h) all shares are common shares entitled to vote and are of one class and one series (section 302A.401, subdivision 2, clauses (a) and (b));

(i) all shares have equal rights and preferences in all matters not otherwise provided for by the board (section 302A.401, subdivision 2, clause (b));

(j) the par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes (section 302A.401, subdivision 2, clause (c));

(k) the board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends, divisions, or combinations, and determine the value of nonmonetary consideration (section 302A.405, subdivision 1);

(l) shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends, divisions, or combinations, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued (section 302A.405, subdivision 1);

(m) a corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board (section 302A.409);

(n) a shareholder has certain preemptive rights, unless otherwise provided by the board (section 302A.413);

(o) the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a plurality of the votes cast (section 302A.215, subdivision 1) or a majority of the voting power of all shares entitled to vote (section 302A.437, subdivision 1);

(p) shares of a corporation acquired by the corporation may be reissued (section 302A.553, subdivision 1);

(q) each share has one vote unless otherwise provided in the terms of the share (section 302A.445, subdivision 3);

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

(s) the board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval (section 302A.402);

(t) a written action of shareholders must be signed by all shareholders (section 302A.441);

(u) specified amendments of the articles create dissenters' rights (section 302A.471, subdivision 1, clause (a)); and

(v) shareholders are entitled to vote as a class or series upon proposed amendments to the articles in specified circumstances (section 302A.137).

Subd. 3. **Statutory provisions that may be modified in articles, in a shareholder control agreement, or in bylaws.** The following provisions govern a corporation unless modified in the articles, in a shareholder control agreement under section 302A.457, 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) the notice of a board 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), and a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee (section 302A.241, subdivision 2a);

(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 corporation 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);

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

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

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

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

Subd. 4. **Optional provisions; specific subjects.** The 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);

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(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 (g));

(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. Nothing in this subdivision limits the permissible scope of a shareholder control agreement under section 302A.457.

Subd. 5. **Optional provisions: generally.** The articles may contain other provisions not inconsistent with section 302A.201 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.

Subd. 6. **Powers need not be stated.** It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.

Subd. 7. **Dependence on facts outside of the articles.** Except for provisions included pursuant to subdivision 1, any provision of the articles may:

(a) be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and

(b) incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

History: *1981 c 270 s 7; 1982 c 497 s 14-16; 1984 c 618 s 11,12; 1987 c 2 s 1; 1987 c 104 s 7,8; 1987 c 203 s 1; 1989 c 172 s 3; 1991 c 49 s 1; 1993 c 17 s 6,7; 1997 c 10 art 1 s 7; 1999 c 85 art 1 s 3; 2004 c 199 art 14 s 7; 2006 c 250 art 1 s 15,16; 2008 c 233 art 1 s 3-5; 2014 c 170 s 6,7*

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;

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(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 on file, authorized or registered to do business in this state at the time of filing, whether profit or nonprofit, and each name the right to which is, at the time of incorporation, reserved as provided for in sections 5.35, 302A.117, 321.0109, 322B.125, 322C.0109, 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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 domestic or foreign 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.

Subd. 2. **Names continued.** Subdivision 1, clause (d) does not affect the right of a domestic corporation existing on January 1, 1984, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

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.

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Subd. 4. **Other laws affecting use of names.** This section and section 302A.117 do not abrogate or limit the law of unfair competition or unfair practices, nor sections 333.001 to 333.54, nor the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.

Subd. 5. **Use of name by successor corporation.** A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that is incorporated by the reorganization of one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may have the same name as that used in this state by any of the other organizations, if the other organization whose name is sought to be used was organized under the laws of, or is authorized to transact business in, this state.

Subd. 6. **Injunction.** The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of a person interested or affected, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

Subd. 7. **Lost names; use by others.** Each corporation formed before July 1, 1979, which has not filed the active status report required by Minnesota Statutes 1982, section 301.511 or an annual registration under section 302A.821 and which has not elected to become governed by this chapter before January 1, 1984, shall file the annual registration under section 302A.821.

Each corporation which has not filed that report or registration loses its right to the exclusive use of its name. The corporation may reacquire the right to use that name by filing the registration under section 302A.821, unless the name has been adopted for use or reserved by another person, in which case the registration will be rejected unless the registration is accompanied by a consent, court order, or affidavit pursuant to subdivision 1, clause (d). A corporation which cannot reacquire the use of its corporate name shall adopt a new corporate name which complies with the provisions of this section.

Subd. 8. [Repealed, 2008 c 203 s 14]

History: *1981 c 270 s 8; 1982 c 497 s 17; 1983 c 368 s 3; 1984 c 618 s 13; 1984 c 655 art 1 s 56; 1988 c 682 s 7,8; 1989 c 292 s 3-5; 1992 c 517 art 1 s 13; 1993 c 17 s 8; 1995 c 128 art 2 s 1; 1997 c 10 art 1 s 8; 2002 c 311 art 1 s 10; 2004 c 199 art 13 s 110; 2006 c 250 art 1 s 17,18; 2009 c 98 s 8; 2014 c 157 art 2 s 9,31*

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;

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(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 not distinguishable from that name in one or more states other than this state and not described in clause (d), (e), or (f).

Subd. 2. **Method of reservation.** The reservation shall be made by filing with the secretary of state a request that the name be reserved. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12-month periods.

Subd. 3. **Transfer of reservation.** The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee.

History: *1981 c 270 s 9; 1989 c 292 s 6; 1993 c 17 s 9*

302A.121 MS 2008 [Subds 1 and 2 repealed by amendment, 2010 c 250 art 2 s 8]

302A.121 REGISTERED OFFICE; REGISTERED AGENT.

Every corporation shall have a registered office, and may have a registered agent, in the manner prescribed by section 5.36.

History: *1981 c 270 s 10; 1992 c 517 art 1 s 14; 1995 c 128 art 3 s 2; 2010 c 250 art 2 s 8*

302A.123 MS 2008 [Subds 1 to 3 repealed by amendment, 2010 c 250 art 2 s 9]

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

Every corporation may change its registered office or change its registered agent, and the agent may resign, or change its business address or name, in the manner prescribed by section 5.36.

History: *1981 c 270 s 11; 1982 c 497 s 18; 1989 c 236 s 4; 1993 c 17 s 10; 2010 c 250 art 2 s 9*

302A.131 AMENDMENT OF ARTICLES.

The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 302A.133 to 302A.139. An amendment which merely restates the then-existing articles of incorporation, as amended, is not an amendment for the purposes of section 302A.215, subdivision 2, or 302A.413, subdivision 9.

History: *1981 c 270 s 12; 1982 c 497 s 19; 1984 c 618 s 14*

302A.133 PROCEDURE FOR AMENDMENT WHEN NO SHARES ARE OUTSTANDING.

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

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a class or series of shares before the issuance of any shares of that class or series or at any subsequent time that no shares of that class or series are outstanding by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state. If a statement filed pursuant to section 302A.401, subdivision 3, is canceled, the shares of the class and series originally covered by the statement have the status of authorized but unissued, undesignated shares, unless the articles otherwise provide. If the articles provide that the canceled shares may not be reissued, the statement of cancellation must include the information specified by section 302A.553, subdivision 2.

History: *1981 c 270 s 13; 1987 c 104 s 9; 1993 c 17 s 11*

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

Subdivision 1. **Manner of amendment.** Except as otherwise set forth in section 302A.133, after the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.

Subd. 2. **Submission to shareholders.** A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment shall be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a 15-month period, except that if a corporation is registered or reporting under the federal securities laws, the provisions of this sentence do not apply to the extent that those provisions are in conflict with the federal securities laws or rules adopted under those laws. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them.

Subd. 3. **Notice.** Written notice of the shareholders' meeting setting forth the substance of the proposed amendment shall be given to each shareholder entitled to vote in the manner provided in section 302A.435 for the giving of notice of meetings of shareholders.

Subd. 4. **Approval by shareholders.** (a) The proposed amendment is adopted when approved by the affirmative vote of the shareholders required by section 302A.437, except as provided in paragraphs (b) and (c) and subdivision 5.

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

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

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

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

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

Subd. 6. **Investment companies.** Notwithstanding any contrary provision of this chapter, the board of directors of a corporation that is registered as an open-end management investment company under the Investment Company Act of 1940 may, without shareholder approval, increase or decrease, but not below the then-outstanding shares, the aggregate number of shares the corporation has authority to issue, including shares of any class or series, unless a provision has been included in the corporation's articles prohibiting the board from increasing or decreasing the aggregate number of shares, or any class or series of shares, as applicable, that the corporation has authority to issue.

Subd. 7. **Change of corporate name.** An amendment that only changes a corporation's corporate name may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in subdivisions 2, 3, and 4.

History: *1981 c 270 s 14; 1982 c 497 s 20,21; 1985 c 5 s 1; 1987 c 104 s 10,11; 1993 c 17 s 12,13; 1994 c 417 s 1; 2000 c 264 s 1; 2002 c 311 art 1 s 11; 2006 c 250 art 1 s 19*

302A.137 CLASS OR SERIES VOTING ON AMENDMENTS.

Subdivision 1. **Amendments creating rights.** Except as provided in subdivision 2, the holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

(a) effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series, or effect a combination of outstanding shares of a class or series into a lesser number of shares of the class or series where each other class and series is not subject to a similar combination;

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

(c) change the rights or preferences of the shares of the class or series;

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

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

(f) limit or deny any existing preemptive rights of the shares of the class or series; or

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

Subd. 2. **Combined voting groups.** The articles may provide that, if a proposed amendment entitling the holders of the outstanding shares of two or more classes or series to vote as separate classes or series under subdivision 1 would affect those classes or series in the same or a substantially similar way, the holders of the outstanding shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment.

History: *1981 c 270 s 15; 1987 c 104 s 12; 1993 c 17 s 14; 2004 c 199 art 14 s 8; 2014 c 170 s 8*

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302A.139 ARTICLES OF AMENDMENT.

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

(a) the name of the corporation;

(b) the amendment adopted;

(c) with respect to an amendment restating the articles, a statement that the amendment restating the articles correctly sets forth without change the corresponding provisions of the articles as previously amended if the amendment was approved only by the board;

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

(e) a statement that the amendment has been adopted pursuant to this chapter.

History: *1981 c 270 s 16; 1987 c 104 s 13; 1988 c 682 s 9; 1991 c 49 s 2*

302A.141 EFFECT OF AMENDMENT.

Subdivision 1. **Effect on cause of action.** An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than shareholders.

Subd. 2. **Effect of change of name.** If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.

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

History: *1981 c 270 s 17; 1987 c 104 s 14*

302A.151 FILING ARTICLES.

Unless filed with the commissioner of commerce, pursuant to other law, articles of incorporation and articles of amendment shall be filed with the secretary of state.

History: *1981 c 270 s 18; 2009 c 98 s 9*

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 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: *1981 c 270 s 19; 1981 c 356 s 344; 1987 c 404 s 164; 1989 c 335 art 1 s 194; 1993 c 17 s 15*

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302A.155 PRESUMPTION; CERTIFICATE OF INCORPORATION.

When the articles of incorporation have been filed with the secretary of state and the required fee has been paid to the secretary of state, it is presumed that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the secretary of state shall issue a certificate of incorporation to the corporation, but this presumption does not apply against this state in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

History: *1981 c 270 s 20*

POWERS

302A.161 POWERS.

Subdivision 1. **Generally; limitations.** A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.

Subd. 2. **Duration.** A corporation has perpetual duration.

Subd. 3. **Legal capacity.** A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

Subd. 4. **Property ownership.** A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

Subd. 5. **Property disposition.** A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest therein, wherever situated.

Subd. 6. **Trading in securities; obligations.** A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality thereof.

Subd. 7. **Contracts; mortgages.** A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises and income.

Subd. 8. **Investment.** A corporation may invest and reinvest its funds.

Subd. 9. **Holding property as security.** A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.

Subd. 10. **Location.** A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

Subd. 11. **Donations.** A corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes; for the purpose of fostering national or international amateur sports competition; and for the prevention of cruelty to children and animals.

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Subd. 12. **Pensions; benefits.** A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the corporation, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

Subd. 13. **Participating in management.** A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

Subd. 14. **Insurance.** A corporation may provide for its benefit life insurance and other insurance with respect to the services of any or all of its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.

Subd. 15. **Corporate seal.** A corporation may have, alter at pleasure, and use a corporate seal as provided in section 302A.163.

Subd. 16. **Bylaws.** A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 302A.181.

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.

Subd. 18. **Officers; employees; agents.** A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties as provided in sections 302A.301 to 302A.361 and fix their compensation.

Subd. 19. **Securities.** A corporation may issue securities and rights to purchase securities as provided in sections 302A.401 to 302A.425.

Subd. 20. **Loans; guaranties; sureties.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 302A.501.

Subd. 21. **Advances.** A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 302A.505.

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

Subd. 23. **Assumed names.** A corporation may conduct all or part of its business under one or more assumed names as provided in sections 333.001 to 333.06.

Subd. 24. **Other powers.** A corporation may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the corporation is incorporated.

History: *1981 c 270 s 21; 1987 c 104 s 15; 1989 c 172 s 4; 1993 c 137 s 12*

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302A.163 CORPORATE SEAL.

Subdivision 1. **Seal not required.** A corporation may, but need not, have a corporate seal, and the use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

Subd. 2. **Required words; use.** If a corporation has a corporate seal, the seal may consist of a mechanical imprinting device, or a rubber stamp with a facsimile of the seal affixed thereon, or a facsimile or reproduction of either. The seal need include only the word "Seal," but it may also include a part or all of the name of the corporation and a combination, derivation, or abbreviation of either or both of the phrases "a Minnesota Corporation" and "Corporate Seal." If a corporate seal is used, it or a facsimile of it may be affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on any document.

History: *1981 c 270 s 22*

302A.165 EFFECT OF LACK OF POWER; ULTRA VIRES.

The doing, continuing, or performing by a corporation of an act, or an executed or wholly or partially executory contract, conveyance or transfer to or by the corporation, if otherwise lawful, is not invalid because the corporation was without the power to do, continue, or perform the act, contract, conveyance, or transfer, unless the lack of power is established in a court in this state:

(a) In a proceeding by a shareholder against the corporation to enjoin the doing, continuing, or performing of the act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and in so doing may allow to the corporation or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the court in setting aside and enjoining the performance of the contract;

(b) In a proceeding by or in the name of the corporation, whether acting directly or through a legal representative, or through shareholders in a representative or derivative suit, against the incumbent or former officers or directors of the corporation for exceeding or otherwise violating their authority, or against a person having actual knowledge of the lack of power; or

(c) In a proceeding by the attorney general, as provided in section 302A.757, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

History: *1981 c 270 s 23*

ORGANIZATION; BYLAWS

302A.171 ORGANIZATION.

Subdivision 1. **Role of incorporators.** If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.

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

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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: *1981 c 270 s 24; 1993 c 17 s 16; 1997 c 10 art 1 s 9*

302A.181 BYLAWS.

Subdivision 1. **Generally.** A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with section 302A.201 or any other provision of law or the articles.

Subd. 2. **Power of board.** Initial bylaws may be adopted pursuant to section 302A.171 by the incorporators or by the first board. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subdivision 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws, the board shall not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.

Subd. 3. **Power of shareholders; procedure.** If a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 302A.135, subdivisions 2 to 4, for amendment of the articles.

History: *1981 c 270 s 25; 1982 c 497 s 22; 1999 c 85 art 1 s 4; 2000 c 264 s 2*

BOARD

302A.201 BOARD.

Subdivision 1. **Board to manage.** The business and affairs of a corporation shall be managed by or under the direction of a board, subject to the provisions of subdivision 2 and section 302A.457. The members of the first board may be named in the articles or elected by the incorporators pursuant to section 302A.171 or by the shareholders.

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

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

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

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

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

History: *1981 c 270 s 26; 1982 c 497 s 23; 1987 c 104 s 16*

302A.203 NUMBER.

The board shall consist of one or more directors. The number of directors shall be fixed by or in the manner provided in the articles or bylaws. The number of directors may be increased or, subject to section 302A.223, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

History: *1981 c 270 s 27*

302A.205 QUALIFICATIONS; ELECTION.

Directors shall be natural persons. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws.

History: *1981 c 270 s 28*

302A.207 TERMS.

Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of the shareholders. A fixed term of a director shall not exceed five years. A director holds office for the term for which the director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

History: *1981 c 270 s 29; 1982 c 497 s 24*

302A.209 ACTS NOT VOID OR VOIDABLE.

The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable.

History: *1981 c 270 s 30*

302A.211 COMPENSATION.

Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors.

History: *1981 c 270 s 31*

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302A.213 CLASSIFICATION OF DIRECTORS.

Directors may be divided into classes as provided in the articles or bylaws.

History: *1981 c 270 s 32*

302A.215 VOTING FOR DIRECTORS; CUMULATIVE VOTING.

Subdivision 1. **Required vote.** Unless otherwise provided in the articles, directors are elected by a plurality of the voting power of the shares present and entitled to vote on the election of directors at a meeting at which a quorum is present.

Subd. 2. **Cumulative voting rights.** Unless the articles provide that there shall be no cumulative voting, and except as provided in section 302A.223, subdivision 5, each shareholder entitled to vote for directors has the right to cumulate those votes in the election of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:

(a) The presiding officer at the meeting shall announce, before the election of directors, that shareholders shall cumulate their votes; and

(b) Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares, or by distributing all of those votes on the same principle among any number of candidates.

Subd. 3. **Modifications of cumulative voting.** With respect to a corporation that is not a publicly held corporation, no amendment to the articles or bylaws that has the effect of denying, limiting, or modifying the right to cumulative voting for directors provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

History: *1981 c 270 s 33; 1983 c 368 s 4; 2004 c 199 art 14 s 9; 2010 c 250 art 1 s 2*

302A.221 RESIGNATION.

A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.

History: *1981 c 270 s 34*

302A.223 REMOVAL OF DIRECTORS.

Subdivision 1. **Modification.** The provisions of this section apply unless modified by the articles, the bylaws, or an agreement described in section 302A.457.

Subd. 2. **Removal by directors.** A director may be removed at any time, with or without cause, if:

(a) the director was named by the board to fill a vacancy;

(b) the shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and

(c) a majority of the remaining directors present affirmatively vote to remove the director.

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Subd. 3. **Removal by shareholders.** Except as provided in subdivision 4, any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote at an election of directors; provided that, if a director has been elected solely by the holders of a class or series of shares, as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of all shares of that class or series entitled to vote at an election of that director.

Subd. 4. **Exception for corporations with cumulative voting.** In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.

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: *1981 c 270 s 35; 1997 c 10 art 1 s 10; 1999 c 85 art 1 s 5*

302A.225 VACANCIES.

Unless different rules for filling vacancies are provided for in the articles or bylaws:

(a)(1) Vacancies on the board resulting from the death, resignation, removal, or disqualification of a director may be filled by the affirmative vote of a majority of the remaining directors, even though less than a quorum; and

(2) Vacancies on the board resulting from newly created directorships may be filled by the affirmative vote of a majority of the directors serving at the time of the increase; and

(b) Each director elected under this section to fill a vacancy holds office until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders.

History: *1981 c 270 s 36*

302A.231 BOARD MEETINGS.

Subdivision 1. **Time; place.** Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subdivision 2. If the board fails to select a place for a meeting, the meeting shall be held at the principal executive office, unless the articles or bylaws provide otherwise. The board of directors may determine under subdivision 2 that a meeting of the board of directors shall be held solely by means of remote communication.

Subd. 2. MS 2000 [Paragraph (b) renumbered subd 3]

Subd. 2. **Meetings solely by means of remote communication.** Any meeting among directors may be conducted solely by one or more means of remote communication through which all of the directors may participate with each other during the meeting, if the same notice is given of the meeting required by subdivision 4, and if the number of directors participating in the meeting is sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

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Subd. 3. MS 2000 [Renumbered subd 4]

Subd. 3. **Participation in meetings by means of remote communication.** A director may participate in a board meeting by means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case through which the director, other directors so participating, and all directors physically present at the meeting may participate with each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

Subd. 4. MS 2000 [Renumbered subd 5]

Subd. 4. **Calling meetings; notice.** (a) Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to section 302A.171, subdivision 2, at least three days' notice, to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

(b) Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given. The notice is deemed given if by:

(1) facsimile communication, when directed to a telephone number at which the director has consented to receive notice;

(2) electronic mail, when directed to an electronic mail address at which the director has consented to receive notice; and

(3) any other form of electronic communication by which the director has consented to receive notice, when directed to the director.

(c) Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent so given may be relied upon until revoked by the director, provided that no revocation affects the validity of any notice given before receipt of revocation of the consent.

Subd. 5. MS 2000 [Renumbered subd 6]

Subd. 5. **Previously scheduled meetings.** If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Subd. 6. **Waiver of notice.** A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, by authenticated electronic communication, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

History: *1981 c 270 s 37; 1993 c 17 s 17; 2002 c 311 art 1 s 12; 2004 c 199 art 14 s 10,11; 2008 c 233 art 1 s 6,7*

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302A.233 ABSENT DIRECTORS.

If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as the vote of a director present at the meeting in favor of or against the proposal and shall be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

History: *1981 c 270 s 38; 1993 c 17 s 18*

302A.235 QUORUM.

A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

History: *1981 c 270 s 39; 1982 c 497 s 70*

302A.237 ACT OF THE BOARD.

Subdivision 1. **Majority required.** The board shall take action by the affirmative vote of the greater of (1) a majority of directors present at a duly held meeting at the time the action is taken, or (2) a majority of the minimum proportion or number of directors that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles shall control.

Subd. 2. **Voting power.** The articles of a domestic corporation that is not a publicly held corporation may confer upon one or more directors voting powers greater than or less than those of other directors. After the adoption of the initial articles, an amendment to the articles to confer upon one or more directors voting powers greater than or less than those of other directors requires the approval of all of the shareholders entitled to vote on the amendment. If the articles provide that any director has more or less than one vote on any matter, every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the voting power of the directors. Unless otherwise provided in the articles, the bylaws, or the resolution establishing the committee or the subcommittee, any such provision conferring greater or lesser voting power applies to voting in a committee or subcommittee.

History: *1981 c 270 s 40; 1993 c 17 s 19; 2008 c 233 art 1 s 8*

302A.239 ACTION WITHOUT MEETING.

Subdivision 1. **Method.** An action required or permitted to be taken at a board meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

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Subd. 2. **Effective time.** The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of directors, unless a different effective time is provided in the written action.

Subd. 3. **Notice; liability.** When written action is permitted to be taken by less than all directors, all directors shall be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby.

History: *1981 c 270 s 41; 1982 c 497 s 25; 2002 c 311 art 1 s 13,14*

302A.241 COMMITTEES.

Subdivision 1. **Generally.** A resolution approved by the affirmative vote of a majority of the directors currently holding office 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 and committees formed pursuant to section 302A.673, subdivision 1, paragraph (d), are subject at all times to the direction and control of the board.

Subd. 2. **Membership.** Committee members shall be natural persons. Unless the articles or bylaws provide for a different membership or manner of appointment, 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.

Subd. 2a. **Subcommittees.** Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or context clearly indicates that a different meaning is intended, any reference to a committee is deemed to include a subcommittee, and any reference to a committee member is deemed to include a subcommittee member.

Subd. 3. [Repealed, 1982 c 497 s 73]

Subd. 4. **Procedure.** Sections 302A.231 to 302A.239 apply to committees and members of committees to the same extent as those sections apply to the board and directors.

Subd. 5. **Minutes.** Minutes, if any, of committee meetings shall be made available upon request to members of the committee and to any director.

Subd. 6. **Standard of conduct.** The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 302A.251.

Subd. 7. **Committee members deemed directors.** Committee members are deemed to be directors for purposes of sections 302A.251, 302A.255, and 302A.521.

History: *1981 c 270 s 42; 1982 c 497 s 26,27; 1989 c 172 s 5; 1993 c 17 s 20; 2006 c 250 art 1 s 20; 2008 c 233 art 1 s 9*

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

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302A.251 STANDARD OF CONDUCT.

Subdivision 1. **Standard; liability.** A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

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.

Subd. 3. **Presumption of assent; dissent.** A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

(a) objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose of this chapter;

(b) votes against the action at the meeting; or

(c) is prohibited by section 302A.255 from voting on the action.

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

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

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

(c) under section 302A.559 or 80A.76;

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

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

Subd. 5. **Considerations.** In discharging the duties of the position of director, a director may, in considering the best interests of the corporation, consider the interests of the corporation's employees,

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customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the corporation and its shareholders including the possibility that these interests may be best served by the continued independence of the corporation.

History: *1981 c 270 s 44; 1982 c 497 s 29,30; 1987 c 2 s 2; 1Sp1987 c 1 s 18; 1989 c 172 s 6; 2006 c 196 art 1 s 52; art 2 s 7*

302A.255 DIRECTOR CONFLICTS OF INTEREST.

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

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

(b) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by (1) the holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote;

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

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

Subd. 2. **Material financial interest.** For purposes of this section:

(a) A resolution fixing the compensation of a director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, is not void or voidable or considered to be a contract or other transaction between a corporation and one or more of its directors for purposes of this section even though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified or even though other directors voting upon the resolution are also receiving compensation from the corporation; and

(b) A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and the brothers and sisters of the spouse of the director, or any combination of them have a material financial interest. For purposes of this section, a contract or other transaction between a corporation and the spouse, parents, children and spouses of children, brothers and sisters, spouses of brothers and sisters, and the brothers and sisters of the spouse of a director, or any combination of them, is considered to be a transaction between the corporation and the director.

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

History: *1981 c 270 s 45; 1982 c 497 s 31; 1987 c 104 s 17; 1Sp1987 c 1 s 19; 1993 c 17 s 21; 2000 c 264 s 3; 2008 c 233 art 1 s 10*

OFFICERS

302A.301 OFFICERS REQUIRED.

A corporation shall have one or more natural persons exercising the functions of the offices, however designated, of chief executive officer and chief financial officer.

History: *1981 c 270 s 46*

302A.305 DUTIES OF REQUIRED OFFICERS.

Subdivision 1. **Presumption; modification.** Unless the articles, the bylaws, or a resolution adopted by the board and not inconsistent with the articles or bylaws, provide otherwise, the chief executive officer and chief financial officer have the duties specified in this section.

Subd. 2. **Chief executive officer.** The chief executive officer shall:

(a) have general active management of the business of the corporation;

(b) when present, preside at all meetings of the board and of the shareholders;

(c) see that all orders and resolutions of the board are carried into effect;

(d) sign and deliver in the name of the corporation any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some other officer or agent of the corporation;

(e) maintain records of and, whenever necessary, certify all proceedings of the board and the shareholders; and

(f) perform other duties prescribed by the board.

Subd. 3. **Chief financial officer.** The chief financial officer shall:

(a) keep accurate financial records for the corporation;

(b) deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;

(c) endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers therefor;

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(d) disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;

(e) render to the chief executive officer and the board, whenever requested, an account of all transactions by the chief financial officer and of the financial condition of the corporation; and

(f) perform other duties prescribed by the board or by the chief executive officer.

History: *1981 c 270 s 47*

302A.311 OTHER OFFICERS.

The board may elect or appoint, in a manner set forth in the articles or bylaws or in a resolution approved by the affirmative vote of a majority of the directors present, any other officers the board deems necessary for the operation and management of the corporation, each of whom shall have the powers, rights, duties, responsibilities, and terms in office provided for in the articles or bylaws or determined by the board. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the chief executive officer may appoint one or more officers, other than the chief financial officer. An election or appointment as described in this section is subject to the provisions of a shareholder control agreement.

History: *1981 c 270 s 48; 2010 c 250 art 1 s 3*

302A.315 MULTIPLE OFFICES.

Any number of offices or functions of those offices may be held or exercised by the same person. If a document must be signed by persons holding different offices or functions and a person holds or exercises more than one of those offices or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

History: *1981 c 270 s 49*

302A.321 OFFICERS DEEMED ELECTED.

In the absence of an election or appointment of officers by the board, the person or persons exercising the principal functions of the chief executive officer or the chief financial officer are deemed to have been elected to those offices, except for the purpose of determining the location of the principal executive office, which in that case is the registered office of the corporation.

History: *1981 c 270 s 50*

302A.331 CONTRACT RIGHTS.

The election or appointment of a person as an officer or agent does not, of itself, create contract rights. A corporation may enter into a contract with an officer or agent for a period of time if, in the board's judgment, the contract would be in the best interests of the corporation. The fact that the contract may be for a term longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

History: *1981 c 270 s 51*

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302A.341 RESIGNATION; REMOVAL; VACANCIES.

Subdivision 1. **Resignation.** An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.

Subd. 2. **Removal.** An officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present. An officer appointed by the chief executive officer may also be removed at any time, with or without cause, by the chief executive officer. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the chief executive officer of a corporation that is not a closely held corporation may remove an officer elected or appointed by the board, other than the chief financial officer. A removal as described in this subdivision is subject to the provisions of a shareholder control agreement and is without prejudice to any contractual rights of the officer.

Subd. 3. **Vacancy.** A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief executive officer or chief financial officer shall, be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to section 302A.321.

History: *1981 c 270 s 52; 2010 c 250 art 1 s 4*

302A.351 DELEGATION.

Unless prohibited by the articles or bylaws or by a resolution approved by the affirmative vote of a majority of the directors present, an officer may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. An officer who delegates the duties or powers of an office is subject to the standard of conduct for an officer stated in section 302A.361 with respect to: (1) the act of delegation; and (2) the supervision of persons to whom those duties and powers are so delegated.

History: *1981 c 270 s 53; 2014 c 170 s 9*

302A.361 STANDARD OF CONDUCT.

An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been an officer of the corporation. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 302A.351 is deemed an officer for purposes of this section and sections 302A.467 and 302A.521.

History: *1981 c 270 s 54; 2014 c 170 s 10*

SHARES; SHAREHOLDERS

302A.401 AUTHORIZED SHARES.

Subdivision 1. **Board may authorize.** Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.

Subd. 2. **Terms of shares.** All the shares of a corporation:

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(a) shall be of one class and one series, unless the articles establish, or authorize the board to establish, more than one class or series;

(b) shall be common shares entitled to vote and shall have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent that the articles have fixed the relative rights and preferences of different classes and series; and

(c) shall have, unless a different par value is specified in the articles, a par value of one cent per share, solely for the purpose of a statute or rule imposing a tax or fee based upon the capitalization of a corporation, and a par value fixed by the board for the purpose of a statute or rule requiring the shares of the corporation to have a par value.

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.

(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) Filing a statement with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles for purposes of sections 302A.135, 302A.137, and 302A.471. Filing an amendment of such a statement with the secretary of state is considered an amendment of the articles for purposes of sections 302A.135, 302A.137, and 302A.471.

Subd. 4. **Specific terms.** Without limiting the authority granted in this section, a corporation may issue shares of a class or series:

(a) subject to the right of the corporation to redeem any of those shares at the price fixed for their redemption by the articles or by the board or at a price determined in the manner specified by the articles or by the board;

(b) entitling the shareholders to cumulative, partially cumulative, or noncumulative distributions in the amounts fixed by the articles or by the board or in amounts determined in the manner specified by the articles or by the board;

(c) having preference over any class or series of shares for the payment of distributions of any or all kinds;

(d) convertible into shares of any other class or any series of the same or another class on the terms fixed by the articles or by the board or on terms determined in the manner specified by the articles or by the board; or

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(e) having full, partial, or no voting rights, except as provided in section 302A.137.

History: *1981 c 270 s 55; 1982 c 497 s 32; 1985 c 248 s 70; 1987 c 104 s 18; 1991 c 49 s 3,4; 1993 c 17 s 22,23; 1994 c 417 s 2; 1997 c 10 art 1 s 11; 2004 c 199 art 14 s 12; 2006 c 250 art 1 s 21*

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

Subdivision 1. **Power to effect.** A corporation may effect a share dividend or a division or combination of its shares as provided in this section.

Subd. 2. **When shareholder approval required; filing of articles of amendment.** (a) Articles of amendment must be adopted by the board and the shareholders under section 302A.135 and, if required, section 302A.137 to effect a division or combination if, as a result of the proposed division or combination:

(1) the rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or

(2) the percentage of authorized shares of any class or series remaining unissued after the division or combination will exceed the percentage of authorized shares of that class or series that were unissued before the division or combination.

(b) If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by section 302A.139.

Subd. 3. **By action of board alone; filing of articles of amendment.** (a) Subject to the restrictions provided in subdivision 2 or any provision in the articles that states that section 302A.402, subdivision 3, does not apply, 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 share dividend, 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, but only if the amendment will not result in the percentage of authorized shares of any class or series remaining unissued after the share dividend, division, or combination exceeding the percentage of authorized shares of that class or series that were unissued before the share dividend, division, or combination, and make any other change necessary or appropriate to ensure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the share dividend, division, or combination.

(b) If a share dividend, 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 share dividend, division, or combination exceeding the percentage of authorized shares of that class or series that were unissued before the share dividend, division, or combination.

Subd. 4. **Changes in voting rights; fractional shares.** For purposes of this section, an increase or decrease in the relative voting rights of the shares that are the subject of the share dividend, division, or combination that arises solely from the increase or decrease in the number of shares outstanding is not an adverse effect on the outstanding shares of any class or series and any increase in the percentage of authorized

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shares remaining unissued arising solely from the elimination of fractional shares under section 302A.423 must be disregarded.

History: *1991 c 49 s 5; 1992 c 603 s 1; 1993 c 17 s 24-26; 1997 c 10 art 1 s 12; 1999 c 85 art 1 s 6; 2004 c 199 art 14 s 13; 2010 c 250 art 1 s 5,6*

302A.403 SUBSCRIPTIONS FOR SHARES.

Subdivision 1. **Signed writing.** A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.

Subd. 2. **Irrevocable period.** Unless otherwise provided in the subscription agreement, or unless all of the subscribers and, if in existence, the corporation consent to a shorter or longer period, a subscription for shares is irrevocable for a period of six months.

Subd. 3. **Payment; installments.** A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times, or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board, but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.

Subd. 4. **Method of collection; cancellation or sale for account of subscriber.** (a) Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation.

(b) If the amount due on a subscription for shares remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber, the shares subscribed for may be offered for sale by the corporation for a price in money equaling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale. If the shares subscribed for are sold pursuant to this paragraph, the corporation shall pay to the delinquent subscriber or to the delinquent subscriber's legal representative the lesser of (i) the excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale, and (ii) the amount actually paid by the delinquent subscriber. If the shares subscribed for are not sold pursuant to this paragraph, the corporation may collect the amount due in the same manner as a debt due the corporation or cancel the subscription in accordance with paragraph (c).

(c) If the amount due on a subscription for shares remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber and the shares subscribed for by the delinquent subscriber have not been sold pursuant to paragraph (b), the corporation may cancel the subscription, in which event the shares subscribed for must be restored to the status of authorized but unissued shares, the corporation may retain the portion of the subscription price actually paid that does not exceed ten percent of the subscription price, and the corporation shall refund to the delinquent subscriber or the delinquent subscriber's legal representative that portion of the subscription price actually paid which exceeds ten percent of the subscription price.

History: *1981 c 270 s 56; 1982 c 497 s 33,34; 1993 c 17 s 27,28*

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

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

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(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, 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.

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

Subd. 3. **Payment; liability; contribution; statute of limitations.** (a) A corporation shall issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassessable" shares are shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation. Consideration in the form of a promissory note, a check, or a written agreement to transfer property to a corporation in the future is fully paid when the note, check, or written agreement is delivered to the corporation, and consideration in the form of services to be rendered to the corporation is fully paid when the issuance of the shares is authorized or approved pursuant to subdivision 1, paragraph (a).

(b) If shares are issued in violation of paragraph (a), the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:

(1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;

(2) The person to whom the shares were issued; and

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(3) A successor or transferee of the interest in the corporation of a person described in clause (1) or (2), including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in clause (1) or (2), or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.

(c)(1) A pledgee or holder of any other security interest in all or any shares that have been issued in violation of paragraph (a) is not liable under paragraph (b) if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.

(2) A pledgee, holder of any other security interest, or legal representative is liable under paragraph (b) only in that capacity. The liability of the person under paragraph (b) is limited to the assets held in that capacity for the person or estate of the person described in clause (1) or (2) of paragraph (b).

(3) Each person liable under paragraph (b) has a full right of contribution on an equitable basis from all other persons liable under paragraph (b) for the same transaction.

(4) An action shall not be maintained against a person under paragraph (b) unless commenced within two years from the date on which shares are issued in violation of paragraph (a).

History: *1981 c 270 s 57; 1982 c 497 s 35; 1987 c 104 s 19,20; 1991 c 49 s 6; 1994 c 417 s 3; 1997 c 10 art 1 s 13; 1999 c 85 art 1 s 7; 2000 c 264 s 4*

302A.409 RIGHTS TO PURCHASE.

Subdivision 1. **Definition.** "Right to purchase" means the right, however designated, pursuant to the terms of a security or agreement, entitling a person to subscribe to, purchase, or acquire securities of a corporation, whether by the exchange or conversion of other securities, or by the exercise of options, warrants, or other rights, or otherwise, but excluding preemptive rights.

Subd. 2. **Transferability; separability.** Rights to purchase may be either transferable or nontransferable and either separable or inseparable from other securities of the corporation, as the board may determine under this section.

Subd. 3. **Issuance permitted.** A corporation may issue rights to purchase after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, or by an officer pursuant to board authorization, subject to any restrictions in the articles. Notwithstanding any provision of this chapter, a corporation may issue rights to purchase or amend the instrument or agreement fixing the terms, provisions, and conditions of the rights to purchase to include terms and conditions that prevent the holder of a specified percentage of the outstanding shares of the corporation, including subsequent transferees of the holder, from exercising those rights to purchase.

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: *1981 c 270 s 58; 1987 c 104 s 21; 1995 c 128 art 4 s 1; 1997 c 10 art 1 s 14; 2000 c 264 s 5*

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302A.413 PREEMPTIVE RIGHTS.

Subdivision 1. **Presumption; modification.** Unless denied or limited in the articles or by the board pursuant to section 302A.401, subdivision 2, clause (b), a shareholder of a corporation has the preemptive rights provided in this section.

Subd. 2. **Definition.** A preemptive right is the right of a shareholder to acquire a certain fraction of the unissued securities or rights to purchase securities of a corporation before the corporation may offer them to other persons.

Subd. 3. **When right accrues.** A shareholder has a preemptive right whenever the corporation proposes to issue new or additional shares or rights to purchase shares of the same series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder, or new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder.

Subd. 4. **Exemptions.** Unless otherwise provided in the articles, a shareholder does not have a preemptive right pursuant to this section to acquire securities or rights to purchase securities that are:

(a) issued for a consideration other than money;

(b) issued pursuant to a plan of merger or exchange;

(c) issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;

(d) issued upon exercise of previously issued rights to purchase securities of the corporation;

(e) issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this clause, "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by either state or federal securities laws; or

(f) issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

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

Subd. 6. **Waiver.** A shareholder may waive a preemptive right in writing. The waiver is binding upon the shareholder whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed issuance described in the waiver.

Subd. 7. **Notice.** When proposing the issuance of securities with respect to which shareholders have preemptive rights under this section, the board shall cause notice to be given to each shareholder entitled to preemptive rights. The notice shall be given at least ten days before the date by which the shareholder must exercise a preemptive right and shall contain:

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(a) the number or amount of securities with respect to which the shareholder has a preemptive right, and the method used to determine that number or amount;

(b) the price and other terms and conditions upon which the shareholder may purchase them; and

(c) the time within which and the method by which the shareholder must exercise the right.

Subd. 8. **Issuance to others.** Securities that are subject to preemptive rights but not acquired by shareholders in the exercise of those rights may, for a period not exceeding one year after the date fixed by the board for the exercise of those preemptive rights, be issued to persons the board determines, at a price not less than, and on terms no more favorable to the purchaser than, those offered to the shareholders. Securities that are not issued during that one year period shall, at the expiration of the period, again become subject to preemptive rights of shareholders.

Subd. 9. **Modification.** If the shareholders of a corporation are entitled to cumulative voting in the election of directors, no amendment to the articles which has the effect of denying, limiting, or modifying the preemptive rights provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

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: *1981 c 270 s 59; 1982 c 497 s 36; 1983 c 368 s 5; 1987 c 104 s 22; 1991 c 49 s 7; 1993 c 17 s 29,30; 1997 c 10 art 1 s 15*

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

Subdivision 1. **Certificated; uncertificated.** The shares of a corporation shall be either certificated shares or uncertificated shares. Each holder of certificated shares issued in accordance with section 302A.405, subdivision 3, paragraph (a) is entitled to a certificate of shares.

Subd. 2. **Certificates; signature required.** Certificates shall be signed by an agent or officer authorized in the articles or bylaws to sign share certificates or, in the absence of an authorization, by an officer.

Subd. 3. **Signature valid.** If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.

Subd. 4. **Form of certificate.** A certificate representing shares of a corporation shall contain on its face:

(a) the name of the corporation;

(b) a statement that the corporation is incorporated under the laws of this state;

(c) the name of the person to whom it is issued; and

(d) the number and class of shares, and the designation of the series, if any, that the certificate represents.

Subd. 5. **Limitations set forth.** A certificate representing shares issued by a corporation authorized to issue shares of more than one class or series shall set forth upon the face or back of the certificate, or shall

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state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class or series authorized to be issued, so far as they have been determined, and the authority of the board to determine the relative rights and preferences of subsequent classes or series.

Subd. 6. **Prima facie evidence.** A certificate signed as provided in subdivision 2 is prima facie evidence of the ownership of the shares referred to in the certificate.

Subd. 7. **Uncertificated shares.** Unless uncertificated shares are prohibited by the articles or bylaws, a corporation may provide that some or all of any or all classes and series of its shares will be uncertificated shares. Such an action 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 17A 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: *1981 c 270 s 60; 1997 c 10 art 1 s 16; 1999 c 85 art 1 s 8; 2006 c 250 art 1 s 22*

302A.419 LOST SHARE CERTIFICATES; REPLACEMENT.

Subdivision 1. **Issuance.** A new share certificate may be issued pursuant to section 336.8-405 in place of one that is alleged to have been lost, stolen, or destroyed.

Subd. 2. **Not overissue.** The issuance of a new certificate under this section does not constitute an overissue of the shares it represents.

History: *1981 c 270 s 61*

302A.423 FRACTIONAL SHARES.

Subdivision 1. **Issuance; alternative exchange.** A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, it shall in connection with an original issuance of shares:

(a) arrange for the disposition of fractional interests by those entitled to them;

(b) pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or

(c) issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.

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. Subject to the rights, if any, of dissenting shareholders under section 302A.471, 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

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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: *1981 c 270 s 62; 1993 c 17 s 31; 1997 c 10 art 1 s 17; 2014 c 170 s 11*

302A.425 LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS WITH RESPECT TO SHARES.

A subscriber for shares or a shareholder of a corporation is under no obligation to the corporation or its creditors with respect to the shares subscribed for or owned, except to pay to the corporation the full consideration for which the shares are issued or to be issued.

History: *1981 c 270 s 63*

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

Subdivision 1. **How imposed.** A restriction on the transfer or registration of transfer of securities of a corporation may be imposed in the articles, in the bylaws, by a resolution adopted by the shareholders, or by an agreement among or other written action by a number of shareholders or holders of other securities or among them and the corporation. A restriction is not binding with respect to securities issued prior to the adoption of the restriction, unless the holders of those securities are parties to the agreement or voted in favor of the restriction.

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, is valid and specifically enforceable 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 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: *1981 c 270 s 64; 1997 c 10 art 1 s 18; 2010 c 250 art 1 s 7*

302A.431 REGULAR MEETINGS OF SHAREHOLDERS.

Subdivision 1. **Frequency.** Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles or bylaws or by subdivision 2.

Subd. 2. **Demand by shareholder.** If a regular meeting of shareholders has not been held during the immediately preceding 15 months, a shareholder or shareholders holding three percent or more of the voting power of all shares entitled to vote may demand a regular meeting of shareholders by written notice of demand given to the chief executive officer or the chief financial officer of the corporation. Within 30 days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the corporation. If the board fails to cause a regular meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the regular meeting by giving notice as required by section 302A.435, all at the expense of the corporation.

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Subd. 3. **Time; place.** A regular meeting, if any, shall be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subdivision 2 shall be held in the county where the principal executive office of the corporation is located. To the extent authorized in the articles or bylaws, the board of directors may determine that a regular meeting of the shareholders shall be held solely by means of remote communication in accordance with section 302A.436, subdivision 2.

Subd. 4. **Elections required; other business.** At each regular meeting of shareholders there shall be an election of qualified successors for directors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the shareholders may be transacted at a regular meeting.

History: *1981 c 270 s 65; 1982 c 497 s 37; 2002 c 311 art 1 s 15*

302A.433 SPECIAL MEETINGS OF SHAREHOLDERS.

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

(a) the chief executive officer;

(b) the chief financial officer;

(c) two or more directors;

(d) a person authorized in the articles or bylaws to call special meetings; or

(e) a shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by 25 percent or more of the voting power of all shares entitled to vote.

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

Subd. 3. **Time; place.** Special meetings shall be held on the date and at the time and place fixed by the chief executive officer, the chief financial officer, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subdivision 2 shall be held in the county where the principal executive office is located. To the extent authorized in the articles or bylaws, the board of directors may determine that a special meeting of the shareholders shall be held solely by means of remote communication in accordance with section 302A.436, subdivision 2.

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Subd. 4. **Business limited.** The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting in accordance with section 302A.435, subdivision 4.

History: *1981 c 270 s 66; 1982 c 497 s 38,39; 1987 c 104 s 23; 1Sp1987 c 1 s 20,21; 2002 c 311 art 1 s 16*

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, unless:

(1) the meeting is an adjourned meeting to be held not more than 120 days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; 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 regular meeting notices and notices of any special meetings held during the period between the two regular meetings; or

(ii) all payments of dividends sent during a 12-month period, provided there are at least two sent during the 12-month period.

If notice of an adjourned meeting is required under clause (1), then the date for determination of shares entitled to notice of and entitled to vote at the adjourned meeting must comply with section 302A.445, subdivision 1, except that if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.

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.

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

Subd. 3. **Contents.** The notice shall contain the date, time, and place of the meeting, the information with respect to dissenters' rights required by section 302A.473, subdivision 2, if applicable, and any other information required by this chapter. In the case of a special meeting, the notice shall contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.

Subd. 4. **Waiver; objections.** A shareholder may waive notice of a meeting of shareholders. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of

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business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

History: *1981 c 270 s 67; 1982 c 497 s 40; 1987 c 104 s 24; 1989 c 172 s 7; 1991 c 49 s 8; 1993 c 17 s 32,33; 1994 c 417 s 4; 2010 c 250 art 1 s 8*

302A.436 REMOTE COMMUNICATIONS FOR SHAREHOLDER MEETINGS.

Subdivision 1. MS 2000 [Renumbered subd 2]

Subdivision 1. **Construction and application.** This section shall be construed and applied to:

(1) facilitate remote communication consistent with other applicable law; and

(2) be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.

Subd. 2. MS 2000 [Renumbered subd 3]

Subd. 2. **Shareholder meetings held solely by means of remote communication.** To the extent authorized in the articles or bylaws and determined by the board, a regular or special meeting of shareholders may be held solely by any combination of means of remote communication through which the shareholders may participate in the meeting, if notice of the meeting is given to every holder of shares entitled to vote required by this chapter for a meeting, and if the number of shares held by the shareholders participating in the meeting would be sufficient to constitute a quorum at a meeting. Participation by a shareholder by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 302A.449 are met.

Subd. 3. MS 2000 [Renumbered subd 7]

Subd. 3. **Participation in shareholder meetings by means of remote communication.** To the extent authorized in the articles or bylaws and determined by the board, a shareholder not physically present in person or by proxy at a regular or special meeting of shareholders may, by means of remote communication, participate in a meeting of shareholders held at a designated place. Participation by a shareholder by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 302A.449 are met.

Subd. 4. **Requirements for meetings held solely by means of remote communication and for participation by means of remote communication.** In any meeting of shareholders held solely by means of remote communication under subdivision 2 or in any meeting of shareholders held at a designated place in which one or more shareholders participate by means of remote communication under subdivision 3:

(1) the corporation shall implement reasonable measures to verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder; and

(2) the corporation shall implement reasonable measures to provide each shareholder participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:

(i) read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(ii) if allowed by the procedures governing the meeting, have the shareholder's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and

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(iii) if otherwise entitled, vote on matters submitted to the shareholders.

Subd. 5. **Notice to shareholders.** (a) Any notice to shareholders given by the corporation under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the shareholder to whom the notice is given is effective when given. The notice is deemed given:

(1) if by facsimile communication, when directed to a telephone number at which the shareholder has consented to receive notice;

(2) if by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;

(3) if by a posting on an electronic network on which the shareholder has consented to receive notice, together with separate notice to the shareholder of the specific posting, upon the later of:

(i) the posting; and

(ii) the giving of the separate notice; and

(4) if by any other form of electronic communication by which the shareholder has consented to receive notice, when directed to the shareholder.

An affidavit of the secretary, other authorized officer, or authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

(b) Consent by a shareholder to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the shareholder, provided that no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.

Subd. 6. **Revocation.** Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the shareholder submitting the ballot, vote, authorization, or consent so long as the revocation is received by an officer of the corporation at or before the meeting or before an action without a meeting is effective according to section 302A.441.

Subd. 7. **Waiver.** Waiver of notice by a shareholder of a meeting by means of authenticated electronic communication may be given in the manner provided in section 302A.435, subdivision 4. Participation in a meeting by means of remote communication described in subdivisions 2 and 3 is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

History: *1991 c 49 s 9; 2002 c 311 art 1 s 17*

302A.437 ACT OF THE SHAREHOLDERS.

Subdivision 1. **Majority required.** Except for the election of directors, which is governed by section 302A.215, the shareholders shall take action by the affirmative vote of the holders of the greater of (1) a majority of the voting power of the shares present and entitled to vote on that item of business, or (2) a majority of the voting power of the minimum number of the shares entitled to vote that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles require a

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larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

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: *1981 c 270 s 68; 1982 c 497 s 41; 1987 c 104 s 25; 1991 c 49 s 10; 1993 c 17 s 34; 1997 c 10 art 1 s 19; 2004 c 199 art 14 s 14*

302A.439 CONTRACTUAL REQUIREMENT TO SUBMIT MATTER TO SHAREHOLDERS.

A corporation may agree to submit a matter to its shareholders whether or not the board of directors determines, at any time after approving the matter, that the matter is no longer advisable and recommends that shareholders reject it.

History: *2006 c 250 art 1 s 23*

302A.441 ACTION WITHOUT A MEETING.

Subdivision 1. **Method.** An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the shareholders entitled to vote on that action. The articles of a corporation that is not a publicly held corporation may provide that any action may be taken by written action signed, or consented to by authenticated electronic communication, by shareholders having voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present, but in no event may written action be taken by holders of less than a majority of the voting power of all shares entitled to vote on that action. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all shareholders requires the approval of all of the shareholders entitled to vote on the amendment.

Subd. 2. **Effective time.** The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the required shareholders, unless a different effective time is provided in the written action.

Subd. 3. **Notice and liability.** When written action is permitted to be taken by less than all shareholders, all shareholders who did not sign or consent to the written action must be notified of its text and effective time no later than five days after the effective time of the action. Failure to provide the notice does not invalidate the written action. A shareholder who does not sign or consent to the written action has no liability for any action authorized by the written action.

History: *1981 c 270 s 69; 2002 c 311 art 1 s 18; 2004 c 199 art 14 s 15; 2006 c 250 art 1 s 24; 2014 c 170 s 12*

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302A.443 QUORUM.

The holders of a majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. If a quorum is present when a duly called or held meeting is convened, the shareholders present may continue to transact business until adjournment, even though the withdrawal of a number of shareholders originally present leaves less than the proportion or number otherwise required for a quorum.

History: *1981 c 270 s 70; 1982 c 497 s 42*

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.

Subd. 2. **Certification of beneficial owner.** A resolution approved by the affirmative vote of a majority of the directors present may establish procedure whereby a shareholder may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.

Subd. 3. **One vote per share.** Unless otherwise provided in the articles or in the terms of the shares, a shareholder has one vote for each share held.

Subd. 4. **Nonshareholders.** The articles may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this section.

Subd. 5. **Jointly owned shares.** Shares owned by two or more shareholders may be voted by any one of them unless the corporation receives written notice from any one of them denying the authority of that person to vote those shares.

Subd. 6. **Manner of voting; presumption.** Except as provided in subdivision 5, a holder of shares entitled to vote may vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way.

History: *1981 c 270 s 71; 1982 c 497 s 43,44; 1984 c 618 s 15; 1997 c 10 art 1 s 20*

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

Subdivision 1. **Shares held by other corporation.** Shares of a corporation registered in the name of another domestic or foreign corporation may be voted by the chief executive officer or another legal representative of that domestic or foreign corporation.

Subd. 2. **Shares held by subsidiary.** Except as provided in subdivision 3, shares of a corporation registered in the name of a subsidiary are not entitled to be voted on any matter.

Subd. 3. **Shares controlled in fiduciary capacity.** Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter,

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except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation or, with respect to shares in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the shares.

Subd. 4. **Voting by certain representatives.** Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney-in-fact may be voted by the person, either in person or by proxy, without registration of those shares in the name of the person. Shares registered in the name of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian shall not vote shares held by the person unless they are registered in the name of the person.

Subd. 5. **Voting by trustee in bankruptcy or receiver.** Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.

Subd. 6. **Shares held by other organizations.** Shares registered in the name of an organization not described in subdivisions 1 to 5 may be voted either in person or by proxy by the legal representative of that organization.

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

History: *1981 c 270 s 72; 1987 c 104 s 26; 1993 c 17 s 35,36; 2006 c 250 art 1 s 25*

302A.449 PROXIES.

Subdivision 1. **Authorization.** (a) A shareholder may cast or authorize the casting of a vote by (1) 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, or (2) telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the shareholder, of an appointment of a proxy with the corporation or the corporation's duly authorized agent at or before the meeting at which the appointment is to be effective. The telephonic transmission or authenticated electronic communication 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 reasonably concluded that the telephonic transmission or authenticated electronic communication 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. A proxy so appointed may vote on behalf of the shareholder, or otherwise participate, in a meeting by remote communication according to section 302A.436 to the extent the shareholder appointing the proxy would have been entitled to participate by remote communication according to section 302A.436 if the shareholder did not appoint the proxy.

(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 consented to by authenticated electronic communication by any one of them, unless the corporation receives

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from any one of those shareholders written notice or authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

Subd. 2. **Duration.** The appointment of a proxy is valid for 11 months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the shares or in the corporation.

Subd. 3. **Termination.** An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with an officer of the corporation, or by filing a new written appointment of a proxy, signed by the shareholder, with an officer of the corporation, or by telephonic transmission or authenticated electronic communication, whether or not accompanied by written instructions of the shareholder, of a new appointment of a proxy with the corporation or the corporation's duly authorized agent. Termination in any such manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation or when the telephonic transmission or authenticated electronic communication is received by the corporation or the corporation's duly authorized agent. The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the new appointment was authorized by the shareholder.

Subd. 4. **Revocation by death, incapacity.** The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by an officer of the corporation before the proxy exercises the authority under that appointment.

Subd. 5. **Multiple proxies.** Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:

(a) Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and

(b) If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares shall be voted as a majority of the proxies determine. If the proxies are equally divided, the shares shall not be voted.

Subd. 6. **Vote of proxy accepted; liability.** Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the corporation may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

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

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Subd. 8. **Limited authority.** If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of section 302A.437, subdivision 1, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subdivision.

History: *1981 c 270 s 73; 1984 c 488 s 17; 1Sp1985 c 5 s 18; 1986 c 431 s 1; 1991 c 49 s 11,12; 1993 c 17 s 37; 1997 c 10 art 1 s 21; 2002 c 311 art 1 s 19; 2008 c 233 art 1 s 11*

302A.453 VOTING TRUSTS.

Subdivision 1. **Authorization; period; termination.** Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding 15 years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A copy of the agreement shall be filed with the corporation.

Subd. 2. **Voting by trustees.** Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in section 302A.445, subdivision 5.

History: *1981 c 270 s 74*

302A.455 SHAREHOLDER VOTING AGREEMENTS.

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

History: *1981 c 270 s 75; 1982 c 497 s 45; 1987 c 104 s 27*

302A.457 SHAREHOLDER CONTROL AGREEMENTS.

Subdivision 1. **Authorized.** A written agreement among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subdivision 2. The agreement may also include as parties persons who are neither shareholders nor subscribers.

Subd. 2. **Method of approval; enforceability; copies.** (a) A written agreement as described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among the shareholders and subscribers, 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 and others by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who, on the date the agreement first becomes effective, 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. A written agreement as described in subdivision 1 may provide for its amendment through nonunanimous means.

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(b) The agreement is enforceable by the persons 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.

Subd. 3. **Liability.** The effect of an agreement authorized by this section is to relieve the board and the director or directors in their capacities as directors of, and to impose upon the parties to the agreement, the liability for acts or omissions imposed by law upon directors to the extent that and so long as the discretion or powers of the directors in the management of the business and affairs of the corporation are exercised by the shareholders under a provision in the agreement. A shareholder is not liable pursuant to this subdivision by virtue of a shareholder vote, if the shareholder had no right to vote on the action.

Subd. 4. **Other agreements.** This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this section.

History: *1981 c 270 s 76; 1982 c 497 s 46,47; 1987 c 104 s 28,29; 1997 c 10 art 1 s 22; 1999 c 85 art 1 s 9,10*

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.

Subd. 2. **Other documents required.** A corporation shall keep at its principal executive office or at another place or places within the United States determined by the board, and, if its principal executive office or any such other place is outside of this state, shall make available at its registered office or its principal executive office within this state within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subdivision 4, originals or copies of:

(a) records of all proceedings of shareholders for the last three years;

(b) records of all proceedings of the board for the last three years;

(c) its articles and all amendments currently in effect;

(d) its bylaws and all amendments currently in effect;

(e) financial statements required by section 302A.463 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;

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(f) reports made to shareholders generally within the last three years;

(g) a statement of the names and usual business addresses of its directors and principal officers;

(h) voting trust agreements described in section 302A.453;

(i) shareholder control agreements described in section 302A.457; and

(j) a copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under section 302A.111, subdivision 7.

Subd. 3. **Financial records.** A corporation shall keep appropriate and complete financial records.

Subd. 4. **Right to inspect.** (a) A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the corporation shall make available within ten days after receipt by an officer of the corporation of the written demand:

(1) the share register; and

(2) all documents referred to in subdivision 2.

(b) A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination.

(c) A shareholder, beneficial owner, or a holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged or verified in the manner provided in chapter 358, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office in this state or at its principal place of business.

(d) For purposes of this section, a "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

Subd. 4a. **Protective orders.** On application of the corporation, a court in this state may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed 12 months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed 12 months and in total not to exceed 36 months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate. This subdivision does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the corporate records that may be copied or examined under subdivision 4 or the use or distribution of the records by the demanding shareholder, beneficial owner, or holder of a voting trust certificate.

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

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

Subd. 6. **Computerized records.** The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or micro-images, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subdivision 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subdivision 5. A copy of the conversion is admissible in evidence, and shall be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

History: *1981 c 270 s 77; 1982 c 497 s 48; 1983 c 368 s 6,7; 1985 c 97 s 2-4; 1991 c 49 s 13-15; 1992 c 363 art 1 s 1; 1993 c 17 s 38; 1997 c 10 art 1 s 23; 2006 c 250 art 1 s 26; 2010 c 250 art 1 s 9*

302A.463 FINANCIAL STATEMENTS.

(a) A corporation shall prepare annual financial statements within 180 days after the close of the corporation's fiscal year. The financial statement shall include at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, which shall be prepared on the basis of accounting methods reasonable in the circumstances and may be consolidated statements of the corporation and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy shall be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy shall be accompanied by a statement of the chief financial officer or other person in charge of the corporation's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

(b) Upon written request by a shareholder, a corporation shall furnish its most recent annual financial statements as required under paragraph (a) no later than ten business days after receipt of a shareholder's written request. "Furnish" for purposes of this paragraph means that the corporation shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting shareholder.

History: *1981 c 270 s 78; 1982 c 497 s 49; 1993 c 17 s 39*

302A.467 EQUITABLE REMEDIES.

If a corporation or an officer or director of the corporation violates a provision of this chapter, a court in this state may, in an action brought by a shareholder of the corporation, grant any equitable relief it deems

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just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the shareholder.

History: *1981 c 270 s 79; 1982 c 497 s 50*

302A.471 RIGHTS OF DISSENTING SHAREHOLDERS.

Subdivision 1. **Actions creating rights.** A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) unless otherwise provided in the articles, an amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder in that it:

(1) alters or abolishes a preferential right of the shares;

(2) creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(3) alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;

(4) excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; except that an amendment to the articles of an issuing public corporation that provides that section 302A.671 does not apply to a control share acquisition does not give rise to the right to obtain payment under this section; or

(5) eliminates the right to obtain payment under this subdivision;

(b) a sale, lease, transfer, or other disposition of property and assets of the corporation that requires shareholder approval under section 302A.661, subdivision 2, but not including a disposition in dissolution described in section 302A.725, subdivision 2, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

(c) a plan of merger, whether under this chapter or under chapter 322B or 322C, to which the corporation is a constituent organization, except as provided in subdivision 3, and except for a plan of merger adopted under section 302A.626;

(d) a plan of exchange, whether under this chapter or under chapter 322B or 322C, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring organization, except as provided in subdivision 3;

(e) a plan of conversion is adopted by the corporation and becomes effective;

(f) an amendment of the articles in connection with a combination of a class or series under section 302A.402 that reduces the number of shares of the class or series owned by the shareholder to a fraction of a share if the corporation exercises its right to repurchase the fractional share so created under section 302A.423; or

(g) any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

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Subd. 2. **Beneficial owners.** (a) A shareholder shall not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter shall be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and shall be treated as a dissenting shareholder under the terms of this section and section 302A.473, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

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 (1) the surviving corporation in a merger with respect to shares of the shareholder that are not entitled to be voted on the merger and are not canceled or exchanged in the merger or (2) the corporation whose shares will be acquired by the acquiring organization in a plan of exchange with respect to shares of the shareholder that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

(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.

(c) Notwithstanding subdivision 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 302A.621, is limited in accordance with the following provisions:

(1) The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Market, or the NASDAQ Global Select Market.

(2) The applicability of clause (1) is determined as of:

(i) the record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subdivision 1; or

(ii) the day before the effective date of corporate action described in subdivision 1 if there is no meeting of shareholders.

(3) Clause (1) is not applicable, and the right to obtain payment under this section is available pursuant to subdivision 1, for the holders of any class or series of shares who are required by the terms of the corporate action described in subdivision 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of a domestic or foreign corporation, or any other ownership interest of any other organization, that satisfies the standards set forth in clause (1) at the time the corporate action becomes effective.

Subd. 4. **Other rights.** The shareholders of a corporation who have a right under this section to obtain payment for their shares, or who would have the right to obtain payment for their shares absent the exception set forth in paragraph (c) of subdivision 3, do not have a right at law or in equity to have a corporate action

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described in subdivision 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

History: *1981 c 270 s 80; 1987 c 203 s 2,3; 1988 c 692 s 10; 1991 c 49 s 16; 1992 c 517 art 1 s 15; 1993 c 17 s 40; 1994 c 417 s 5; 1997 c 10 art 1 s 24; 1999 c 85 art 1 s 11; 2000 c 264 s 6,7; 2002 c 311 art 1 s 20; 2004 c 199 art 14 s 16,17; 2006 c 250 art 1 s 27-29; 2008 c 233 art 1 s 12; 2014 c 170 s 13; 2015 c 39 s 8; 2016 c 135 art 4 s 10*

302A.473 PROCEDURES FOR ASSERTING DISSENTERS' RIGHTS.

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

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

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

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

Subd. 2. **Notice of action.** If a corporation calls a shareholder meeting at which any action described in section 302A.471, subdivision 1 is to be voted upon, the notice of the meeting shall inform each shareholder of the right to dissent and shall include a copy of section 302A.471 and this section and a brief description of the procedure to be followed under these sections.

Subd. 3. **Notice of dissent.** If the proposed action must be approved by the shareholders and the corporation holds a shareholder meeting, 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.

Subd. 4. **Notice of procedure; deposit of shares.** (a) After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to (i) all shareholders who have complied with subdivision 3, (ii) all shareholders who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 302A.471, and (iii) all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:

(1) the address to which a demand for payment and certificates of certificated shares must be sent in order to obtain payment and the date by which they must be received;

(2) any restrictions on transfer of uncertificated shares that will apply after the demand for payment is received;

(3) a form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and

(4) a copy of section 302A.471 and this section and a brief description of the procedures to be followed under these sections.

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(b) In order to receive the fair value of the shares, a dissenting shareholder must demand payment and deposit certificated shares or comply with any restrictions on transfer of uncertificated shares within 30 days after the notice required by paragraph (a) was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.

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

(1) the corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the effective date of the corporate action, together with the latest available interim financial statements;

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

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

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

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

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

Subd. 7. **Petition; determination.** If the corporation receives a demand under subdivision 6, it shall, within 60 days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares, plus interest. The petition shall be filed in the county in which the registered office of the corporation is located, except that a surviving foreign corporation that receives a demand relating to the shares of a constituent domestic corporation shall file the petition in the county in this state in which the last registered office of the constituent corporation was located. The petition shall name as parties all dissenters who have demanded payment under subdivision 6 and who have not reached agreement with the corporation. The corporation shall, after filing the petition, serve all parties with a summons and copy of the petition under the Rules of Civil Procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the Rules of Civil Procedure

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apply to this proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment in cash for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the shares as determined by the court, plus interest.

Subd. 8. **Costs; fees; expenses.** (a) The court shall determine the costs and expenses of a proceeding under subdivision 7, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the corporation, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subdivision 6 is found to be arbitrary, vexatious, or not in good faith.

(b) If the court finds that the corporation has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court deems equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

(c) The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

History: *1981 c 270 s 81; 1987 c 104 s 30-33; 1993 c 17 s 41,42; 1997 c 10 art 1 s 25; 2004 c 199 art 14 s 18,19; 2014 c 170 s 14*

LOANS; OBLIGATIONS; DISTRIBUTIONS

302A.501 LOANS; GUARANTEES; SURETYSHIP.

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

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

(b) is with, or for the benefit of, a related organization, an organization in which the corporation has a financial interest, an organization with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the corporation;

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

(d) whether or not any separate consideration has been paid or promised to the corporation, has been approved by (1) the holders of two-thirds of the voting power of the shares entitled to vote which are owned

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by persons other than the interested person or persons, or (2) the unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

Subd. 2. **Interest; security.** A loan, guaranty, surety contract, or other financial assistance under subdivision 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in shares of the corporation.

Subd. 3. **Banking authority not granted.** This section does not grant any authority to act as a bank or to carry on the business of banking.

History: *1981 c 270 s 82; 1987 c 104 s 34; 1993 c 17 s 43; 1993 c 137 s 13*

302A.505 ADVANCES.

A corporation may, without a vote of the directors, advance money to its directors, officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

History: *1981 c 270 s 83*

302A.521 INDEMNIFICATION.

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

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

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

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

(e) "Special legal counsel" means counsel who has not in the preceding five years (1) represented the corporation or a related organization in a capacity other than special legal counsel, or (2) represented a director, officer, member of a committee of the board, or employee, whose indemnification is in issue.

Subd. 2. **Indemnification mandatory; standard.** (a) Subject to the provisions of subdivision 4, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

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(1) has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(2) acted in good faith;

(3) received no improper personal benefit and section 302A.255, if applicable, has been satisfied;

(4) in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

(5) in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (3), reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.

Subd. 3. **Advances.** Subject to the provisions of subdivision 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding, (a) upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subdivision 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if it is ultimately determined that the criteria for indemnification have not been satisfied, and (b) after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The written undertaking required by clause (a) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

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.

Subd. 5. **Reimbursement to witnesses.** This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

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Subd. 6. **Determination of eligibility.** (a) All determinations whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 shall be made:

(1) by the board by a majority of a quorum, if the directors who are at the time parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

(2) if a quorum under clause (1) cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;

(3) if a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to clause (1) or (2) or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;

(4) if a determination is not made under clauses (1) to (3), by the affirmative vote of the shareholders required by section 302A.437, but the shares held by parties to the proceeding must not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or

(5) if an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under paragraph (b) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the corporation or (ii) a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

Subd. 7. **Insurance.** A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.

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

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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: *1981 c 270 s 84; 1982 c 497 s 51; 1983 c 368 s 8; 1984 c 618 s 16; 1987 c 104 s 35-38; 1993 c 17 s 44; 1993 c 137 s 14; 1997 c 10 art 1 s 26,27; 2000 c 264 s 8; 2004 c 199 art 14 s 20; 2008 c 233 art 1 s 13*

302A.551 DISTRIBUTIONS.

Subdivision 1. **When permitted.** (a) The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subdivision 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous.

(b) The corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.

(c) The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution shall be measured in accordance with subdivision 3.

(d) The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.

Subd. 2. **Determination presumed proper.** A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 302A.251 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 302A.251 or 302A.559 will accrue if the requirements of this subdivision have been met.

Subd. 3. **Effect measured.** (a) In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution shall be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.

(b) The effect of any other distribution shall be measured as of the date of its authorization if payment occurs 120 days or less following the date of authorization, or as of the date of payment if payment occurs more than 120 days following the date of authorization.

(c) Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related organization, or subject to any other agreement between the corporation and the shareholder.

(d) Sections 302A.551 to 302A.559 supersede all other statutes of this state with respect to distributions, and the provisions of sections 513.41 to 513.51 do not apply to distributions made by a corporation governed by this chapter.

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Subd. 4. **Restrictions.** (a) A distribution may be made to the holders of a class or series of shares only if:

(1) All amounts payable to the holders of shares having a preference for the payment of that kind of distribution, other than those holders who give notice to the corporation of their agreement to waive their rights to that payment, are paid; and

(2) The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless the distribution is made to those shareholders in the order and to the extent of their respective priorities or the holders of shares who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution.

A determination that the payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 302A.251 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation, or other methods, reasonable in the circumstances. Liability under section 302A.251 or 302A.559 will not arise if the requirements of this paragraph are met.

(b) If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes unless those holders who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution.

History: *1981 c 270 s 85; 1982 c 497 s 52,53; 1988 c 682 s 10; 1991 c 49 s 17; 1993 c 17 s 45; 1993 c 137 s 15*

302A.553 POWER TO ACQUIRE SHARES.

Subdivision 1. **When permitted; status of shares.** (a) A corporation may acquire its own shares, subject to section 302A.551 and subdivision 3.

(b) If a corporation acquires its own shares, then any of the acquired shares that are not pledged by the corporation as security for the future payment of some or all of the purchase price for the shares constitute authorized but unissued shares of the corporation, unless the articles provide that they shall not be reissued. If the articles prohibit reissue, the number of authorized shares is reduced by the number of shares acquired.

(c) If a corporation pledges acquired shares as security for future payment of all or part of the purchase price for the shares and reissues the pledged shares in its own name; then

(1) the shares must continue to be issued and outstanding except for voting and determination of a quorum, and the shares are not considered to be present and entitled to vote at any meeting of shareholders;

(2) the corporation may not vote or exercise any other rights of a shareholder with respect to the pledged shares, but the pledgee shall have any rights, other than the right to vote, with respect to the shares to which the pledgee is entitled to by contract;

(3) if the pledge is foreclosed, the corporation shall reissue and deliver the pledged shares to or at the direction of the pledgee; and

(4) shares which are released from a pledge have the status specified in paragraph (b).

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Subd. 2. **Statement of cancellation.** If the number of authorized shares of a corporation is reduced by an acquisition of its shares, the corporation shall, no later than the time it makes its next annual report to shareholders or, if no report is made, no later than three months after the end of the fiscal year in which the acquisition occurs, file with the secretary of state a statement of cancellation showing the reduction in the authorized shares. The statement shall contain:

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares itemized by classes and series, after giving effect to the cancellation.

Subd. 3. **Limitation on share purchases.** Except for redemptions under section 302A.671, subdivision 6, a publicly held corporation shall not, directly or indirectly, purchase or agree to purchase any shares entitled to vote from a person (or two or more persons who act as a partnership, limited partnership, syndicate, or other group pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise for the purpose of acquiring, owning, or voting shares of the publicly held corporation) who beneficially owns more than five percent of the voting power of the publicly held corporation for more than the market value thereof if the shares have been beneficially owned by the person for less than two years, unless the purchase or agreement to purchase is approved at a meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote or the publicly held corporation makes an offer, of at least equal value per share, to all holders of shares of the class or series and to all holders of any class or series into which the securities may be converted. For purposes of determining the period that shares have been beneficially owned by a person:

(1) shares acquired by the person by gift from a donor are deemed to have first become beneficially owned by the person when the shares were acquired by the donor;

(2) shares acquired by a trust from the settlor of the trust, or shares acquired from the trust by a beneficiary of the trust, are deemed to have first become beneficially owned by the trust or the beneficiary when the shares were acquired by the settlor; and

(3) shares acquired by an estate or personal representative as a result of the death or incapacity of a person, or shares acquired from the estate or personal representative by an heir, devisee, or beneficiary of the deceased or incapacitated person, are deemed to have first become beneficially owned by the estate, personal representative, heir, devisee, or beneficiary when the shares were acquired by the deceased or incapacitated person.

History: *1981 c 270 s 86; 1987 c 104 s 39; 1Sp1987 c 1 s 22,23; 1988 c 692 s 11; 1991 c 58 s 14; 1993 c 17 s 46; 2006 c 250 art 1 s 30; 2008 c 233 art 1 s 14*

302A.557 LIABILITY OF SHAREHOLDERS FOR ILLEGAL DISTRIBUTIONS.

Subdivision 1. **Liability.** A shareholder who receives a distribution made in violation of the provisions of section 302A.551 is liable to the corporation, its receiver or other person winding up its affairs, or a director under section 302A.559, subdivision 2, but only to the extent that the distribution received by the shareholder exceeded the amount that properly could have been paid under section 302A.551.

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Subd. 2. **Statute of limitations.** An action shall not be commenced under this section more than two years from the date of the distribution.

History: *1981 c 270 s 87*

302A.559 LIABILITY OF DIRECTORS FOR ILLEGAL DISTRIBUTIONS.

Subdivision 1. **Liability.** In addition to any other liabilities, a director who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 302A.551, subdivision 1, paragraph (a), or 4, or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 302A.251, is liable to the corporation, its receiver or any other person winding up its affairs jointly and severally with all other directors so liable and to other directors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 302A.551.

Subd. 2. **Contribution from shareholders.** A director against whom an action is brought under this section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro rata contribution from them in that action to the extent provided in section 302A.557, subdivision 1.

Subd. 3. **Impleader; contribution from directors.** A director against whom an action is brought under this section with respect to a distribution may implead in that action all other directors who voted for or consented in writing to the distribution and may compel pro rata contribution from them in that action.

Subd. 4. **Statute of limitations.** An action shall not be commenced under this section more than two years from the date of the distribution.

History: *1981 c 270 s 88; 1982 c 497 s 54; 1993 c 17 s 47*

MERGER, EXCHANGE, TRANSFER

302A.601 MERGER, EXCHANGE, TRANSFER.

Subdivision 1. **Merger.** A corporation may merge with one or more domestic or foreign corporations, resulting in a single domestic or foreign corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 302A.611 to 302A.651.

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

Subd. 3. **Transfer.** A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 302A.661.

Subd. 4. **Merger or exchange with 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: *1981 c 270 s 89; 1987 c 203 s 4; 1992 c 517 art 1 s 16; 1997 c 10 art 3 s 6; 2006 c 250 art 1 s 31,32*

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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, or other ownership interests in, the surviving organization or of any other organization, or, in whole or in part, into money or other property, or of canceling some or all of the ownership interests; or

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

(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: *1981 c 270 s 90; 1987 c 203 s 5; 1997 c 10 art 3 s 7; 2006 c 250 art 1 s 33; 2014 c 170 s 15*

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

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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 if the plan of merger or exchange effects a cancellation or exchange of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or exchange 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, or would have the right to obtain payment for their shares absent the exception set forth in paragraph (c) of section 302A.471, subdivision 3, in the event of the merger or exchange.

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

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

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

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

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

History: *1981 c 270 s 91; 1982 c 497 s 55,56; 1987 c 203 s 6; 1991 c 49 s 18; 1993 c 17 s 48,49; 1997 c 10 art 3 s 8,9; 1999 c 85 art 1 s 12; 2000 c 264 s 9; 2006 c 250 art 1 s 34,35*

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: *1981 c 270 s 92; 1987 c 203 s 7; 1988 c 682 s 11; 1997 c 10 art 3 s 10*

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302A.621 MERGER OF SUBSIDIARY.

Subdivision 1. **When authorized; contents of plan.** If either the parent or the subsidiary is a domestic corporation, a parent that is a domestic or foreign corporation or limited liability company owning at least 90 percent of the outstanding shares of each class and series of a subsidiary that is a domestic or foreign corporation or limited liability company directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related organizations, other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the shareholders or other owners of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors or other members of the governing body of the parent present shall set forth a plan of merger that contains:

(1) the name of the subsidiary or subsidiaries, the name of the parent and the name of the surviving organization;

(2) the manner and basis of converting the shares or other ownership interests of the subsidiary or subsidiaries or parent into securities or other ownership interests of the parent, subsidiary, or of another corporation or, in whole or in part, into money or other property;

(3) if the parent is a constituent organization but is not the surviving organization in the merger, a provision for the pro rata issuance of shares or other ownership interests of the surviving organization to the holders of shares or other ownership interests of the parent on surrender of any certificates for shares or other ownership interests of the parent; and

(4) if the surviving organization is a subsidiary, a statement of any amendments to the articles of the surviving organization that will be part of the merger.

Subd. 2. **Notice to shareholders of subsidiary.** If the subsidiary is a domestic corporation, notice of the action, including a copy of the plan of merger, shall be given to each shareholder, other than the parent and any subsidiary, of each such subsidiary that is a constituent corporation in the merger before, or within ten days after, the effective date of the merger.

Subd. 2a. **Approval of parent's shareholders; when required.** (a) Notwithstanding subdivision 1:

(1) if the parent is a domestic corporation and the conditions of section 302A.613, subdivision 3, are not met with respect to the parent, then the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 302A.613; and

(2) if the parent is a limited liability company or a foreign corporation and not the surviving organization in the merger, then the resolution is not effective unless it is also approved in accordance with the laws under which the parent is organized or incorporated.

(b) Notwithstanding paragraph (a), if the parent is a constituent corporation and the surviving corporation in the merger, it may change its corporate name, without shareholder approval, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the directors of the parent present. Upon the effective date of the merger, the parent's corporate name shall be changed.

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Subd. 3. **Articles of merger; contents of articles.** Articles of merger shall be prepared that contain:

(1) the plan of merger;

(2) a statement that the parent owns directly, or indirectly through related organizations, at least 90 percent of the outstanding shares or other ownership interests of each class and series of each subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger; and

(3) a statement that the plan of merger has been approved by the parent under this section.

Subd. 4. **Articles signed, filed.** The articles of merger shall be signed on behalf of the parent and filed with the secretary of state.

Subd. 5. **Certificate.** The secretary of state shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent organization but is not the surviving organization in the merger, to the surviving organization or its legal representative.

Subd. 6. **Rights of dissenting shareholders.** In the event all of the stock of one or more domestic subsidiaries that is a constituent corporation in a merger under this section is not owned by the parent directly, or indirectly through related organizations, immediately prior to the merger, the shareholders of each subsidiary that is a domestic corporation have dissenters' rights under sections 302A.471 (without regard to section 302A.471, subdivision 3) and 302A.473. 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.

Subd. 7. **Nonexclusivity.** A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 302A.611, 302A.613, and 302A.615 instead of this section, in which case this section does not apply.

History: *1981 c 270 s 93; 1991 c 49 s 19; 1993 c 17 s 50; 1997 c 10 art 1 s 28; 1999 c 85 art 1 s 13,14; 2002 c 311 art 1 s 21-24; 2006 c 250 art 1 s 36-41; 2014 c 170 s 16*

302A.626 MERGER TO EFFECT A HOLDING COMPANY REORGANIZATION.

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

(b) "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section.

(c) "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation.

(d) "Subsidiary constituent corporation" means the subsidiary corporation that the parent constituent corporation merges with or into in the merger.

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Subd. 2. **Authorization.** Unless its articles expressly provide otherwise, and subject to subdivision 3, a parent constituent corporation may merge with or into a subsidiary constituent corporation without a vote of the shareholders of the parent constituent corporation.

Subd. 3. **Requirements.** A merger may be accomplished under this section only if each of the following requirements is met:

(1) the holding company and the constituent corporations to the merger are each organized under this chapter;

(2) at all times following the issuance of shares until the consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

(3) immediately before the consummation of a merger under this section, the subsidiary constituent corporation is an indirect wholly owned subsidiary of the parent constituent corporation and a direct wholly owned subsidiary of the holding company;

(4) the parent constituent corporation and the subsidiary constituent corporation are the only constituent corporations to the merger;

(5) immediately after the merger becomes effective, the surviving corporation becomes or remains a direct wholly owned subsidiary of the holding company;

(6) each share or fraction of a share of the parent constituent corporation outstanding immediately before the effective time of the merger is converted in the merger into a share or equal fraction of a share of the holding company having the same designation and relative rights and preferences, and the same restrictions thereon, as the share or fraction of a share of the parent constituent corporation being converted in the merger;

(7) the articles and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares, if the exchange, reclassification, or cancellation has become effective;

(8) the articles and bylaws of the surviving corporation immediately following the effective time of the merger are identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares, if the exchange, reclassification, or cancellation has become effective, except that:

(i) the articles of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation, other than the election or removal of directors of the surviving corporation, that requires for its adoption under this chapter or its articles the approval of the shareholders of the surviving corporation shall, by specific reference to this section, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this chapter and/or by the articles of the surviving corporation; and

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(ii) the articles of the surviving corporation may be amended in the merger to reduce the number of classes, series, and shares that the surviving corporation is authorized to issue;

(9) the directors of the parent constituent corporation become or remain the directors of the holding company immediately after the merger becomes effective;

(10) the board of directors of the parent constituent corporation determines that the shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes; and

(11) a resolution approved by the affirmative vote of a majority of the directors of the parent constituent corporation present sets forth a plan of merger that contains provisions addressing the requirements of clauses (1) to (10).

Subd. 4. **Removal of directors of surviving corporation.** Neither subdivision 3, clause (8), item (i), nor any provisions of the surviving corporation's articles required by that item may be construed to require approval of the shareholders of the holding company to elect or remove directors of the surviving corporation.

Subd. 5. **Interaction with certain other sections.** To the extent restrictions under section 302A.671 or 302A.673 applied to the parent constituent corporation or any of its shareholders at the effective time of the merger, those restrictions apply to the holding company and its shareholders immediately after the merger becomes effective as though the holding company were the parent constituent corporation. No shareholder who, immediately before the merger becomes effective, was not an acquiring person or an interested shareholder of the parent constituent corporation shall, solely by reason of the merger, become an acquiring person or interested shareholder of the holding company.

Subd. 6. **Share certificates.** If the name of the holding company at the time the merger takes effect is the same as the name of the parent constituent corporation immediately before that time, the shares of the holding company into which the shares of the parent constituent corporation are converted in the merger must, unless new certificates are issued, be represented by the share certificates that previously represented shares of the parent constituent corporation.

Subd. 7. **Articles of merger; filing with secretary of state.** (a) Articles of merger must be prepared that contain:

(1) the plan of merger; and

(2) a statement that the plan of merger was adopted under this section.

(b) The articles of merger must be signed on behalf of the parent constituent corporation and filed with the secretary of state.

Subd. 8. **Certificate.** The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative.

Subd. 9. **Nonexclusivity.** A merger between a parent and a subsidiary may be accomplished under sections 302A.611, 302A.613, and 302A.615, or section 302A.621 instead of this section, in which case this section does not apply.

History: *2002 c 311 art 1 s 25; 2006 c 250 art 1 s 42*

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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: *1981 c 270 s 94; 1987 c 203 s 8; 1997 c 10 art 3 s 11*

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

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

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;

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(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, personal, or mixed property or any interest in real, personal, or mixed property 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.

Subd. 3. **Effect on shareholders.** When a merger or exchange becomes effective, the shares of the corporation or corporations to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The holders of those shares are entitled only to the securities, money, or other property into which those shares have been converted or for which those shares have been exchanged in accordance with the plan, subject to any dissenter's rights under section 302A.471.

History: *1981 c 270 s 95; 1987 c 203 s 9; 1993 c 17 s 51; 1997 c 10 art 3 s 12; 2014 c 170 s 17*

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

Subdivision 1. **When permitted.** A domestic corporation may merge with, including a merger pursuant to section 302A.621, 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

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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 322C 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 as provided in section 5.25, 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: *1981 c 270 s 96; 1991 c 49 s 20; 1997 c 10 art 3 s 13; 1997 c 10 art 1 s 29; 2004 c 199 art 14 s 21; 2014 c 170 s 18; 2016 c 135 art 4 s 11*

302A.661 TRANSFER OF ASSETS; WHEN PERMITTED.

Subdivision 1. **Shareholder approval; when not required.** A corporation may, by affirmative vote of a majority of the directors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, and without shareholder approval:

(1) sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

(2) grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

(3) transfer any or all of its property to an organization all the shares or other ownership interests of which are owned directly, or indirectly through wholly owned organizations, by the corporation.

Subd. 2. **Shareholder approval; when required.** (a) A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote. Written notice of the meeting shall be given to all shareholders whether or not they are entitled to vote at the meeting. The written notice shall state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

(b) Shareholder approval is not required under paragraph (a) if, following the sale, lease, transfer, or other disposition of its property and assets, the corporation retains a significant continuing business activity. If a corporation retains a business activity that represented at least (1) 25 percent of the corporation's total

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assets at the end of the most recently completed fiscal year and (2) 25 percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of clauses (1) and (2), then the corporation will conclusively be deemed to have retained a significant continuing business activity.

Subd. 3. **Signing of documents.** Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.

Subd. 4. **Transferee liability.** The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state. A disposition of all or substantially all of a corporation's property and assets under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee shall not be liable solely because it is deemed to be a continuation of the transferor.

History: *1981 c 270 s 97; 1982 c 497 s 57; 1994 c 417 s 6; 2004 c 199 art 14 s 22; 2006 c 250 art 1 s 43,44; 2010 c 250 art 1 s 10*

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. A shareholder's proposal to amend the corporation's articles or bylaws to cause this section to be inapplicable to the corporation requires the vote set forth in subdivision 4a, paragraph (b), in order for it to be effective, unless it is approved by a committee of the board comprised solely of directors who:

(1) are neither officers nor employees of, nor were during the five years preceding the formation of the committee officers or employees of, the corporation or a related organization;

(2) are neither acquiring persons nor affiliates or associates of an acquiring person;

(3) were not nominated for election as directors by an acquiring person or an affiliate or associate of an acquiring person; and

(4) were directors at the time an acquiring person became an acquiring person or were nominated, elected, or recommended for election as directors by a majority of those directors.

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

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

(a) the identity and background of the acquiring person, including the identity and background of each member of any partnership, limited partnership, syndicate, or other group constituting the acquiring person, and the identity and background of each affiliate and associate of the acquiring person, including the identity and background of each affiliate and associate of each member of such partnership, syndicate, or other group; provided, however, that with respect to a limited partnership, the information need only be given with respect to a partner who is denominated or functions as a general partner and each affiliate and associate of the general partner;

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

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

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

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

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

(3) over 50 percent; and

(e) the terms of the control share acquisition or proposed control share acquisition, including, but not limited to, the source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition; plans or proposals of the acquiring person (including plans or proposals under consideration) to (1) liquidate or dissolve the issuing public corporation, (2) sell all or a substantial part of its assets, or merge it or exchange its shares with any other person, (3) change the location of its principal place of business or its principal executive office or of a material portion of its business activities, (4) change materially its management or policies of employment, (5) change materially its charitable or community contributions or its policies, programs, or practices relating thereto, (6) change materially its relationship with suppliers or customers or the communities in which it operates, or (7) make any other material change in its business, corporate structure, management or personnel; and other objective facts as would be substantially likely to affect the decision of a shareholder with respect to voting on the control share acquisition.

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

Subd. 3. **Meeting of shareholders.** If the acquiring person so requests in writing at the time of delivery of an information statement pursuant to subdivision 2, and has made, or has made a bona fide written offer to make, a control share acquisition and gives a written undertaking to pay or reimburse the issuing public corporation's expenses of a special meeting, except the expenses of the issuing public corporation in opposing 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

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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.

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

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

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

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

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

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

Subd. 6. **Redemption.** Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, the issuing public corporation shall have the option to call for redemption all but not less than all shares referred to in subdivision 1, paragraph (b), acquired in a control share acquisition, at a redemption price equal to the market value of the shares at the time the call for redemption is given, in the event (1) an information statement has not been delivered to the issuing public corporation by the acquiring person by the tenth day after the control share acquisition, or (2) an information statement has been delivered but the shareholders have voted not to accord voting rights to such shares pursuant to subdivision 4a, paragraph (b). The call for redemption shall be given by the issuing public corporation within 30 days after the event giving the issuing public corporation the option to call the shares for redemption and the shares shall be redeemed within 60 days after the call is given.

History: *1984 c 488 s 18; 1Sp1985 c 5 s 19; 1986 c 431 s 2; 1Sp1987 c 1 s 24; 1988 c 692 s 12-16; 1989 c 172 s 8; 1993 c 17 s 52; 1997 c 10 art 1 s 30; 1999 c 85 art 1 s 15*

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, or on the share acquisition date but prior to the interested shareholder's becoming an interested shareholder on the 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 solely of one or more disinterested directors. The

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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) 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 organization.

Subd. 2. [Repealed, 1988 c 692 s 19]

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;

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(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: *1Sp1987 c 1 s 25; 1988 c 692 s 17,18; 1989 c 172 s 9,10; 1993 c 17 s 53,54; 1993 c 137 s 16; 1994 c 417 s 7; 1997 c 10 art 1 s 31; 2002 c 311 art 1 s 26*

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, before the purchase of any shares by the offeror pursuant to the earlier takeover offer, by a committee of the board, comprised solely of directors who:

(1) neither are officers or employees of, nor were during the five years preceding the formation of the committee officers or employees of, the corporation or a related organization;

(2) are neither the offerors nor affiliates or associates of the offeror;

(3) were not nominated for election as directors by the offeror or an affiliate or associate of the offeror; and

(4) were directors at the time of the first public announcement of the takeover offer or were nominated, elected, or recommended for election as directors by a majority of the directors.

History: *1991 c 58 s 15; 1997 c 10 art 1 s 32; 1999 c 85 art 1 s 16*

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302A.681 [Repealed, 2015 c 39 s 45]

302A.682 CONVERSION.

Subdivision 1. **Conversion requirements.** Pursuant to this section, sections 302A.684 to 302A.692, and a plan of conversion, another organization may convert to a domestic corporation, and a domestic corporation may convert to another organization if:

(1) the other organization's governing statute authorizes the conversion;

(2) the conversion is not prohibited by other law of this state or the law of the jurisdiction that enacted the other organization's governing statute; and

(3) the other organization complies with its governing statute in effecting the conversion.

Subd. 2. **Contents of plan of conversion.** A plan of conversion must include:

(1) the name and form of the organization and the jurisdiction of the organization's governing statute before conversion;

(2) the name and form of the organization and the jurisdiction of the organization's governing statute after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(4) the organizational documents of the converted organization as they are to be in effect upon completion of the conversion.

History: *2015 c 39 s 9*

302A.683 [Repealed, 2015 c 39 s 45]

302A.684 ACTION ON PLAN OF CONVERSION BY CONVERTING CORPORATION.

Subdivision 1. **Approval of plan of conversion.** Subject to section 302A.692, a plan of conversion of a converting corporation must be approved under subdivisions 2 and 3.

Subd. 2. **Board approval; notice to shareholders.** A resolution containing the plan of conversion must be approved by the affirmative vote of a majority, or more if so provided in the converting corporation's organizational documents, of the directors present at a meeting of the board of directors of the converting corporation and must then be submitted at a regular or a special meeting to the shareholders of the converting corporation. Written notice must be given to every shareholder of the converting corporation, whether or not entitled to vote at the meeting, not less than 14 days nor more than 60 days before the meeting. The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion. A copy or short description of the plan of conversion must be included in or enclosed with the notice.

Subd. 3. **Approval by shareholders.** At the meeting, a vote of the shareholders must be taken on the proposed plan. The plan of conversion is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote. A class or series of shares is entitled to vote as a class or series on the approval of the plan unless otherwise provided in the articles or shareholder control agreement, in which case the articles or shareholder control agreement shall govern such class voting rights to the exclusion of section 302A.137.

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Subd. 4. **Amendment of plan or abandonment of conversion.** Subject to section 302A.692 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the secretary of state for filing under section 302A.686, a converting corporation may amend the plan or abandon the conversion:

(1) as provided in the plan; or

(2) except as otherwise prohibited in the plan, by the same consent as was required to approved the plan.

History: *2015 c 39 s 10*

302A.685 [Repealed, 2015 c 39 s 45]

302A.686 FILINGS REQUIRED FOR CONVERSION; EFFECTIVE DATE AND TIME.

Subdivision 1. **Articles of conversion.** After a plan of conversion is approved:

(1) if the converting organization is a converting corporation, the converting corporation shall file articles of conversion with the secretary of state, together with a total fee of $35, which articles of conversion must be signed as provided in section 302A.011, subdivision 30, and must include:

(i) the plan of conversion;

(ii) a statement that the corporation is converting into another organization;

(iii) the name and form of the converted organization and the jurisdiction of its governing statute;

(iv) the time the conversion is effective under the governing statute of the converted organization;

(v) a statement that the conversion was approved as required by this chapter;

(vi) a statement that the conversion was approved as required by the governing statute of the converted organization; and

(vii) if the converted organization is a foreign organization not authorized to transact business in this state, the street address of an office that the secretary of state may use for the purposes of section 302A.691, subdivision 3; and

(2) if the converting organization is not a converting corporation, the converting organization shall file articles of conversion with the secretary of state, together with a total fee of $35, which articles of conversion must be signed as provided in section 302A.011, subdivision 30, and must include:

(i) articles of incorporation for the corporation into which the converting organization is converting, which articles of incorporation must include the information required by section 302A.111, subdivision 1, paragraphs (a) to (c);

(ii) the plan of conversion;

(iii) a statement that the converting organization is converting into a corporation;

(iv) the name and form of the converting organization and the jurisdiction of its governing statute; and

(v) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

Subd. 2. **Effective date and time of conversion.** A conversion becomes effective:

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(1) if the converted organization is a corporation, when the articles of conversion are filed with the secretary of state or on a later date or at a later time specified in the articles of conversion; and

(2) if the converted organization is not a corporation, as provided by the governing statute of the converted organization.

Subd. 3. **Certificate.** The secretary of state shall issue to the converted organization or its legal representative a certificate of conversion and, if the converted organization is a corporation, a certificate of incorporation.

History: *2015 c 39 s 11*

302A.687 [Repealed, 2015 c 39 s 45]

302A.6871 [Never effective, 2015 c 39 s 45]

302A.688 [Never effective, 2015 c 39 s 45]

302A.689 [Repealed, 2015 c 39 s 45]

302A.691 EFFECT OF CONVERSION.

Subdivision 1. **Same entity.** An organization that has been converted pursuant to sections 302A.682 to 302A.692 is for all purposes the same entity that existed before the conversion.

Subd. 2. **Effect on converting organization.** When a conversion takes effect:

(1) all property owned by the converting organization remains vested in the converted organization and no assignment by operation of law or otherwise of its assets, properties, or contracts shall be deemed to have occurred;

(2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;

(3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred or as actions or proceedings by or against the converted organization;

(4) except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization; and

(5) the conversion does not dissolve a converting corporation for the purposes of sections 302A.701 to 302A.791.

Subd. 3. **Foreign organization.** A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting corporation is liable if, before the conversion, the converting corporation was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subdivision.

History: *2004 c 199 art 14 s 28; 2014 c 157 art 2 s 16,31; 2014 c 170 s 25,26; 2015 c 39 s 12*

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302A.692 RESTRICTIONS ON APPROVAL OF CONVERSIONS.

Subdivision 1. **Personal liability of shareholder.** If a shareholder of a converting corporation will have personal liability with respect to a converted organization, approval or amendment of a plan of conversion is ineffective without the consent of the shareholder, unless:

(1) a valid shareholder control agreement of the converting corporation provides for approval of a conversion and imposition of personal liability without the consent of all shareholders against whom personal liability is imposed;

(2) the shareholder has consented in writing to the provision of the valid shareholder control agreement; and

(3) the shareholder does not exercise dissenter's rights pursuant to section 302A.471.

Subd. 2. **Consent.** A shareholder does not give the consent required by subdivision 1 merely by consenting to a provision of a shareholder control agreement or any other agreement that permits the shareholder control agreement or any other agreement to be amended with the consent of fewer than all shareholders or parties to the other agreement.

History: *2014 c 157 art 2 s 17,31; 2015 c 39 s 13*

DISSOLUTION

302A.701 METHODS OF DISSOLUTION.

A corporation may be dissolved:

(a) before the issuance of shares, pursuant to section 302A.711;

(b) after the issuance of shares, pursuant to sections 302A.721 to 302A.7291;

(c) by order of a court pursuant to sections 302A.741 to 302A.765; or

(d) by the secretary of state according to section 302A.821.

History: *1981 c 270 s 98; 1991 c 49 s 21; 1995 c 128 art 3 s 3; 2008 c 233 art 1 s 15*

302A.711 VOLUNTARY DISSOLUTION BEFORE ISSUANCE OF SHARES.

Subdivision 1. **Manner.** A corporation that has not issued shares may be dissolved by the incorporators or directors in the manner set forth in this section.

Subd. 2. **Articles of dissolution.** (a) A majority of the incorporators or directors shall sign articles of dissolution containing:

(1) the name of the corporation;

(2) the date of incorporation;

(3) a statement that shares have not been issued;

(4) a statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and

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(5) a statement that no debts remain unpaid.

(b) The articles of dissolution shall be filed with the secretary of state.

Subd. 3. **Effective date.** When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.

Subd. 4. **Certificate.** The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

(a) the name of the corporation;

(b) the date the articles of dissolution were filed with the secretary of state; and

(c) a statement that the corporation is dissolved.

History: *1981 c 270 s 99; 1993 c 17 s 55,56; 2011 c 106 s 5*

302A.721 VOLUNTARY DISSOLUTION AFTER ISSUANCE OF SHARES.

Subdivision 1. **Manner.** After the issuance of shares, a corporation may be dissolved when authorized in the manner set forth in this section.

Subd. 2. **Notice; approval.** (a) If the corporation has outstanding shares:

(1) Written notice shall be given to each shareholder, whether or not entitled to vote at a meeting of shareholders, within the time and in the manner provided in section 302A.435 for notice of meetings of shareholders and, whether the meeting is a regular or a special meeting, shall state that a purpose of the meeting is to consider dissolving the corporation.

(2) The proposed dissolution shall be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution shall be commenced.

(b) If the corporation no longer has any outstanding shares, then the directors may authorize and commence the dissolution. If the directors take that action, then the notice of dissolution filed under section 302A.723 shall so reflect and the directors shall have the right to revoke the dissolution proceedings in accordance with section 302A.731, subdivision 1.

History: *1981 c 270 s 100; 1982 c 497 s 58; 2008 c 233 art 1 s 16*

302A.723 FILING NOTICE OF INTENT TO DISSOLVE; EFFECT.

Subdivision 1. **Contents.** If dissolution of the corporation is approved pursuant to section 302A.721, subdivision 2, the corporation shall file with the secretary of state a notice of intent to dissolve. The notice shall contain:

(a) the name of the corporation;

(b) the date and place of the meeting at which the resolution was approved pursuant to section 302A.721, subdivision 2; and

(c) a statement that the requisite vote of the shareholders was received, or that the requisite shareholders entitled to vote signed a written action.

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Subd. 2. **Winding up.** When the notice of intent to dissolve has been filed with the secretary of state, and subject to section 302A.731, the corporation shall cease to carry on its business, except to the extent necessary for the winding up of the corporation. The shareholders shall retain the right to revoke the dissolution proceedings in accordance with section 302A.731 and the right to remove directors or fill vacancies on the board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.

Subd. 3. **Remedies continued.** The filing with the secretary of state of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in sections 302A.727, 302A.7291, and 302A.781.

History: *1981 c 270 s 101; 1982 c 497 s 59; 1991 c 49 s 22; 2004 c 199 art 14 s 29*

302A.725 PROCEDURE IN DISSOLUTION.

Subdivision 1. **Collection; payment.** When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:

(a) To collect or make provision for the collection of all known debts due or owing to the corporation, including unpaid subscriptions for shares;

(b) Except as provided in sections 302A.727, 302A.7291, and 302A.781, to pay or make provision for the payment of all known debts, obligations, and liabilities of the corporation according to their priorities; and

(c) To give notice to creditors and claimants under section 302A.727 or to proceed under section 302A.7291.

Subd. 2. **Transfer of assets.** Notwithstanding the provisions of section 302A.661, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the shareholders.

Subd. 3. **Distribution to shareholders.** All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the corporation shall be distributed to the shareholders in accordance with section 302A.551, subdivision 4.

History: *1981 c 270 s 102; 1991 c 49 s 23; 1994 c 417 s 8*

302A.727 DISSOLUTION PROCEDURE FOR CORPORATIONS THAT GIVE NOTICE TO CREDITORS AND CLAIMANTS.

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

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

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(a) a statement that the corporation is in the process of dissolving;

(b) a statement that the corporation has filed with the secretary of state a notice of intent to dissolve;

(c) the date of filing the notice of intent to dissolve;

(d) the address of the office to which written claims against the corporation must be presented; and

(e) the date by which all the claims must be received, which shall be the later of 90 days after published notice or, with respect to a particular known creditor or claimant, 90 days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.

Subd. 3. **Claims against corporations that give notice.** (a) A corporation that gives notice to creditors and claimants has 30 days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it; a claim not expressly rejected in this manner is deemed accepted.

(b) A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has 60 days from the date of rejection, 180 days from the date the corporation filed with the secretary of state the notice of intent to dissolve, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.

(c) A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 302A.781.

(d) A creditor or claimant whose claim is rejected by the corporation under paragraph (b) is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in paragraph (b).

Subd. 4. **Articles of dissolution; when filed.** Articles of dissolution for a corporation that has given notice to creditors and claimants under this section must be filed with the secretary of state after:

(1) the 90-day period in subdivision 2, paragraph (e), has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

(2) the longest of the periods described in subdivision 3, paragraph (b), has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b).

Subd. 5. **Contents of articles.** The articles of dissolution must state:

(1) the last date on which the notice was given and: (i) that the payment of all creditors and claimants filing a claim within the 90-day period in subdivision 2, paragraph (e), has been made or provided for; or (ii) the date on which the longest of the periods described in subdivision 3, paragraph (b), expired;

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

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(3) that there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b), or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

History: *1981 c 270 s 103; 1982 c 497 s 60; 1984 c 543 s 12; 1987 c 104 s 40; 1987 c 384 art 3 s 13; 1991 c 49 s 24*

302A.729 [Repealed, 1991 c 49 s 28]

302A.7291 DISSOLUTION PROCEDURE FOR CORPORATIONS THAT DO NOT GIVE NOTICE.

Subdivision 1. **Articles of dissolution; when filed.** Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 302A.727 must be filed with the secretary of state after:

(1) the payment of claims of all known creditors and claimants has been made or provided for; or

(2) at least two years have elapsed from the date of filing the notice of intent to dissolve.

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

(1) if articles of dissolution are being filed pursuant to subdivision 1, clause (1), that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;

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

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

Subd. 3. **Claims against corporations that do not give notice.** (a) If the corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

(b) If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 302A.781.

History: *1991 c 49 s 25*

302A.730 [Repealed, 1991 c 49 s 28]

302A.731 REVOCATION OF DISSOLUTION PROCEEDINGS.

Subdivision 1. **Generally.** Dissolution proceedings commenced pursuant to section 302A.721 may be revoked prior to filing of articles of dissolution.

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Subd. 2. **Notice to shareholders; approval.** Written notice shall be given to every shareholder entitled to vote at a shareholders' meeting within the time and in the manner provided in section 302A.435 for notice of meetings of shareholders and shall state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation shall be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.

Subd. 3. **Effective date; effect.** Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state. The corporation may thereafter resume business.

History: *1981 c 270 s 105; 1982 c 497 s 62*

302A.733 [Repealed, 1991 c 49 s 28]

302A.734 EFFECTIVE DATE OF DISSOLUTION; CERTIFICATE.

Subdivision 1. **Effective date.** When the articles of dissolution have been filed with the secretary of state, or on a later date or a later time each within 30 days after filing if the articles of dissolution so provide, the corporation is dissolved.

Subd. 2. **Certificate.** The secretary of state shall issue to the corporation or its legal representative a certificate of dissolution that contains:

(1) the name of the corporation;

(2) the date the articles of dissolution were filed with the secretary of state or any later effective date or later effective time stated in the articles of dissolution in accordance with subdivision 1; and

(3) a statement that the corporation is dissolved.

History: *1991 c 49 s 26; 2002 c 311 art 1 s 27; 2011 c 106 s 6; 2014 c 170 s 27*

302A.741 SUPERVISED VOLUNTARY DISSOLUTION.

After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation or, for good cause shown, a shareholder or creditor may apply to a court within the county in which the registered office of the corporation is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 302A.751 to 302A.781.

History: *1981 c 270 s 107; 1982 c 497 s 64*

302A.751 JUDICIAL INTERVENTION; EQUITABLE REMEDIES OR DISSOLUTION.

Subdivision 1. **When permitted.** A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

(a) In a supervised voluntary dissolution pursuant to section 302A.741;

(b) In an action by a shareholder when it is established that:

(1) the directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;

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(2) the directors or those in control of the corporation have acted fraudulently or illegally toward one or more shareholders in their capacities as shareholders or directors, or as officers or employees of a closely held corporation;

(3) the directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation, or as officers or employees of a closely held corporation;

(4) the shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(5) the corporate assets are being misapplied or wasted; or

(6) the period of duration as provided in the articles has expired;

(c) In an action by a creditor when:

(1) the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or

(2) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

(d) In an action by the attorney general to dissolve the corporation in accordance with section 302A.757 when it is established that a decree of dissolution is appropriate.

Subd. 2. **Buy-out on motion.** In an action under subdivision 1, clause (b), involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that clause is established, the court may, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

The purchase price of any shares so sold shall be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court, provided that, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under section 302A.473, subdivision 5, paragraph (a).

If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall determine the fair value of the shares under the provisions of section 302A.473, subdivision 7, and may allow interest or costs as provided in section 302A.473, subdivisions 1 and 8.

The purchase price shall be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subdivision and provided that the corporation or the moving shareholders

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post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus such additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as might be awarded.

Subd. 3. **Condition of corporation.** In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the financial condition of the corporation but shall not refuse to order equitable relief, dissolution, or a buy-out solely on the ground that the corporation has accumulated or current operating profits.

Subd. 3a. **Considerations in granting relief involving closely held corporations.** In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of all shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreements, including employment agreements and buy-sell agreements, between or among shareholders or between or among one or more shareholders and the corporation are presumed to reflect the parties' reasonable expectations concerning matters dealt with in the agreements.

Subd. 3b. **Dissolution as remedy.** In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buy-out, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision 1, clause (b) or (c). Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

Subd. 4. **Expenses.** If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

Subd. 5. **Venue; parties.** Proceedings under this section shall be brought in a court within the county in which the registered office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

History: *1981 c 270 s 108; 1982 c 497 s 65,66; 1983 c 368 s 9-11; 1986 c 431 s 3; 1994 c 417 s 9-11; 2011 c 106 s 7*

302A.753 PROCEDURE IN INVOLUNTARY OR SUPERVISED VOLUNTARY DISSOLUTION.

Subdivision 1. **Action before hearing.** In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.

Subd. 2. **Action after hearing.** After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. In addition to the powers set forth in chapter 576, a receiver has authority, subject to the order of the court, to continue

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the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.

Subd. 3. **Discharge of obligations.** The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the order of priority set forth in section 576.51.

Subd. 4. **Remainder to shareholders.** After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, shall be distributed to the shareholders in accordance with section 302A.551, subdivision 4.

History: *1981 c 270 s 109; 2012 c 143 art 3 s 1,2*

302A.755 QUALIFICATIONS OF RECEIVERS; POWERS.

Subdivision 1. **Qualifications.** Any person qualified under section 576.26 may be appointed as receiver. A receiver shall give bond as required by section 576.27.

Subd. 2. **Powers.** A receiver may sue and defend all actions as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction over the corporation, the receiver, and all receivership property pursuant to section 576.23.

History: *1981 c 270 s 110; 2012 c 143 art 3 s 3*

302A.757 ACTION BY ATTORNEY GENERAL.

Subdivision 1. **When permitted.** A corporation may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general when it is established that:

(a) the articles and certificate of incorporation were procured through fraud;

(b) the corporation was incorporated for a purpose not permitted by section 302A.101;

(c) the corporation failed to comply with the requirements of sections 302A.021 to 302A.155 essential to incorporation under or election to become governed by this chapter;

(d) the corporation has flagrantly violated a provision of this chapter, or has violated a provision of this chapter more than once, or has violated more than one provision of this chapter; or

(e) the corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.

Subd. 2. **Notice to corporation; correction.** An action shall not be commenced under this section until 30 days after notice to the corporation by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation 30 additional days in which to effect the correction before filing the action.

History: *1981 c 270 s 111*

302A.759 FILING CLAIMS IN PROCEEDINGS TO DISSOLVE.

Subdivision 1. **Manner and form.** In proceedings referred to in section 302A.751 to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims pursuant to section 576.49. The receiver or any party in interest may object to any claim pursuant to section 576.50.

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Subd. 2. [Repealed, 2012 c 143 art 3 s 39]

History: *1981 c 270 s 112; 1Sp1986 c 3 art 1 s 82; 2012 c 143 art 3 s 4*

302A.761 DISCONTINUANCE OF DISSOLUTION PROCEEDINGS.

The involuntary or supervised voluntary dissolution of a corporation shall be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets and to file a final report pursuant to section 576.38, subdivision 3.

History: *1981 c 270 s 113; 2012 c 143 art 3 s 5*

302A.763 DECREE OF DISSOLUTION.

Subdivision 1. **When entered.** In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all debts, obligations, and liabilities of the corporation have been paid or discharged and all of its remaining property and assets have been distributed to its shareholders or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to the priorities set forth in section 302A.753, the court shall enter a decree dissolving the corporation.

Subd. 2. **Effective date.** When the decree dissolving the corporation has been entered, the corporation is dissolved.

History: *1981 c 270 s 114*

302A.765 FILING DECREE.

After the court enters a decree dissolving a corporation, the court administrator shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state shall not charge a fee for filing the decree.

History: *1981 c 270 s 115; 1Sp1986 c 3 art 1 s 82*

302A.771 DEPOSIT WITH COMMISSIONER OF MANAGEMENT AND BUDGET OF AMOUNT DUE CERTAIN SHAREHOLDERS.

Upon dissolution of a corporation, the portion of the assets distributable to a shareholder who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, shall be reduced to money and deposited with the commissioner of management and budget. The amount deposited is appropriated to the commissioner of management and budget and shall be paid over to the shareholder or a legal representative, upon proof satisfactory to the commissioner of management and budget of a right to payment.

History: *1981 c 270 s 116; 2003 c 112 art 2 s 50; 2009 c 101 art 2 s 109*

302A.781 CLAIMS BARRED; EXCEPTIONS.

Subdivision 1. **Claims barred.** Except as provided in this section, a creditor or claimant whose claims are barred under section 302A.727, 302A.7291, or 302A.759 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.

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Subd. 2. **Claims reopened.** At any time within one year after articles of dissolution have been filed with the secretary of state pursuant to section 302A.727 or 302A.7291, subdivision 1, clause (2), or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

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

(b) if the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability shall be limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.

Subd. 3. **Obligations incurred during dissolution proceedings.** All known contractual debts, obligations, and liabilities incurred in the course of winding up the corporation's affairs shall be paid or provided for by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the officers and directors of the corporation who are responsible for, but who fail to cause the corporation to pay or make provision for payment of the debts, obligations, and liabilities or against shareholders to the extent permitted under section 302A.559. This subdivision does not apply to dissolution under the supervision or order of a court.

Subd. 4. **Statutory homeowner warranty claims preserved.** The statutory warranties provided under section 327A.02, and any contribution or indemnity claim arising from the breach of those warranties, are not affected by the dissolution under this chapter of a vendor or home improvement contractor.

Subd. 5. **Other claims preserved.** In addition to the claims in subdivision 4, all other statutory and common law rights of persons who may bring claims of injury to a person, including death, are not affected by dissolution under this chapter.

History: *1981 c 270 s 117; 1982 c 497 s 67; 1987 c 104 s 45; 1991 c 49 s 27; 2006 c 202 s 3; 2007 c 54 art 5 s 6; 2010 c 343 s 1*

302A.783 RIGHT TO SUE OR DEFEND AFTER DISSOLUTION.

After a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation.

History: *1981 c 270 s 118*

302A.791 OMITTED ASSETS.

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to shareholders may be transferred by a court in this state.

History: *1981 c 270 s 119*

302A.801 [Repealed, 2011 c 106 s 27]

302A.805 [Repealed, 2011 c 106 s 27]

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CORPORATE REGISTRATION

302A.821 MINNESOTA CORPORATE RENEWAL.

Subdivision 1. MS 1998 [Renumbered subd 2]

Subdivision 1. **Annual renewal.** (a) The secretary of state may send annually to each corporation, using the information provided by the corporation pursuant to section 5.002 or 5.34 or the articles of incorporation, a notice announcing the need to file the annual renewal and informing the corporation that the annual renewal may be filed online and that paper filings may also be made, and informing the corporation that failing to file the annual renewal will result in an administrative dissolution of the corporation.

(b) Each calendar year beginning in the calendar year following the calendar year in which a corporation incorporates, the corporation must file with the secretary of state by December 31 of each calendar year a renewal containing the information listed in subdivision 2.

Subd. 2. MS 1998 [Renumbered subd 3]

Subd. 2. **Information required; manner of filing.** The filing must be made pursuant to section 5.34.

Subd. 3. MS 1998 [Repealed by amendment, 2000 c 395 s 5]

Subd. 3. [Repealed by amendment, 2009 c 101 art 2 s 73]

Subd. 4. MS 1998 [Repealed by amendment, 2000 c 395 s 5]

Subd. 4. **Penalty; reinstatement.** (a) A corporation that has failed to file a renewal complying with section 5.34 must be dissolved by the secretary of state as described in paragraph (b).

(b) If the corporation has not filed the renewal during any calendar year, the secretary of state must issue a certificate of administrative dissolution and the certificate must be filed in the Office of the Secretary of State. The secretary of state must make available in an electronic format the names of the dissolved corporations. 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.

(c) After administrative dissolution, filing a renewal complying with section 5.34 and the $25 fee with the secretary of state:

(1) returns the corporation to good standing as of the date of the dissolution;

(2) validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and

(3) restores to the corporation all assets and rights of the corporation to the extent they were held by the corporation before the dissolution occurred, except to the extent that assets or rights were affected by acts occurring after the dissolution or sold or otherwise distributed after that time.

Subd. 5. [Renumbered subd 4]

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Subd. 6. [Repealed by amendment, 2000 c 395 s 5]

History: *1981 c 270 s 122; 1981 c 311 s 39; 1982 c 497 s 68,69; 1982 c 545 s 24; 1988 c 682 s 12; 1989 c 236 s 5; 1989 c 335 art 1 s 195,196; 1990 c 480 art 1 s 46; 1991 c 205 s 5-7; 1992 c 477 s 1; 1993 c 48 s 1; 1994 c 438 s 4; 1997 c 137 s 7; 2000 c 395 s 5; 2004 c 251 s 2-4; 2007 c 148 art 2 s 50; 2009 c 101 art 2 s 73*

ACTIONS AGAINST CORPORATIONS

302A.901 SERVICE OF PROCESS ON CORPORATION.

Subdivision 1. **Who may be served.** A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent, if any, of the corporation named in the articles, or upon an officer of the corporation, or upon the secretary of state as provided in section 5.25.

Subd. 2. [Repealed, 1995 c 128 art 1 s 20]

Subd. 2a. [Repealed, 1995 c 128 art 1 s 20]

Subd. 3. [Repealed, 1995 c 128 art 1 s 20]

Subd. 4. [Repealed, 1995 c 128 art 1 s 20]

History: *1981 c 270 s 123; 3Sp1981 c 2 art 1 s 35; 1993 c 17 s 57; 1995 c 128 art 1 s 6*

302A.917 STATE INTERESTED; PROCEEDINGS.

If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

History: *1981 c 270 s 124*

CORPORATION CREATED BY SPECIAL ACT; TRUSTEES AND DIRECTORS

302A.92 SELECTION OF TRUSTEES OR DIRECTORS BY A CORPORATION CREATED BY SPECIAL ACT.

Subdivision 1. **Resolution changing the method of selection.** A corporation created by a special act of the legislature of the Territory or the State of Minnesota which prescribes a method of selection of the trustees or directors of the corporation may change the method as to trustees or directors other than those automatically made trustees or directors by the special act. The method change must be made by adoption of a resolution by the body or persons empowered by the special act to select the trustees or directors. The corporation may provide in the resolution that those selected must hold office until their successors are selected and have qualified; that a vacancy in the office of trustee or director must be filled by the remaining trustees or directors; and that the appointee must hold office until the next annual meeting of the corporation, at which time a trustee or director will be elected in the manner provided to serve for the remainder of the unexpired term.

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Subd. 2. **Filing of resolution.** A certified copy of the resolution referred to in subdivision 1 must be filed in the Office of the Secretary of State. The resolution takes effect when filed.

Subd. 3. **Effect of filing resolution.** After the resolution takes effect, the board of trustees or directors of the corporation are self-perpetuating. All vacancies are to be filled as provided in subdivision 1.

Subd. 4. **Application of section.** This section does not apply to the Board of Regents of the University of Minnesota.

History: *1951 c 656 s 1; 1955 c 520 s 1; 1984 c 628 art 5 s 1; 2005 c 69 art 1 s 21*

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