302A.167 VALIDITY OF DEFECTIVE CORPORATE ACTS AND SHARES; PROCEEDINGS.

Subdivision 1. **When permitted.** Subject to subdivision 5, upon application by the corporation, a successor entity to the corporation, a member of the board, a shareholder or beneficial owner of valid shares or putative shares, a shareholder or beneficial owner of valid shares or putative shares as of the time of a defective corporate act ratified pursuant to section 302A.166, or other person claiming to be substantially and adversely affected by a ratification pursuant to section 302A.166, a court may:

(1) determine the validity and effectiveness of any defective corporate act ratified pursuant to section 302A.166;

(2) determine the validity and effectiveness of the ratification of any defective corporate act pursuant to section 302A.166;

(3) determine the validity and effectiveness of any defective corporate act not ratified or not ratified effectively pursuant to section 302A.166;

(4) determine the validity of any corporate act or transaction and any shares or rights to purchase; and

(5) modify or waive any of the procedures set forth in section 302A.166 to ratify a defective corporate act.

Subd. 2. **Remedies.** In connection with an action under this section, a court may:

(1) declare that a ratification under section 302A.166 is not effective or is only effective at a time or upon conditions established by the court;

(2) validate and declare effective a defective corporate act or putative shares and impose conditions upon the court's validation;

(3) require measures to remedy or avoid harm to a person substantially and adversely affected by a ratification under section 302A.166 or from a court order pursuant to this section, excluding harm that would have resulted if the defective corporate act had been valid when approved or effectuated;

(4) order the secretary of state to accept an instrument for filing with an effective time specified by the court, which may be before or after the time of the order, provided that the filing date of the instrument must be determined in accordance with section 302A.011, subdivision 11;

(5) approve a share register for the corporation that includes any shares ratified or validated in accordance with this section or section 302A.166;

(6) declare that putative shares are valid shares or require a corporation to issue and deliver valid shares in place of any putative shares;

(7) order a meeting of holders of valid shares or putative shares and determine the right and power of persons claiming to hold valid shares or putative shares to vote at the ordered meeting;

(8) declare that a defective corporate act validated by a court is effective as of the time of the defective corporate act or at another time the court may determine;

(9) declare that putative shares validated by a court shall be deemed to be an identical share or fraction of a valid share as of the time originally issued or purportedly issued or at such other time as the court may determine; and

(10) make other orders regarding matters as the court deems proper under the circumstances.

Subd. 3. **Service.** Service of the application under subdivision 1 upon the registered agent of the corporation is deemed to be service upon the corporation, and no other party needs to be joined in order for a court to adjudicate the matter. In an action filed by the corporation, a court may require notice of the action be provided to other persons specified by the court and permit the other persons to intervene in the action.

Subd. 4. **Considerations.** In connection with resolving matters pursuant to subdivisions 1 and 2, a court may consider the following:

(1) whether the defective corporate act was originally approved or effectuated with the good faith belief that the approval or effectuation was in compliance with the provisions of this chapter, the articles, or the bylaws;

(2) whether the corporation and board have treated the defective corporate act as a valid act or transaction and whether a person has acted in reliance on the public record that the defective corporate act was valid;

(3) whether any person may be or was harmed by the ratification or validation of the defective corporate act, excluding harm that would have resulted if the defective corporate act had been valid when approved or effectuated;

(4) whether any person is harmed by the failure to ratify or validate the defective corporate act; and

(5) any other factors or considerations the court deems just and equitable.

Subd. 5. **Statute of limitations.** An action asserting that (1) a defective corporate act or putative shares ratified in accordance with section 302A.166 is void or voidable due to a failure of authorization identified in the resolution adopted in accordance with section 302A.166, subdivision 2 or 3, or (2) a court should declare in its discretion that a ratification in accordance with section 302A.166 not be effective or be effective only on certain conditions, is prohibited from being brought after the expiration of 120 days from the later of the validation effective time and the time notice, if any, that is required to be given pursuant to section 302A.166, subdivision 8, is given with respect to the ratification; except that this subdivision does not apply to an action asserting that a ratification was not accomplished in accordance with section 302A.166 or to any person to whom notice of the ratification was required to have been given pursuant to section 302A.166, subdivision 5 or 8, but to whom the notice was not given.

History: *2025 c 11 s 13*