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 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;

(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*