

charter the former officials of Ramsey county shall deliver to them all records, money, and other public property under their control.

Sec. 7. LOCAL APPROVAL.

This act is effective the day after compliance with Minnesota Statutes, section 645.021, subdivision 3, by the board of county commissioners of Ramsey county.

Approved May 13, 1987

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CHAPTER 104—S.F.No. 578

*An act relating to business corporations; regulating the organization and operation of business corporations; providing for indemnification; providing voting rights; providing for the value, issuance, pledging, and acquisition of shares; and providing for payment on the return of shares; amending Minnesota Statutes 1986, sections 300.08, subdivision 1; 300.083, subdivisions 1, 4, 8, and by adding a subdivision; 302A.011, subdivision 40; 302A.111, subdivisions 2 and 3; 302A.133; 302A.135, subdivision 4, and by adding a subdivision; 302A.137; 302A.139; 302A.141, by adding a subdivision; 302A.161, subdivision 22; 302A.201, subdivision 2; 302A.255, subdivision 1; 302A.401, subdivision 3; 302A.405, subdivisions 1 and 2; 302A.409, subdivision 3; 302A.413, subdivision 5; 302A.433, subdivision 3; 302A.435, subdivision 2; 302A.437, subdivision 2; 302A.447, subdivision 7; 302A.455; 302A.457, subdivisions 1 and 2; 302A.473, subdivisions 1, 5, 6, and 7; 302A.501, subdivision 1; 302A.521, subdivisions 1, 4, and 8, and by adding a subdivision; 302A.553, subdivision 1; 302A.727; 302A.729; 302A.733, subdivisions 1 and 2; and 302A.781; proposing coding for new law in Minnesota Statutes, chapter 302A.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 300.08, subdivision 1, is amended to read:

Subdivision 1. **ENUMERATED POWERS.** (a) A corporation formed under the provisions of this chapter may:

(1) be known by its corporate name for the time stated in its certificate of incorporation;

(2) sue and be sued in any court;

(3) have, use, and alter a common seal;

(4) acquire, by purchase or otherwise, and hold, enjoy, improve, lease, encumber, and convey all real and personal property necessary for the purposes of its organization, subject to the limitations hereafter declared;

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(5) elect or appoint in any manner it determines all necessary or proper officers, agents, boards, and committees, to fix their compensation, and to define their powers and duties;

(6) make and amend consistently with law bylaws providing for the management of its property and the regulation and government of its affairs; and

(7) wind up and liquidate its business in the manner provided by law.

(b) A corporation formed under this chapter shall indemnify those persons identified in section 300.083 against certain expenses and liabilities only as provided in section 300.083 and may indemnify other persons.

Sec. 2. Minnesota Statutes 1986, section 300.083, subdivision 1, is amended to read:

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 or ~~agency~~ relationship undertaken by an employee or ~~agent~~ of the corporation, and (3) with respect to a director, officer, ~~or~~ employee, or ~~agent~~ of the corporation who, while a director, officer, ~~or~~ employee, or ~~agent~~ 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, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, 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 represented the corporation or a related corporation, or a director, officer, member of a committee or board, ~~or~~ employee, or ~~agent~~ whose indemnification is in issue.

Sec. 3. Minnesota Statutes 1986, section 300.083, subdivision 4, is amended to read:

Subd. 4. **PROHIBITION OR LIMIT ON INDEMNIFICATION OR ADVANCES.** The articles or bylaws either may prohibit indemnification or

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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 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.

Sec. 4. Minnesota Statutes 1986, section 300.083, subdivision 8, is amended to read:

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 ~~to the shareholders in an annual report covering the period when the indemnification or advance was paid or accrued under the accounting method of the corporation not later than the next meeting of shareholders.~~

Sec. 5. Minnesota Statutes 1986, section 300.083, is amended by adding a subdivision to read:

Subd. 10. INDEMNIFICATION OF OTHER PERSONS. Nothing in this section shall be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

Sec. 6. Minnesota Statutes 1986, section 302A.011, subdivision 40, is amended to read:

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, as amended through December 31, ~~1984~~ 1986.

Sec. 7. Minnesota Statutes 1986, section 302A.111, subdivision 2, is amended to read:

Subd. 2. **STATUTORY PROVISIONS THAT MAY BE MODIFIED ONLY IN ARTICLES.** The following provisions govern a corporation unless modified in the articles:

- (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);

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- (d) A corporation must allow cumulative voting for directors (section 302A.215);
- (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 or splits, 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 or splits, 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 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) An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than 20 percent immediately after the exchange (section 302A.613, subdivision 3, clause (c));
- (r) An exchange need not be approved by shareholders of the acquiring

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corporation unless the outstanding participating shares of that corporation will be increased by more than 20 percent immediately after the exchange (section 302A.613, subdivision 3, clause (d)); ~~and~~

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

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

Sec. 8. Minnesota Statutes 1986, section 302A.111, subdivision 3, is amended to read:

**Subd. 3. STATUTORY PROVISIONS THAT MAY BE MODIFIED EITHER IN ARTICLES OR IN BYLAWS.** The following provisions govern a corporation unless modified either in the articles or in the bylaws:

(a) Directors serve for an indefinite term that expires at the next regular meeting of shareholders (section 302A.207);

(b) The compensation of directors is fixed by the board (section 302A.211);

(c) A certain method must be used for removal of directors (section 302A.223);

(d) A certain method must be used for filling board vacancies (section 302A.225);

(e) If the board fails to select a place for a board meeting, it must be held at the principal executive office (section 302A.231, subdivision 1);

(f) A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting (section 302A.231, subdivision 3);

(g) A majority of the board is a quorum for a board meeting (section 302A.235);

(h) A committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present (section 302A.241, subdivision 2);

~~(i) A majority of a committee is a quorum for a committee meeting, unless otherwise provided by a resolution of the board (section 302A.241, subdivision 3);~~

~~(j) The board may establish a committee of disinterested persons (section 302A.243);~~

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

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

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

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

(~~o~~) (n) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than 10-days ~~nor more than 60-days~~ notice is required for a meeting of shareholders (section 302A.435, subdivision 2);

(~~p~~) (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);

(~~q~~) (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);

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

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

Sec. 9. Minnesota Statutes 1986, section 302A.133, is amended to read:

**302A.133 PROCEDURE FOR AMENDMENT BEFORE ISSUANCE OF SHARES.**

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 be amended by the board to change a statement pursuant to section 302A.401, subdivision 3, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series.

Sec. 10. Minnesota Statutes 1986, section 302A.135, subdivision 4, is amended to read:

Subd. 4. **APPROVAL BY SHAREHOLDERS.** (a) The proposed amendment is adopted when approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, 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

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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.

Sec. 11. Minnesota Statutes 1986, section 302A.135, is amended by adding a subdivision to read:

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.

Sec. 12. Minnesota Statutes 1986, section 302A.137, is amended to read:

**302A.137 CLASS OR SERIES VOTING ON AMENDMENTS.**

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) Increase or decrease the aggregate number of authorized shares of the class or series;

~~(b) Increase or decrease the par value of the shares of the class or series;~~

~~(c) Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;~~

~~(d) (c) 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;~~

~~(e) (d) Change the rights or preferences of the shares of the class or series;~~

~~(f) (e) Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same or another class or series;~~

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~~(e)~~ (f) 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;

~~(h)~~ (g) 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;

~~(j)~~ (h) Limit or deny any existing preemptive rights of the shares of the class or series; or

~~(k)~~ (i) Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

Sec. 13. Minnesota Statutes 1986, section 302A.139, is amended to read:

**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) The date of the adoption of the amendment by the shareholders, or by the incorporators or the board where no shares have been issued; or the date of adoption of the amendment by the board if:

(1) the amendment merely restates the existing articles, as amended, and the amendment was not submitted to and approved by the shareholders, in which case the articles of amendment must contain a statement that the amendment restating the articles correctly sets forth without change the corresponding provisions of the articles as previously amended; or

(2) the amendment is to a statement establishing or fixing the rights and preferences of a class or series of shares before the issuance of shares of that class or series;

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

(e) If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to them.

Sec. 14. Minnesota Statutes 1986, section 302A.141, is amended by adding a subdivision to read:

Subd. 3. EFFECT OF AMENDMENTS RESTATING ARTICLES. When effective under section 302A.153, an amendment restating the articles in their

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entirety supersedes the original articles and all amendments to the original articles.

Sec. 15. Minnesota Statutes 1986, section 302A.161, subdivision 22, is amended to read:

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.

Sec. 16. Minnesota Statutes 1986, section 302A.201, subdivision 2, is amended to read:

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 ~~or the shareholders to take after action or approval of the board.~~ As to an action taken by the shareholders in that manner:

(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.

Sec. 17. Minnesota Statutes 1986, section 302A.255, subdivision 1, is amended to read:

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

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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 shareholders and the contract or transaction is approved in good faith by (1) the holders of a majority two-thirds of the outstanding shares; but shares owned by the interested director or directors shall not be counted in determining the presence of a quorum and shall not be voted 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 board or committee, 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.

Sec. 18. Minnesota Statutes 1986, section 302A.401, subdivision 3, is amended to read:

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 approved by the affirmative vote of a majority of the directors present 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.

Sec. 19. Minnesota Statutes 1986, section 302A.405, subdivision 1, is amended to read:

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 under a written agreement, as authorized by resolution approved by the affirmative vote of a majority of the directors present, or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, valuing all nonmonetary consideration and 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) Upon authorization by resolution approved by the affirmative vote of a majority of the directors present or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends or splits, including reverse share splits. 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.

Sec. 20. Minnesota Statutes 1986, section 302A.405, subdivision 2, is amended to read:

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.

Sec. 21. Minnesota Statutes 1986, section 302A.409, subdivision 3, is amended to read:

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Subd. 3. **ISSUANCE PERMITTED.** A corporation may issue rights to purchase ~~it~~

~~(a) Shares issuable upon the exercise of all outstanding rights to purchase, including the rights to purchase that are to be issued, are authorized under section 302A.111, subdivision 1, and are unissued; and~~

~~(b) 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, subject to any restrictions in the articles.~~

Sec. 22. Minnesota Statutes 1986, section 302A.413, subdivision 5, is amended to read:

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. ~~For purposes of determining pursuant to this subdivision the total number of shares of a class or series issued and outstanding at a particular time, all shares of that class or series issuable upon a conversion or exchange or upon the exercise of rights to purchase are considered issued and outstanding at that time.~~

Sec. 23. Minnesota Statutes 1986, section 302A.433, subdivision 3, is amended to read:

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.

Sec. 24. Minnesota Statutes 1986, section 302A.435, subdivision 2, is amended to read:

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.

Sec. 25. Minnesota Statutes 1986, section 302A.437, subdivision 2, is amended to read:

Subd. 2. **VOTING BY CLASS.** In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, 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

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that class or series, or of the total outstanding shares of that class or series, as is 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, 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.

Sec. 26. Minnesota Statutes 1986, section 302A.447, subdivision 7, is amended to read:

Subd. 7. **PLEGGED 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.

Sec. 27. Minnesota Statutes 1986, section 302A.455, is amended to read:

**302A.455 SHAREHOLDER VOTING AGREEMENTS.**

A written agreement ~~solely~~ 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.

Sec. 28. Minnesota Statutes 1986, section 302A.457, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZED.** A written agreement ~~solely~~ 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.

Sec. 29. Minnesota Statutes 1986, section 302A.457, subdivision 2, is amended to read:

Subd. 2. **METHOD OF APPROVAL; ENFORCEABILITY; COPIES.** (a) A written agreement ~~solely~~ among persons described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.

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(b) The agreement is enforceable by the persons described in subdivision 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A copy of the agreement shall be filed with the corporation. The existence and location of a copy of the agreement shall be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement.

(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.

Sec. 30. Minnesota Statutes 1986, section 302A.473, subdivision 1, is amended to read:

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 ~~from~~ commencing five days after the effective date of the corporate action referred to in section 302A.471, subdivision 1 until up to and including the date of payment, calculated at the rate provided in section 549.09 for interest on verdicts and judgments.

Sec. 31. Minnesota Statutes 1986, section 302A.473, subdivision 5, is amended to read:

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, with plus interest; ~~if any,~~ 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.

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(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.

Sec. 32. Minnesota Statutes 1986, section 302A.473, subdivision 6, is amended to read:

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 ~~with plus interest if any~~, the dissenter may give written notice to the corporation of the dissenter's own estimate of the fair value of the shares, with plus interest, if any, 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.

Sec. 33. Minnesota Statutes 1986, section 302A.473, subdivision 7, is amended to read:

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, with plus interest, if any. 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 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

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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 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.

Sec. 34. Minnesota Statutes 1986, section 302A.501, subdivision 1, is amended to read:

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 corporation, 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;

(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) Has been approved by (1) the affirmative vote of the holders of two-thirds of the outstanding shares of the voting power of the shares entitled to vote which are owned 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.

Sec. 35. Minnesota Statutes 1986, section 302A.521, subdivision 1, is amended to read:

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

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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 ~~or agency~~ relationship undertaken by an employee ~~or agent~~ of the corporation, and (3) with respect to a director, officer, ~~or employee, or agent~~ of the corporation who, while a director, officer, ~~or employee, or agent~~ 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, employee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

(d) "Proceeding" means a threatened, pending, (d) 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 represented the corporation or a related corporation, or a director, officer, member of a committee of the board, or employee, or agent whose indemnification is in issue.

Sec. 36. Minnesota Statutes 1986, section 302A.521, subdivision 4, is amended to read:

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 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 by-laws establishing the prohibition or limit on indemnification or advances.

Sec. 37. Minnesota Statutes 1986, section 302A.521, subdivision 8, is amended to read:

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 ~~as part of the annual financial statements furnished to shareholders pursuant to section 302A.463 covering the period when the indemnification or advance was paid or accrued under the accounting method of the corporation reflected in the financial statements not later than the next meeting of shareholders.~~

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Sec. 38. Minnesota Statutes 1986, section 302A.521, is amended by adding a subdivision to read:

Subd. 9. INDEMNIFICATION OF OTHER PERSONS. Nothing in this section shall be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

Sec. 39. Minnesota Statutes 1986, section 302A.553, subdivision 1, is amended to read:

Subdivision 1. **WHEN PERMITTED; STATUS OF SHARES.** A corporation may acquire its own shares, subject to section 302A.551. If the corporation pledges the shares to secure payment of the redemption price thereof, then the corporation shall not be deemed to have acquired the shares for the purposes of this subdivision until the pledge is released. Shares ~~so~~ acquired by a corporation constitute authorized but unissued shares of the corporation, unless the articles provide that they shall not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.

Sec. 40. Minnesota Statutes 1986, section 302A.727, is amended to read:

#### 302A.727 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 ~~known~~ creditor of and claimant against the corporation at the ~~last known address of each known or unknown, present, or future, or and contingent claimant or non-contingent.~~ The corporation may give published notice to known creditors or claimants whose address is unknown and to unknown present, future, or contingent creditors and claimants; 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:

- (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 ~~the notice of intent to dissolve was filed with the secretary~~

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of state 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.

Sec. 41. Minnesota Statutes 1986, section 302A.729, is amended to read:

302A.729 **CLAIMS IN DISSOLUTION.**

~~Subdivision 1.~~ **PROCEDURE.** If the corporation gives ~~proper~~ notice to creditors and claimants pursuant to section 302A.727:

(a) ~~The claim of 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 subject to the provisions of section 302A.781;~~

(b) The corporation 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; and

~~(c) (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, or 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. If the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim during that period, the claim is subject to the provisions of section 302A.781.~~

~~Subd. 2. **STATUTE OF LIMITATIONS.** The claim of a creditor or claimant to whom notice is not given and for whom payment of any debt is not made or provided for and who does not initiate legal, administrative, or arbitration proceedings concerning the claim within two years after the date of filing the notice of intent to dissolve is thereafter subject to the provisions of 302A.781.~~

Sec. 42. [302A.730] **STATUTE OF LIMITATIONS.**

Subdivision 1. **CORPORATIONS THAT GIVE NOTICE.** If the corporation gives notice to creditors and claimants pursuant to section 302A.727:

(1) the claim of 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 subject to the provisions of section 302A.781;

(2) the claim of a creditor or claimant that is rejected by the corporation in accordance with section 302A.729 is subject to the provisions of section 302A.781 if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim during the period set forth in section 302A.729, clause (b).

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Subd. 2. OTHER CORPORATIONS. If the corporation does not give notice to creditors and claimants pursuant to section 302A.727, the claim of a creditor or claimant who does not initiate legal, administrative, or arbitration proceedings concerning the claim within two years after the date of filing the notice of intent to dissolve is subject to the provisions of section 302A.781.

Sec. 43. Minnesota Statutes 1986, section 302A.733, subdivision 1, is amended to read:

Subdivision 1. **ARTICLES; WHEN FILED.** Articles of dissolution for a corporation dissolving pursuant to section 302A.721 shall be filed with the secretary of state after:

(a) The payment of claims of all known creditors and claimants has been made or provided for;

(b) ~~The longer of the periods described in section 302A.729, subdivision 1, clause (e) has expired, if the corporation has given notice to creditors and claimants of the corporation in the manner described in section 302A.727; or, in all other cases, if the corporation has given notice to creditors and claimants in the manner provided in section 302A.727; (1) the 90-day period in section 302A.727, subdivision 2, clause (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 longer of the periods described in section 302A.729, clause (b), has expired; or, in all other cases,~~

(c) ~~The two year period described in section 302A.729, subdivision 2 42 has expired.~~

Sec. 44. Minnesota Statutes 1986, section 302A.733, subdivision 2, is amended to read:

Subd. 2. **CONTENTS OF ARTICLES.** The articles of dissolution shall state:

(a) Whether notice has been given to all creditors and claimants of the corporation in the manner provided in section 302A.727, and, if notice has been given, the last date on which the notice was given and: (1) that the payment of all creditors and claimants filing a claim within the 90-day period set forth in section 302A.727, subdivision 2, clause (e), has been made or provided for; or (2) the date on which the longer of the periods described in section 302A.729, subdivision 1, clause (e) (b), expired; or

(b) If notice was not given and articles of dissolution are being filed pursuant to section 302A.733, subdivision 1, clause (a), that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provisions have been made therefor; and

(c) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with section 302A.551,

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subdivision 4, or that adequate provision has been made for that distribution; and

(d) 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; ~~and that all other claims are barred under section 302A.781.~~

Sec. 45. Minnesota Statutes 1986, section 302A.781, is amended to read:

**302A.781 CLAIMS BARRED; EXCEPTIONS.**

**Subdivision 1. CLAIMS BARRED.** A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within the time provided in section ~~302A.729~~ 42, 302A.741, 302A.751, or 302A.759, or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

**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.733, subdivision 1, clause (b) or (c), 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.

**Subd. 3. CLAIMS PERMITTED.** All debts, obligations, and liabilities incurred during dissolution proceedings 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 against the officers, directors, and shareholders of the corporation before the expiration of the applicable statute of limitations. This subdivision does not apply to dissolution under the supervision or order of a court.

Sec. 46. **EFFECTIVE DATE.**

Notwithstanding Minnesota Statutes, section 645.21, section 18 is effective retroactive to January 1, 1984.

Approved May 13, 1987

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