

section 169.121 or 169.129. Any person violating any of the provisions of this subdivision shall be guilty of a misdemeanor.

**Sec. 6. REPEALER.**

Minnesota Statutes 1987 Supplement, section 126.033, subdivision 4, is repealed.

Approved April 28, 1988

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**CHAPTER 692—H.F.No. 2253**

*An act relating to corporations; making certain corrections to shareholder protection and corporate take-over legislation; eliminating restrictions on certain business combinations with an interested shareholder after five years; applying the control share acquisition and business combination statutes to certain issuing public corporations; amending Minnesota Statutes 1986, section 80B.03, subdivisions 1 and 6; Minnesota Statutes 1987 Supplement, sections 302A.011, subdivisions 37, 41, 42, 46, 49, 50, and 51; 302A.471, subdivision 1; 302A.553, subdivision 3; 302A.671, subdivisions 1, 2, 3, 4, and 4a; and 302A.673, subdivisions 1 and 3; repealing Minnesota Statutes 1987 Supplement, section 302A.673, subdivision 2.*

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

Section 1. Minnesota Statutes 1986, section 80B.03, subdivision 1, is amended to read:

Subdivision 1. It is unlawful for any person to make a takeover offer or to acquire any equity securities pursuant to the offer, unless the offer is effective under sections 80B.01 to 80B.13. A takeover offer is effective when the offeror files with the commissioner a registration statement containing the information prescribed in subdivisions 2 and 6. The offeror shall deliver a copy of the registration statement by personal service to the target company at its principal office and ~~publicly disclose the material terms of the proposed offer,~~ not later than the date of filing of the registration statement. ~~Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers maintaining an office in this state currently quoting the security~~ The offeror shall send or deliver to all offerees as soon as practicable after the filing, the material terms of the proposed offer and the information specified in subdivision 6.

Sec. 2. Minnesota Statutes 1986, section 80B.03, subdivision 6, is amended to read:

Subd. 6. The form required to be filed by subdivision 2, clause (a), shall contain the following information:

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(a) the identity and background of all persons on whose behalf the acquisition of any equity security of the issuer target company has been or is to be affected effected including the identity and background of each member of a partnership, limited partnership, syndicate, or other group constituting the person and the identity and background of each affiliate and associate of the person, including the identity and background of each affiliate and associate of each member of the 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;

(b) the source and amount of funds or other consideration used or to be used in acquiring any equity security, including, if applicable, a statement describing any securities which are being offered in exchange for the equity securities of the issuer, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements and the names of the parties from whom the funds were borrowed the material terms of the financial arrangements for the take-over;

(c) if the purpose of the acquisition is to gain control of the target company, a statement of plans or proposals which the person has, upon gaining control, to liquidate the issuer; sell its assets; effect its merger or consolidation; to change the location of its principal executive office or of a material portion of its business activities; to change its management or policies of employment; to materially alter its relationship with suppliers or customers or the communities in which it operates; or make any other major change in its business, corporate structure, management or personnel, and such other objective facts as would be substantially likely to affect a reasonable shareholder's evaluation of the takeover offer any plans or proposals of any person identified under paragraph (a), including plans or proposals under consideration, to (1) liquidate or dissolve the target company, (2) sell all or a substantial part of its assets, or merge it or exchange its shares with another 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 related policies, programs, or practices, (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 the take-over offer;

(d) the number of shares or units of any equity security of the issuer owned beneficially by the person and any affiliate or associate of the person, together with the name and address of each affiliate or associate;

(e) the material terms of any contract, arrangement, or understanding with any other person with respect to the equity securities of the issuer whereby the person filing the statement has or will acquire any interest in additional equity securities of the issuer, or is or will be obligated to transfer any interest in the equity securities to another and class or series of shares of the target company

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beneficially owned, directly or indirectly, by each of the persons identified under paragraph (a).

Sec. 3. Minnesota Statutes 1987 Supplement, section 302A.011, subdivision 37, is amended to read:

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 ~~(whether or not in writing)~~ 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.

Sec. 4. Minnesota Statutes 1987 Supplement, section 302A.011, subdivision 41, is amended to read:

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 ~~(whether or not in writing)~~, has or shares the power to vote, or direct the voting of, the shares or securities ~~and/or~~ or has or shares the power to dispose of, or direct the disposition of, the shares or securities, ~~provided 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 ~~provided that~~ (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

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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.

(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 corporation or entity in which the person owns ten percent or more of the equity, and any affiliate of the person.

(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.

Sec. 5. Minnesota Statutes 1987 Supplement, section 302A.011, subdivision 42, is amended to read:

Subd. 42. **INTERESTED SHARES.** "Interested shares" means the shares of an issuing public corporation ~~with respect to which~~ beneficially owned by any of the following persons may exercise or direct the exercise of voting power in the election of directors of the issuing public corporation: (1) ~~an~~ 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.

Sec. 6. Minnesota Statutes 1987 Supplement, section 302A.011, subdivision 46, is amended to read:

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 domestic or foreign corporation (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, ~~provided, however, that the~~

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foregoing shall not include but excluding (1) the merger of a wholly-owned subsidiary of the issuing public corporation into the issuing public corporation ~~or~~, (2) the merger of two or more wholly-owned subsidiaries of the issuing public corporation, or (3) the merger of a corporation, 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 corporation, 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 domestic or foreign corporation (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 corporation, other than an interested shareholder or an affiliate or associate of an interested shareholder, pursuant to which the corporation, immediately after the exchange, becomes a wholly-owned subsidiary of the issuing public corporation;

(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 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;

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(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, ~~or relationship~~, understanding, or otherwise (~~whether or not in writing~~) 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, ~~or relationship~~, understanding, or otherwise (~~whether or not in writing~~) 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.

Sec. 7. Minnesota Statutes 1987 Supplement, section 302A.011, subdivision 49, is amended to read:

Subd. 49. **INTERESTED SHAREHOLDER.** "Interested shareholder," when used in reference to any issuing public corporation, means any person (other than the issuing public corporation or any subsidiary of the issuing public corporation) 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 and at any time within the five-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. Notwithstanding anything stated in this subdivision, 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

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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 clause (1) or (2) unless:

(i) 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

(ii) 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.

Sec. 8. Minnesota Statutes 1987 Supplement, section 302A.011, subdivision 50, is amended to read:

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

(1) in the case of shares, the highest average closing sale price of a share on the composite tape for New York Stock Exchange listed shares during the 30-day period 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 of a share on the composite tape for New York Stock Exchange listed shares, or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which the shares are listed, or, if the shares are not listed on any such exchange, on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, or, if the shares are not quoted on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, the highest average closing bid quotation during the 30-day period 30 trading days preceding the date purchase of the shares in question of a share on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or, with respect to the reference in section 302A.553, subdivision 3, if the person or persons selling the shares shall have commenced a tender offer or have announced an intention to seek control of the corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement, provided that if no such quotation is available, the market value is the fair market value on the date in question of a share the shares as determined in good faith by the board of the issuing public corporation; subject to arbitration;

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(2) in the case of property other than cash or shares, the fair market value of the property on the date in question as determined in good faith by the board of the issuing public corporation; subject to arbitration.

Sec. 9. Minnesota Statutes 1987 Supplement, section 302A.011, subdivision 51, is amended to read:

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; provided, however, that in the event 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.

Sec. 10. Minnesota Statutes 1987 Supplement, section 302A.471, subdivision 1, is amended to read:

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) 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 limited by dilution through the issuance of securities with similar 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;

(b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, 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;

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(c) A plan of merger to which the corporation is a party, except as provided in subdivision 3;

(d) A plan of exchange to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan; or

(e) 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.

Sec. 11. Minnesota Statutes 1987 Supplement, section 302A.553, subdivision 3, is amended to read:

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; ~~whether or not in writing~~; 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 average market price value thereof if the shares have been beneficially owned by the person or persons for less than six months, 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 such the class or series and to all holders of any class or series into which the securities may be converted. ~~For purposes of this section, the average market price shall mean: the average closing sale price during the 30 trading days immediately preceding the purchase of the shares in question (or if the person or persons have commenced a tender offer or have announced an intention to seek control of the publicly held corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or the making of the announcement); of a share on the composite tape for New York Stock Exchange listed shares; or, if the shares are not quoted on the composite tape or not listed on the New York Stock Exchange, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which the shares are listed; or, if the shares are not listed on any such exchange, on the National Association of Securities Dealers, Inc. Automated Quotations National Market System; or, if the shares are not quoted on the National Association of Securities Dealers, Inc. Automated Quotations National Market System, the average closing bid quotation, during the 30 trading days preceding the purchase of the shares in question of a share on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use (or if the person or persons have commenced a tender offer or have announced an intention to seek control of the publicly held corporation, during the 30 trading days preceding the earlier of the commencement of the tender offer or~~

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the making of the announcement); provided that if no quotation is available, the average market price shall be the fair market value on the date of purchase of the shares in question of a share as determined in good faith by the board of the publicly held corporation.

Sec. 12. Minnesota Statutes 1987 Supplement, section 302A.671, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION IN ARTICLES.** (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 consummated, or a proposed control share acquisition with respect to which an information statement has been received by the issuing public corporation, on or before July 31, ~~1989~~ 1990.

Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section does not apply to a control share acquisition consummated after July 31, ~~1989~~ 1990, with respect to which no information statement has been received by the issuing public corporation, on or before July 31, ~~1989~~ 1990.

(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.

Sec. 13. Minnesota Statutes 1987 Supplement, section 302A.671, subdivision 2, is amended to read:

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;

(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

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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, ~~to~~ (2) sell all or a substantial part of its assets, or merge it or exchange its shares with any other person, ~~to~~ (3) change the location of its principal place of business or its principal executive office or of a material portion of its business activities, ~~to~~ (4) change materially its management or policies of employment, ~~to~~ (5) change materially its charitable or community contributions or its policies, programs, or practices relating thereto, ~~to~~ (6) change materially its relationship with suppliers or customers or the communities in which it operates, or ~~to~~ (7) make any other material change in its business, corporate structure, management or personnel; and ~~such~~ 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 ~~such~~ 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.

Sec. 14. Minnesota Statutes 1987 Supplement, section 302A.671, subdivision 3, is amended to read:

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,

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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 ~~approval of~~ accorded voting rights with respect to shares acquired or to be acquired in the control share acquisition, within ten days after receipt by the issuing public corporation of the information statement, a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 302A.433, subdivision 1, for the sole purpose of considering the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to the control share acquisition. The special meeting shall be held no later than 55 days after receipt of the information statement and written undertaking to pay or reimburse the issuing public corporation's expenses of the special meeting, unless the acquiring person agrees to a later date. If the acquiring person so requests in writing at the time of delivery of the information statement, the special meeting shall not be held sooner than 30 days after receipt by the issuing public corporation of the information statement. 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, unless prior thereto the matter of the voting rights becomes moot. 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.

Sec. 15. Minnesota Statutes 1987 Supplement, section 302A.671, subdivision 4, is amended to read:

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 required to~~ 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 ~~institution~~ institutions or other ~~entity~~ 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

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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.

Sec. 16. Minnesota Statutes 1987 Supplement, section 302A.671, subdivision 4a, is amended to read:

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.

(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.

Sec. 17. Minnesota Statutes 1987 Supplement, section 302A.673, subdivision 1, is amended to read:

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, ~~or relationship~~, understanding, or otherwise ~~(whether or not in writing)~~ with, any interested shareholder of the issuing public corporation or any affiliate or associate of the interested shareholder for a period of five years following the interest-

New language is indicated by underline, deletions by ~~strikeout~~.

ed 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 by a committee of the board of the issuing public corporation before the interested shareholder's share acquisition date. The committee shall be 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 ~~45~~ 30 days after receipt of the proposal by the issuing public corporation, ~~or a shorter period, if any, as may be required by the Securities Exchange Act of 1934 or rules and regulations under that act,~~ 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. ~~Unless the committee responds affirmatively in writing within 45 days after receipt of the proposal by the issuing public corporation, or a shorter period, if any, as may be required by the Securities Exchange Act of 1934 or rules and regulations under that act, the committee shall be considered to have disapproved the share acquisition.~~

(d)(1) When a business combination or acquisition of shares is proposed pursuant to this subdivision, the board shall promptly form a committee composed of all of the board's 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) A committee formed pursuant to this subdivision shall be composed of one or more members. Only disinterested directors may be members of a committee formed pursuant to this subdivision. However, 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 ~~not a present or former officer or employee~~ 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 corporation.

Sec. 18. Minnesota Statutes 1987 Supplement, section 302A.673, subdivision 3, is amended to read:

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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 the effective date of this section until adoption of the article or bylaw provision, a publicly held corporation. If the article or bylaw provision electing to be subject to this section expressly so provides, this section shall not apply to any business combination with an interested shareholder whose share acquisition date is before the effective date of the article or bylaw provision.

(b) Except as provided in paragraph (c), this section does not apply to any business combination of an issuing public corporation:

(1) if the original, 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 ~~issuing public~~ 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 ~~such~~ the amendment provides that it is not to be effective until 18 months after the vote of shareholders, or August 1, ~~1989~~ 1990, whichever date is earlier, and provides that, except as provided in paragraph ~~(d)~~ (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 final enactment of this section.

(e) ~~This section does not apply to any business combination of an issuing public corporation with an interested shareholder of the issuing public corporation who became an interested shareholder inadvertently; if the interested shareholder:~~

~~(1) as soon as practicable, divests itself of a sufficient amount of the shares entitled to vote of the issuing public corporation so that it no longer is the beneficial owner, directly or indirectly, of ten percent or more of the outstanding shares entitled to vote of the issuing public corporation; and~~

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(2) would not at any time within the five-year period preceding the announcement date with respect to the business combination have been an interested shareholder but for the inadvertent acquisition.

(d) (c) This section does not apply to any business combination of an issuing public corporation with an interested shareholder that was the beneficial owner, directly or indirectly, of ten percent or more of the outstanding shares entitled to vote of the issuing public corporation on June 1, 1987 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 on June 1, 1987, had this section been in effect on this date.

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. 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 on the effective date of the amendment if this section had been applicable.

(e) (d) Unless the articles or bylaws approved by the shareholders of the issuing public corporation otherwise provide, 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 agreement, arrangement, or understanding (whether or not in writing) with any interested shareholder if the interested shareholder's share acquisition date is on or after August 1, 1989 1990, or an affiliate or associate of that interested shareholder.

#### Sec. 19. REPEALER.

Minnesota Statutes 1987 Supplement, section 302A.673, subdivision 2, is repealed.

Approved April 28, 1988

### CHAPTER 693—H.F.No. 2341

*An act relating to child support; providing that automatic income withholding does not apply to modification of orders issued prior to the effective date; providing for a motion to implement withholding in certain cases; providing that a court shall stay service of an automatic withholding order if an obligor establishes an escrow account for payment of child*

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