CHAPTER 17—H.F.No. 341

An act relating to business corporations; making various technical changes; amending Minnesota Statutes 1992, sections 302A.011, subdivisions 26, 38, 53, and by adding a subdivision; 302A.105; 302A.111, subdivisions 3 and 4; 302A.115, subdivision 1; 302A.117, subdivision 1; 302A.123, subdivision 3; 302A.133; 302A.135, subdivisions 1 and 3; 302A.137; 302A.153; 302A.171, subdivision 2; 302A.231, subdivision 3; 302A.233; 302A.237; 302A.241, subdivision 1; 302A.255, subdivision 2; 302A.401, subdivisions 1 and 3; 302A.402, subdivisions 1, 2, and by adding a subdivision; 302A.403, subdivisions 2 and 4; 302A.413, subdivisions 4 and 9; 302A.423, subdivision 2; 302A.435, subdivisions 1 and 3; 302A.437, subdivision 2; 302A.447, subdivisions 2 and 3; 302A.449, subdivision 1; 302A.461, subdivision 4; 302A.463; 302A.471, subdivision 3; 302A.473, subdivisions 4 and 7; 302A.501, subdivision 1; 302A.521, subdivision 6; 302A.551, subdivision 1; 302A.553, subdivision 1; 302A.559, subdivision 1; 302A.613, subdivisions 2 and 3; 302A.621, subdivision 6; 302A.641, subdivision 1; 302A.671, subdivision 3; 302A.673, subdivisions 1 and 3; 302A.711, subdivisions 1 and 2; and 302A.901, by adding a subdivision.

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

Section 1. Minnesota Statutes 1992, section 302A.011, subdivision 26, is amended to read:

Subd. 26. **SECURITY.** "Security" has the meaning given it in section 80A.14, ~~paragraph (q)~~ subdivision 18.

Sec. 2. Minnesota Statutes 1992, section 302A.011, subdivision 38, is amended to read:

Subd. 38. **CONTROL SHARE ACQUISITION.** "Control share acquisition" means an acquisition, directly or indirectly, by an acquiring person of beneficial ownership of shares of an issuing public corporation that, except for section 302A.671, would, when added to all other shares of the issuing public corporation beneficially owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the ranges specified in section 302A.671, subdivision 2, paragraph (d), but does not include any of the following:

(a) an acquisition before, or pursuant to an agreement entered into before, August 1, 1984;

(b) an acquisition by a donee pursuant to an inter vivos gift not made to avoid section 302A.671 or by a distributee as defined in section 524.1-201, clause (10);

(c) an acquisition pursuant to a security agreement not created to avoid section 302A.671;

(d) an acquisition under sections 302A.601 to 302A.661, if the issuing public corporation is a party to the transaction;

(e) an acquisition from the issuing public corporation;

(f) an acquisition for the benefit of others by a person acting in good faith and not made to avoid section 302A.671, to the extent that the person may not exercise or direct the exercise of the voting power or disposition of the shares except upon the instruction of others;

(g) an acquisition pursuant to a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or any of its subsidiaries, or by a fiduciary of the plan acting in a fiduciary capacity pursuant to the plan; or

(h) an acquisition subsequent to January 1, 1991, pursuant to an offer to purchase for cash pursuant to a tender offer all shares of the voting stock of the issuing public corporation:

(i) which has been approved by a majority vote of the members of a committee comprised of the disinterested members of the board of the issuing public corporation formed pursuant to section 302A.673, subdivision 1, paragraph (d), before the commencement of, or the public announcement of the intent to commence, the tender offer; and

(ii) pursuant to which the acquiring person will become the owner of over 50 percent of the voting stock of the issuing public corporation outstanding at the time of the transaction.

For purposes of this subdivision, shares beneficially owned by a plan described in clause (g), or by a fiduciary of a plan described in clause (g) pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan. All shares the beneficial ownership of which is acquired within a 120-day period, and all shares the beneficial ownership of which is acquired pursuant to a plan to make a control share acquisition, shall be deemed to have been acquired in the same acquisition.

Sec. 3. Minnesota Statutes 1992, section 302A.011, subdivision 53, is amended to read:

Subd. 53. **TAKEOVER OFFER.** (a) "Takeover offer" means an offer to acquire shares of an issuing public corporation from a shareholder pursuant to a tender offer or request or invitation for tenders, if, after the acquisition of all shares acquired pursuant to the offer:

(1) the offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding shares of the issuing public corporation and was directly or indirectly the beneficial owner of ~~less than~~ ten percent or less of ~~any~~ that class of the outstanding shares of the issuing public corporation before commencement of the offer; or

(2) the beneficial ownership by the offeror of any class of the outstanding shares of the issuing public corporation would be increased by more than ten

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

percent of that class and the offeror was directly or indirectly the beneficial owner of ten percent or more of any class of the outstanding shares of the issuing public corporation before commencement of the offer.

(b) Takeover offer does not include:

(1) an offer in connection with the acquisition of a share which, together with all other acquisitions by the offeror of shares of the same class of shares of the issuer, would not result in the offeror having acquired more than two percent of this class during the preceding 12-month period;

(2) an offer by the issuer to acquire its own shares unless the offer is made during the pendency of a takeover offer by a person who is not an associate or affiliate of the issuer;

(3) an offer in which the issuing public corporation is an insurance company subject to regulation by the commissioner of commerce, a financial institution regulated by the commissioner, or a public service utility subject to regulation by the public utilities commission.

Sec. 4. Minnesota Statutes 1992, section 302A.011, is amended by adding a subdivision to read:

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

Sec. 5. Minnesota Statutes 1992, section 302A.105, is amended to read:

302A.105 **INCORPORATORS.**

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

Sec. 6. Minnesota Statutes 1992, 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~~ a board meeting need not state the purpose of the meeting (section 302A.231, subdivision 3);

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

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

(i) The board may establish a special litigation committee (section 302A.241);

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

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

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

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

(n) In all instances where a specific minimum notice period has not otherwise been fixed by law, not less than ten-days notice is required for a meeting of shareholders (section 302A.435, subdivision 2);

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

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

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

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

Sec. 7. Minnesota Statutes 1992, section 302A.111, subdivision 4, is amended to read:

Subd. 4. **OPTIONAL PROVISIONS; SPECIFIC SUBJECTS.** The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board, fixing a greater than majority director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:

(a) The members of the first board may be named in the articles (section 302A.201, subdivision 1);

(b) A manner for increasing or decreasing the number of directors may be provided (section 302A.203);

(c) Additional qualifications for directors may be imposed (section 302A.205);

(d) Directors may be classified (section 302A.213);

(e) The day or date, time, and place of board meetings may be fixed (section 302A.231, subdivision 1);

(f) Absent directors may be permitted to give written consent or opposition to a proposal (section 302A.233);

(g) A larger than majority vote may be required for board action (section 302A.237);

(h) Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer (section 302A.305, subdivision 2);

(i) Additional officers may be designated (section 302A.311);

(j) Additional powers, rights, duties, and responsibilities may be given to officers (section ~~302A.315~~ 302A.311);

(k) A method for filling vacant offices may be specified (section 302A.341, subdivision 3);

(l) A certain officer or agent may be authorized to sign share certificates (section 302A.417, subdivision 2);

(m) The transfer or registration of transfer of securities may be restricted (section 302A.429);

(n) The day or date, time, and place of regular shareholder meetings may be fixed (section 302A.431, subdivision 3);

(o) Certain persons may be authorized to call special meetings of shareholders (section 302A.433, subdivision 1);

(p) Notices of shareholder meetings may be required to contain certain information (section 302A.435, subdivision 3);

(q) A larger than majority vote may be required for shareholder action (section 302A.437);

(r) Voting rights may be granted in or pursuant to the articles to persons who are not shareholders (section 302A.445, subdivision 4);

(s) Corporate actions giving rise to dissenter rights may be designated (section 302A.471, subdivision 1, clause (e));

(t) The rights and priorities of persons to receive distributions may be established (section 302A.551); and

(u) A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles (section 302A.251, subdivision 4).

Sec. 8. Minnesota Statutes 1992, section 302A.115, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS; PROHIBITIONS.** The corporate name:

(a) Shall be in the English language or in any other language expressed in English letters or characters;

(b) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&";

(c) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;

(d) Shall be distinguishable upon the records in the office of the secretary of state from the name of ~~a~~ <u>each</u> domestic corporation ~~or~~<u>,</u> limited partnership<u>,</u> <u>and limited liability company</u>, whether profit or nonprofit, ~~or a limited liability company, whether domestic or foreign, or a~~ <u>and each</u> foreign corporation ~~or~~<u>,</u> limited partnership<u>,</u> <u>and limited liability company</u> authorized or registered to do business in this state, whether profit or nonprofit, ~~or a~~ <u>and each</u> name the right to which is, at the time of incorporation, reserved ~~or~~ <u>as</u> provided for in sections 302A.117, 322A.03, 322B.125, or 333.001 to 333.54, unless there is filed with the articles one of the following:

(1) The written consent of the domestic corporation ~~or~~<u>,</u> limited partnership<u>,</u> <u>or limited liability company,</u> or <u>the</u> foreign corporation ~~or~~<u>,</u> limited partnership<u>,</u> <u>or limited liability company</u> authorized or registered to do business in this state or the holder of a reserved name or a name filed by or registered with the secretary of state under sections 333.001 to 333.54 having a name that is not distinguishable;

New language is indicated by <u>underline</u>, deletions by ~~strikeout~~.

(2) A certified copy of a final decree of a court in this state establishing the prior right of the applicant to the use of the name in this state; or

(3) The applicant's affidavit that the corporation ~~or~~, limited partnership, or limited liability company with the name that is not distinguishable has been incorporated or on file in this state for at least three years prior to the affidavit, if it is a domestic corporation ~~or~~, limited partnership, or limited liability company, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign corporation ~~or~~, limited partnership, or limited liability company, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit~~, and~~; that the corporation, limited partnership, or limited liability company or holder has not during the three-year period filed any document with the secretary of state; that the applicant has mailed written notice to the corporation ~~or~~, limited partnership , or limited liability company or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the corporation or in care of the agent of the limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, stating that the applicant intends to use a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee corporation ~~or~~, limited partnership, limited liability company, or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the corporation ~~or~~, limited partnership, or limited liability company with the name that is not distinguishable in the county in which is located the registered office of the corporation, limited partnership, or limited liability company shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the corporation ~~or~~, limited partnership, limited liability company, or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

Sec. 9. Minnesota Statutes 1992, section 302A.117, subdivision 1, is amended to read:

Subdivision 1. **WHO MAY RESERVE.** The exclusive right to the use of a corporate name otherwise permitted by section 302A.115 may be reserved by:

(a) a person doing business in this state under that name;

(b) a person intending to incorporate under this chapter;

(c) a domestic corporation intending to change its name;

(d) a foreign corporation intending to make application for a certificate of authority to transact business in this state;

(e) a foreign corporation authorized to transact business in this state and intending to change its name;

(f) a person intending to incorporate a foreign corporation and intending to have the foreign corporation make application for a certificate of authority to transact business in this state; or

(g) a foreign corporation doing business under that name or a name ~~deceptively similar to~~ not distinguishable from that name in one or more states other than this state and not described in clause (d), (e), or (f).

Sec. 10. Minnesota Statutes 1992, section 302A.123, subdivision 3, is amended to read:

Subd. 3. **CHANGE OF BUSINESS ADDRESS OR NAME OF AGENT.** If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement as required in subdivision 1, except that it need be signed only by the registered agent, need not be responsive to clause ~~(e) or (h)~~ (f), and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

Sec. 11. Minnesota Statutes 1992, section 302A.133, is amended to read:

302A.133 **PROCEDURE FOR AMENDMENT ~~BEFORE ISSUANCE OF SHARES~~ WHEN NO SHARES ARE OUTSTANDING.**

Before the issuance of shares by a corporation, the articles may be amended pursuant to section 302A.171 by the incorporators or by the board. The articles may also be amended by the board to change or cancel a statement pursuant to section 302A.401, subdivision 3, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series~~.~~ or at any subsequent time that no shares of that class or series are outstanding by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state. If a statement filed pursuant to section 302A.401, subdivision 3, is canceled, the shares of the class and series originally covered by the statement have the status of authorized but unissued, undesignated shares, unless the articles otherwise provide. If the articles provide that the canceled shares may not be reissued, the statement of cancellation must include the information specified by section 302A.553, subdivision 2.

Sec. 12. Minnesota Statutes 1992, section 302A.135, subdivision 1, is amended to read:

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

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

Sec. 13. Minnesota Statutes 1992, section 302A.135, subdivision 3, is amended to read:

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

Sec. 14. Minnesota Statutes 1992, 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) Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;

(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;

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

(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;

(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;

(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;

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

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

Sec. 15. Minnesota Statutes 1992, section 302A.153, is amended to read:

302A.153 **EFFECTIVE DATE OF ARTICLES.**

Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the secretary of state accompanied by a payment of $135, which includes a $100 incorporation fee in addition to the $35 filing fee required by section 302A.011, subdivision 11. Articles of amendment ~~and articles of merger~~ are effective when filed with the secretary of state or at another time within 30 days after filing if the articles of amendment so provide. Articles of merger must be accompanied by a fee of $60, which includes a $25 merger fee in addition to the $35 filing fee required by section 302A.011, subdivision 11.

Sec. 16. Minnesota Statutes 1992, section 302A.171, subdivision 2, is amended to read:

Subd. 2. **MEETING.** After the ~~issuance of the certificate~~ <u>filing of articles</u> of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. <u>Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to section 302A.231, subdivision 5.</u>

Sec. 17. Minnesota Statutes 1992, section 302A.231, subdivision 3, is amended to read:

Subd. 3. **CALLING MEETINGS; NOTICE.** Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving <u>at least</u> ten days notice <u>or, in the case of organizational meetings pursuant to section 302A.171, subdivision 2, at least three days notice,</u> to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

Sec. 18. Minnesota Statutes 1992, section 302A.233, is amended to read:

302A.233 **ABSENT DIRECTORS.**

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

Sec. 19. Minnesota Statutes 1992, section 302A.237, is amended to read:

302A.237 **ACT OF THE BOARD.**

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

Sec. 20. Minnesota Statutes 1992, section 302A.241, subdivision 1, is amended to read:

Subdivision 1. **GENERALLY.** A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights and remedies should be pursued. Committees other than special litigation committees and committees formed pursuant to section 302A.673, subdivision 1, paragraph (d), are subject at all times to the direction and control of the board.

Sec. 21. Minnesota Statutes 1992, section 302A.255, subdivision 2, is amended to read:

Subd. 2. **MATERIAL FINANCIAL INTEREST.** For purposes of this section:

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

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

Sec. 22. Minnesota Statutes 1992, section 302A.401, subdivision 1, is amended to read:

Subdivision 1. **BOARD OR SHAREHOLDER MAY AUTHORIZE.** Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board or by the shareholders.

Sec. 23. Minnesota Statutes 1992, 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 or resolutions 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. Any of the rights and preferences of a class or series established in the articles or by resolution of the directors:

(1) may be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and

(2) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(b) A statement setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption shall be filed with the secretary of state before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles; provided, however, where the shareholders have received notice of the creation of shares with rights or preferences not set forth in the articles before the issuance of the shares, the statement may be filed any time within one year after the issuance of the shares. The resolution is effective when the statement has been filed with the secretary of state; or, if it is not required to be filed with the secretary of state before the issuance of shares, on the date of its adoption by the directors.

(c) A statement filed with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles for purposes of sections 302A.137 and 302A.471.

Sec. 24. Minnesota Statutes 1992, section 302A.402, subdivision 1, is amended to read:

Subdivision 1. **POWER TO EFFECT.** A corporation may effect a share dividend or a division or combination of its shares as provided in this section. ~~As used in this section, the terms "division" and "combination" mean dividing or combining shares of any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.~~

Sec. 25. Minnesota Statutes 1992, section 302A.402, subdivision 2, is amended to read:

Subd. 2. **WHEN SHAREHOLDER APPROVAL REQUIRED; FILING OF ARTICLES OF AMENDMENT.** (a) Articles of amendment must be adopted by the board and the shareholders under sections 302A.135 and 302A.137 to effect a division or combination if, as a result of the proposed division or combination:

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

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

~~For purposes of this section, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of the shares outstanding is not an adverse effect on the outstanding shares of any class or series and any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fractional shares under section 302A.423 must be disregarded.~~

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

Sec. 26. Minnesota Statutes 1992, section 302A.402, is amended by adding a subdivision to read:

<u>Subd. 4.</u> **CHANGES IN VOTING RIGHTS; FRACTIONAL SHARES.**

For purposes of this section, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of shares outstanding is not an adverse effect on the outstanding shares of any class or series and any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fractional shares under section 302A.423 must be disregarded.

Sec. 27. Minnesota Statutes 1992, section 302A.403, subdivision 2, is amended to read:

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

Sec. 28. Minnesota Statutes 1992, section 302A.403, subdivision 4, is amended to read:

Subd. 4. **METHOD OF COLLECTION; ~~FORFEITURE;~~ CANCELLATION OR SALE FOR ACCOUNT OF SUBSCRIBER.** (a) Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation~~, or, if the amount due remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber, the board may declare a forfeiture of the subscription or cancel it in accordance with this subdivision~~.

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

(c) ~~If, within 20 days after the corporation offers to sell~~ If the amount due on a subscription for shares remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber and the shares subscribed for by the delinquent subscriber~~, no prospective purchaser offers to purchase the shares for a money price sufficient to pay the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to~~

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

~~the sale, or if the corporation has refunded to the subscriber or a legal representative a~~ have not been sold pursuant to paragraph (b), the corporation may cancel the subscription, in which event the shares subscribed for must be restored to the status of authorized but unissued shares, the corporation may retain the portion of the subscription price actually paid~~, the subscription may be canceled, the shares subscribed for may be restored to the status of authorized but unissued shares~~ that does not exceed ten percent of the subscription price, and the corporation ~~may retain the~~ shall refund to the delinquent subscriber or the delinquent subscriber's legal representative that portion of the subscription price actually paid ~~that does not exceed~~ which exceeds ten percent of the subscription price.

Sec. 29. Minnesota Statutes 1992, section 302A.413, subdivision 4, is amended to read:

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

(a) Issued for a consideration other than money;

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

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

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

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

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

Sec. 30. Minnesota Statutes 1992, section 302A.413, subdivision 9, is amended to read:

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

Sec. 31. Minnesota Statutes 1992, section 302A.423, subdivision 2, is amended to read:

Subd. 2. **RESTRICTIONS; RIGHTS.** A corporation shall not pay money for fractional shares if that action would result in the cancellation of more than 20 percent of the outstanding shares of a class or series. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate or a transaction statement for a fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

Sec. 32. Minnesota Statutes 1992, section 302A.435, subdivision 1, is amended to read:

Subdivision 1. **TO WHOM GIVEN.** Except as otherwise provided in this chapter, notice of all meetings of shareholders shall be given to every holder of shares entitled to vote, ~~except~~ unless:

(1) the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or

(2) the following have been mailed by first class mail to a shareholder at the address in the corporate records and returned undeliverable:

(i) two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or

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

An action or meeting that is taken or held without notice under clause (2) has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

Sec. 33. Minnesota Statutes 1992, section 302A.435, subdivision 3, is amended to read:

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

Sec. 34. Minnesota Statutes 1992, section 302A.437, subdivision 2, is amended to read:

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

Subd. 2. **VOTING BY CLASS OR SERIES.** 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 that class or series, or of the total outstanding shares of that class or series, as the proportion required pursuant to subdivision 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class or series, the minimum percentage of the total number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 302A.443.

Sec. 35. Minnesota Statutes 1992, section 302A.447, subdivision 2, is amended to read:

Subd. 2. **SHARES HELD BY SUBSIDIARY.** Except as provided in subdivision 3, shares of a corporation registered in the name of a subsidiary are not entitled to ~~vote~~ be voted on any matter.

Sec. 36. Minnesota Statutes 1992, section 302A.447, subdivision 3, is amended to read:

Subd. 3. **SHARES CONTROLLED IN FIDUCIARY CAPACITY.** Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to ~~vote~~ be voted on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation or, with respect to shares in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the shares.

Sec. 37. Minnesota Statutes 1992, section 302A.449, subdivision 1, is amended to read:

Subdivision 1. **AUTHORIZATION.** A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegram, cablegram, or other means of electronic transmission, provided that the ~~telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined~~ corporation has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the shareholder. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, provided that the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or otherwise authorized by any one of them, unless the corporation receives

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

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

Sec. 38. Minnesota Statutes 1992, section 302A.461, subdivision 4, is amended to read:

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

(1) the share register; and

(2) all documents referred to in subdivision 2.

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

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

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

Sec. 39. Minnesota Statutes 1992, section 302A.463, is amended to read:

302A.463 **FINANCIAL STATEMENTS.**

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

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

Sec. 40. Minnesota Statutes 1992, section 302A.471, subdivision 3, is amended to read:

Subd. 3. **RIGHTS NOT TO APPLY.** Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to a shareholder of the surviving corporation in a merger, if the shares of the shareholder are not entitled to be voted on the merger.

Sec. 41. Minnesota Statutes 1992, section 302A.473, subdivision 4, is amended to read:

Subd. 4. **NOTICE OF PROCEDURE; DEPOSIT OF SHARES.** (a) After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subdivision 3 and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:

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

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

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

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

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

Sec. 42. Minnesota Statutes 1992, 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, plus interest. The petition shall be filed in the county in which the registered office of the corporation is located, except that a surviving foreign corporation that receives a demand relating to the shares of a constituent domestic corporation shall file the petition in the county in this state in which the last registered office of the constituent corporation was located. The petition shall name as parties all dissenters who have demanded payment under subdivision 6 and who have not reached agreement with the corporation. The corporation shall, after filing the petition, serve all parties with a summons and copy of the petition under the rules of civil procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the rules of civil procedure apply to this proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment in cash for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subdivision 5, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subdivision 5 exceeds the fair value of the shares as determined by the court, plus interest.

Sec. 43. Minnesota Statutes 1992, 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, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the corporation;

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

(d) Whether or not any separate consideration has been paid or promised to the corporation, has been approved by (1) the holders of two-thirds of the voting power of the shares entitled to vote which are owned 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. 44. Minnesota Statutes 1992, section 302A.521, subdivision 6, is amended to read:

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

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

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

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

(4) If a determination is not made under clauses (1) to (3), by the shareholders, ~~excluding the votes of~~ but the shares held by parties to the proceeding must not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or

(5) If an adverse determination is made under clauses (1) to (4) or under paragraph (b), or if no determination is made under clauses (1) to (4) or under

paragraph (b) within 60 days after (i) the later to occur of the termination of a proceeding or a written request for indemnification to the corporation or ~~after a~~ (ii) a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

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

Sec. 45. Minnesota Statutes 1992, section 302A.551, subdivision 1, is amended to read:

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

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

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

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

Sec. 46. Minnesota Statutes 1992, section 302A.553, subdivision 1, is amended to read:

Subdivision 1. **WHEN PERMITTED; STATUS OF SHARES.** (a) A corporation may acquire its own shares, subject to section 302A.551 and subdivision 3. ~~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 acquired by a corporation~~

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

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

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

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

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

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

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

Sec. 47. Minnesota Statutes 1992, section 302A.559, subdivision 1, is amended to read:

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

Sec. 48. Minnesota Statutes 1992, section 302A.613, subdivision 2, is amended to read:

Subd. 2. **APPROVAL BY SHAREHOLDERS.** (a) At the meeting a vote of the shareholders shall be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote. Except as provided in paragraph (b), a class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

(b) A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger ~~or exchange~~ effects a cancellation of the shares of the class or series if the plan of merger ~~or exchange~~ effects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger ~~or exchange~~ and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 302A.471 in the event of the merger ~~or exchange~~.

Sec. 49. Minnesota Statutes 1992, section 302A.613, subdivision 3, is amended to read:

Subd. 3. **WHEN APPROVAL BY SHAREHOLDERS NOT REQUIRED.** Notwithstanding the provisions of subdivisions 1 and 2, submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

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

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

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

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

Sec. 50. Minnesota Statutes 1992, section 302A.621, subdivision 6, is amended to read:

Subd. 6. **RIGHTS OF DISSENTING SHAREHOLDERS.** In the event all of the stock of one or more domestic subsidiaries ~~of the parent~~ that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenters' rights under section 302A.471, without regard to sections 302A.471, subdivision 3, and 302A.473. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenters' rights under section 302A.471, subdivision 1, paragraph (a), if the articles of incorporation of the surviving corporation constituted an amendment to the articles of incorporation of the parent, that shareholder of the parent has dissenters' rights as provided under sections 302A.471 and 302A.473. Except as provided in this subdivision, sections 302A.471 and 302A.473 do not apply to any merger effected under this section.

Sec. 51. Minnesota Statutes 1992, section 302A.641, subdivision 1, is amended to read:

Subdivision 1. **EFFECTIVE DATE OR TIME.** A merger or exchange is effective when the articles of merger or exchange are filed with the secretary of state or on a later date or at a later time specified in the articles of merger or exchange.

Sec. 52. Minnesota Statutes 1992, 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, a control share acquisition and gives a written undertaking to pay or reimburse the issuing public corporation's expenses of a special meeting, except the expenses of the issuing public corporation in opposing according voting rights with respect to shares acquired or to be acquired in the control share acquisition, within ten days after receipt by the issuing public corporation of the information statement, a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 302A.433, subdivision 1, for the sole purpose of considering the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to the control share acquisition. The special meeting shall be held no later than 55 days after receipt of the information statement and written undertaking to pay or reimburse the issuing public corporation's expenses of the special meeting, unless the acquiring person agrees to a later date. If the acquiring person so requests in writing at the time of delivery of the information statement, (1) the special meeting shall not be held sooner than 30 days after receipt by the issuing public corporation of the information statement~~,~~ and (2) the record date for the meeting must be at least 30 days prior to the date of the meeting. If no request for a special meeting is made, consideration of the voting rights to be accorded to shares referred to in subdivision 1, paragraph (b), acquired or to be acquired pursuant to the control share acquisition shall be presented at the next special or annual meeting of the shareholders, 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. 53. Minnesota Statutes 1992, 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, relationship, understanding, or otherwise with, any interested shareholder of the issuing public corporation or any affiliate or associate of the interested shareholder for a period of four years following the interested shareholder's share acquisition date unless the business combination or the acquisition of shares made by the interested shareholder on the interested shareholder's share acquisition date is approved before the interested shareholder's share acquisition date, or on the share acquisition date but prior to the interested shareholder's becoming an interested shareholder on the share acquisition date, by a committee of the board of the issuing public corporation formed in accordance with paragraph (d).

(b) If a good faith definitive proposal regarding a business combination is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d) shall consider and take action on the proposal and respond in writing within 30 days after receipt of the proposal by the issuing public corporation, setting forth its decision regarding the proposal.

(c) If a good faith definitive proposal to acquire shares is made in writing to the board of the issuing public corporation, a committee of the board formed in accordance with paragraph (d), shall consider and take action on the proposal and respond in writing within 30 days after receipt of the proposal by the issuing public corporation, setting forth its decision regarding the proposal.

(d)(1) When a business combination or acquisition of shares is proposed pursuant to this subdivision, the board shall promptly form a committee composed 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 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. 54. Minnesota Statutes 1992, section 302A.673, subdivision 3, is amended to read:

Subd. 3. **APPLICATION.** (a) Unless by express provision electing to be subject to this section contained in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section does not apply to any business combination of an issuing public corporation, that is not, at any time during the period from June 1, 1987, until adoption of the article or bylaw provision, a publicly held corporation. ~~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 either before the effective date of the article or bylaw provision or on the effective date, but prior to the effective time 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, prior to the time the issuing public corporation becomes a publicly held corporation or becomes subject to this section by virtue of an election under paragraph (a), including any time prior to the time that the corporation becomes an issuing public corporation, articles or bylaws of the corporation contain a provision expressly electing not to be subject to this section;

(2) if the board of the issuing public corporation adopts, prior to September 1, 1987, an amendment to the issuing public corporation's bylaws expressly electing not to be subject to this section;

(3) if an amendment to the articles or bylaws of the issuing public corpora-

tion is approved by the shareholders, other than interested shareholders and their affiliates and associates, holding a majority of the outstanding voting power of all shares entitled to vote, excluding the shares of interested shareholders and their affiliates and associates, expressly electing not to be subject to this section and the amendment provides that it is not to be effective until 18 months after the vote of shareholders and provides that, except as provided in paragraph (c), it does not apply to any business combination of the issuing public corporation with an interested shareholder whose share acquisition date is on or before the effective date of the amendment; or

(4) if the business combination was consummated before, or if a binding agreement for the business combination was entered into before, the day following June 1, 1987.

(c) This section does not apply to any business combination of an issuing public corporation with 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 and had the issuing public corporation been an issuing public corporation 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~~ at the effective ~~date~~ time of the amendment if this section had been applicable.

Sec. 55. Minnesota Statutes 1992, section 302A.711, subdivision 1, is amended to read:

Subdivision 1. **MANNER.** A corporation that has not issued shares may be dissolved by the incorporators or directors in the manner set forth in this section.

Sec. 56. Minnesota Statutes 1992, section 302A.711, subdivision 2, is amended to read:

Subd. 2. **ARTICLES OF DISSOLUTION.** (a) A majority of the incorporators or directors shall sign articles of dissolution containing:

(1) The name of the corporation;

(2) The date of incorporation;

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

(3) A statement that shares have not been issued;

(4) A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and

(5) A statement that no debts remain unpaid.

(b) The articles of dissolution shall be filed with the secretary of state.

Sec. 57. Minnesota Statutes 1992, section 302A.901, is amended by adding a subdivision to read:

Subd. 2a. **SERVICE ON DISSOLVED CORPORATIONS.** Process, notice, or demand may be served on a dissolved corporation as provided in this subdivision. The court shall determine if service is proper.

(a) If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subdivision 1 so long as claims are not finally barred under section 302A.781.

(b) If a corporation has been involuntarily dissolved pursuant to section 302A.821, service may be made according to subdivision 1.

Presented to the governor April 7, 1993

Signed by the governor April 7, 1993, 3:22 p.m.

CHAPTER 18—H.F.No. 159

An act relating to education; extending the time for school districts receiving capital loans prior to April 1, 1993, to enter into construction contracts.

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

Section 1. **CAPITAL LOAN CONTRACT DEADLINE EXTENSION.**

Notwithstanding Minnesota Statutes 1992, section 124.431, subdivision 1, for capital loans granted prior to April 1, 1993, contracts must be entered into within 30 months after the date on which the loan is granted.

Sec. 2. **EFFECTIVE DATE.**

Section 1 is effective retroactive to July 1, 1992.

Presented to the governor April 7, 1993

Signed by the governor April 7, 1993, 3:24 p.m.